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# NAVIGATING THROUGH DELAWARE’S RESIDENTIAL LANDLORD–TENANT LAW

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## A. *What this Guide Covers and the Scope of the Code’s Coverage*

This Guide covers the provisions of, and case law concerning, Delaware’s Residential Landlord–Tenant Code<sup>1</sup> (hereinafter “the Code”), which is attached to this Guide as Appendix 1. This Guide does not cover federal law, and to the extent that federal law preempts the Code, federal law will control.<sup>2</sup> This preemption occurs largely in the context of federally-subsidized housing.<sup>3</sup> Before reading this Guide, it is important to understand the scope of the Code’s coverage to determine if the Code governs your particular issue.

1. Is the property a residential rental unit or a commercial rental unit?

The Code regulates and determines the legal rights, remedies, and obligations of both parties and beneficiaries<sup>4</sup> of rental agreements

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*The author dedicates this article to his father, John Tsouflas. May his memory be eternal.*

<sup>1</sup> DEL. CODE ANN. tit. 25, §§ 5101 et seq. (2017). All “Section” references throughout this Guide refer to sections under Chapter 25 of the Delaware Code, unless expressly stated or cited otherwise.

<sup>2</sup> See *Del. St. Hous. Auth. v. Justice of the Peace Ct. 16*, No. 07A-11-004, 2008 WL 4120038, at \*3 (Del. Super. Ct. Aug. 8, 2008) (discussing the different categories of preemption).

<sup>3</sup> In *Del. St. Hous. Auth.*, the Delaware Superior Court found that, in the specific context of federally-subsidized housing, the Low–Income Housing General Program of Assisted Housing, 42 U.S.C. § 1437 et. seq., preempts the Code with regard to the number of times a tenant may make a late payment before the landlord may terminate the lease. 2008 WL 4120038, at \*4.

<sup>4</sup> See, e.g., *Thayer v. Concord Mall*, 1989 WL 89581, at \*7 (Del. Super. Ct. Mar. 31, 1989) (finding that the tenant’s employee “easily fits within the definition of a beneficiary to

concerning *residential* rental units located in Delaware.<sup>5</sup> A “rental unit,” also referred to as a “dwelling unit” or “dwelling place,” is a house, building, or structure, or any portion of a house, building, or structure, which is occupied, rented, or leased as the residence of one or more persons.<sup>6</sup> The parties to a rental agreement, also referred to as a “landlord-tenant agreement,” are typically a landlord (the person who rents out the property)<sup>7</sup> and a tenant (the individual who is entitled to occupy the residence).<sup>8</sup>

The Code does not govern rental agreements for *commercial* rental units.<sup>9</sup> A “commercial rental unit” is property that is occupied or rented solely or primarily for commercial or industrial purposes, *i.e.*, business purposes.<sup>10</sup> In 1996, Delaware’s General Assembly amended the Code, making the Code inapplicable to rental agreements for commercial rental units.<sup>11</sup> Accordingly, all rental agreements executed *before* 1996 are governed by the version of the Code that did not distinguish between commercial and residential leases (thereby offering greater protections for parties to commercial leases).<sup>12</sup> Furthermore, a commercial lease may provide that the Code applies to their relationship; however, in *Troumouhis v. St. Dept. of Transp.*,<sup>13</sup> the Delaware Superior Court indicated that where such provision conflicts with a more specific contractual provision, the more specific provision would control.<sup>14</sup>

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be protected under [the Code]). The term “beneficiary” also includes social guests of the tenant. *Ford v. Ja-Sin*, 420 A.2d 184, 187 (Del. Super. Ct. 1980).

<sup>5</sup> DEL. CODE ANN. tit. 25, § 5101(a) (2017); *see also* *Thayer*, 1989 WL 89581, at \*4 (noting that the Code became effective in 1972); *Makin v. Mack*, 336 A.2d 230, 232-33 (Del. Ch. 1975) (stating that the Code’s purpose is “to simplify and clarify the law governing landlord and tenant relationships, to upgrade the quality of housing in the State, and ‘to revise and modernize the law of landlord and tenant to serve more realistically the needs of a modern day society’”).

<sup>6</sup> DEL. CODE ANN. tit. 25, § 5141(25) (2017). Delaware courts have held that where leased land is “bare and there is no indication that any structure existed on it during the tenancy,” the land is not covered by the Code. *Ambro v. Ploener*, 394 A.2d 758, 761 (Del. Super. Ct. 1978).

<sup>7</sup> DEL. CODE ANN. tit. 25, § 5141(15) (2017). The court in *Main Street Ct., LLC v. Kiernan*, No. CPU4-14-000003, 2015 WL 4041171 (Del. C.P. July 2, 2015) held that the definition of “landlord” is unambiguously defined in the Code, and includes a person authorized (or held out to be authorized) to manage the property on the landlord’s behalf. Accordingly, such a person may be held liable as a landlord. *Id.*

<sup>8</sup> DEL. CODE ANN. tit. 25, § 5141(32) (2017).

<sup>9</sup> *Id.* § 5101(b).

<sup>10</sup> *Id.* § 5141(4).

<sup>11</sup> *See* *Axel v. Damar, Inc.*, No. 06C-05-004-RFS, 2007 WL 2446839, at \*3 (Del. Super. Ct. Aug. 29, 2007).

<sup>12</sup> *Independence Mall, Inc. v. Wahl*, No. 10C-12-031-FSS, 2012 WL 6945505, at \*4 (Del. Super. Ct. Dec. 31, 2012).

<sup>13</sup> No. 04C-01-104, 2006 WL 1579776, at \*5 (Del. Super. Ct. May 31, 2006).

<sup>14</sup> *Id.*

2. Is the agreement a conditional sales agreement that has been converted to a landlord-tenant agreement?

The Code also governs relationships between parties arising by law under *conditional sales agreements* that have been converted to a landlord-tenant agreement by operation Section 314(d)(3).<sup>15</sup> A conditional sales agreement is simply a contract between a buyer and a seller whereby the buyer takes possession of the property, but title to the property and the right to repossess the property remain with the seller until the buyer pays the entire purchase price. Typically, under a conditional sales agreement, the buyer will pay for the property through monthly installment payments. This looks like rent, but the major difference between rent and monthly installment payments is ownership—the buyer will own the property once all installment payments have been made.

It is important to note that only certain conditional sales agreements are governed by the Code, *i.e.*, those that have been converted to landlord-tenant agreements pursuant to Section 314(d)(3). Under Section 314(d), a buyer who defaults for failure to pay the monthly installment payment has the right to redeem the property by paying the remaining contract amount.<sup>16</sup> The buyer must make this “redemption payment” within one hundred and twenty days of the seller providing the buyer with written notice of the default.<sup>17</sup> If, however, the defaulting buyer fails to timely make this redemption payment, the conditional sales agreement converts to a landlord-tenant agreement.<sup>18</sup> This newly converted landlord-tenant agreement, and the relationship of the parties to that agreement, will be governed by the Code.

#### **Conditional Sales Agreement Example**

Brian Buyer wishes to purchase a home from Samantha Seller, but he is having trouble obtaining financing. Samantha offers to sell Brian the home for \$200,000, and allows Brian to pay Samantha monthly payments of \$1,000 for 200 months. After Brian makes all monthly payments, Samantha will convey title to the property to Brian (this is called “*final settlement*”). Brian agrees and he and Samantha enter into a conditional sales agreement that reflects this arrangement.

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<sup>15</sup> DEL. CODE ANN. tit. 25, § 5101(c) (2017).

<sup>16</sup> *Id.* § 314(d)(2).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* § 314(d)(3).

Brian moves into the home and makes the first five monthly payments on time. In month six, however, Brian fails to make his \$1,000 payment. Samantha sends Brian a notice of default, and Brian now has 120 days to pay the remaining purchase price of the home (*i.e.*, \$195,000). Brian is again unable to find a lender willing to loan him the \$195,000. After 120 days, Brian and Samantha's conditional sales agreement converts by law to a landlord-tenant agreement. Brian becomes the tenant, Samantha becomes the landlord, and the Code establishes their respective rights, duties and obligations.

3. Is the living arrangement expressly excluded from the Code's application?

Certain living arrangements are expressly excluded from the Code's application.<sup>19</sup> The following non-exhaustive list sets forth some of the most common living arrangements that are not ordinarily governed by the Code:

- a. Residence in prisons;
- b. Residence in student housing;
- c. Residence in old-age homes and nursing homes;
- d. Residence in hospitals;
- e. Residence by a fraternal organization member in a building operated for the organization's benefit;
- f. Residence in a hotel/motel; and
- g. Nonrenewable residence in certain beach areas for 120 days or less.

Notably, if a living arrangement that would otherwise be excluded from the Code's application is created solely to avoid such application, that arrangement will not be so excluded.<sup>20</sup> Section 5102 of the Code provides greater detail with regard to the excluded arrangements.<sup>21</sup>

### *B. How to Use This Guide*

This Guide is intended to establish a comprehensive source for individuals and their advisors (including attorneys) who seek to navigate through Delaware's residential landlord-tenant law. Although this Guide cannot cover all issues landlords, tenants, and their respective advisors will face, this Guide endeavors to cover the most common issues.

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<sup>19</sup> DEL. CODE ANN. tit. 25, § 5102 (2017).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

This Guide is also intended to be as user friendly as possible. To this end, this Guide is organized in chronological order: this Guide starts with the establishment of the landlord-tenant relationship, then discusses many of the issues that arise during the relationship, and, next, focuses on how to go about ending the relationship. Finally, Chapter Four explains how individuals resolve issues that arise when a landlord or tenant breaches the landlord-tenant agreement or violates applicable law.

## I. CHAPTER ONE: STARTING THE RESIDENTIAL LANDLORD-TENANT RELATIONSHIP

### A. Applications by Prospective Tenants

Although not legally obligated to do so, landlords typically require prospective tenants to complete an application before the individual is eligible to rent the premises. Landlords are required to keep all applications made by prospective tenants for a period of six months.<sup>22</sup>

When a prospective tenant completes such an application, the prospective landlord or owner of the property may not ask for, and may not receive, “assurance money.”<sup>23</sup> “Assurance money” is *any* payment made by a prospective tenant to the prospective landlord, *except for* payments that constitute the following: (1) application fees; (2) security or pet deposits; (3) surety bond fees or premiums; (4) deposits made to reserve the rental unit for a certain period of time; and (5) reimbursements for money expended by the prospective landlord in credit or other investigations.<sup>24</sup> Each of these payments will be discussed in greater detail below.

With regard to credit or other investigation fees, the prospective landlord may be reimbursed for these expenses, but may not charge any more than the specific cost of such investigation.<sup>25</sup> Where the landlord requires the tenant to pay a fee to determine the tenant’s credit worthiness, that fee is considered an “application fee.”<sup>26</sup> Landlords are permitted to charge application fees to determine the prospective tenant’s credit worthiness, but this fee cannot exceed the greater of ten percent of the monthly rent or fifty dollars.<sup>27</sup> The landlord must give a receipt to the tenant for the full amount of the application fee paid by the tenant.<sup>28</sup> Also, for each application fee charged and received, the landlord must keep records for a period of two

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<sup>22</sup> DEL. CODE ANN. tit. 25, § 5310(b) (2017). If the landlord has failed to keep the application fee, see *id.*

<sup>23</sup> *Id.* § 5310(a). For the definition of “owner,” see *id.* § 5141(20).

<sup>24</sup> For the definition of “surety bond fee or premium,” see *id.* § 5141(31).

<sup>25</sup> *Id.* § 5310(a).

<sup>26</sup> *Id.* § 5514(d).

<sup>27</sup> *Id.*

<sup>28</sup> DEL. CODE ANN. tit. 25, § 5514(d) (2017).

years.<sup>29</sup>

Finally, in addition to application fees, landlords are permitted to charge tenants for certain optional service fees for actual services rendered, such as a pool fee or tennis-court fee; however, landlords are prohibited from charging tenants any other non-refundable fee as a condition for occupancy.<sup>30</sup>

## B. Deposits and Surety Bonds

### 1. Security Deposit

A security deposit is any deposit, excluding a pet deposit, which the landlord holds during any part of the rental agreement's term.<sup>31</sup> A landlord may require tenants to pay a security deposit, subject to a few limitations.<sup>32</sup>

First, if the rental agreement is for one year or more, the landlord may not require a security deposit in excess of one month's rent.<sup>33</sup> This limitation does not apply to furnished rental units.<sup>34</sup>

Second, if the rental term is undefined or month-to-month,<sup>35</sup> and the tenancy has lasted for one year or more, the landlord may not require a security deposit in excess of one month's rent (with the exception of premises governed by federally assisted housing regulations).<sup>36</sup> In this month-to-month scenario, the landlord may have collected a security deposit in excess of one month's rent.<sup>37</sup> If this is the case, and the tenant has resided in the premises for one year, the landlord must immediately return any amount of the security deposit that is in excess of one month's rent.<sup>38</sup> The landlord must also return any amount which, when combined with the amount of any surety bond, exceeds one month's rent.<sup>39</sup> The limitation in this paragraph does not apply to furnished rental units.<sup>40</sup>

Third, landlords must place security deposits in an escrow bank account.<sup>41</sup> The escrow bank account must be in a federally insured bank with an office that accepts deposits in Delaware.<sup>42</sup> The account must be

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<sup>29</sup> If the landlord unlawfully demanded more than the allowable application fee, see *infra* Chapter Four, section B, part 11.

<sup>30</sup> DEL. CODE ANN. tit. 25, § 5311 (2017).

<sup>31</sup> *Id.* § 5141(26).

<sup>32</sup> *Id.* § 5514(a)(1).

<sup>33</sup> *Id.* § 5514(a).

<sup>34</sup> *Id.* § 5514(a)(4).

<sup>35</sup> *Id.* § 5141(18).

<sup>36</sup> DEL. CODE ANN. tit. 25, § 5514(a)(3) (2017).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* § 5514.

<sup>40</sup> *Id.* § 5514(a)(4).

<sup>41</sup> *Id.* § 5514(b). The provisions relating to security deposit were placed in the Code because of the widespread abuse by landlords in the use and comingling of such funds. See *Stoltz Mgmt. Co. v. Phillip*, 593 A.2d 583, 587 (Del. Super. Ct. 1990).

<sup>42</sup> DEL. CODE ANN. tit. 25, § 5514 (b) (2017).

designated as a security deposit account, and the landlord may not use this account in the operation of her business.<sup>43</sup> The landlord must also disclose to the tenant the location of the account.<sup>44</sup> The account must be administered for the tenant's benefit, and the tenant's claim to the money in this account will have priority over any other creditor of the landlord (including a bankruptcy trustee) even if the money is commingled.<sup>45</sup>

Fourth, security deposits may be for following purposes: (1) to reimburse the landlord for *actual* damages caused to the premises by the tenant which *exceed normal wear and tear*, or which cannot be corrected by painting and ordinary cleaning; (2) to pay the landlord for back rent, late charges, and the tenant's premature termination or abandonment of the rental agreement; and (3) to reimburse the landlord for reasonable expenses incurred in renovating and re-renting the property because of the tenant's premature termination of the agreement, provided that such reimbursement will not exceed one month's rent (collectively, the "Security Expenses").<sup>46</sup> The Delaware Superior Court has provided that, where a non-refundable fee is charged to tenants to defray many of the same expenses covered by security deposits, such fees conflict with the Code provisions regarding the uses and handling of security deposits, and are therefore unenforceable.<sup>47</sup>

Finally, landlords are permitted to increase the security deposit commensurate with the rent if the rental agreement authorizes this increase.<sup>48</sup> However, if the increase exceeds ten percent of the monthly rent, payment of the increased deposit will be prorated over the rental agreement's term, unless the tenancy is month-to-month, in which case payment will be prorated over four months.<sup>49</sup>

## 2. Surety Bond

Rather than paying all or part of a security deposit, a tenant may elect to purchase a surety bond.<sup>50</sup> A landlord may not, however, *require* a tenant to purchase a surety bond instead of paying a security deposit.<sup>51</sup> A landlord is similarly not required to accept a tenant's purchase of a surety bond in lieu

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<sup>43</sup> DEL. CODE ANN. tit. 25, § 5514 (b) (2017).

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* If the landlord failed to disclose the security deposit account's location, see *infra* Chapter Four, section B, part 12.

<sup>46</sup> DEL. CODE ANN. tit. 25, § 5514(c) (2017).

<sup>47</sup> See *Stoltz Mgmt. Co. v. Phillip*, 593 A.2d 583, 587 (Del. Super. Ct. 1990). For the definition of "normal wear and tear," see DEL. CODE ANN. tit. 25, § 5141(19) (2017).

<sup>48</sup> DEL. CODE ANN. tit. 25, § 5514(j) (2017).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* § 5514A(a); see also *id.* § 5311. Delaware courts define a "suretyship" as "an undertaking to answer for the debt, default or miscarriage of another, by which the surety becomes bound as the principal or original debtor is bound." *W.T. Rawleigh Co. v. Warrington*, 1999 A.2d 666, 667-68 (Del. Super. Ct. 1938).

<sup>51</sup> DEL. CODE ANN. tit. 25, § 5514A(b) (2017).

of paying a security deposit.<sup>52</sup> Thus, practically speaking, the parties must mutually agree to the tenant's use, and landlord's acceptance, of a surety bond in lieu of a security deposit. A surety bond may be used for the Security Expenses (defined in Subsection 1 above).<sup>53</sup> Similarly, the amount of the surety bond (or the aggregate amount of both the surety bond and the security deposit) is essentially governed by the same monetary limitation rules outlined above in Subsection 1.<sup>54</sup>

A surety bond may only be issued by an admitted carrier licensed by the Delaware Department of Insurance—*i.e.*, a surety.<sup>55</sup> If the landlord does not accept the surety bond, or the tenant does not enter into a lease with the landlord, the Code mandates that the surety refund the tenant any charges paid in connection with the surety bond.<sup>56</sup> Before purchasing a surety bond, a surety must disclose to the tenant *in writing* that: (1) payment for a surety bond *may* be non-refundable (subject to the limited exceptions discussed above); (2) the surety bond is not insurance for the tenant; (3) the bond is being purchased for the landlord's protection; (4) the tenant may be required to reimburse the surety for amounts the surety paid to the landlord for any claim made by the landlord against the surety bond; (5) even after the tenant purchases a surety bond, the tenant is still responsible for the Security Expenses; and (6) the tenant is not required to pay more than the amount owed to the landlord for the Security Expenses.<sup>57</sup> Once purchased, the surety or the landlord must deliver to the tenant a copy of the rental agreement and bond form that was signed by the tenant when they purchased the bond.<sup>58</sup>

Even if the tenant issues a surety bond to the landlord, the tenant has the right under the Code to pay the Security Expenses directly to the landlord.<sup>59</sup> The tenant also has the right to require the landlord to use the tenant's security deposit (if any) before the landlord makes a claim against the bond.<sup>60</sup>

Lastly, if the landlord sells or transfers her interest in the leased property, the new landlord must accept the surety bond.<sup>61</sup> Relatedly, the new landlord may not require an additional security deposit from the tenant during the current lease term. Moreover, at any lease renewal, the new landlord may not require a surety bond or security deposit in addition to the existing surety bond or security deposit if doing so would exceed the

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<sup>52</sup> DEL. CODE ANN. tit. 25, § 5514A(b) (2017).

<sup>53</sup> *Id.* § 5514A(a).

<sup>54</sup> *Id.* § 5514A(d).

<sup>55</sup> *Id.* § 5514A(k).

<sup>56</sup> *Id.* § 5514A(c).

<sup>57</sup> *Id.* § 5514A(e).

<sup>58</sup> DEL. CODE ANN. tit. 25, § 5514A(i) (2017).

<sup>59</sup> *Id.* § 5514A(f).

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* § 5514A(j).

amount permitted under the Code.<sup>62</sup>

### 3. Pet Deposit

Landlords are permitted to require pet deposits, unless the pet is a duly certified and trained support animal for a disabled resident of the rental unit.<sup>63</sup> A “pet deposit” is a deposit made by the tenant for the presence of an animal in the rental unit, and is to be held by the landlord during any part of the rental agreement’s term.<sup>64</sup> Any expenses incurred because of damage to the rental unit caused by an animal must first be deducted from the pet deposit.<sup>65</sup> Where the pet deposit is insufficient to cover these expenses, the landlord may deduct damages from the security deposit.<sup>66</sup> Pet deposits are similarly subject to the escrow bank account provisions discussed in section 1 above.<sup>67</sup> Lastly, the pet deposit may not exceed one month’s rent, regardless of the rental agreement’s duration.<sup>68</sup>

### C. The Landlord–Tenant Agreement

From the outset of the landlord–tenant relationship, the landlord and the tenant typically enter into some type of landlord–tenant agreement. The landlord–tenant agreement sets forth or modifies the terms, conditions, rules, regulations, or any other provisions concerning the use and occupancy of a rental unit.<sup>69</sup> The landlord–tenant agreement may be *oral or written*. There are different rules that apply to written landlord–tenant agreements than those that apply to oral agreements. These rules and distinctions are discussed in greater detail below.

If a provision in the agreement, whether written or oral, conflicts with and is not expressly authorized by the Code, that provision will be rendered unenforceable.<sup>70</sup> This unenforceability, however, will not affect any other provision of the landlord–tenant agreement that can be given effect without this unenforceable provision.

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<sup>62</sup> DEL. CODE ANN. tit. 25, § 5514A(j) (2017). If the surety fails to comply with the provisions in this section, see *infra* Chapter Four, section B, part 12.

<sup>63</sup> DEL. CODE ANN. tit. 25, § 5514(i)(3) (2017). For the definition of “support animal,” see *id.* § 5141(30).

<sup>64</sup> *Id.* § 5141(22).

<sup>65</sup> *Id.* § 5514(i)(1).

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* § 5514(i)(2).

<sup>69</sup> DEL. CODE ANN. tit. 25, § 5141(24) (2017); *id.* § 5109(a) (“Material promises, agreements, covenants or undertakings of any kind to be performed by either party to a rental agreement shall be interpreted as mutual and dependent conditions to the performance of material promises, agreements, covenants and undertakings by the other party.”).

<sup>70</sup> *Id.* § 5105(a).

### **Unenforceable Provision Example**

A landlord–tenant agreement may not shift attorney’s fees to a prevailing party in a landlord–tenant dispute. If, for example, a landlord–tenant agreement attempts to shift attorney’s fees in violation of the Code, that provision will be unenforceable and neither the tenant nor the landlord may be forced to comply with that section. The unenforceable attorney’s fees provision; however, should not affect the validity of any other provision in the landlord–tenant agreement that can otherwise be enforced without the void attorney’s fees provision. So, for example, a section in the landlord–tenant agreement that requires the tenant to pay rent each month, and a provision that contractually obligates the landlord to provide a parking space to the tenant, are still enforceable since the attorney’s fees provision does not affect these rights, duties, and obligations.

#### 1. Information the Landlord Needs to Provide the Tenant

In the case of written agreements, the landlord must provide the tenant a copy of the written landlord–tenant agreement *free of charge*.<sup>71</sup> The landlord must also “prominently disclose” certain information on the written rental agreement.<sup>72</sup> The Code does not define “prominently disclose,” but best practices suggest that this information be presented in such a way that makes it stand out from the other text in the landlord–tenant agreement. For example, using bold and underline typeface, although not required, should satisfy this disclosure requirement.

With regard to the information that must be disclosed, the Code requires that the written rental agreement include the names and usual business addresses of the owners of the rental unit or the property of which the rental unit is a part (or their appointed resident agents), and/or the landlord of the rental unit.<sup>73</sup> If, however, the landlord–tenant agreement is oral, the landlord is only obligated to provide this information to the tenant in a separate writing if the tenant makes a demand for such information.<sup>74</sup> Best practices suggest that the tenant require the landlord to enter into a written agreement, or alternatively, make a written demand for the information concerning the landlord–tenant relationship. Additionally, all communications and notices required to be made under the Code must be

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<sup>71</sup> DEL. CODE ANN. tit. 25, § 5105(b) (2017).

<sup>72</sup> *Id.* § 5105(a).

<sup>73</sup> For more detail, see *id.* Note that owners and resident agents not dealing with the tenant as a landlord will be responsible for compliance with Section 5105 by the landlord. *Id.* § 5105(c). The legislative intent behind this requirement is for tenants to know who their landlords are, how to contact them, and how to serve them with process (if necessary). *Hallmon v. Alperin*, No. 90C-JA-174, 1992 WL 207249, at \*2 (Del. Super. Ct. Aug. 6, 1992).

<sup>74</sup> DEL. CODE ANN. tit. 25, § 5101(b) (2017).

directed to the landlord at the address specified in the rental agreement and to the tenant at an address specified in the rental agreement or to a forwarding address, if provided in writing by the tenant at or prior to the rental agreement's termination.<sup>75</sup>

## 2. Unsigned Agreements

The effectiveness of an unsigned landlord–tenant agreement hinges upon which party did not sign, and which party tendered the agreement.<sup>76</sup> If the landlord failed to sign the written agreement, and the tenant tendered the agreement to the landlord, the landlord's acceptance of rent without reservation will give the agreement the same effect as if the landlord signed it.<sup>77</sup> If the tenant fails to sign the written agreement, and the landlord tenders the agreement to the tenant, the tenant's acceptance of possession and payment of rent will give effect to the agreement to the same extent as if the tenant had signed it.<sup>78</sup> Importantly, if the agreement was given effect by operation of Section 5110 the agreement is only effective for a one-year term, even if the agreement provides for a term longer than one year.<sup>79</sup>

## 3. Obligations of a Cosigner

A landlord may require a tenant to obtain a “cosigner” to execute the landlord–tenant agreement. Ordinarily, and as provided in the Restatement Third of Suretyship & Guaranty, “if the parties to a contract identify one party as a ‘cosigner’, the party so identified is a secondary obligor who is subject to a secondary obligation pursuant to which the secondary obligor is jointly and severally liable with the principal obligor to perform the obligation set forth in that contract.”<sup>80</sup> In other words, the cosigner and the tenant are both responsible for fulfilling the tenant's responsibilities and obligations under the landlord–tenant agreement.

In *Rynkowski v. Seal*, however, the Delaware Court of Common Pleas held that the cosigner at issue was not responsible for the tenant's obligations under the lease.<sup>81</sup> The court reasoned that, aside from the individual's mere designation as a “cosigner” on the agreement's signature page, the agreement did not include any language pertaining to the cosigner's responsibilities and obligations.<sup>82</sup> The court also indicated that

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<sup>75</sup> DEL. CODE ANN. tit. 25, § 5514(h) (2017).

<sup>76</sup> See *id.* § 5110 (describing the effect of an unsigned rental agreement).

<sup>77</sup> *Id.* § 5110(a).

<sup>78</sup> *Id.* § 5110(b).

<sup>79</sup> *Id.* § 5110(c).

<sup>80</sup> *Rynkowski v. Seal*, No. CIV.A. 2001-10-628, 2003 WL 1821861, at \*2 (Del. C.P. Jan. 9, 2003) (quotation omitted).

<sup>81</sup> *Id.* at \*3.

<sup>82</sup> *Id.*

the cosigner did not receive any consideration for signing the agreement, and the cosigner did not execute the agreement at the same time as the other parties.<sup>83</sup> According to the court, these factors constituted a lack of notice as to the cosigner's liabilities, and, therefore, found that holding the cosigner responsible for the tenant's obligations would violate fundamental fairness and notice principles.<sup>84</sup>

In light of the *Rynkowski* decision, if the landlord requires the tenant to obtain a cosigner and intends the cosigner and the tenant to be jointly and severally liable for the tenant's obligations under the lease, the lease should unambiguously set forth the cosigner's responsibilities and obligations under the lease, and identify the consideration the cosigner received. The cosigner should also execute the agreement at the same time as the landlord and tenant or, at the very least, at the same time as the tenant.

#### 4. Unenforceable Provisions

The Code prohibits a landlord-tenant agreement from providing that a tenant: (1) agrees to waive or forego rights or remedies under the Code; (2) authorizes any person other than the tenant to confess judgment against the tenant on a claim arising out of the landlord-tenant agreement; or (3) 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.<sup>85</sup> For example, the landlord-tenant agreement at issue in *Taklai v. Admirals Club Apartments* limited the landlord's liability for any loss by fire, water, theft, or negligence, and required the tenant to indemnify the landlord for such losses.<sup>86</sup> The court found these provisions were in direct conflict with the Code, and rendered them unenforceable.<sup>87</sup> Note, however, that a lease provision does not need to be expressly authorized by the Code for it to be enforceable—the provision merely cannot conflict with the Code.<sup>88</sup>

If the agreement includes a prohibited provisions and the landlord knew that it was unenforceable, the tenant may seek damages.<sup>89</sup> Similarly, a provision in a landlord-tenant agreement that provides for the recovery of attorneys' fees by a party to any tenancy-related litigation is

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<sup>83</sup> *Rynkowski*, 2003 WL 1821861, at \*3.

<sup>84</sup> *Id.* at \*2.

<sup>85</sup> DEL. CODE ANN. tit. 25, §§ 5301(a), 5121 (2017).

<sup>86</sup> *Taklai v. Admirals Club Apartments*, No. 06C-11-291 PLA, 2008 WL 2332340, at \*1 (Del. Super. Ct. June 6, 2008).

<sup>87</sup> *Id.* at \*2.

<sup>88</sup> *Stoltz Mgmt. Co. v. Phillip*, 593 A.2d 583, 587 (Del. Super. Ct. 1990).

<sup>89</sup> See DEL. CODE ANN. tit. 25, § 5301(b) (2017); see also *infra* Chapter Four, section B, part 5.

unenforceable.<sup>90</sup> A tenant may not, however, seek damages on the sole basis that such a provision was included in a landlord–tenant agreement.

#### D. Summary of the Code

At the beginning of the tenant's rental term, the tenant must be given a summary of the Code.<sup>91</sup> This summary is prepared by the Consumer Protection Unit of the Attorney General's Office.<sup>92</sup>

#### E. Fair Housing Provisions

The Code expressly prohibits certain discriminatory conduct.<sup>93</sup> First, a property owner may not refuse or decline to rent, sub-rent, or sublease a rental property to a person because of that person's race, creed, religion, marital status, color, sex, sexual orientation,<sup>94</sup> gender identity,<sup>95</sup> national origin, disability, age or occupation, or because the person has a child or children in the family.<sup>96</sup> Second, a property owner may not refuse or decline to assign or cancel any existing landlord–tenant agreement based on the reasons stated in the previous sentence.<sup>97</sup>

A landlord may, however, make rental units available exclusively for rental by senior citizens without violating the age-discrimination prohibition.<sup>98</sup> A "senior citizen" is a person who is sixty-two years or older (regardless of the age of such person's spouse).<sup>99</sup> Lastly, a person may not demand or receive a greater amount of rent because the tenant (or prospective tenant) is of a particular race, creed, religion, marital status, color, sex, sexual orientation, gender identity, national origin, disability, age or occupation, or has a child or children in their family.<sup>100</sup>

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<sup>90</sup> DEL. CODE ANN. tit. 25, § 5111 (2017). If the landlord is knowingly attempting to enforce a provision that she knows violates the Code, see *infra* Chapter Four, section B, part 5.

<sup>91</sup> DEL. CODE ANN. tit. 25, § 5118 (2017). If the landlord fails to provide this summary to the tenant, see *infra* Chapter Four, section B, part 1

<sup>92</sup> To view this summary, see Delaware Dept. of Justice, *A Summary of the Delaware Residential Landlord-Tenant Code*, available at [https://attorneygeneral.delaware.gov/wp-content/uploads/sites/50/2017/03/Landlord\\_Tenant\\_Code\\_Summary\\_for\\_Tenants\\_2014.pdf](https://attorneygeneral.delaware.gov/wp-content/uploads/sites/50/2017/03/Landlord_Tenant_Code_Summary_for_Tenants_2014.pdf).

<sup>93</sup> See DEL. CODE ANN. tit. 25, §§ 5116, 5141 (2017).

<sup>94</sup> For the definition of "sexual orientation," see *id.* § 5141(29).

<sup>95</sup> For the definition of "gender identity," see *id.* § 5141(11).

<sup>96</sup> *Id.* § 5116(a).

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* § 5116(d).

<sup>99</sup> DEL. CODE ANN. tit. 25, § 5141(27) (2017).

<sup>100</sup> *Id.* § 5116(b). If you feel that you have been discriminated against, see *infra* Chapter Four, B, part 2.

### *F. Supplying possession of the rental unit.*

The landlord is obligated under the Code to supply the tenant with, and put the tenant in full possession of, the rental unit at the beginning of the rental term.<sup>101</sup>

## II. CHAPTER TWO: DURING THE RESIDENTIAL LANDLORD–TENANT RELATIONSHIP

At this stage, the landlord and tenant have entered into some kind of landlord–tenant agreement, and the tenant is in full possession of the rental unit. This Chapter discusses the landlord’s and tenant’s respective rights, duties, and obligations during the time in which the parties are in a residential landlord–tenant relationship.

### *A. Duty to Act in Good Faith*

As discussed in greater detail throughout this Guide, the Code imposes certain duties on landlords and tenants. The Code also requires that certain acts be performed before certain parties may exercise rights or remedies under the Code. To the extent the Code imposes such a duty, or requires a party to complete such an act, that party must perform such duty, or complete such act, in good faith.<sup>102</sup>

### *B. Landlord’s Obligations*

#### 1. The Landlord’s Obligations, Generally

Throughout the entire term of the tenancy, the landlord has several obligations. First, the landlord must comply with all laws governing the maintenance, construction, use, or appearance of the rental unit and the rental property.<sup>103</sup> As discussed in greater detail in Chapter Four, the landlord’s compliance with applicable building and housing laws creates a presumption of compliance with the Code.<sup>104</sup> Second, the landlord must

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<sup>101</sup> DEL. CODE ANN. tit. 25, § 5303 (2017).

<sup>102</sup> *Id.* § 5104.

<sup>103</sup> *Id.* § 5305(a)(1).

<sup>104</sup> *Id.* § 5305(d). The Delaware State Housing Code establishes the “minimum conditions of residential premises and building to be used for human occupancy.” *Id.* § 4111. For example, under this code, “[a]ll premises shall be maintained in a clean, safe and sanitary condition free from accumulation of rubbish or garbage.” *Id.* § 4112. As for the interior and exterior structure, and the interior equipment, they must “be maintained structurally sound and sanitary so as not to pose a threat to the health and safety of the occupants and so as to protect the occupants from the environment.” *Id.* §§ 4113(a), 4114(a). “The supporting structural members of every building shall be maintained structurally sound, not showing any evidence of deterioration which would render them

provide a rental unit that does not endanger the health, welfare or safety of the tenants or occupants.<sup>105</sup> Third, the landlord must keep clean and sanitary all of the building's common areas, grounds, and facilities (and anything that accompanies the foregoing).<sup>106</sup> Fourth, the landlord is obligated to keep the rental unit (and anything that accompanies the unit) in as good a condition as it was, or as it should have been as prescribed by law or agreement, at the start of the tenancy.<sup>107</sup> Finally, the landlord is statutorily required to maintain – in good working order – all electrical, plumbing, and other facilities supplied by the landlord.<sup>108</sup>

In addition to the statutory mandates discussed in the preceding paragraph, a landlord–tenant agreement may impose certain obligations on the landlord.<sup>109</sup> Specifically, the landlord–tenant agreement may require the landlord to provide and maintain waste receptacles and arrange for the frequent and convenient removal of such waste.<sup>110</sup> The landlord–tenant agreement may also provide that the landlord is obligated to supply water, hot water, heat, and electricity to the rental unit.<sup>111</sup> These additional obligations of the landlord must be included in the landlord–tenant agreement in order to impose a duty on the landlord to satisfy such obligations.

Delaware courts have made clear that the tenant's knowledge of an unsuitable condition on the leased property on the date the lease is entered into does not alone allow the unsuitable condition to persist.<sup>112</sup> In other words, a tenant is “justified in assuming that the unsuitable condition will

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incapable of carrying the imposed loads.” *Id.* § 4114(b). “Every exterior door . . . shall be maintained in good condition.” *Id.* § 4113(o). “All structures shall be kept free from insect and rat infestation . . . [and] [e]very dwelling unit shall include its own plumbing facilities which are in proper operating condition, can be used in privacy and are adequate for personal cleanliness and the disposal of human waste.” *Id.* §§ 4114(i), 4116(a). Finally, “[a]ll cooking and heating equipment, components and accessories in every heating, cooking and water heating device shall be . . . kept functioning properly so as to be free from fire, health and accident hazards.” *Id.* § 4117(d). It must be noted that these examples are for illustrative purposes only, and do not include all of the provisions of the applicable building and housing laws.

<sup>105</sup> DEL. CODE ANN. tit. 25, § 5305 (2017). The safety component of this Code requirement does not encompass a duty to protect against the criminal acts of third parties. *See Paula v. Magness Const. Co.*, 1998 WL 55345, at \*2 (Del. Super. Ct. May 9, 1988); *c.f. Jardel Co. v. Hughes*, 523 A.2d 521 (Del. Super. Ct. 1987). The rental unit must also be fit for the purpose for which it was rented. DEL. CODE ANN. tit. 25, § 5305(a)(2) (2017).

<sup>106</sup> DEL. CODE ANN. tit. 25, § 5305(a)(3) (2017).

<sup>107</sup> *Id.* § 5305(a)(4). For instance, if, prior to starting the tenancy, the landlord promised the tenant that she would install coat hangers in the closet before the tenant moved into the rental unit, and the landlord failed to do so, the landlord is in breach of this Code provision.

<sup>108</sup> *Id.* § 5305(a)(5).

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* § 5305(b)(1).

<sup>111</sup> *Id.* § 5305(b)(2). If the landlord violated his or her obligations outlined in this subsection, see *infra* Chapter Four, section B, part 6.

<sup>112</sup> *Mendes v. Conrad*, No. CPU5-13-000785, 2014 WL 3534924, at \*3 (Del. C.P. June 2, 2014).

be eliminated before the date he is entitled to possession.”<sup>113</sup> By extension, Delaware courts have routinely indicated that landlords are required to continuously maintain premises in a reasonably safe condition, which includes a duty to repair the defects, even latent (or “hidden”) ones “of which the landlord is aware or should be aware through reasonable inspection.”<sup>114</sup> Determinations as to whether the landlord “should have been aware through reasonable inspection” is a question of fact for a jury or trier of fact to decide.<sup>115</sup>

Although landlords are required to maintain the premises, the Code also seeks to protect landlords from a tenant’s abuse of the property. Specifically, the Code sets forth the following specific sources from which landlords may obtain funds: (1) collecting rent and late rental charges;<sup>116</sup> (2) separately charging for utilities;<sup>117</sup> (3) requiring the payment of a security deposit;<sup>118</sup> (4) seeking reimbursement for certain “repairs, maintenance tasks, alterations or remodeling”;<sup>119</sup> (5) collecting costs associated with remedying breaches of contracts, waste, and a failure to report defective conditions;<sup>120</sup> (6) seeking summary possession and the costs that stem therefrom;<sup>121</sup> and (7) charging the tenant for the cost of removing and storing his property.<sup>122</sup> Despite these protections, a landlord is specifically limited in the way in which she uses a security deposit, and the landlord cannot seek to circumvent these limitations by charging separate fees.<sup>123</sup> These limitations are discussed in more detail in Chapter Three, section I.

## 2. The Landlord’s Obligations: Metering and Charges for Utility Services

Landlords are permitted to install, operate, and maintain meters (or another appliances) for measuring the consumption of utility services (*i.e.*,

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<sup>113</sup> *Mendes*, 2014 WL 3534924, at \*3.

<sup>114</sup> *In re Kupidua v. Emsley*, No. 94C-03-022-WTQ, 1997 WL 528259, at \*3 (Del. Super. Ct. July 24, 1997) (quotation omitted).

<sup>115</sup> *Id.*

<sup>116</sup> DEL. CODE ANN. tit. 25, §§ 5501(a), (d) (2017).

<sup>117</sup> *Id.* § 5312.

<sup>118</sup> *Id.* § 5514.

<sup>119</sup> *Id.* § 5305(c).

<sup>120</sup> *Id.* §§ 5515, 5314, 5513, 5505(a).

<sup>121</sup> *Id.* § 5702.

<sup>122</sup> DEL. CODE ANN. tit. 25, § 5715(d) (2017).

<sup>123</sup> *Stoltz Mgmt. Co., v. Consumer Affairs Board*, 616 A.2d 1206, 1210 (Del. 1992) (“To allow the landlord to cover ordinary costs through a separate fee would permit the landlord to advertise a rental unit at one price (rent) yet actually lease it at a higher price (rent and fee). Such a practice would run counter to an acknowledged purpose of the Landlord–Tenant Code—the clear statutory definition of the rights and duties of the landlord and tenant, including their financial obligations, in order to prevent abuses.”); *see also supra* notes 43–44 and accompanying text.

water, sewer, electricity, or fuel) by each rental unit.<sup>124</sup> A landlord may charge tenants separately for the utility services as measured by the meter; however, the rental agreement must “specifically include language from which the tenant can understand that the tenant will pay for a specific utility when that utility is being metered.”<sup>125</sup> The landlord may not, however, charge for utilities separately unless the utility services are separately metered.<sup>126</sup> This “separateness” requirement is not applicable to metering systems already in use prior to July 17, 1996.<sup>127</sup>

a. Providing Utility Services and Associated Costs

Utility services are often provided by the landlord, who may purchase such services in bulk, or by a utility service provider.<sup>128</sup> The landlord may require the tenant to contract directly with a utility service provider, but only if the rental unit is separately metered.<sup>129</sup> If the landlord purchases utility services in bulk, the landlord may only charge a tenant individually for such services if the services are individually metered or the cost of such services is included in each monthly rental payment, as provided for in the rental agreement.<sup>130</sup> Additionally, if a landlord elects to charge tenants separately for utility services, the amount charged may not exceed the actual cost of the utility services as determined by the cost of the service charged by the provider to the landlord.<sup>131</sup> Similarly, a landlord who charges separately for utilities must bill the tenant no less frequently than monthly.<sup>132</sup> In so billing, the landlord must use reasonable efforts to obtain an actual reading of the meters, and these readings must reasonably coincide with the landlord's bulk billing.<sup>133</sup> If the landlord is unable to obtain an actual reading, despite his or her best efforts to do so, the landlord may bill the tenant based on an estimated consumption amount.<sup>134</sup> The landlord may not, however, send more than two consecutive estimated billings.<sup>135</sup> Additionally, an actual reading of the meter must be made at the beginning and at the termination of the lease.<sup>136</sup>

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<sup>124</sup> DEL. CODE ANN. tit. 25, §§ 5312(a), 5141(33) (2017).

<sup>125</sup> *Id.* § 5312(a); *Boardwalk Ventures v. Henlopen Hotel, Inc.*, 1990 WL 18369, at \*2 (Del. Super. Ct. Feb. 21, 1990).

<sup>126</sup> DEL. CODE ANN. tit. 25, § 5312(a) (2017).

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* § 5312(b).

<sup>130</sup> *Id.*

<sup>131</sup> *Id.* § 5312(c).

<sup>132</sup> DEL. CODE ANN. tit. 25, § 5312(f) (2017).

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

### b. Approval, Inspection, and Enforcement

The Division of Weights and Measures must approve and is authorized to inspect metering systems.<sup>137</sup> If a landlord charges a tenant independently for utility services, the tenant is entitled to inspect the bills and records upon which such charges were calculated.<sup>138</sup> The tenant may only do so, however, during the landlord's regular business hours at the landlord's regular business office.<sup>139</sup> To facilitate this inspection, landlords are required to retain such bills and records for one year from the date the tenant was billed.<sup>140</sup> Tenants are also permitted to examine and test the meter upon request.<sup>141</sup> If the meter is found to be accurate, the tenant must pay (as additional rent) the costs and expenses of the test or examination.<sup>142</sup> If the meter is deemed inaccurate, then the landlord will be obligated to pay for the costs and expenses of such tests, and must replace the meter.<sup>143</sup>

The Attorney General's office may also enter the premises for purposes of examining and testing the meters.<sup>144</sup> In terms of the charges for utility services made by a landlord to a tenant, such charges will be considered "rent" for all purposes of the Code.<sup>145</sup> Thus, with respect to security deposits, and unless the rental agreement provides otherwise, the rights and obligations of the parties as to the payment (or nonpayment) of utility charges will be enforced in the same manner as the rights and obligations of the parties relating to the payment (or nonpayment) of rent.<sup>146</sup> A landlord may not, however, discontinue or terminate utility services for nonpayment of rent or utility charges, or for any other breach.<sup>147</sup>

### 3. The Landlord's Obligations: Payment of Taxes

Ordinarily, the owner of the rental property is obligated to pay taxes laid upon that property. If, however, the tax is paid by or levied from the tenant (or anyone else occupying the property), that amount will be offset against the rent (or other demand) of the owner for the use—or profits of such premises.<sup>148</sup> If the rent (or other demand) is insufficient to cover the amount paid or levied, the tenant or occupant may demand and recover the

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<sup>137</sup> DEL. CODE ANN. tit. 25, § 5312(a) (2017).

<sup>138</sup> *Id.* § 5312(d).

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.* § 5312(g)(1).

<sup>142</sup> *Id.*

<sup>143</sup> DEL. CODE ANN. tit. 25, § 5312(g)(1) (2017).

<sup>144</sup> *Id.* § 5312(g)(2). The Consumer Protection Unit of the Attorney General's office has authority to enforce Section 5312. *Id.* § 5312(h).

<sup>145</sup> *Id.* § 5312(e).

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.* § 5315.

amount from the owner, *with costs*.<sup>149</sup> This Code provision will not affect any contract between the landlord and the tenant.<sup>150</sup>

### C. The Tenant's Obligations

#### 1. The Tenant's Obligation: Paying Rent

The tenant's paramount obligation is to pay rent. The landlord and tenant must agree to the amount of the rent. If no agreement is made, the tenant must pay the landlord a "reasonable sum for the use and occupation of the rental unit."<sup>151</sup> The rent is payable at the time and place agreed to by the landlord and the tenant.<sup>152</sup> If no such agreement exists, and the rental term is one month or less, the tenant must pay the entire amount at the beginning of the term.<sup>153</sup> If, however, the rental term is longer than one month, the tenant must pay one month's rent at the beginning of each month.<sup>154</sup> As for the location at which the tenant must pay rent, the landlord must maintain an office or other permanent place for receipt of payments in the county in which the rental unit is located.<sup>155</sup> If the landlord fails to do so, the agreed upon time for payment of rent will be extended by three days beyond the due date.<sup>156</sup>

Where the rental agreement provides for late charges for past due rent, the late charges may not exceed five percent of the monthly rent.<sup>157</sup> The late charge may not be imposed within five days of the agreed upon time for payment of rent.<sup>158</sup> Late charges are considered additional "rent" for purposes of the Code.<sup>159</sup>

The landlord may accept a cash payment for rent, but must give the tenant a payment receipt within fifteen days of such payment.<sup>160</sup> The landlord must also maintain a record of all cash receipts for rent for a period of three years.<sup>161</sup> Except for purposes of payment, rent will be uniformly apportioned from day to day.<sup>162</sup>

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<sup>149</sup> DEL. CODE ANN. tit. 25, § 5315 (2017).

<sup>150</sup> *Id.*

<sup>151</sup> *Id.* § 5501(a).

<sup>152</sup> *Id.* § 5501(b).

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> DEL. CODE ANN. tit. 25, § 5501(d) (2017).

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.* § 5501(e).

<sup>161</sup> DEL. CODE ANN. tit. 25, § 5501(e) (2017).

<sup>162</sup> *Id.*

## 2. The Tenant's Obligations: Repairs, Waste, and Defective Conditions

As discussed above, the landlord is ordinarily obligated to perform repairs on, and maintain, the premises. The landlord and the tenant may, however, agree by a *conspicuous writing separate from the rental agreement* that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling.<sup>163</sup> Although the Code does not define "conspicuous," best practices suggest the text or writing should be distinct from standard text (i.e., the text can be bold and underlined). Additionally, the tenant will only be required to perform such tasks if the following requirements are satisfied:

- a. The work performed by the tenant is for the rental unit's primary benefit;
- b. The work is not necessary to bring a noncomplying rental unit into compliance with applicable laws;
- c. The tenant receives adequate consideration (apart from any provision of the rental agreement), or a reduction in rent, in exchange for the tenant's promise to perform such services; however, the landlord may not condition any provision of the rental agreement on the tenant's promise to render such services; and
- d. The parties entered into the agreement in good faith and not for the purpose of evading any of the landlord's obligations.<sup>164</sup>

The tenant also has a general obligation not to commit "waste" on the rental property.<sup>165</sup> This obligation requires the tenant to do the following:

- a. Comply with all applicable legal requirements imposed upon tenants under Delaware law;
- b. Keep the part of the premises which the tenant occupies as clean and safe as the premises' conditions permit;
- c. Dispose of all ashes, rubbish, garbage, and other organic or flammable waste, in a clean and safe manner;
- d. Keep all plumbing fixtures used by the tenant as clean and safe as their condition permits;
- e. Use the electrical, plumbing, sanitary, heating, ventilation, and other facilities and appliances in a reasonable manner;
- f. Refrain from willfully or wantonly destroying, defacing, damaging, repairing, or removing any part of

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<sup>163</sup> DEL. CODE ANN. tit. 25, § 5305(c) (2017).

<sup>164</sup> *Id.*

<sup>165</sup> *Id.* § 5503.

the structure of the rental unit or anything related to the rental unit (and not permit anyone else to do the same);

g. Refrain from removing or tampering with properly working smoke detectors and carbon monoxide detectors installed by the landlord;

h. Comply with all provisions of Sections 5511 and 5512 of the Code, and which the landlord can demonstrate are “reasonably necessary” for the property’s preservation and the presentation of “persons of the landlord, other tenants or any other person.”<sup>166</sup>

A tenant also has an obligation to report to the landlord, in writing, any defective condition of the premises which comes to the tenant’s attention, and which the tenant has reason to believe is the landlord’s or another tenant’s duty to repair.<sup>167</sup> The tenant must report the defective condition as soon as practicable.<sup>168</sup> The tenant’s failure to do so will make the tenant responsible for any liability or injury resulting to the landlord as a result of the tenant’s failure to timely report such condition.<sup>169</sup> Where the tenant is given a complaint in ejectment or an action against the premises is served, the tenant must immediately notify the landlord in writing.<sup>170</sup> If the landlord has *actual notice* of the defective condition, the provisions discussed in this paragraph will not apply.<sup>171</sup>

### 3. The Tenant’s Obligations: Extended Absences from the Premises

The landlord may require written notification from the tenant of any anticipated, extended absences from the premises, and the landlord may require this notification be given no later than the first day of such absence.<sup>172</sup> This notification requirement must be set forth in the rental agreement.<sup>173</sup>

### 4. The Tenant’s Obligations: Access to the Premises

The landlord may enter the rental unit to inspect it, make necessary repairs, decorations, alterations or improvements, supply services as agreed to, or show the rental unit to prospective purchasers, mortgagees, or tenants.<sup>174</sup> The tenant may not unreasonably withhold consent for such

<sup>166</sup> DEL. CODE ANN. tit. 25, § 5503 (2017).

<sup>167</sup> *Id.* § 5505(a).

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> *Id.* § 5505(b).

<sup>171</sup> *Id.* § 5505(c). For a discussion on a tenant’s defense to an action for waste, see *infra* Chapter Four, section B, part 14.

<sup>172</sup> DEL. CODE ANN. tit. 25, § 5506 (2017).

<sup>173</sup> *Id.*

<sup>174</sup> *Id.* § 5509(a).

access by the landlord.<sup>175</sup> Pursuant to Section 5312, the tenant must also permit the landlord to enter the premises at reasonable times in order to obtain readings of meters for the measurement of utility services consumption.<sup>176</sup> A tenant may, however, install a new lock at the tenant's cost, on the condition that (1) the tenant notifies the landlord in writing and supplies the landlord with a key to the lock; (2) the new lock fits into the system already in place; and (3) the lock installation does not damage the door.<sup>177</sup>

The landlord may not abuse her right of access, or use it to harass the tenant.<sup>178</sup> The landlord must also give the tenant at least forty-eight hour notice of her intent to enter, except for repairs requested by the tenant.<sup>179</sup> Similarly, the landlord may only enter the premises between 8:00 a.m. and 9:00 p.m., but in emergencies, the landlord may enter at any time.<sup>180</sup>

If the landlord is showing the premises to prospective tenants or purchasers, the current tenant may expressly waive the forty-eight hour notice requirement in a signed agreement separate from the rental agreement.<sup>181</sup>

## 5. The Tenant's Obligations: Rules and Regulations

The tenant, and everyone in the premises with the tenant's consent, must abide by the landlord's rules, regulations, and restrictions concerning the use, occupancy, and maintenance of the rental premises.<sup>182</sup> These rules, however, must satisfy the following criteria:

- a. They promote the health, safety, quiet, private enjoyment or welfare, peace, and order of the tenants;
- b. They promote the preservation of the landlord's property from abuse;
- c. They promote the fair distribution of services and facilities provided for all tenants generally;
- d. They are brought to the tenant's attention at the time the tenant enters into the rental agreement, or, if not made known at the start of the tenancy, are brought to the tenant's attention, and the tenant provides written consent if the obligations substantially modify the landlord-tenant agreement;

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<sup>175</sup> DEL. CODE ANN. tit. 25, § 55009(a) (2017).

<sup>176</sup> *Id.* § 5509(c).

<sup>177</sup> *Id.* § 5509(a).

<sup>178</sup> *Id.* § 5509(b).

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> DEL. CODE ANN. tit. 25, § 5509(b) (2017).

<sup>182</sup> *Id.* § 5511(a).

- e. They are reasonably related to the purpose for which they are promulgated;
- f. They apply to all tenants of the property in a fair manner; and
- g. They are sufficiently explicit in the prohibition, direction, or limitation of the tenant's conduct to fairly inform the tenant of what must or must not be done to comply.<sup>183</sup>

In addition to complying with the landlord's rules and regulations, tenants and their permitted guests must conduct themselves in a manner that does not unreasonably interfere with the other tenants' peaceful enjoyment.<sup>184</sup>

### III. CHAPTER THREE: ENDING THE RESIDENTIAL LANDLORD–TENANT RELATIONSHIP

This Chapter discusses the manners in which a landlord–tenant relationship may terminate. Note that if the tenant is occupying a federally-subsidized housing unit, and the Code conflicts in any way with federal law, the federal law will govern.<sup>185</sup> As previously stated, this Guide does not cover federal law.

#### A. *The Rental Agreement Ordinarily Establishes the Rental Term*

Ordinarily, the rental agreement will set forth the date on which the landlord–tenant relationship ends. If the rental agreement is not in writing, the agreement may only be effective for a maximum duration of one year.<sup>186</sup> Regardless of whether the agreement is in writing or not, if it does not provide a term, the term will be month-to-month.<sup>187</sup> Similarly, a verbal rental agreement that purports to last longer than one year is ineffective, and will be construed as a month-to-month tenancy.<sup>188</sup> Month-to-month

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<sup>183</sup> DEL. CODE ANN. tit. 25, § 5511(a) (2017).

<sup>184</sup> *Id.* § 5511(b). If the tenant violated his or her obligations outlined above, see *infra* Chapter Four, section B, part 5.

<sup>185</sup> DEL. CODE ANN. tit. 25, § 5106(e) (2017). For example, a tenant may be occupying a United States Department of Housing and Urban Development (“HUD”) subsidized housing unit, and, pursuant to regulations and guidelines established by HUD, the tenant's rent and security deposit may vary depending on their income. If this is the case, HUD may establish how the tenant's rent and security deposit will adjust in the future. HUD's determinations in this regard will govern over the Code; thus, the Code provisions discussed below in Chapter Three, section B (regarding modifications and amendments to rental agreements) will be displaced by HUD's regulations and guidelines. *Id.* § 5107(d).

<sup>186</sup> *Id.* § 5106(a).

<sup>187</sup> *Id.* § 5106(b).

<sup>188</sup> *Naylor v. Tumeay*, No. CPU4-12-003651, 2013 WL 3946113, at \*3 (Del. C.P. July 30, 2013).

simply means that the term of the agreement will be for one month, and the term will renew each month.<sup>189</sup> Also, recall that if the rental agreement was not signed by both parties, but the agreement was given effect pursuant to Section 5110, as discussed in Chapter One, section C, part two, the agreement may only be effective for one year, even if the agreement provides for a term longer than one year.<sup>190</sup>

### B. How to Terminate the Rental Agreement

The landlord and the tenant are each permitted to terminate the agreement by giving the other party written notice of their intent to terminate.<sup>191</sup> Where the landlord is notifying the tenant, and the term of the agreement is not month-to-month, the notice must state that the agreement will terminate upon its expiration date.<sup>192</sup> Additionally, where the term of the agreement is not month-to-month, the notice must be given to the other party at least sixty days prior to the expiration of the rental agreement's term.<sup>193</sup> A similar sixty-day notice period is imposed in cases of month-to-month terms; however, this sixty-day period begins on the first day of the month following the day of the actual notice.<sup>194</sup>

### C. How to Renew the Rental Agreement with Modifications

A landlord may desire to renew a rental agreement at the end of the rental term, but make the renewal subject to modifications or amendments. For example, the landlord may want to amend or modify the provisions in the rental agreement relating to the length of the rental agreement's term, or the amount of the security deposit or rent. The document that extends and modifies the original lease does not need to contain all or some of the terms of the original lease; rather, the document can modify some of the original terms, but keep the other original term intact without restating them.<sup>195</sup> For example, the landlord may wish to extend the original lease's term, but increase the amount of rent due. Here, the document that extends and modifies the original lease would include a provision that *clearly expresses the parties' intent*<sup>196</sup> to preserve the original lease's terms, except with regard to rent.

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<sup>189</sup> DEL. CODE ANN. tit. 25, § 5141(18) (2017).

<sup>190</sup> *Id.* § 5110(c).

<sup>191</sup> *Id.* § 5106(c).

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> *Id.* § 5106(d). For example, if a tenant wants to terminate his month-to-month lease, and he gives his landlord notice to this effect on February 20th, the sixty-day notice period will start on March 1st.

<sup>195</sup> English Village/Panzer Mgmt. v. Slater, No. 1994-03-057, 1995 WL 1582011, at \*1 (Del. C.P. Feb. 6, 1995).

<sup>196</sup> *Id.*

If the landlord elects to renew the agreement subject to modification or amendment, the landlord must give the tenant written notice that the agreement will be renewed subject to amended or modified provisions.<sup>197</sup> This notice must be given to the tenant at least sixty days before the rental agreement is set to expire.<sup>198</sup> The notice must specify the modified or amended provisions, the amount of any rent or security deposit, and the date on which the modifications or amendments will take effect.<sup>199</sup>

The tenant is not obligated to renew the agreement subject to the landlord's proposed modifications or amendments. If the tenant does not want to renew the agreement, however, he must notify the landlord of his intent to terminate the existing rental agreement.<sup>200</sup> This notification must be given to the landlord at least forty-five days before the last day of the rental agreement's term.<sup>201</sup> If the tenant fails to notify the landlord of his intent to terminate the agreement in this specified timeframe, the tenant will be deemed to have accepted and agreed to the amended or modified rental agreement provisions, and the terms of the amended or modified agreement will take full force and effect.<sup>202</sup> If, however, the tenant rejects the modifications or amendments set forth in the landlord's notice, the tenant's rejection notice of renewal will be considered an effective termination notice.<sup>203</sup>

#### *D. Automatically Extending the Agreement Without Termination or Modification*

The rental agreement's term will automatically convert to a month-to-month tenancy if the following elements are satisfied: (1) the rental agreement is for one year or more; (2) the landlord does not give the tenant a termination notice within sixty days of the term's expiration; and (3) the tenant does not give forty-five days' notice to the landlord of her intent to terminate the agreement.<sup>204</sup> Once converted to a month-to-month tenancy, all other terms of the rental agreement will continue in full force and effect.<sup>205</sup> This automatic extension provision does not apply to rental agreements for farm units.<sup>206</sup> Recall that a month-to-month rental term, by its very nature, is subject to automatic extension if neither the landlord nor the tenant express their desire to terminate the agreement.<sup>207</sup>

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<sup>197</sup> DEL. CODE ANN. tit. 25, § 5107(a) (2017).

<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

<sup>200</sup> *Id.* § 5107(b).

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

<sup>203</sup> DEL. CODE ANN. tit. 25, § 5107(c) (2017); *see supra* Chapter 3, section B.

<sup>204</sup> DEL. CODE ANN. tit. 25, § 5108(a) (2017).

<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

<sup>207</sup> *Id.* § 5141(18).

These automatic extension provisions will not apply if a renewal with modification notice, as detailed in Chapter Three, section C above, has been sent.<sup>208</sup> Instead, the Code provisions discussed in Chapter Three, section C will control.<sup>209</sup> Similarly, federal law, to the extent it conflicts with these Code provisions, will govern with regard to tenants occupying federally-subsidized housing units.<sup>210</sup>

### *E. Damage or Destruction by Fire or Casualty*

In some cases, damage or destruction to the rental property may warrant early termination of the rental agreement. In order to terminate the rental agreement due to damage or destruction, the rental unit – or anything necessary to the enjoyment of the rental unit – must have been damaged or destroyed by fire or casualty to an extent that enjoyment of the unit is “substantially impaired.”<sup>211</sup> Also, the fire or casualty may not have been caused by the tenant, a member of the tenant’s family, or any other person on the property with the tenant’s permission.<sup>212</sup> If these prerequisites are met, the tenant has two options.

First, the tenant may immediately terminate the rental agreement.<sup>213</sup> If the tenant elects to immediately quit, the tenant must notify the landlord, in writing, of the tenant’s election to quit within one week of vacating the premises.<sup>214</sup> With this timely written notice, the rental agreement will terminate as of the date the tenant vacated the premises.<sup>215</sup> If the tenant fails to send this written notice, the tenant must pay for any rent accruing up to the date of the landlord’s actual knowledge of the tenant’s vacating the rental unit or impossibility of further occupancy.<sup>216</sup> Once the rental agreement is terminated, the landlord must timely return any security deposit, pet deposit, and prepaid rent that the landlord is not entitled to keep under the Code.<sup>217</sup> Accounting for rent in the event of termination or apportionment will be made as of the date of the fire or casualty.<sup>218</sup>

Second, the tenant may vacate only the portion of the premises that is not usable due to the fire or casualty.<sup>219</sup> Under this scenario, the tenant’s rent liability will be reduced in proportion to the diminution of the fair

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<sup>208</sup> DEL. CODE ANN. tit. 25, § 5108(b) (2017).

<sup>209</sup> *Id.*

<sup>210</sup> *Id.* § 5108(c).

<sup>211</sup> *Id.* § 5309(a).

<sup>212</sup> *Id.*

<sup>213</sup> *Id.* § 5309(a)(1).

<sup>214</sup> DEL. CODE ANN. tit. 25, § 5309(a)(1) (2017).

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> *Id.* § 5309(b).

<sup>218</sup> *Id.*

<sup>219</sup> *Id.* § 5309(a)(2).

rental value of the rental unit.<sup>220</sup> Note that this option is only available to the tenant if it will still be lawful to continue occupying the premises.<sup>221</sup> Again, accounting for rent in the event of termination or apportionment will be made as of the date of the fire or casualty.<sup>222</sup>

*F. The Tenant's Right to Early Termination, Subletting, or Assignment*

The Code provides seven situations in which a tenant (or a tenant's surviving spouse or personal representative, where applicable) has the right to terminate the tenancy before it is set to expire.<sup>223</sup> These situations are:

- a. A change in the tenant's employment location, with the tenant's present employer, requires the tenant to change his or her residence in excess of 30 miles;
- b. The tenant's serious illness, or the death or serious illness of a member of the tenant's immediate family who resides in the premises, requires a change in the location of the tenant's residence on a permanent basis;
- c. The tenant is accepted for admission to a senior citizens' housing facility, including subsidized public or private housing, or a group or cooperative living facility or retirement home;
- d. The tenant is accepted for admission into a rental unit subsidized by a governmental entity or by a private nonprofit corporation, including subsidized private or public housing;
- e. The tenant, *after executing the rental agreement*, enters the U.S. military service on active duty;
- f. The tenant is a victim of domestic abuse, sexual offenses, stalking, or the tenant has obtained or is seeking relief for domestic violence or abuse from any court, police agency, or domestic violence program or service; or
- g. The tenant has died.

In the last situation, the tenant's surviving spouse or personal representative of the tenant's estate has the right to elect to terminate the tenancy.<sup>224</sup> If one of these seven situations occurs, the tenant (or the tenant's surviving spouse or personal representative, where applicable) may terminate the tenancy by providing thirty days' written notice to the landlord.<sup>225</sup> This thirty day period will begin on the first day of the month

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<sup>220</sup> DEL. CODE ANN. tit. 25, § 5309(a)(2) (2017).

<sup>221</sup> *Id.*

<sup>222</sup> *Id.* § 5309(b).

<sup>223</sup> *Id.* § 5314(b).

<sup>224</sup> *Id.* § 5314(b)(7).

<sup>225</sup> *Id.* § 5314(b).

following the day of actual notice.<sup>226</sup>

Instead of terminating the tenancy early (either rightfully or wrongfully), the tenant may elect to sublet the premises or assign the rental agreement to another person.<sup>227</sup> The tenant is free to do so unless otherwise prohibited in writing.<sup>228</sup> Prohibitions and restrictions on subletting and assignment are typically contained in the landlord–tenant agreement, but they may also be found in another writing. Best practices suggest including any such prohibitions or restrictions in the landlord–tenant agreement. The Code makes clear that the landlord–tenant agreement may restrict or prohibit the tenant’s right to assign the landlord–tenant agreement *in any manner*.<sup>229</sup> With regard to subletting the premises, a rental agreement may restrict the tenant’s right to sublease the premises by conditioning such right on the landlord’s consent.<sup>230</sup> Here, the landlord’s consent may not be unreasonably withheld.<sup>231</sup> In a lawsuit to determine whether the landlord’s consent was “unreasonably withheld,” the landlord bears the burden of showing reasonableness.<sup>232</sup>

### *G. Effect of Termination and Expiration*

Generally, when a party has rightfully elected to terminate the rental agreement, the duties of each party under the agreement cease, and the parties must discharge any remaining obligations as soon as practicable.<sup>233</sup> This rule is subject to limited exceptions that are set forth in the Code. The most notable exception is the handling of the security deposit. As discussed in greater detail below, a landlord is allotted twenty days after the expiration or termination of the agreement to remit any portion of the security deposit to which the landlord is not entitled. Thus, even if the landlord may be capable of discharging this duty before the twenty-day time period, the twenty-day allocation will govern over the Code’s “as soon as practicable” requirement.

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<sup>226</sup> DEL. CODE ANN. tit. 25, § 5314(b) (2017) For example, if the tenant sends the termination notice on October 24th, the thirty-day period will begin on November 1, and the tenancy will terminate on November 30.

<sup>227</sup> *Id.* § 5508(a).

<sup>228</sup> *Id.*

<sup>229</sup> *Id.* § 5508(b).

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> DEL. CODE ANN. tit. 25, § 5508(c) (2017).

<sup>233</sup> *Id.* § 5314(a); *see also id.* §5515(a) (“Except as is otherwise provided in this Code, whenever either party to a rental agreement rightfully elects to terminate, the duties of each party under the rental agreement shall cease.”).

#### H. Regaining Possession upon the Death of a Deceased Sole Tenant

As discussed above, the tenant's surviving spouse or personal representative—has the right to terminate the rental agreement upon the tenant's death. Certain provisions apply when the deceased tenant is the only leaseholder under the landlord–tenant agreement entitled to occupy the unit—that is, a “deceased sole tenant.”<sup>234</sup> In particular, if the deceased sole tenant, during his or her life, authorized another individual to occupy the rental unit at the tenant's sole discretion, that occupant's right to occupy the rental unit terminates immediately upon the deceased sole tenant's death.<sup>235</sup>

Additionally, upon the deceased sole tenant's death, possession of the rental unit will be returned to the landlord, *without the need for a summary possession action* (discussed in Chapter Four), if two conditions are satisfied.<sup>236</sup> First, an affiant or personal representative must present the landlord with valid documentation issued by the register of wills evidencing such representation pursuant to Title 12 of the Delaware Code.<sup>237</sup> Once this is done, the landlord must allow the affiant or personal representative access to the unit to remove the tenant's belongings.<sup>238</sup> Second, either the affiant or personal representative informs the landlord that further access to the premises is not needed, or thirty days have elapsed since the tenant's death and the affiant or personal representative has not provided the landlord written notice that access to the premises is still needed.<sup>239</sup>

Even if an affiant or personal representative presents the landlord with the documentation detailed in the preceding paragraph, the landlord still retains the right to initiate at any time an action for summary possession (discussed in Chapter Four below) and money due.<sup>240</sup> In this case, the landlord will bring the action against the tenant's estate and serve the complaint upon the affiant or personal representative at the address provided by that party.<sup>241</sup> If no such address is provided, or the address is not valid, then the landlord will serve the complaint upon the register of wills in the county in which the rental unit is located.<sup>242</sup> Similarly, the landlord must serve the register of wills if the affiant or personal representative does not present the landlord with the documentation detailed in the preceding paragraph.<sup>243</sup>

In any event, if the register of wills is to be served as a registered agent for the estate, the landlord must, prior to initiating the action, place a notice

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<sup>234</sup> DEL. CODE ANN. tit. 25, § 5141(5) (2017).

<sup>235</sup> *Id.*

<sup>236</sup> *Id.* § 5719(a).

<sup>237</sup> *Id.* § 5719(a)(1).

<sup>238</sup> *Id.* § 5719(a).

<sup>239</sup> *Id.* § 5719(a)(2).

<sup>240</sup> DEL. CODE ANN. tit. 25, § 5719(b) (2017).

<sup>241</sup> *Id.*

<sup>242</sup> *Id.*

<sup>243</sup> *Id.*

of such action in a paper that is circulated in the county in which the rental unit is located.<sup>244</sup> This notice will identify: (1) the landlord's name; (2) the deceased tenant's name; (3) the rental unit's address; (4) the type of action to be brought; (5) the court in which the action will be maintained; and (6) the amount of the claim (if any).<sup>245</sup>

### *I. Handling Security Deposits After Expiration or Termination*

Once the rental agreement expires or is terminated, the landlord may be entitled to keep all or a portion of the security deposit. To do so, the landlord must comply with certain requirements set forth in the Code. Specifically, the landlord must provide the tenant with an itemized list of damages to the premises and a good faith estimate of the cost for repairing the damaged items.<sup>246</sup> This itemized list must be given to the tenant (or the personal representative) within twenty days after the termination or expiration of the rental agreement or within twenty days after the landlord receives possession of the rental unit of a deceased sole tenant (or, if applicable, within twenty days after the storage of the tenant's property has ended).<sup>247</sup>

Also within the applicable twenty-day period, the landlord must remit to the tenant (or the personal representative of the deceased tenant's estate) the amount of the security deposit that the landlord is not entitled to keep—that is, the amount of the security deposit less the costs of repairing the damage to the premises (if any).<sup>248</sup> The damage to the premises, however, must be beyond “normal wear and tear which can be corrected by painting and ordinary cleaning.”<sup>249</sup>

Where the rental agreement is terminated because of the death of the sole tenant, the landlord must return any portion of the security deposit which she is not entitled to within twenty days of receiving possession of the unit, or, if applicable, within twenty days after the storage of the tenant's property has ended.<sup>250</sup> The landlord will return this portion of the security deposit to the representative of the deceased tenant's estate who has valid documentation of such representation (as discussed in the preceding section).<sup>251</sup> If the landlord fails to do any of these tasks within the applicable twenty-day period, the landlord is considered to have acknowledged that no payment for damages is due, thereby entitling the

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<sup>244</sup> DEL. CODE ANN. tit. 25, § 5719(b) (2017).

<sup>245</sup> *Id.* If a writ is entered and the deceased sole tenant's property is still in the premises, see *infra* Chapter Four, section C, part 6.

<sup>246</sup> DEL. CODE ANN. tit. 25, § 5514(f) (2017); *NDR Group v. Nolting*, No. CPU5-13-001286, 2015 WL 4605416, at \*2 (Del. C.P. Jan. 14, 2015).

<sup>247</sup> DEL. CODE ANN. tit. 25, §§ 5514(f), 5719(d) (2017).

<sup>248</sup> *Id.*

<sup>249</sup> *Stoltz Mgmt. Co., v. Consumer Affairs Bd.*, 616 A.2d 1205, 1209 (Del. 1992).

<sup>250</sup> DEL. CODE ANN. tit. 25, § 5719(d) (2017).

<sup>251</sup> *Id.*

tenant (or the deceased tenant's estate) to the entire security deposit.<sup>252</sup>

In some cases, the tenant (or the personal representative of the deceased tenant's estate) may disagree with the amount of the damages outlined in the landlord's itemized list. The tenant (or the personal representative of the deceased tenant's estate) may object to the amount of the security deposit withheld by the landlord, but the tenant (or personal representative) must do so in writing within ten days of receiving the unused portion of the deposit.<sup>253</sup> If, however, the tenant (or personal representative) accepts the payment submitted with the itemized list of damages, and the tenant (or personal representative) fails to timely object to the landlord's calculation of damages, the tenant (or personal representative) is deemed to have agreed to the landlord's assessment of damages.<sup>254</sup>

With regard to a surety bond, the landlord must only provide the tenant with an itemized list of damages and estimated cost of repairs within twenty days of the agreement's termination or expiration.<sup>255</sup> Failure to do so will constitute an acknowledgment by the landlord that no payment for damages is due.<sup>256</sup> Lastly, the tenant may object to the landlord's damages assessment, but, as is the case in the security deposit context, the tenant must do so within ten days of receiving the landlord's itemized list.<sup>257</sup> Although not required by the Code, best practices suggest the tenant should outline any objections in writing.

The landlord's address specified in the rental agreement must be used for all notices and communications.<sup>258</sup> As for the tenant, the landlord must use the address specified in the rental agreement, *or a forwarding address if provided by the tenant, in writing, before the termination or expiration of the rental agreement.*<sup>259</sup> If the tenant fails to provide an address, the landlord does not have any obligation under the Code to provide notice, and the landlord is no longer liable for double the amount of the security deposit as provided in the Code.<sup>260</sup> Best practices suggests that the tenant should provide the landlord with the forwarding address in writing; however, in *Broadwater v. Salaam*, the Delaware Court of Common Pleas concluded that if the court finds by a preponderance of the evidence that a landlord had actual knowledge of the former tenant's forwarding address at or before the lease's termination, the landlord may still be liable for double the

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<sup>252</sup> DEL. CODE ANN. tit. 25, §§ 5514(f), 5719(d) (2017).

<sup>253</sup> *Id.*

<sup>254</sup> *Id.* Pet deposits are similarly subject to the provisions outlined in the two preceding paragraphs. *See id.* § 5514(i)(1).

<sup>255</sup> *Id.* § 5514(f).

<sup>256</sup> *Id.*

<sup>257</sup> *Id.*

<sup>258</sup> DEL. CODE ANN. tit. 25, § 5514(f) (2017).

<sup>259</sup> *Id.* § 5514(h).

<sup>260</sup> *Id.*

amount of the security deposit.<sup>261</sup> The forwarding address should also be that of the former tenant; the address of a third party may be deemed insufficient.<sup>262</sup> Finally, although not required, the tenant should ask the landlord to acknowledge receipt of the forwarding address in a writing signed by the landlord.<sup>263</sup>

Where the rental agreement is terminated because of the death of the sole tenant, the estate's representative's failure to provide the landlord with valid documentation of such representation, or the representative's failure to provide the landlord with a valid address, will similarly relieve the landlord of responsibility to give notice of any damages and potential liability for double the amount of the security deposit.<sup>264</sup> In any case, the landlord will, however, continue to be liable to the tenant (or personal representative of the deceased tenant's estate) for any unused portion of the security deposit, but only if the tenant (or personal representative) makes a claim in writing to the landlord within one year from the rental agreement's termination or expiration (or, in the case of a deceased tenant, within one year from the landlord receiving possession of the unit).<sup>265</sup> Pet deposits are subject to the same provisions discussed in this paragraph.<sup>266</sup>

#### IV. CHAPTER FOUR: BREACH, REMEDIES AND DEFENSES

##### A. *Litigation Procedures Generally*

##### 1. Remedies: Violations of the Rental Agreement or the Code

This Chapter addresses the rights and obligations of, and remedies and defenses available to, a landlord and tenant that arise when a party breaches the rental agreement or violates the Code. When such a breach occurs, the injured party has a right to bring a cause of action against the other party in

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<sup>261</sup> *Broadwater v. Salaam*, No. CPU4-12-001738, 2013 WL 164082, at \*2 (Del. C.P. Jan. 15, 2013); *see also* *Lowe v. George*, No. 96-11-059, 1997 WL 1737114, at \*1 (Del. C.P. May 29, 1997) (concluding that a return address shown on an envelope of a letter from the tenant to the landlord constituted a return address for notice purposes after termination); *cf.* *Kennedy v. Holber*, No. 83C-JL-78, 1985 Del. Super. LEXIS 1146, at \*1 (Del. Super. Ct. Jan. 17, 1985) (holding that a tenant could seek double the security deposit after providing oral notice of his new address when he did not receive a copy of the Code).

<sup>262</sup> *See* *Onoda v. Termonia*, No. 2003-06-432, 2004 WL 2378833, at \*2 (Del. C.P. Aug. 10, 2004) (recognizing that tenant provided a forwarding address, but concluding that the forwarding address belonged to a third party, and because “[t]here were no assurances that the third party would even forward any mail to the [former tenant], the landlord “was relieved of liability to send notice of damages”).

<sup>263</sup> *See* *Patton v. Weyl*, No. 2003-10-526, 2004 WL 1177217, at \*2 (Del. C.P. May 27, 2004).

<sup>264</sup> DEL. CODE ANN. tit. 25, § 5719(d) (2017).

<sup>265</sup> *Id.* §§ 5514(h), 5719(d).

<sup>266</sup> *Id.* § 5514(i)(1). If the landlord failed to remit the security deposit, *see infra* Chapter Four, section B, part 12.

any court of “competent civil jurisdiction.”<sup>267</sup> In most cases, a court of “competent civil jurisdiction” means the Justice of the Peace Court (“JP Court”).<sup>268</sup> The JP Court has *exclusive* jurisdiction over summary possession proceedings (discussed below).<sup>269</sup> The JP Court also has jurisdiction (concurrently with the Superior Court and the Court of Common Pleas) over contractual disputes, replevin actions (*i.e.*, actions brought to recover possession of personal property unlawfully taken), and negligence cases, each where the amount in controversy does not exceed \$15,000.<sup>270</sup>

The Code also provides that, in satisfaction of a judgment obtained by a landlord for unpaid rent or unlawful destruction of property, the wages of the judgment debtor (typically, the tenant) may be attached in the manner provided by law.<sup>271</sup>

## 2. Substantial Compliance with the Code's Enforcement Provisions

In certain cases, one party may breach the Code or the rental agreement, and the other party may seek to remedy the breach. The Code provides that if the party seeking to remedy the breach fails to comply with the exact instructions of the Code, *but that noncompliance is nonmaterial and nonprejudicial to the other party*, the party seeking to remedy the breach will be deemed to have complied with the Code.<sup>272</sup>

## 3. Jurisdiction

Any person who owns, holds an ownership or beneficial interest in, uses, manages, or possess real estate in Delaware submits herself (or her personal representative) to the jurisdiction of the courts in Delaware as to any action or proceeding for the enforcement of an obligation arising under the Code.<sup>273</sup> This applies equally whether or not the person is or is not a citizen or resident of Delaware.<sup>274</sup>

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<sup>267</sup> DEL. CODE ANN. tit. 25, § 5117(a) (2017); *see also id.* § 5141(1) (“‘Action’ shall mean any claim advanced in a court proceeding in which rights are determined.”).

<sup>268</sup> DEL. CONST. art. IV, §§ 29-30. Delaware's Constitution provides for the Justice of the Peace Court.

<sup>269</sup> *See Smith v. Justice of the Peace Ct. No. 1, No. 89A-SE2, 1990 WL 123051, at \*5* (Del. Super. Ct. Aug. 7, 1990); *Continental Coach Crafters Co. v. Fitzwater, 415 A.2d 785, 792* (Del. Super. Ct. 1980). Importantly, Delaware's Superior Court held that Delaware residents do not have a constitutional right to a law-trained judge in summary possession and damages proceeding brought under the Code. *Smith, 1990 WL 123051, at \*8.*

<sup>270</sup> *Justice Of the Peace Court, DELAWARE COURTS*, <http://courts.delaware.gov/jpcourt/jurisdiction.aspx>.

<sup>271</sup> DEL. CODE ANN. tit. 25, § 5117(b) (2017).

<sup>272</sup> *Id.* § 5109(b).

<sup>273</sup> *Id.* § 5103.

<sup>274</sup> *Id.*

#### 4. Equitable Jurisdiction: Conversion of a Conditional Sales Agreement

JP Courts, concurrently with Delaware's Court of Chancery, have equitable jurisdiction to fully determine the rights of all parties at the time of hearing any matter brought pursuant to the conversion of a conditional sales agreement to a landlord-tenant agreement by operation of Section 314(d)(3) of Title 25 of the Delaware Code.<sup>275</sup> This authority includes, without limitation, an accounting for all payments made under the conditional sales agreement prior to the conversion of the contract to a landlord-tenant agreement.<sup>276</sup> This authority is also in addition to any other equitable authority granted to, or inherent in the powers of, the JP Court as set forth in the Code.<sup>277</sup>

#### 5. Time Computation and Notice of a Fact

In computing any period of time set forth by a court or the Code, the day of the act, event, or default from which the designated period of time begins to run will not be included unless specifically included by law.<sup>278</sup> The last day of the time period will be included, unless that day is a Saturday, Sunday, or a legal holiday.<sup>279</sup> If this is the case, the period will run until the end of the next day that is not a Saturday, Sunday, or legal holiday.<sup>280</sup> Lastly, when the time period is less than seven days, intermediate Saturdays, Sundays, and legal holidays will be excluded from the computation.<sup>281</sup>

Additionally, the term "notice" is often used throughout the Code when referring to a person's knowledge of a particular fact. Under the Code, a person has notice of a fact if (1) the person has actual knowledge of it; (2) the person has received a notice pursuant to the Code's provisions; or (3) the person has *reason to know* that the fact exists based on the facts and circumstances known at the time in question.<sup>282</sup> Thus, the Code does not require a person to *actually* know of a fact; instead, knowledge of a fact may be inferred from the facts and circumstances.<sup>283</sup>

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<sup>275</sup> DEL. CODE ANN. tit. 25, § 5122 (2017).

<sup>276</sup> *Id.*

<sup>277</sup> *Id.*

<sup>278</sup> *Id.*

<sup>279</sup> *Id.*

<sup>280</sup> *Id.*

<sup>281</sup> DEL. CODE ANN. tit. 25, § 5122 (2017). For the definition of "legal holiday," see *id.* § 5141(16).

<sup>282</sup> *Id.* § 5114.

<sup>283</sup> *Id.*

## 6. Service of Notices or Pleadings and Process

The Code sets forth the manner in which a notice or service of process must be served. Both the landlord and the tenant may be served personally—that is, by serving that party individually.<sup>284</sup> Additionally, the tenant may be served by leaving a copy of the notice or service of process with an adult living in the rental unit or the tenant's usual place of abode.<sup>285</sup> Similarly, the landlord may be served by leaving a copy of the notice or service of process with an adult living at the landlord's address (as set forth in the lease or as otherwise provided by the landlord), or with an agent or other person employed by the landlord whose responsibility it is to accept such notice.<sup>286</sup>

If the landlord is an artificial entity (such as a corporation, limited liability company, or limited partnership), pursuant to Supreme Court Rule 57, service may be made by leaving a copy of the notice or process at the landlord's office or place of business (as set forth in the lease) with an agent authorized by appointment or by law to receive such service.<sup>287</sup> If, however, the landlord fails to put her name and address on the rental agreement (and is, therefore, not in compliance with the Code), the landlord cannot later complain about insufficient service.<sup>288</sup>

Instead of personal service or service by copy of the notice or process, a copy of the notice or process may be sent by first class, registered, or certified mail as evidenced by a certificate of mailing postage prepaid.<sup>289</sup> The mail must be addressed to the tenant at the rental unit, or to the landlord at the landlord's business address (as designated in the lease or as otherwise provided by the landlord).<sup>290</sup> Where the landlord is an artificial entity (such as a corporation, limited liability company, or limited partnership), pursuant to Supreme Court Rule 57, the mail will be addressed to the landlord's office or place of business. The return receipt of the notice, whether signed, refused, or unclaimed, will be considered *prima facie* evidence of service.<sup>291</sup>

Rather than effecting service in the ways outlined above, service may also be obtained by one of the following two alternative methods: (1) posting of the notice on the rental unit, when combined with a return receipt

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<sup>284</sup> DEL. CODE ANN. tit. 25, § 5113(a) (2017).

<sup>285</sup> *Id.*

<sup>286</sup> *Id.*

<sup>287</sup> *Id.*

<sup>288</sup> Hallmon v. Alpern, No. 90C-JA-174, 1992 WL 207249, at \*2 (Del. Super. Ct. Aug. 6, 1992). Delaware case law makes clear that, in this situation, a tenant would not be required to search tax records or the Recorder of Deeds, for example, to learn the landlord's name and address. *Id.* Case law also suggests that serving the landlord's office manager would be sufficient. *Id.*

<sup>289</sup> DEL. CODE ANN. tit. 25, § 5113(b) (2017).

<sup>290</sup> *Id.*

<sup>291</sup> *Id.*

or certificate of mailing; or (2) personal service by a special process server appointed by the Court.<sup>292</sup>

## 7. Distress for Rent and Preference of Rent in Execution Cases

The Code has largely abolished the landlord's right of distress for rent (except as otherwise permitted under the Code).<sup>293</sup> Distress for rent is a summary remedy that permits the landlord to hold the tenant's goods until rent is paid. In addition to abolishing the landlord's right of distress for rent, the Code renders unenforceable most liens on behalf of the landlord (except as otherwise permitted under the Code) in the tenant's personal property and possessions.<sup>294</sup> If, however, the tenant has personal property on the premises held by the tenant by demise under a rent of money, and that property is seized by virtue of a process of execution, attachment, or sequestration, that property is liable for up to one year's unpaid rent at the time of the seizure.<sup>295</sup> This liability is in preference to the execution, attachment, or sequestration process; therefore, the landlord will receive such unpaid rent out of the proceeds of any sale of the property *before the proceeds are distributed elsewhere*.<sup>296</sup> The landlord is also entitled to written notice of the time and place of such sale at least ten days before the sale.<sup>297</sup>

### B. Remedies and Defenses

#### 1. Defense: Landlord Failed to Provide Tenant with a Code Summary<sup>298</sup>

Ignorance of the law is not ordinarily a defense in a legal proceeding. If, however, the landlord has failed to provide the tenant with a summary of the Code, the tenant may plead ignorance of the law as a defense.<sup>299</sup>

#### 2. Discrimination Against a Tenant<sup>300</sup>

The landlord or property owner may not discriminate against a tenant or prospective tenant. If the tenant or prospective tenant has been discriminated against in violation of Section 5116 of the Code, the individual may recover damages sustained as a result of the landlord's

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<sup>292</sup> DEL. CODE ANN. tit. 25, § 5113(c) (2017).

<sup>293</sup> *Id.* § 5120(a).

<sup>294</sup> *Id.* § 5120(b).

<sup>295</sup> *Id.* § 5517(1).

<sup>296</sup> *Id.*

<sup>297</sup> *Id.* § 5517(2).

<sup>298</sup> The matters discussed in this section relate to the matters discussed in Chapter One, section C.

<sup>299</sup> DEL. CODE ANN. tit. 25, § 5118 (2017).

<sup>300</sup> The matters discussed in this section relate to the matters discussed in Chapter One, section D.

action.<sup>301</sup> These damages include, but are not limited to, reasonable expenditures necessary to obtain adequate, substitute housing.<sup>302</sup>

### 3. Landlord's Failure to Supply Possession<sup>303</sup>

The Code requires the landlord to put the tenant in full possession of the rental unit at the beginning of the agreed term. Several remedies are available to the tenant if the landlord fails to supply full possession. These remedies vary depending on the reason for the landlord's failure to supply possession.

If, *for any reason*, the landlord fails to put the tenant into full possession of the rental unit at the beginning of the agreed term, the tenant is entitled to the following remedies: (1) the tenant will not be obligated to pay rent during the period the tenant is unable to enter the premises (i.e., the rent abates during this time); (2) after giving notice to the landlord, the tenant may terminate the rental agreement during the time the tenant is unable to enter into possession; and (3) if the tenant terminates the rental agreement (with sufficient notice), the landlord must return to the tenant all money paid to the landlord for the rental unit (including any prepaid rent, pet deposit, and security deposit).<sup>304</sup>

In addition to these remedies, the tenant may be eligible to recover reasonable expenditures necessary to secure equivalent housing for up to one month.<sup>305</sup> This remedy is only available to the tenant if the tenant's inability to enter the premises is caused *wrongfully* by the landlord (or anyone with the landlord's consent or license) due to *substantial failure* to conform to existing building and housing codes.<sup>306</sup> The tenant may recover these expenditures through an appropriate court action or proceeding, or by deducting them from the rent after the tenant submits receipts for these expenditures.<sup>307</sup> Note, however, that the expenditures to which the tenant may be entitled under this Code provision may not exceed the agreed upon rent for one month.<sup>308</sup>

Lastly, if the tenant is unable to enter because a holdover tenant is wrongfully occupying the property, and the landlord has not brought an action for summary possession against the holdover tenant, the entering tenant may bring an action for summary possession against the holdover

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<sup>301</sup> DEL. CODE ANN. tit. 25, § 5116(c) (2017).

<sup>302</sup> *Id.*

<sup>303</sup> The matters discussed in this section relate to the matters discussed in Chapter One, section E.

<sup>304</sup> DEL. CODE ANN. tit. 25, § 5304(a)(1) (2017).

<sup>305</sup> *Id.* § 5304(a)(2).

<sup>306</sup> *Id.*; see also *id.* § 5141(2) (“‘Building and housing codes’ shall 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.”).

<sup>307</sup> DEL. CODE ANN. tit. 25, § 5304(a)(2) (2017).

<sup>308</sup> *Id.*

tenant.<sup>309</sup> The entering tenant may recover all expenses incurred in bringing this summary possession action and in finding substitute housing.<sup>310</sup> These expenses may be recovered through an appropriate court action or proceeding, or by deducting from the rent after the tenant submits receipts for these expenditures.<sup>311</sup>

#### 4. Unlawful Removal or Exclusion of Tenant from the Premises<sup>312</sup>

Similar to section B, part three above, a landlord is generally prohibited from excluding the tenant from the premises.<sup>313</sup> This means that the tenant may not be removed from the property, or stopped from entering the property,<sup>314</sup> except where the landlord has a valid court order authorizing such removal or exclusion.<sup>315</sup> If the tenant is wrongfully removed or excluded from the premises—that is, the landlord excluded or removed the tenant without a valid court order—the tenant may recover possession or terminate the rental agreement.<sup>316</sup> The tenant may also elect to recover the greater of two damage calculations—the tenant may either recover treble (*i.e.*, “triple”) the damages the tenant sustained as a result of this unlawful act or the tenant may recover three times the per diem (*i.e.*, “per day”) rent for the period of time the tenant was not permitted to enter the unit.<sup>317</sup>

With regard to personal and household effects, damages are computed “based upon the value of the property at the time of the wrongful act complained of,” which is generally computed by taking the replacement value minus depreciation.<sup>318</sup> Direct evidence for determining depreciation is not necessarily required; rather, “[t]he court must do the best it can”<sup>319</sup> to

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<sup>309</sup> DEL. CODE ANN. tit. 25, § 5304(b) (2017).

<sup>310</sup> *Id.*

<sup>311</sup> *Id.*

<sup>312</sup> The matters discussed in this section relate to the matters discussed in Chapter Two, section B, part 1.

<sup>313</sup> DEL. CODE ANN. tit. 25, § 5313 (2017).

<sup>314</sup> *See, e.g.*, G. Murray Derrington PCF Mgmt. v. Adams, No. CIV.A.1999-03-384, 2000 WL 33653430, at \*2 (Del. C.P. May 25, 2000) (excluding tenant from their apartment by changing the locks).

<sup>315</sup> DEL. CODE ANN. tit. 25, § 5313 (2017).

<sup>316</sup> *Id.*

<sup>317</sup> *Id.*

<sup>318</sup> Chancy v. Ward, No. Civ.A. 94A-11-006-JE, 1996 WL 110529, at \*2 (Del. Super. Ct. Jan. 23, 1996) (quoting 34 A.L.R.3d 820). According to at least one Delaware court:

One rule as to the measure of damages . . . is the replacement value of the clothing and household articles adjusted to reflect actual value based on existing conditions. This method does not entitle plaintiffs to the value of new goods and articles, but takes into consideration the same kind of merchandise that had been in use for the same length of time and in the same condition.

Phillips v. Del. Power & Light Co., 201 A.2d 160, 161 (Del. Super. Ct. 1964).

<sup>319</sup> Rafal v. Rafal, 198 A.2d 177, 179 (Del. Ch. 1964).

determine the extent of the depreciation, and the plaintiff only needs to “prove damages with such certainty as the nature of the case may permit, laying a foundation which will enable the trier of the facts to make a fair and reasonable estimate.”<sup>320</sup> Lastly, the tenant may recover the costs associated with any lawsuit the tenant files to recover possession, with the exception of attorneys’ fees.<sup>321</sup>

#### 5. Landlord Seeks to Enforce an Unenforceable Provision<sup>322</sup>

As previously discussed, there are certain provisions that, if included in a landlord-tenant agreement, will be deemed unenforceable. These provisions are set forth in Section 5301(a) of the Code. The landlord is prohibited from attempting to enforce any of these provisions.<sup>323</sup> If the landlord tries to do so, and the landlord knows that the provision she is attempting to enforce is unenforceable, the tenant may bring an action to recover an amount equal to three months’ rent.<sup>324</sup> The tenant may also recover the costs associated with the lawsuit, with the exception of attorneys’ fees.<sup>325</sup>

#### 6. Landlord’s Failure to Satisfy her General Obligation<sup>326</sup>

Chapter Two, section B, part one of this Guide outlines the landlord’s general obligations to the tenant. Chief among them is the duty to comply with the rental agreement and any applicable laws. A tenant has certain remedies available to them if the landlord fails to substantially conform to the rental agreement, or if there is a material noncompliance with any law governing the maintenance or operation of the property.<sup>327</sup>

First, the tenant may terminate the rental agreement and vacate the premises during the first month of the tenant’s occupancy.<sup>328</sup> For this remedy to be available to the tenant, the tenant must provide the landlord with written notice and the tenant must remain in possession of the premises in reliance on the landlord’s written or oral promise to correct the deficiencies.<sup>329</sup>

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<sup>320</sup> Lane v. Oil Delivery, Inc., 524 A.2d 405, 409 (N.J. Super. Ct. App. Div. 1987).

<sup>321</sup> DEL. CODE ANN. tit. 25, § 5313 (2017).

<sup>322</sup> The matters discussed in this section relate to the matters discussed in Chapter One, section B, part 3.

<sup>323</sup> DEL. CODE ANN. tit. 25, § 5301(b) (2017).

<sup>324</sup> *Id.*

<sup>325</sup> *Id.*

<sup>326</sup> The matters discussed in this section relate to the matters discussed in Chapter Two, section B, part 1.

<sup>327</sup> DEL. CODE ANN. tit. 25, § 5302(a) (2017).

<sup>328</sup> *Id.*

<sup>329</sup> *Id.*

Second, if the tenant chooses to stay in possession of the premises in reliance on the landlord's promise to correct the deficiencies, but within six months substantially the same act or omission that constitutes the prior noncompliance recurs, the tenant may terminate the rental agreement.<sup>330</sup> Here, the tenant must give written notice within at least fifteen days, and the notice must specify the breach and the date of the rental agreement's termination.<sup>331</sup>

The third remedial option is available to the tenant if a condition exists that deprives the tenant of a "substantial part of the benefit or enjoyment of the tenant's bargain."<sup>332</sup> In this situation, the tenant may notify the landlord, in writing, of the condition, and terminate the rental agreement if the landlord does not remedy the condition within fifteen days of this written notice.<sup>333</sup> Once terminated, the tenant *must* initiate an action in the JP Court seeking a determination that the landlord breached the rental agreement by depriving the tenant of a substantial part of the benefit or enjoyment of the bargain.<sup>334</sup> The tenant bears the burden of proving the existence of the adverse condition by a preponderance of the evidence.<sup>335</sup> In this JP Court action, the tenant may also seek damages, including a rent deduction from the date that written notice of the condition was given to the landlord.<sup>336</sup> The tenant does not need to commence an action in the JP Court if the condition renders the premises uninhabitable or poses a threat to the health, safety, or welfare of the tenant or the tenant's family.<sup>337</sup> Here, the tenant may terminate the rental agreement immediately after giving notice to the landlord.<sup>338</sup>

Fourth, if the landlord *willfully or negligently* causes the condition that deprives the tenant of a "substantial part of the benefit or enjoyment of the tenant's bargain," the tenant is eligible to recover certain damages.<sup>339</sup> The tenant may recover the greater of (1) the difference between the rent due and any expenses necessary to obtain equivalent substitute housing for the remainder of the rental term or (2) an amount equal to one month's rent and the security deposit.<sup>340</sup> Equivalent substitute housing means "a rental unit

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<sup>330</sup> DEL. CODE ANN. tit. 25, § 5302(b) (2017).

<sup>331</sup> *Id.*

<sup>332</sup> *Id.* § 5302(c).

<sup>333</sup> *Id.*

<sup>334</sup> *Id.*

<sup>335</sup> See *Thomas v. Diemidio*, No. CPU5-10-002062, 2011 WL 11798844, at \*2 (Del. C.P. July 29, 2011).

<sup>336</sup> DEL. CODE ANN. tit. 25, § 5302(c) (2017).

<sup>337</sup> *Id.* § 5306(a); see also *Norfleet v. Mid-Atlantic Realty Co.*, No. Civ.A. 95C-11-008, 2001 WL 282882, at \*3 (Del. Super. Ct. Feb. 16, 2001) (indicating that the Code contains the warranty of habitability and, therefore, "there is no need to imply the existence of a duty at common law").

<sup>338</sup> DEL. CODE ANN. tit. 25, § 5306(a) (2017).

<sup>339</sup> *Id.* §§ 5302(d), 5306(c).

<sup>340</sup> *Id.*

of like or similar location, size, facilities and rent.”<sup>341</sup> Note, however, that the location, size, facilities, and rent need not be identical to constitute equivalent substitute housing. Relatedly, the landlord may be responsible under tort law if the landlord breached her duty to maintain the premises in a reasonable safe condition, and an injury was the “proximate” cause of that breach.<sup>342</sup> An expert may be used to determine the standard of care the landlord needed to comply with in such a case.<sup>343</sup>

Finally, in certain situations, the tenant may elect to repair the defective condition and deduct certain costs from the rent that is due.<sup>344</sup> Here, the landlord must have failed to repair, maintain, or keep in a sanitary condition the leased premises, or the landlord must have failed to perform in a manner required by the rental agreement or applicable law.<sup>345</sup> More specifically, the landlord, after receiving written notice from the tenant, must fail to remedy the defect within thirty days of receiving the notice, or must fail to initiate reasonable corrective measures where appropriate (including obtaining an estimate of the prospective costs of the correction), within ten days of receiving the notice.<sup>346</sup> If this failure occurs, the tenant may immediately do or have done the necessary work in a professional manner.<sup>347</sup> Once the work is completed, the tenant may deduct a “reasonable sum” from the rent.<sup>348</sup> This sum may not exceed \$200, or half of one month’s rent, *whichever is less*.<sup>349</sup> The tenant must also submit receipts of the expenditures to the landlord, and the amount shown on the receipts must cover at least the sum deducted.<sup>350</sup> This remedy is not available to the tenant if the tenant is delinquent in the payment of rent.<sup>351</sup> Also, the tenant will be liable for any damage to people or property if it was caused by the tenant or someone authorized by the tenant in making the repairs.<sup>352</sup>

Importantly, the above remedies are *not available* to the tenant if the condition at issue was caused by the lack of due care by the tenant, the tenant’s family member, or any other person on the premises with the tenant’s consent.<sup>353</sup> In this scenario, if the tenant elects to terminate the

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<sup>341</sup> DEL. CODE ANN. tit. 25, § 5141(8) (2017).

<sup>342</sup> See *New Haverford P’ship v. Stroot*, 772 A.2d 792, 798 (Del. 2001).

<sup>343</sup> *Powell v. Megee*, No. 02C-05-031-RFS, 2004 WL 249589, at \*4 (Del. Super. Ct. Jan. 23, 2004). Note that the Code does not support a claim for negligence *per se* because it does not establish specific standards of conduct. *Id.* at \*5.

<sup>344</sup> DEL. CODE ANN. tit. 25, § 5307 (2017).

<sup>345</sup> *Id.*

<sup>346</sup> *Id.*

<sup>347</sup> *Id.*

<sup>348</sup> *Id.*

<sup>349</sup> *Id.*

<sup>350</sup> DEL. CODE ANN. tit. 25, § 5307 (2017).

<sup>351</sup> *Id.* § 5307(c).

<sup>352</sup> *Id.* § 5307(d).

<sup>353</sup> *Id.* §§ 5302(e), 5306(b), 5307(b).

rental agreement, the tenant's termination will be deemed wrongful, and the tenant will continue to remain obligated under the rental agreement.<sup>354</sup>

## 7. Landlord's Failure to Render Essential Services

In addition to the landlord's obligations discussed throughout this Guide, the landlord is required to render certain essential services. Specifically, the landlord must provide hot water, heat, water, and electricity to the tenant, and the landlord must remedy any condition that *materially* deprives the tenant of a substantial part of the benefit of the tenant's bargain.<sup>355</sup> In order for the tenant to seek recourse for a violation of this latter essential service, the violation must *materially* deprive the tenant of a benefit, and the landlord's breach must be in violation of the rental agreement, the Code, or any other applicable housing code.<sup>356</sup>

It is important to distinguish essential services from the landlord's other obligations because the landlord's failure to render an essential service has greater consequences. Particularly, if the landlord substantially fails to provide one of these essential services, and the failure continues for forty-eight hours or more, the tenant, after giving the landlord *actual or written* notice of the failure, may (1) terminate the rental agreement immediately after giving the landlord written notice of the *continuation of the problem*, or (2) after giving written notice to the landlord, keep 2/3 per diem rent during the time when hot water, heat, water, electricity, or equivalent substitute housing is not supplied.<sup>357</sup> The landlord, however, may potentially have a defense—the landlord may avoid liability if she shows that it was impossible to perform the essential services at issue.<sup>358</sup>

In some situations, the tenant may elect to remain in the rental unit despite the landlord's failure to render an essential service. Where the tenant remains in the unit and gives the landlord the notice required in the preceding paragraph, but the landlord still fails to provide hot water, heat, water, or electricity, the tenant has three remedial options: (1) terminate the rental agreement immediately upon written notice to the landlord, (2) after giving notice to the landlord, obtain equivalent substitute housing for as long as these services are not rendered, or (3) upon written notice to the landlord, withhold 2/3 per diem rent accruing during the period when these services are not rendered or substitute housing is not supplied.<sup>359</sup> With regard to the tenant's second option, the rent will abate during the time in which the tenant finds equivalent substitute housing, and the landlord will be responsible for any expenses incurred by the tenant, up to half of the

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<sup>354</sup> DEL. CODE ANN. tit. 25, §§ 5302(e), 5306(b) (2017).

<sup>355</sup> *Id.* § 5308(a).

<sup>356</sup> *Id.*

<sup>357</sup> *Id.*

<sup>358</sup> *Id.* § 5308(a)(2).

<sup>359</sup> *Id.* § 5308(b).

amount of abated rent; *however*, the landlord will not be responsible for this additional expense if the landlord is able to show impossibility of performance.<sup>360</sup>

Several of the remedies discussed in this subsection permit the tenant to withhold rent. Note that the tenant's withholding of rent will not stop the tenant from recovering damages in the future if those damages exceed the amount withheld.<sup>361</sup> The tenant, however, takes a risk when he withholds (or deducts money from) rent as allowed in the preceding paragraphs. Namely, a landlord may file an action for summary possession (discussed in greater detail below) on the grounds that the tenant has failed to pay the amount of rent due. If the court finds that the tenant has wrongfully withheld rent, the landlord will receive either possession of the premises or damages equal to the amount wrongfully withheld.<sup>362</sup> In the event that the tenant acted in bad faith in withholding rent, the landlord may receive double damages—twice the amount wrongfully withheld.<sup>363</sup> The tenant will also be liable for court costs, but will not be responsible for attorneys' fees.<sup>364</sup> If the court orders the tenant to pay any damages, the tenant must pay these damages to the landlord within ten days from the date of the court's judgment.<sup>365</sup> If the tenant fails to do so, the landlord will receive damages (including court costs) *and* summary possession, without further notice to the tenant.<sup>366</sup>

## 8. Protections for Victims of Domestic Abuse, Sexual Offenses, or Stalking

As discussed below, certain protections are provided to tenants who are victims of domestic abuse, sexual offenses, or stalking. Tenants who are delinquent in the payment of rent, however, may not take advantage of these protections.<sup>367</sup>

The Code endeavors to protect victims of domestic abuse,<sup>368</sup> sexual offenses, or stalking.<sup>369</sup> Where the tenant is such a victim, a landlord is generally prohibited from pursuing an action for summary possession (discussed in greater detail below), demanding an increase in rent, decreasing any services, or otherwise causing the tenant–victim to vacate the rental unit.<sup>370</sup> The landlord is presumed to have violated this Code

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<sup>360</sup> DEL. CODE ANN. tit. 25, § 5308(b)(2) (2017).

<sup>361</sup> *Id.* § 5308(c).

<sup>362</sup> *Id.* § 5308(d).

<sup>363</sup> *Id.*

<sup>364</sup> *Id.*

<sup>365</sup> *Id.*

<sup>366</sup> DEL. CODE ANN. tit. 25, § 5308(d) (2017).

<sup>367</sup> *Id.* § 5316(d).

<sup>368</sup> *Id.* § 5141(7) (defining “domestic abuse”).

<sup>369</sup> *Id.* § 5141(28) (defining “sexual offenses” and “stalking”).

<sup>370</sup> *Id.* § 5316(a).

provision if the tenant proves that the landlord pursued any of these prohibited actions within ninety days of any incident in which the tenant was a victim of domestic abuse, sexual offenses, or stalking.<sup>371</sup> To be considered a victim, the tenant must have obtained, or sought to obtain, assistance for such abuse from any court, police, medical emergency, domestic violence, or sexual offenses program or service.<sup>372</sup> The landlord, however, may rebut the presumption that she violated this Code provision if the landlord can prove any of the following:

- a. The landlord is seeking to recover possession of the rental unit on the basis of an appropriate notice to terminate which was given to the tenant prior to the incident of domestic abuse, sexual offenses, or stalking;
- b. The landlord seeks in good faith to recover possession of the rental unit for immediate use as the landlord's own residence;
- c. The landlord seeks in good faith to recover possession of the rental unit for the purpose of substantially altering, remodeling, or demolishing the premises;
- d. The landlord seeks in good faith to recover possession of the rental unit for the purpose of immediately terminating, for at least six months, use of the premises as a rental unit;
- e. The landlord has in good faith contracted to sell the property and the contract of sale contains a representation from the purchaser confirming that purchaser's intent to use the property in consistency with paragraphs (2), (3) or (4);
- f. The landlord has become liable for a substantial increase in property taxes or a substantial increase in other maintenance or operating costs, and such liability occurred not less than four months prior to the demand for the increase in rent, and the increase in rent does not exceed the prorata portion of the net increase in taxes or cost;
- g. The landlord has completed a substantial capital improvement of the rental unit or the property of which it is a part, not less than four months prior to the demand for increased rent, and such increase in rent does not exceed the amount which may be claimed for federal income tax purposes as a straight-line depreciation of the improvement, prorated among the rental units benefited by the improvement;

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<sup>371</sup> DEL. CODE ANN. tit. 25, § 5316(b) (2017).

<sup>372</sup> *Id.* § 5316(a).

- h. The landlord can establish, by competent evidence, that the rent now demanded of the tenant does not exceed the rent charged other tenants of similar rental units in the same complex;
- i. The landlord can establish, by competent evidence, that the domestic abuse, sexual assault, and/or stalking constitutes a viable and substantial risk of serious physical injury to a tenant who currently resides in another unit of the same multi-unit building as the domestic violence, sexual assault, or stalking victim; or
- j. The landlord, after being given notice of the tenant's victimization per § 5141(7) or (28) of this title, discontinues those actions prohibited by subsection (a) of this section, above.<sup>373</sup>

## 9. Receivership

Certain conditions may exist that warrant the establishment of a receivership. Specifically, a receiver may be appointed if the landlord has failed to provide heat, running water, light, electricity, or adequate sewage facilities in violation of a duty set forth in the rental agreement or applicable law.<sup>374</sup> A receiver may also be appointed if any other conditions exist that pose an imminent danger to the tenant's life, health, or safety.<sup>375</sup> If any of these conditions exist for a period of five days or more *after notice is given to the landlord*, then a tenant or a group of tenants may petition for the establishment of a receivership in JP Court.<sup>376</sup>

In the petition filed with JP Court, the petitioners—*i.e.*, the tenant or the group of tenants—must name certain parties as defendants. These parties are: (1) persons duly disclosed to any of the petitioners in accordance with Section 5105 of this title, as discussed in Chapter One, section C, part one, and (2) persons whose interest in the property is a matter of public record and capable of being protected in this proceeding.<sup>377</sup> Petitioners will not be prejudiced by their failure to join any other interested party.<sup>378</sup> Also recall that, as discussed in Chapter One, section C, part one, the landlord must disclose to the tenant the names and usual business addresses of any owners of the rental unit or the property of which the rental unit is a part (or their resident agents).<sup>379</sup> Since any owners or resident agents not dealing with the tenant as a landlord are also responsible for the landlord's disclosure

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<sup>373</sup> DEL. CODE ANN. tit. 25, § 5316(c) (2017).

<sup>374</sup> *Id.* § 5901(1).

<sup>375</sup> *Id.* § 5901(2).

<sup>376</sup> *Id.* § 5901.

<sup>377</sup> *Id.* § 5902(a).

<sup>378</sup> *Id.* § 5902(b).

<sup>379</sup> DEL. CODE ANN. tit. 25, § 5105(a) (2017).

obligation, these parties may not take advantage of any failure to have process served upon them due to their failure to comply with this disclosure obligation.<sup>380</sup>

A defendant in this type of proceeding may have certain defenses available to them. First, a defendant may defend on the ground that the conditions at issue do not exist at the time of trial.<sup>381</sup> Second, a petitioner may not succeed if a defendant shows that the conditions have been caused by the willful or grossly negligent acts of any of the petitioning tenants, members of their families, or by any other person on the premises with their consent.<sup>382</sup> Finally, a defendant may assert that the conditions would have been corrected, were it not for the refusal by any petitioner to allow reasonable access.<sup>383</sup>

The JP Court will hold a trial to determine the petition's merits. If the court grants the petition, the court will immediately enter judgment on the petition and appoint a receiver.<sup>384</sup> Despite the court's granting of the petition, before judgment is entered and the receiver is appointed, a person having an interest in the property (typically, the owner, mortgagee, or lienor of record) may apply to the court to be permitted to remove or remedy the conditions at issue.<sup>385</sup> This person must demonstrate an ability to *promptly* perform the necessary work, and post security for the performance of this work.<sup>386</sup> The court may then stay judgment and issue an order to permit the person to perform the work. The court will set the amount of the security deposit, determine the manner in which the work is to be performed, and fix the timeframe in which the person must complete the work.<sup>387</sup>

The court may also require the person to periodically report to the court on the progress of the work.<sup>388</sup> If, at any time during the period in which the person is required to complete the repairs, there is reason to believe that the work will not be completed in the manner and time prescribed by the court's order, or the person is not proceeding with due diligence, a hearing may be held to determine whether judgment should be immediately rendered.<sup>389</sup> Either the court or the petitioners may move for this hearing to be held, and notice must be given to all parties to the proceeding before this hearing takes place.<sup>390</sup>

After this hearing, the court may determine that the party is not proceeding with due diligence, or that the party has actually failed to

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<sup>380</sup> DEL. CODE ANN. tit. 25, § 5105(c) (2017).

<sup>381</sup> *Id.* § 5903(1).

<sup>382</sup> *Id.* § 5903(2).

<sup>383</sup> *Id.* § 5903(3).

<sup>384</sup> *Id.* § 5904(a).

<sup>385</sup> *Id.* § 5904.

<sup>386</sup> DEL. CODE ANN. tit. 25, § 5904 (2017).

<sup>387</sup> *Id.*

<sup>388</sup> *Id.*

<sup>389</sup> *Id.* § 5904(b).

<sup>390</sup> *Id.*

complete the work in accordance with the court's order.<sup>391</sup> If the court makes this determination, the court will appoint a receiver, and the security posted will be applied to the receiver's execution of its powers and duties.<sup>392</sup> In the event that the security is insufficient to accomplish the receiver's objectives, the court's judgment will direct the receiver to collect rents, profits, and issues to the extent of the deficiency.<sup>393</sup> Alternatively, if the security exceeds the amount necessary, the court's judgment will direct the receiver to return the excess to the person posting the security.<sup>394</sup>

The receiver—who will be the Division of Consumer Protection of Delaware—will have certain powers, duties, and obligations once appointed.<sup>395</sup> In particular, the receiver has the powers and duties accorded a receiver foreclosing a mortgage on real property and any other powers or duties that the court deems necessary.<sup>396</sup> These powers and duties include, without limitation, collecting and using the property's rents and profits (prior to and despite any assignment of rent) for the following purposes:

- a. Correcting the condition or conditions alleged in the petition;
- b. Materially complying with all applicable provisions of any state or local statute, code, regulation, or ordinance governing the maintenance, construction, use, or appearance of the building and surrounding grounds;
- c. Paying all expenses reasonably necessary to the proper operation and management of the property including insurance, mortgage payments, taxes and assessments, and fees for the services of the receiver and any agent he should hire;
- d. Compensating the tenants for whatever deprivation of their rental agreement rights resulted from the condition or conditions alleged in the petition; and
- e. Paying the costs of the receivership proceeding.<sup>397</sup>

Additionally, the receiver is obligated to take certain steps upon its appointment.<sup>398</sup> First, within fifteen days, the receiver must make an independent finding whether there is a need for rent to be paid to it and for the employment of a private contractor to correct the conditions.<sup>399</sup> Next, if the receiver makes such a finding, it will file a copy of the finding with the recorder of deeds of the county where the property lies.<sup>400</sup> This finding will

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<sup>391</sup> DEL. CODE ANN. tit. 25, § 5904(c)(1) (2017).

<sup>392</sup> *Id.* § 5904(c)(2).

<sup>393</sup> *Id.* § 5904(c)(3).

<sup>394</sup> *Id.*

<sup>395</sup> *Id.* §§ 5905, 5906.

<sup>396</sup> *Id.* § 5906.

<sup>397</sup> DEL. CODE ANN. tit. 25, § 5906 (2017).

<sup>398</sup> *Id.* § 5905.

<sup>399</sup> *Id.* § 5905(1).

<sup>400</sup> *Id.* § 5905(2).

constitute a lien on the property.<sup>401</sup> Once the work is performed and the contractor is paid, the receiver will file a certification with the relevant recorder of deeds, which will release the lien on the property.<sup>402</sup> The receiver will then give notice to all lienholders of record.<sup>403</sup> Finally, if at any time the receiver determines that the appointment of a receiver is not appropriate, the receiver will notify the court and all interested parties, and will be subsequently discharged.<sup>404</sup> Once discharged, the receiver must properly distribute any funds in its possession.<sup>405</sup>

The receiver may also be discharged upon the occurrence of *all* of the following: (1) the conditions at issue have been remedied; (2) the property materially complies with all laws governing the maintenance, construction, use, or appearance of the building and the surrounding grounds; (3) all authorized costs have been paid or reimbursed from the property's rents and profits; and (4) any surplus money has been paid over to the property owner.<sup>406</sup> The owner, mortgagee, or a lienor may also apply for the receiver's discharge upon the occurrence of the first two events listed in the preceding sentence.<sup>407</sup> Before this discharge occurs, however, these parties must pay the receiver any money that has not been paid or reimbursed from the property's rent and profits.<sup>408</sup>

In certain situations, the court may determine that the property's future profits will not cover the costs of remedying the conditions at issue and making the property materially apply with applicable laws.<sup>409</sup> If this occurs, the court may discharge the receiver and fashion an order that would be appropriate to deal with the situation at hand.<sup>410</sup> This might include terminating the rental agreement and ordering the vacation of the building within a specified time.<sup>411</sup> In no event, however, will the court permit repairs that cannot be paid out of the property's future profits.<sup>412</sup>

#### 10. Landlord's Commisison of an Unlawful Retaliatory Act<sup>413</sup>

The Code expressly prohibits retaliatory acts by the landlord.<sup>414</sup> A retaliatory act has two components: (1) an action or complaint made or

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<sup>401</sup> DEL. CODE ANN. tit. 25, § 5905(2) (2017).

<sup>402</sup> *Id.* § 5905(3).

<sup>403</sup> *Id.* § 5905(4).

<sup>404</sup> *Id.* § 5905(5).

<sup>405</sup> *Id.*

<sup>406</sup> *Id.* § 5907(a).

<sup>407</sup> DEL. CODE ANN. tit. 25, § 5907(b) (2017).

<sup>408</sup> *Id.*

<sup>409</sup> *Id.* § 5907(c).

<sup>410</sup> *Id.*

<sup>411</sup> *Id.*

<sup>412</sup> *Id.*

<sup>413</sup> The matters discussed in this section relate to the matters discussed in Chapter Four, section C.

<sup>414</sup> DEL. CODE ANN. tit. 25, § 5516(a) (2017).

instituted by a tenant or a government authority—and (2) an adverse action by the landlord against the tenant. The Code enumerates the following four scenarios that fall under the first retaliatory act component:

- (1) The tenant, in good faith, complained of a condition in or affecting the rental unit which constitutes a violation of the law, and this complaint is made to the landlord or to an authority tasked with enforcing the law;
- (2) A government authority filed a notice or complaint of a violation of an applicable law;
- (3) The tenant organized, or is an officer of, a tenant's organization; or
- (4) The tenant pursued or is pursuing a legal right or remedy arising from the tenancy.<sup>415</sup>

Only after one of the above acts has taken place can an adverse action by the landlord be deemed “retaliatory” under the Code. A retaliatory act will occur, however, if one of the above acts takes place and the landlord attempts to pursue a summary possession action, or otherwise cause the tenant to quit the rental unit involuntarily, demand an increase in rent, or decrease services to which the tenant is entitled.<sup>416</sup> If the tenant can prove that the landlord instituted any of these actions within ninety days of any complaint or act set forth above, the landlord's conduct is *presumed* to be a retaliatory act under the Code.<sup>417</sup> The landlord then has an opportunity to provide that his actions were not retaliatory (i.e., the burden of proof shifts to the landlord once the landlord's conduct is presumed to be retaliatory).<sup>418</sup>

Where a tenant successfully proves that his or her landlord unlawfully committed a retaliatory act against the tenant, the tenant is entitled to certain damages. Specifically, the tenant may either recover three months' rent, or treble (i.e., triple) the damages sustained by the tenant, whichever is greater.<sup>419</sup> The tenant may also recover the cost of the lawsuit, but may *not* recover attorneys' fees.<sup>420</sup> The retaliatory action section of the Code does not, however, give a court the authority to award possession in a case alleging retaliatory action.<sup>421</sup>

Certain defenses are, however, available to a landlord accused of committing a retaliatory act. These damages are discussed in Chapter Four, section C, part seven.

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<sup>415</sup> DEL. CODE ANN. tit. 25, § 5516(b) (2017).

<sup>416</sup> *Id.*

<sup>417</sup> *Id.* § 5516(c).

<sup>418</sup> *Metrodev Newark, LLC v. Justice of the Peace Ct. No. 13, Nos. 06A-12-005-JOH, 08A-09-005-JOH*, 2010 WL 939800, at \*5 (Del. Super. Ct. Feb. 18, 2010).

<sup>419</sup> DEL. CODE ANN. tit. 25, § 5516(e) (2017).

<sup>420</sup> *Id.*

<sup>421</sup> *Metrodev Newark, LLC*, 2010 WL 939800, at \*5.

### 11. Landlord's Demand of Unlawful Application Fee

If a landlord unlawfully demands more than the allowable application fee, the tenant is entitled to damages equal to double the amount charged as an application fee by the landlord.<sup>422</sup>

### 12. Violations Involving the Security Deposit, Pet Deposit, and Surety Bond

As discussed above, any security deposit or pet deposit received by the landlord must be kept in a federally-insured financial institution with an office that accepts deposits in Delaware. The tenant has a right to request the location of such funds.<sup>423</sup> If the landlord fails to disclose the location of the deposit account or accounts within twenty days from the tenant's written request for such location, the deposited funds are forfeited by the landlord to the tenant.<sup>424</sup> The landlord similarly forfeits such funds if the deposits are not held in a federally-insured financial institution with an office that accepts deposits in Delaware.<sup>425</sup>

If a tenant is entitled to all or a portion of the security or pet deposit, the landlord must remit such funds to the tenant within twenty days from the expiration or termination of the rental agreement, or within twenty days from the effective date of the forfeiture of the deposit as discussed in the preceding paragraph.<sup>426</sup> The landlord's failure to remit the funds within this twenty day period will entitle the tenant to *double* the amount wrongfully withheld.<sup>427</sup>

In certain cases, a surety bond may be used in lieu of a security deposit. The Code sets forth specific requirements that a surety must comply with. If a surety fails to comply with the Code's requirements, the surety forfeits the right to make a claim against the tenant under the surety bond.<sup>428</sup>

### 13. Tenant may Reasonably Refuse Access<sup>429</sup>

A demand to access the premises, or actually entering the premises, may be deemed unreasonable. A tenant has grounds to terminate the rental agreement if an individual repeatedly demands to make an *unreasonable* entry, or has actually made an unreasonable entry without the

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<sup>422</sup> DEL. CODE ANN. tit. 25, § 5514(d) (2017).

<sup>423</sup> *Id.* §§ 5514(g)(2), 5514(i)(1).

<sup>424</sup> *Id.*

<sup>425</sup> *Id.*

<sup>426</sup> DEL. CODE ANN. tit. 25, §§ 5514(g)(1), 5514(i)(1) (2017).

<sup>427</sup> *Id.*

<sup>428</sup> *Id.* § 5514A(g).

<sup>429</sup> The matters discussed in this section relate to the matters discussed in Chapter Four, section C, part 3 and Chapter Two, section C, part 4.

tenant's consent.<sup>430</sup> A court may issue an injunction against such unreasonable demands on behalf of one or more tenants.<sup>431</sup> Additionally, a landlord will be liable to a tenant for any theft, casualty, or harm proximately resulting from the landlord's entry into the rental unit if any of the following are satisfied: (1) the tenant is absent and has not specifically consented to the entry; (2) the tenant did not give his or her actual consent when the tenant is present and able to consent; and (3) in any case, the harm suffered by the tenant is due to the landlord's negligence.<sup>432</sup> The landlord will also be liable under these three scenarios if the entrance was made by the landlord's employees or agents, or by any other person with the landlord's permission or license.<sup>433</sup> Finally, an agreement or understanding between a landlord and a tenant that purports to exempt the landlord from liability for an unlawful entry (except for consent to a particular entry) will be unenforceable.<sup>434</sup>

#### 14. Defense to an Action for Waste<sup>435</sup>

Certain defenses are available to a tenant in an action for waste. For the tenant to be entitled to such defenses, the tenant must first prove that he or she notified the landlord within a reasonable time in advance of the repair, alteration, or replacement at issue.<sup>436</sup> Second, the tenant must show that the repair, alteration, or replacement (1) is one which a prudent owner of the affected property would likely make in light of conditions existing on or in the neighborhood or the affected property or (2) has not reduced the market value of the plaintiff's interest.<sup>437</sup> Finally, after proving the existence of one of the two conditions in the preceding sentence, the tenant must show that the landlord demanded that the tenant post security to protect against a failure to complete the proposed work, and to protect against any responsibility for expenditures incident to the making of the proposed repairs, alterations, or replacements as the court demands.<sup>438</sup>

Note that nothing in the preceding paragraph precludes an action for damages for breach of a written rental agreement, nor does it bar an action or summary proceeding based on such breach.<sup>439</sup>

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<sup>430</sup> DEL. CODE ANN. tit. 25, § 5510(c) (2017).

<sup>431</sup> *Id.*; see also *id.* § 5141(14) (defining "injunction").

<sup>432</sup> *Id.* § 5510(b).

<sup>433</sup> *Id.*

<sup>434</sup> *Id.* § 5510(d).

<sup>435</sup> The matters discussed in this section relate to the matters discussed in Chapter Two, section C, part 2 and Chapter Four, section C, part 5.

<sup>436</sup> DEL. CODE ANN. tit. 25, § 5504(a) (2017).

<sup>437</sup> *Id.*

<sup>438</sup> *Id.*

<sup>439</sup> *Id.* § 5504(b).

### C. Remedies and Defenses Available Exclusively to the Landlord

#### 1. Tenant's Failure to Pay Rent<sup>440</sup>

As discussed above, a tenant's paramount duty is to pay rent when it is due. Landlords have certain remedies available to them when tenants have failed to do so.

First, any time after rent is due, including any time before any late fees may be imposed, the landlord may demand payment and notify the tenant in writing that the rental agreement will be terminated unless payment is made within a time mentioned in the notice.<sup>441</sup> This time period must be at least five days after the date notice was given or sent.<sup>442</sup> If the tenant remains in default after this time period has lapsed, the landlord may bring an action for summary possession (discussed below) or any other proper proceeding, action or suit for possession.<sup>443</sup>

Second, the landlord may bring an action for rent and late charges, without seeking summary possession.<sup>444</sup> The landlord may do so at any time after the landlord has demanded payment of past due rent and has notified the tenant of the landlord's intention to bring this action.<sup>445</sup> This action may include late charges, which have accrued as additional rent.<sup>446</sup>

In certain situations, a tenant may avoid liability for failure to pay rent by paying all rent due either before or after the landlord has initiated an action against the tenant.<sup>447</sup> If the tenant pays all rent due *before* the landlord has initiated an action against the tenant, the landlord may not then initiate an action for summary possession or for failure to pay rent.<sup>448</sup> Where the tenant has paid all rent due *after* the landlord has initiated an action for nonpayment or late payment of rent, then the landlord may not maintain that action against the tenant.<sup>449</sup> Importantly, in *both* scenarios, the tenant may only avoid liability if the landlord has accepted the payment without a written reservation of rights.<sup>450</sup>

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<sup>440</sup> The matters discussed in this section relate to the matters discussed in Chapter Three, section C, part 1.

<sup>441</sup> DEL. CODE ANN. tit. 25, § 5502(a) (2017).

<sup>442</sup> *Id.*

<sup>443</sup> *Id.*

<sup>444</sup> *Id.* § 5502(b).

<sup>445</sup> *Id.*

<sup>446</sup> *Id.*

<sup>447</sup> DEL. CODE ANN. tit. 25, §§ 5502(c), (d) (2017).

<sup>448</sup> *Id.* § 5502(c).

<sup>449</sup> *Id.* § 5502(d).

<sup>450</sup> *Id.* §§ 5502(c), (d).

## 2. Tenant's Absence from, or Abandonment of, the Premises<sup>451</sup>

A rental agreement may require the tenant to provide the landlord with notification of an anticipated extended absence from the premises. An “extended absence” means any absence from the premises for more than seven days.<sup>452</sup> If the tenant fails to comply with this requirement, the tenant must indemnify the landlord for any harm that resulted from such absence.<sup>453</sup> Also, during the tenant's extended absence, the landlord may enter the rental unit as is reasonably necessary for inspection, maintenance, and safekeeping.<sup>454</sup>

Landlords also have certain remedies available to them if a tenant has wrongfully abandoned the rental unit—that is, the tenant has wrongfully quit the rental unit and unequivocally indicated (by words or conduct) an intent not to resume tenancy.<sup>455</sup> A landlord who seeks to establish that a tenant abandoned the rental unit must show an act by the tenant evidencing his intent to abandon the unit.<sup>456</sup> “Abandonment is a question of fact to be determined by a jury considering all the facts and circumstances of the case.”<sup>457</sup> The question of whether the unit was abandoned, however, can be withdrawn from the jury where “all the essential facts on which [abandonment] is based on (*sic*) and the inferences drawn therefrom establish [the abandonment], free from doubt.”<sup>458</sup>

In addition to proceeding as specified elsewhere in this Chapter (such as a summary possession proceeding),<sup>459</sup> the landlord may recover the lesser of the following: (1) the entire rent due for the remainder of the term, plus expenses for actual damages caused by the tenant (other than normal wear and tear) which are incurred in preparing the rental unit for a new tenant; or (2) all rent accrued during the period reasonably necessary to rerent the premises at a fair rental, plus the difference between this fair rental and the rent agreed upon in the prior *agreement*, plus expenses incurred to rerent the premises and repairing any damage caused by the tenant (other than normal wear and tear), and a reasonable commission if incurred by the landlord for rerenting the premises.<sup>460</sup>

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<sup>451</sup> The matters discussed in this section relate to the matters discussed in Chapter Three, section C, part 3.

<sup>452</sup> DEL. CODE ANN. tit. 25, § 5141(9) (2017).

<sup>453</sup> *Id.* § 5507(a).

<sup>454</sup> *Id.* § 5507(b).

<sup>455</sup> *Id.* § 5507(d).

<sup>456</sup> *Drylie v. Woods*, No. 89C-MY-168, 1991 WL 53434, at \*4 (Del. Super. Ct. Mar. 18, 1991).

<sup>457</sup> *Id.*

<sup>458</sup> *Id.*

<sup>459</sup> *See id.* at \*3 (“Section [5507(d)] simply provides a measure of damages in the case of abandonment. It in no way excluded a landlord from utilizing a summary proceeding for possession as the legal remedy for gaining repossession of an abandoned rental unit for which there are rent arrearages.”).

<sup>460</sup> DEL. CODE ANN. tit. 25, § 5507(d) (2017).

Moreover, the landlord has a duty to mitigate damages.<sup>461</sup> This means that the landlord may not simply sit back and collect the damages without making an effort to find a replacement tenant. On the contrary, the landlord must take reasonable steps to rerent the rental unit.<sup>462</sup> When determining whether the landlord took reasonable steps to rerent the premises, a court may look at whether and to what extent the landlord advertised the unit as being available, and the length of time it took to rerent the unit (which can be compared to the average length of time it takes to rent a comparable rental unit).<sup>463</sup>

As noted, these damages are in addition to other remedies available to the landlord—namely, summary possession. If a court grants summary possession, and there is no appeal from this judgment, “the landlord may immediately remove and store, *at the tenant’s expense*, all items left on the premises by the tenant. Seven days after the appeal period has expired, the property will be deemed abandoned and may be disposed of by the landlord without further notice or liability.”<sup>464</sup>

### 3. Tenant’s Unreasonable Refusal of Access<sup>465</sup>

Where a tenant unreasonably refuses to allow the landlord to access the premises, the tenant will be liable to the landlord for any harm proximately caused by such unreasonable refusal.<sup>466</sup> Moreover, a court may issue an injunction against the tenant who has unreasonably withheld access.<sup>467</sup> Chapter Four, section B, part thirteen discusses when the tenant may *reasonably* refuse access

### 4. The Holdover Tenant<sup>468</sup>

A tenant is obligated to vacate the premises once the rental agreement expires or is terminated. If the tenant, without the landlord’s consent, continues to possess or exercise control over the premises after this date, the tenant is considered a “holdover tenant,” and must pay certain damages

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<sup>461</sup> DEL. CODE ANN. tit. 25, § 5507(d)(2) (2017).

<sup>462</sup> *English Village v. Slater*, No. 1994-03-057, 1995 WL 1582011, at \*2 (Del. C.P. Feb. 6, 1995).

<sup>463</sup> *Panco Mgmt. Corp. v. Woodall*, No. 1997-09-224, 2000 WL 33275031, at \*2 (Del. C.P. Mar. 13, 2000).

<sup>464</sup> *Brandywine Realty Mgmt v. Horowitz*, No. CIV.A.2000-03-408, 2000 WL 33653458, at \*3 (Del. C.P. Dec. 1, 2000), *aff’d in part, rev’d in part*, No. Civ.A. 00A-12-005-JE, 2001 WL 1198684 (Del. Super. Ct. Sept. 17, 2001).

<sup>465</sup> The matters discussed in this section relate to the matters discussed in Chapter Two, section C, part 4.

<sup>466</sup> DEL. CODE ANN. tit. 25, § 5510(a) (2017).

<sup>467</sup> *Id.*

<sup>468</sup> The matters discussed in this section relate to the matters discussed in Chapter Four, part B.

to the landlord.<sup>469</sup> Specifically, for each day the tenant wrongfully remains in possession, the tenant must pay an amount equal to or less than double the monthly rent due under the previous agreement, computed and prorated on a daily basis.<sup>470</sup> Additionally, the holdover tenant will be responsible for any further losses incurred by the landlord as determined by a court proceeding.<sup>471</sup>

Except in the case of “inequitable conduct” by the landlord,<sup>472</sup> Delaware courts have made clear that holdover tenancies do not extend the existence of legal rights unrelated to the use and occupancy of the property.<sup>473</sup> For example, if a lease gives the tenant a right of first refusal (i.e., a right to purchase the property after the expiration of the lease’s term), the tenant is no longer afforded that right when he becomes a holdover tenant. The lease agreement may, however, extend certain rights to the holdover tenant, and such provisions (to the extent they are not in conflict with the Code), would be enforceable against the landlord and the tenant notwithstanding the tenant’s status as a holdover.

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<sup>469</sup> DEL. CODE ANN. tit. 25, §§ 5515(b), 5141(13) (2017). Then Vice Chancellor, now Chief Justice Strine, articulated the holdover statute’s history as follows:

Historically, in our legal tradition, when tenants continued to occupy property beyond the expiration of a lease, landlords were entitled to treat holdover tenants as trespassers, or to summarily evict them. The doctrine of “self-help” arose in the interest of landlords and incoming tenants, allowing landlords to promptly recover possession of leased property from tenants who held it improperly. Not surprisingly, widespread use of “self-help” remedies led to concerns for the endangerment of persons and property, and breaches of the peace. Statutory holdover tenancies emerged as a means of protecting tenants from self-help by landlords who were legally entitled to treat them as trespassers—that is, to keep people from being dumped out on the street. Statutes such as § 5108 attempt to maintain the status quo of a tenant’s occupancy and use of leased property for a short period of time during which a landlord can pursue summary eviction. This approach balances the policy objectives of permitting landlords and incoming tenants to recover possession of property in a timely fashion and permitting outgoing tenants to move out in an orderly manner, thereby “improv[ing] the prospects for preserving the public peace.

Bateman v. 317 Rehoboth Ave., LLC, 878 A.2d 1176, 1182–83 (Del. Ch. 2005) (alteration in original).

<sup>470</sup> DEL. CODE ANN. tit. 25, § 5515(b) (2017).

<sup>471</sup> *Id.*

<sup>472</sup> Barnes v. Jackson, No. Civ.A. 1061-K, 2005 WL 2130220, at \*4 (Del. Ch. Aug. 29, 2005).

<sup>473</sup> *Bateman*, 878 A.2d at 1184-85; *Barnes*, 2005 WL 2130220, at \*4; Paoli v. Jones, No. 95-06-183, 1997 WL 1737108, at \*1 (Del. C.P. Apr. 11, 1997) (finding an automatic renewal provision to be unenforceable in the case of a holdover tenancy).

### 5. Tenant's Breached of a Rule, Regulation, Restriction, or Covenant<sup>474</sup>

An agreement for the rental of a *single room* in certain buildings may be terminated immediately upon notice to the tenant for the tenant's material violation of a regulation that was given to the tenant at the time of contract or lease.<sup>475</sup> Here, the landlord is permitted to bring a proceeding for possession where all of the following are satisfied: (1) the building is the landlord's primary residence;<sup>476</sup> (2) no more than three rooms in the building are rented to tenants;<sup>477</sup> and (3) no more than three tenants occupy such building.<sup>478</sup>

Where the tenant breaches a rule or covenant (other than failing to pay rent, which is covered under Section 5502), and that rule or covenant is *material* to the rental agreement, the landlord must give written notice to the tenant of this breach, and give the tenant at least seven days to remedy or correct the breach before the landlord can take advantage of the Code's remedies.<sup>479</sup> The written notice must "substantially specify the rule (that the tenant) allegedly breached and advise the tenant that, if the violation continues after seven days, the landlord may terminate the rental agreement and bring an action for summary possession."<sup>480</sup> The notice must also state that it is given pursuant to Section 5513 of the Code, and that if the tenant commits a substantially similar breach within one year, the landlord may rely upon the notice as grounds for initiating an action for summary possession.<sup>481</sup> This means the landlord will not have to give another notice for the subsequent breach. Note, however, that simply giving the notice to the tenant does not establish that a breach actually occurred.<sup>482</sup>

If able to do so, the landlord may also elect to clean, repair, or replace any item caused by the tenant's breach and bill the tenant for the actual and

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<sup>474</sup> For tenant's defenses to an action for waste, see Chapter Four, section B, part 14.

<sup>475</sup> DEL. CODE ANN. tit. 25, § 5512 (2017).

<sup>476</sup> Courts look at a number of factors to determine whether the residence is the individual's "primary residence," including the length of time the individual occupied and was absent from the premises, and whether (i) the individual treated the property as her permanent home, (ii) the individual is the property's sole owner, and (iii) the individual paid the bills prior to, throughout, or after the tenant's residence in the property. *Boyer v. Sylvester*, No. CPU4-10-003496, 2001 WL 2671872, at \*6 (Del. C.P. July 1, 2011); *see also Williamson v. Standard Fire Ins.*, No. 04C-07-033 RFS, 2005 WL 6318348, at \*5 (Del. Super. Ct. Aug. 18, 2005) ("Domicile is said to require bodily presence plus the intent to make the place one's home.").

<sup>477</sup> This element was not satisfied where the tenants had free access to the entire house, and the tenant's furniture was located in several rooms of the property. *Boyer v. Sylvester*, No. CPU4-10-003496, 2001 WL 2671872, at \*9 (Del. C.P. July 1, 2011).

<sup>478</sup> *Id.*

<sup>479</sup> DEL. CODE ANN. tit. 25, § 5513(a) (2017).

<sup>480</sup> *Id.* § 5513(a)(1).

<sup>481</sup> *Id.*

<sup>482</sup> *Id.*

reasonable costs.<sup>483</sup> This repair bill will constitute additional rent, and will be due and payable immediately upon receipt.<sup>484</sup> Finally, if the tenant's breach also constitutes a *material* breach of a legal obligation, the landlord may terminate the rental agreement and bring an action for summary possession.<sup>485</sup> Although this provision does not specify the time in which the landlord may terminate the agreement and bring the summary possession action, a logical interpretation is that the landlord may do so immediately upon giving notice of such breach to the tenant. Any other interpretation would render this subsection superfluous.

Landlords also have remedies available to them when a tenant's breach "causes or threatens to cause irreparable harm to a person or property, or the tenant is convicted of a class A misdemeanor or felony during the tenancy which caused or threatened to cause irreparable harm to a person or property . . . ."<sup>486</sup> Here, the landlord may, without notice, remedy the breach and bill the tenant for actual and reasonable costs incurred.<sup>487</sup> The repair bill will constitute additional rent, and will be due and payable by the tenant upon receipt.<sup>488</sup> The landlord may also immediately terminate the rental agreement upon notice to the tenant and bring an action for summary possession.<sup>489</sup> The landlord has the option to do any *or all* of the foregoing.<sup>490</sup>

If the tenant willfully or negligently fails to comply with his or her responsibilities under the preceding section, the landlord may bring an action or proceeding for waste or breach of contract for damages suffered.<sup>491</sup> The landlord may also request a forthwith summons, which is discussed in more detail below.<sup>492</sup>

Lastly, unless the rental agreement provides otherwise, the tenant must use the rental unit only as the tenant's abode.<sup>493</sup> A violation of this rule will constitute a breach of a rule under 5511, giving the landlord the right to proceed as specified elsewhere in the Code.<sup>494</sup> If the landlord elects to seek summary possession, and there is no appeal from a judgment granting summary possession, the landlord may immediately remove and store, at the tenant's expense, any items left on the premises by the tenant.<sup>495</sup> Seven days after the appeal period has expired, the property will be deemed

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<sup>483</sup> DEL. CODE ANN. tit. 25, § 5513(a)(2) (2017).

<sup>484</sup> *Id.*

<sup>485</sup> *Id.* § 5513(a)(3).

<sup>486</sup> *Id.* § 5513(b).

<sup>487</sup> *Id.*

<sup>488</sup> *Id.*

<sup>489</sup> DEL. CODE ANN. tit. 25, § 5513(b) (2017).

<sup>490</sup> *Id.*

<sup>491</sup> *Id.* § 5513(c).

<sup>492</sup> *Id.*

<sup>493</sup> *Id.* § 5507(c).

<sup>494</sup> *Id.*

<sup>495</sup> DEL. CODE ANN. tit. 25, § 5507(e) (2017).

abandoned and may be disposed of by the landlord without further notice or liability.<sup>496</sup>

## 6. Property Remaining in Premises after Sole Tenant's Death

This subsection addresses situations in which a sole tenant has died and the landlord sought a judgment from a court to obtain possession of the premises.

Where a court enters a final judgment for the landlord–plaintiff, and after the expiration of the time for filing an appeal or motion to vacate or open the judgment, the court must issue a writ of possession.<sup>497</sup> A writ of possession is essentially a court order that describes the property and commands the applicable county's constable or sheriff to remove all persons from the property, and put the landlord–plaintiff in full possession of the property.<sup>498</sup> If a writ of possession is issued, the deceased sole tenant's property must be removed by the time the landlord seeks to execute the writ.<sup>499</sup> Where the deceased tenant's property is still inside the residential unit at the time of the writ's execution, the landlord has the right to immediately remove and store the property for a period of seven days, at the expense of the deceased tenant's estate.<sup>500</sup> If the estate's representative fails to claim the property and reimburse the landlord for the reasonable expenses of removal and storage, the property is deemed abandoned and the landlord may dispose of it without further obligation to any party.<sup>501</sup>

## 7. Landlord's Defenses to Accusations that she Committed Retaliatory Acts

As discussed in Chapter Four, section B, part ten above, the Code expressly prohibits landlords from taking “retaliatory acts” against a tenant. Notwithstanding this prohibition, certain defenses are available to a landlord accused of committing a retaliatory act.<sup>502</sup> Specifically, it is a valid defense if the accused landlord proves any of the following:

- a. The landlord gave appropriate notice under the Code to terminate the tenancy early;
- b. The landlord, in good faith, seeks to take possession of the rental unit for immediate use as the landlord's personal residence;

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<sup>496</sup> DEL. CODE ANN. tit. 25, § 5507(e) (2017).

<sup>497</sup> *Id.* § 5719(c).

<sup>498</sup> *Id.*

<sup>499</sup> *Id.*

<sup>500</sup> *Id.*

<sup>501</sup> *Id.*

<sup>502</sup> DEL. CODE ANN. tit. 25, § 5516(d) (2017).

- c. The landlord, in good faith, seeks to take possession of the rental unit for purposes of substantially altering, remodeling, or demolishing the premises;
- d. The landlord, in good faith, seeks to take possession of the rental unit to immediately terminate use of the premises as a rental unit for at least six months;
- e. The complaint or request relates to a condition caused by the tenant's (or someone in or on the premises with the tenant's consent) lack of ordinary care;
- f. On the date of filing the tenant's complaint or request, or on the date of the notice prior to the end of the rental term, the rental unit was in full compliance with applicable laws;
- g. The landlord, in good faith, contracted to sell the property and the contract of sale contains representations by the purchaser conforming to paragraphs 2, 3, or 4 above;
- h. The landlord seeks to take possession of the rental unit on the basis of a notice to terminate a periodic tenancy, which notice was given to the tenant prior to the complaint or request;
- i. The condition complained of was impossible to remedy prior to the end of the cure period;
- j. The landlord has become liable for a substantial increase in property taxes or a substantial increase in other maintenance or operating costs not associated with the landlord complying with the complaint or request, and such liability occurred not less than four months prior to the demand for the increase in rent, and the increase in rent does not exceed the pro-rata portion of the net increase in taxes or cost;
- k. The landlord has completed a substantial capital improvement of the rental unit or the property of which it is a part, not less than four months prior to the demand for increased rent, and such increase in rent does not exceed the amount which may be claimed for federal income tax purposes as a straight-line depreciation of the improvement, pro-rated among the rental units benefited by the improvement; or
- l. The landlord can establish, by competent evidence, that the rent now demanded of the tenant does not exceed the rent charged other tenants of similar rental units in the same complex, or the landlord can establish

that the increase in rent is not directed at the particular tenant as a result of any retaliatory acts.<sup>503</sup>

## 8. Landlord's Defense that she Complied with Applicable Law

Evidence that the landlord complied with applicable building and housing codes is considered *prima facie* evidence that the landlord complied with the Code.<sup>504</sup> *Prima facie* evidence means that the landlord has enough evidence to show he or she complied with the Code. Once this is shown, the burden shifts to the claimant (likely, the tenant) to refute this evidence.

### *D. Remedies and Defenses Available to Both Tenants and Landlord*

#### 1. Application for a Forthwith Summons

A forthwith summons is simply a summons which requires the personal appearance of a person at the court's earliest convenience.<sup>505</sup> In certain cases, a landlord or a tenant may allege that the other party has caused substantial or irreparable harm to landlord's or tenant's (as applicable) person or property.<sup>506</sup> The alleging party must demonstrate the substantial or irreparable harm to the court by *substantial evidence*.<sup>507</sup> Once this is demonstrated, the JP Court must issue a forthwith summons.<sup>508</sup> The forthwith summons will expedite the court's consideration of these allegations.<sup>509</sup>

#### 2. Summary Possession, Generally

Summary possession proceedings, commenced in accordance with Section 5702 of the Code, "are special hearings designed to promptly resolve disputes between a landlord and tenant over the right to possession of a rental unit."<sup>510</sup>

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<sup>503</sup> DEL. CODE ANN. tit. 25, § 5516(d) (2017).

<sup>504</sup> *Id.* § 5305(d).

<sup>505</sup> *Id.* § 5141(10).

<sup>506</sup> *Id.* § 5115.

<sup>507</sup> *Id.* In *Black v. Justice of the Peace Court 13*, 105 A.3d 392, 395 (Del. 2014), the Delaware Supreme Court found the petitioner insufficiently set forth "substantial evidence" of substantial or irreparable harm because, among other things, the compliant did not allege that the respondents caused such harm, and it did not include any authenticated documents, testimony, affidavits, or any other evidence.

<sup>508</sup> DEL. CODE ANN. tit. 25, § 5115 (2017).

<sup>509</sup> See *Black*, 105 A.3d at 395; DEL. CODE ANN. tit. 25, § 5115 (2017).

<sup>510</sup> *Dorsey v. Cochran*, No. CPU 4-10-005067, 2011 WL 809854, at \*3 (Del. C.P. Jan. 31, 2011).

Summary possession proceedings may only be initiated by the following parties: (1) the landlord; (2) the owner of the premises; (3) the tenant who has been wrongfully put out or kept out of the premises; (4) the next tenant of the premises, whose term has begun; and (5) the tenant.<sup>511</sup>

The Code also sets forth the situations in which an action for summary possession may be maintained:

- a. The tenant unlawfully continues in possession of any part of the premises after the expiration of the rental agreement, without the permission of the landlord, or, where a new tenant is entitled to possession, without the permission of the new tenant;
- b. The tenant has wrongfully failed to pay the agreed rent;
- c. The tenant has wrongfully deducted money from the agreed rent;
- d. The tenant has breached a lawful obligation relating to the tenant's use of the premises;
- e. The tenant, employee, servant, or agent of the landlord holds over for more than fifteen days after dismissal, when the housing is supplied by the landlord as part of the compensation for labor or services;
- f. The tenant holds over for more than five days after the property has been duly sold upon the foreclosure of a mortgage and the title has been duly perfected;
- g. The rightful tenant of the rental unit has been wrongfully ousted;
- h. The tenant refuses to yield possession of the rental unit rendered partially or wholly unusable by fire or casualty, and the landlord requires possession for the purpose of effecting repairs of the damage;
- i. The tenant is convicted of a class A misdemeanor or any felony during the term of tenancy which caused or threatened to cause irreparable harm to any person or property;
- j. A rental agreement for a commercial rental unit provides grounds for an action for summary possession to be maintained;
- k. If, and only if, it pertains to manufactured home lots, for any of the grounds set forth in the Manufactured Home Owners and Community Owners Act, as amended; or

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<sup>511</sup> DEL. CODE ANN. tit. 25, § 5703 (2017).

1. The tenant who is the sole tenant under the rental agreement has died and becomes the deceased sole tenant under the residential rental agreement.<sup>512</sup>

To the extent consistent with the Code, the parties may agree, under the rental agreement, to eliminate the right to seek summary possession for any of the above mentioned situations.<sup>513</sup>

### 3. Summary Possession: Jurisdiction and Venue

Before commencing a summary possession proceeding, you must make sure you are filing the action in the correct court. A summary possession action may only be maintained in the JP Court that hears civil cases in the county in which the rental unit is located.<sup>514</sup> There may, however, be more than one court that meets these qualifications. In the event this occurs, then the action may only be maintained in the JP Court that possesses *territorial jurisdiction* over the area in which the rental unit is located.<sup>515</sup> Each JP Court will have a geographical area assigned to it for purposes of establishing such jurisdiction, and the designation of the boundaries between territories will be accomplished by court rule.<sup>516</sup>

### 4. Summary Possession: Commencement of the Action

A summary possession proceeding starts when one of the appropriate parties, listed above, files a complaint for possession with the appropriate court.<sup>517</sup> The complaint must include the following:

- a. A statement regarding the plaintiff's interest in the applicable rental unit (*i.e.*, the unit from which removal is sought);
- b. A statement regarding the defendant's interest in the applicable rental unit;
- c. A description of the applicable rental unit;
- d. A statement of the facts upon which the proceeding is based, including, as an exhibit attached to the complaint, a copy of any written notice of the basis of the claim; and
- e. A statement of the relief sought, which may include a judgment for rent due if the notice of the complaint

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<sup>512</sup> DEL. CODE ANN. tit. 25, § 5703 (2017).

<sup>513</sup> *Id.*

<sup>514</sup> *Id.* § 5701.

<sup>515</sup> *Id.*

<sup>516</sup> *Id.* § 5701A.

<sup>517</sup> *Id.* at § 5704(a); *see also id.* § 5703.

contains a conspicuous notice that such demand has been made.<sup>518</sup>

In addition to these mandatory provisions, the Code sets forth other requirements if possession of the rental unit is sought on the grounds that the tenant has violated or failed to observe a lawful obligation in relation to the tenant's use and enjoyment of the rental unit.<sup>519</sup> Here, the complaint must also include:

- a. The rule or rental agreement provision that was allegedly breached, together with the date the rule was made known to the tenant, and a copy of the rule or provision as initially provided to the tenant and the manner in which such rule or provision was made known to the tenant;
- b. Allegations, *with specificity*, of the facts constituting a breach of the rule or provision of the rental agreement, and that notice or warning as required by law was given to the tenant;
- c. The facts constituting a continued or recurrent violation of the rule or provision of the rental agreement;
- d. The purpose served by the rule or provision of the rental agreement allegedly breached; and,
- e. Allegations that where the rule is not a part of the rental agreement or any other agreement of the landlord and tenant at the time of the formation of the rental agreement, that it does not work as a substantial modification of the tenant's bargain, or, if it does, that the tenant consented knowingly in writing to the rule.<sup>520</sup>

In certain cases, an individual may not have the funds to commence or defend a summary possession action or appeal and seeks to proceed *in forma pauperis*.<sup>521</sup> Upon application of a party claiming to be indigent, the court may authorize the commencement, prosecution, or defense of a civil action or appeal without prepayment of fees and costs (or security for such fees and costs).<sup>522</sup> In order to receive such relief, the individual must submit an affidavit stating: (1) that the individual is unable to pay the costs (or give security for such costs), along with sufficient facts from which the court may make an objective determination of the alleged indigence; (2) the

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<sup>518</sup> DEL. CODE ANN. tit. 25, § 5707 (2017).

<sup>519</sup> *Id.* § 5708.

<sup>520</sup> *Id.*

<sup>521</sup> *In forma pauperis* is a Latin term meaning "in the character or manner of a pauper," and it refers "to a party to a lawsuit who gets filing fees waived by filing a statement, often in the form of an affidavit, declaring the inability to pay." See *In Forma Pauperis Law and Legal Definition*, US LEGAL, <https://definitions.uslegal.com/i/in-forma-pauperis/> (last visited Jan. 13, 2018).

<sup>522</sup> DEL. CODE ANN. tit. 25, § 5718 (2017).

nature of the action or the defense; and (3) the person's belief that they are entitled to redress.<sup>523</sup> The court has discretion to conduct a hearing on the question of indigence.<sup>524</sup> Importantly, where the indigent individual has recovered a judgment in his favor, or has received funds from a settlement of the action, the indigent party will be required to pay any accrued court costs.<sup>525</sup> If a party wants an action to be dismissed without settlement or recovery, the party and the attorney of record must file appropriate affidavits to this effect.<sup>526</sup>

### 5. Summary Possession: Notice and Service

Once the summary possession action is commenced, the court must issue the process specified in the praecipe, and it must cause service of the complaint on the defendant, together with a notice stating the time and place of the hearing.<sup>527</sup> The notice must indicate that if the defendant fails to appear at the hearing and defend against the complaint, the defendant may be precluded from subsequently raising any defenses or a claim based on such defenses in any other proceeding or action.<sup>528</sup>

Consistent with Justice of the Peace Court Civil Rules, the party requesting the process may file a motion for the appointment of a special process server.<sup>529</sup> To this end, the requesting party may prepare a form of order for the clerk of court's signature under seal of the court.<sup>530</sup> To facilitate this process, the clerk of court, upon a party's request, will provide blank forms for a motion for the appointment of a special process server and for an order appointing such a special process server.<sup>531</sup>

The notice of hearing and the complaint must be served on the defendant at least five days, and not more than thirty days, before the time at which the complaint is to be heard.<sup>532</sup> The notice of hearing, the complaint, and proof of service of the notice and complaint must be filed with the court before the hearing, but not later than five days after service.<sup>533</sup> In the event

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<sup>523</sup> DEL. CODE ANN. tit. 25, § 5718 (2017).

<sup>524</sup> *Id.*; Morgan v. Limestone Valley Enters., No. 14A-11-005 JAP, 2015 WL 721246, at \*2 (Del. Super. Ct. Feb. 18, 2015) (denying a request for leave to proceed *in forma pauperis* because the individual failed to provide information regarding her personal property including her bank accounts).

<sup>525</sup> DEL. CODE ANN. tit. 25, § 5718 (2017).

<sup>526</sup> *Id.*

<sup>527</sup> *Id.* § 5704(b). Service of the notice and complaint may be made in accordance with either Section 5704 or 5706 of the Code. *Id.* § 5705(c). Service pursuant to Section 5706 will be considered actual or statutory notice. *Id.* § 5706(d).

<sup>528</sup> *Id.* § 5704(b).

<sup>529</sup> *Id.* § 5704(c).

<sup>530</sup> *Id.*

<sup>531</sup> DEL. CODE ANN. tit. 25, § 5704(c) (2017).

<sup>532</sup> *Id.* § 5705(a).

<sup>533</sup> *Id.* § 5705(b).

that service has been made by certified or registered mail, the return receipt, signed, refused, or unclaimed, will constitute proof of service.<sup>534</sup>

The notice of hearing and the complaint must be served in the same manner as personal service of a summons in an action.<sup>535</sup> If service cannot be effected in this manner, it must be made by leaving a copy of the notice and complaint personally with a person of suitable age and discretion who resides or is employed in the rental unit.<sup>536</sup> Finally, in the event that such a person cannot be found despite a reasonable effort, the Code sets forth two alternative service processes:

(1) Upon a natural person by affixing a copy of the notice and complaint upon a conspicuous part of the rental unit within one day thereafter, and by sending by either certified mail or first class mail with certificate of mailing, using United States Postal Service Form 3817 or its successor, an additional copy of each document to the rental unit and to any other address known to the person seeking possession as reasonably chosen to give actual notice to the defendant; or

(2) If defendant is an artificial entity, pursuant to Supreme Court Rule 57, by sending by certified mail or by sending by first class mail with certificate of mailing, using United States Postal Service Form 3817 or its successor, within one day after affixation, additional copies of each document to the rental unit and to the principal place of business of such defendant, if known, or to any other place known to the party seeking possession as reasonably chosen to effect actual notice.<sup>537</sup>

A “certificate of mailing” means a United States Postal Form No. 3817 or the form’s successor.<sup>538</sup>

## 6. Summary Possession: Answer to the Complaint

The defendant (or any person in possession or claiming possession of the rental unit) may answer the complaint when the petition is to be heard.<sup>539</sup> The answer may be made orally or in writing.<sup>540</sup> Where the answer is oral,

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<sup>534</sup> DEL. CODE ANN. tit. 25, § 5705(b) (2017).

<sup>535</sup> *Id.* § 5706(a).

<sup>536</sup> *Id.* § 5706(b).

<sup>537</sup> *Id.* § 5706(c).

<sup>538</sup> *Id.* § 5141(3).

<sup>539</sup> *Id.* § 5709.

<sup>540</sup> DEL. CODE ANN. tit. 25, § 5709 (2017).

the answer's substance must be endorsed on the complaint.<sup>541</sup> The answer may contain any legal or equitable defense or counterclaim, so long as the defense or counterclaim does not exceed the court's jurisdiction.<sup>542</sup>

## 7. Summary Possession: The Trial

When raised, triable issues of fact must be tried by the court.<sup>543</sup> Under the Delaware Constitution, citizens have a constitutional right to a trial by jury in summary possession proceedings.<sup>544</sup> Accordingly, the parties may elect to demand a trial by jury; otherwise, the justice will hear the case and render a judgment.<sup>545</sup> Only certain JP Courts are designated to accommodate a jury trial; therefore, the parties and the court must determine if the case needs to be transferred to another JP Court.<sup>546</sup>

The plaintiff may make a trial by jury demand at the time the action is commenced, and the defendant may make this demand within ten days after being served.<sup>547</sup> Upon receiving a timely demand, the JP Court justice will appoint, as jurors, six impartial persons of the county in which the action was commenced.<sup>548</sup> The jury must be sworn, make certain affirmations, and hear the allegations of the parties and their proofs.<sup>549</sup>

If one of the parties fails to appear before the jury, the trial will proceed in that party's absence.<sup>550</sup> If any of the appointed jurors fail to appear or serve throughout the trial, the justice may supply a replacement; however, if the defendant has failed to appear, there will be no trial by jury.<sup>551</sup> The sitting justice may also require the attendance of the jurors appointed by that justice, and may issue a summons under hand and seal to a constable for summoning them to appear before the court.<sup>552</sup> If, after being summoned, a juror fails to appear as required, or to be qualified and serve throughout the trial, the juror will be guilty of contempt and will be fined \$50, which will be levied with costs by distress and sale of the juror's goods and chattels by virtue of a warrant by the justice.<sup>553</sup> The juror may avoid this liability by demonstrating a sufficient excuse.<sup>554</sup> When the entire jury or any four of them agree, the jury must make a report under their

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<sup>541</sup> DEL. CODE ANN. tit. 25, § 5709 (2017).

<sup>542</sup> *Id.*

<sup>543</sup> *Id.* § 5710.

<sup>544</sup> Hopkins v. Justice of the Peace Ct. No. 1, 342 A.2d 243, 246–47 (Del. Super. Ct. 1975).

<sup>545</sup> DEL. CODE ANN. tit. 25, §§ 5713(a), (d) (2017).

<sup>546</sup> *Id.* § 5713(e).

<sup>547</sup> *Id.* § 5713(a).

<sup>548</sup> *Id.*

<sup>549</sup> *Id.* § 5713(b).

<sup>550</sup> *Id.*

<sup>551</sup> DEL. CODE ANN. tit. 25, § 5713(c) (2017).

<sup>552</sup> *Id.* § 5714(a).

<sup>553</sup> *Id.*; see also *id.* § 5714(c).

<sup>554</sup> *Id.* § 5714(b).

hands and return the report to the justice,<sup>555</sup> who will then give judgment according to the report.<sup>556</sup>

In certain limited cases, the summary possession proceeding may be adjourned before the court hears the case.<sup>557</sup> Either party, at the time when an issue is joined, may submit an application to the court that an adjournment is necessary to enable the applicant to procure necessary witnesses or evidence.<sup>558</sup> To grant this application, the court must be satisfied by the proof submitted by the applicant.<sup>559</sup> This proof may be submitted orally or by affidavit.<sup>560</sup> Alternatively, the parties who appear at the trial may also consent to adjourn the trial.<sup>561</sup> The trial will not be adjourned for more than ten days, unless all the parties consent otherwise.<sup>562</sup>

## 8. Summary Possession: The Judgment

Irrespective of whether the summary possession proceeding is tried by a jury or a JP Court justice, the court is tasked with entering the final judgment.<sup>563</sup> The final judgment will determine the parties' rights and award the costs of the proceeding to the successful party.<sup>564</sup> In addition to these costs, the court is permitted to award the successful party a fixed sum of damages if the proceeding is founded upon an allegation of forcible entry or forcible holding out.<sup>565</sup>

In certain cases, the JP Court's limited jurisdiction may preclude a party from bringing a counterclaim in the proceeding for affirmative equitable relief. Despite the judgment's finality, a party may seek such affirmative equitable relief if the party commences or interposes the action, proceeding, or counterclaim within sixty days of the entry of judgment.<sup>566</sup>

The JP Court may render a default judgment against a defendant if the plaintiff has presented sufficient evidence to support the relevant cause of action and the defendant has failed to appear at the proceeding. This default judgment may not, however, be entered unless the court is satisfied, upon competent proof, that the defendant has received actual notice of the proceeding, or, if the defendant abandoned the rental unit, cannot be found

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<sup>555</sup> DEL. CODE ANN. tit. 25, § 5713(b) (2017).

<sup>556</sup> *Id.*

<sup>557</sup> *Id.* § 5710.

<sup>558</sup> *Id.*

<sup>559</sup> *Id.*

<sup>560</sup> *Id.*

<sup>561</sup> DEL. CODE ANN. tit. 25, § 5710 (2017).

<sup>562</sup> *Id.*

<sup>563</sup> *Id.* § 5711(a).

<sup>564</sup> *Id.*

<sup>565</sup> *Id.* § 5711(c).

<sup>566</sup> *Id.* § 5711(b).

within the court's jurisdiction after the exercise of reasonable diligence.<sup>567</sup> For default judgment purposes, posting and first class mail (evidenced by a certificate of mailing) is acceptable as actual notice.<sup>568</sup> Further, within ten days of the entry of a default judgment or nonsuit, a party may file a motion with the court to vacate the judgment.<sup>569</sup> If, after a hearing on this motion, the court finds that the party has satisfied the requirement of Justices of the Peace Civil Rule 60(b), the court must grant the motion and permit the parties to elect a trial by jury or by a single judge.<sup>570</sup>

### 9. Summary Possession: Stay of Proceedings

Where a final judgment is rendered, the aggrieved party has several options available to him to stay the judgment's execution.

First, if the final judgment is brought against a tenant–defendant for failure to pay rent, and the default arose out of a good faith dispute, the tenant may stay all proceedings on the judgment by simply paying all rent due at the date of the judgment and the costs of the proceeding.<sup>571</sup> A good faith dispute means an honest difference of opinion relating to the rights of the parties to a rental agreement pursuant to the agreement or the Code.<sup>572</sup>

Second, in the preceding scenario, the tenant–defendant may also file an undertaking to the plaintiff, with such assurances as the court requires, to the effect that the tenant will pay the rent due and costs within ten days of the final judgment being rendered.<sup>573</sup> After this ten-day period, the court will issue a warrant of possession *unless* the tenant–defendant produces satisfactory proof of payment.<sup>574</sup>

Finally, a proceeding may be stayed when a party appeals the judgment. The party aggrieved by the judgment may appeal any issue on which judgment was rendered at the trial court level, including the issue of back rent due.<sup>575</sup> The aggrieved party may, by written request within five days after the judgment, request an appeal before a panel comprised of three justices of the peace.<sup>576</sup> This three-justice panel will not consist of the justice who presided at the trial, and the decision will be made by a

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<sup>567</sup> DEL. CODE ANN. tit. 25, § 5712(a) (2017).

<sup>568</sup> *Id.*

<sup>569</sup> *Id.* § 5712(b).

<sup>570</sup> *Id.*

<sup>571</sup> *Id.* § 5716.

<sup>572</sup> *Id.* § 5141(12).

<sup>573</sup> DEL. CODE ANN. tit. 25, § 5716 (2017).

<sup>574</sup> *Id.*

<sup>575</sup> *Id.* § 5717(f). See *Murray v. Lancaster Court Rental, LLC*, No. N15A-02-001 ALR, 2015 WL 590347, at \*1 (Del. Super. Ct. Feb. 12, 2015) (denying an appeal for lack of subject matter jurisdiction because “a writ of possession may only be appealed to a three-judge panel”).

<sup>576</sup> DEL. CODE ANN. tit. 25, §§ 5717(a), (c) (2017).

majority vote.<sup>577</sup> The appeal, however, will only stay proceedings of the judgment if the appealing party, at the time of making the request, executes and files with the court an undertaking to the successful party, with such bond or other assurances as the court may require, to the effect that the appealing party will pay all costs of such proceedings which may be awarded against that party and abide by the court's order and pay all damages, including rent, accruing during the pendency of the proceedings.<sup>578</sup> Once this assurance is made, all further proceedings in execution of the judgment will be stayed.<sup>579</sup>

It is important to note that certain rules concerning appealing a judgment vary depending on whether the initial trial was heard by a justice or a jury. As for nonjury trials, the appeal will be *de novo*, and the three justice panel must render a final judgment on the original complaint within fifteen days after the appeal request.<sup>580</sup> A *de novo* appeal is not considered a "fresh start"—the appealing party does not have the right to treat this appeal as a new trial and relitigate the case.<sup>581</sup> The nonjury appeal may also include claims and counterclaims not raised in the initial proceeding, provided that within five days of the filing of the appeal, the claimant also files a bill of particulars identifying any new issues that the claimant intends to raise at the hearing.<sup>582</sup> An appeal from a jury trial, on the other hand, is reviewed on the record and the appealing party must designate *with particularity* the points of law which that party feels were erroneously applied in the initial proceeding.<sup>583</sup> By negative implication, no new claims or counterclaims may be presented to the three-justice panel on this type of appeal.

If possession is no longer at issue (e.g., where the tenant vacated the premises), the landlord may proceed with the case as a debt action. In cases where "summary possession is no longer at issue at the time of the trial, and the action proceeds as a debt action, appeals should be made to the Court of Common Pleas."<sup>584</sup> The Court of Common Pleas is not the appropriate forum, however, where possession is still at issue.<sup>585</sup> Importantly, if an appeal is filed in the wrong court, the Order dismissing the case can transfer it to the appropriate court *provided the appeal was filed within the*

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<sup>577</sup> DEL. CODE ANN. tit. 25, §§ 5717(a), (c) (2017).

<sup>578</sup> *Id.*

<sup>579</sup> *Id.*

<sup>580</sup> *Id.* § 5717(a).

<sup>581</sup> *Smith v. Justice of the Peace Court No. 1, No. 89A-SE2, 1990 WL 123051, at \*9* (Del. Super. Ct. Aug. 7, 1990).

<sup>582</sup> DEL. CODE ANN. tit. 25, § 5717(a) (2017).

<sup>583</sup> *Id.* § 5717(c).

<sup>584</sup> *Wise v. G-Town Partners, LP, No. CPU4-14-000699, 2015 WL 246415, at \*1* (Del. C.P. Jan. 21, 2015).

<sup>585</sup> *See Bomba's Rest. & Cocktail Lounge, Inc. v. Lord De La Warr Hotel, Inc., 389 A.2d 766* (Del. 1978).

*prescribed time.*<sup>586</sup> Relatedly, a party is not able to sever the debt action from the summary possession action—it is the statute, and not the party, that dictates which court has jurisdiction over the case.<sup>587</sup>

A party may also petition the Delaware Superior Court for *certiorari* review<sup>588</sup> of the JP Court’s grant of summary possession.<sup>589</sup> Here, the reviewing “[c]ourt will look for fundamental errors that appear on the face of the record,” such as errors of law, improper service and irregularity of process, a lack of jurisdiction, or a remedy ordered outside the court’s statutory authority.<sup>590</sup> For example, in *Black v. Just. of the Peace Ct. 13*, the Delaware Supreme Court was confronted with an issue of whether the

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<sup>586</sup> *Dorsey v. Cochran*, No. CPU 4-10-005067, 2011 WL 809854, at \*3 (Del. C.P. Jan. 31, 2011).

<sup>587</sup> *Neitzelt v. Meera Mgmt., LLC*, No. 05A-10-003, 2006 WL 1719976, at \*3 (Del. Super. Ct. May 1, 2006) (citing *Manufactured Home Cmtys., Inc. v. Brown*, No. 98-06-071, 1999 WL 1847440, at \*2 (Del. C.P. Jan. 22, 1999) and *Seaford Doughnut Co. v. Wheeler*, No. 93C-01-013, 1993 WL 331090, at \*2 (Del. Super. Ct. July 28, 1993)) (relying on *Manufactured Home* and not *Seaford Doughnut*).

<sup>588</sup> In *Metrodev Newark, LLC v. Justice of the Peace Court No. 13*, the Superior Court of Delaware indicated:

The Court’s role after accepting a writ of *certiorari* is considerably more limited than during its statutory appellate review. The Supreme Court has clarified the Court’s function when addressing this writ. [T]he Superior Court’s scope of review on common writ of *certiorari* issued to any inferior tribunal in any type of case, is limited to errors on the face of the record. A writ of *certiorari* is not a substitute for, or the functional equivalent of, an appeal. It is more limited in scope. Review on a writ of *certiorari* issued by the Superior Court differs fundamentally from appellate review because reviewing on *certiorari* is on the record and the reviewing court may not weigh evidence or review the lower court’s factual findings. The Court’s limitation to the record coincides with this Court’s limited review. That record is nothing more than the initial papers, limited to the complaint initiating the proceedings, the answer or response (if required), and the docket entries.

Nos. 06A-12-005-JOH, 08A-09-005-JOH, 2010 WL 939800, at \*4 (Del. Super. Ct. Feb. 18, 2010) (internal quotations omitted) (alteration in original); *see also* *Howell v. Justice of the Peace Ct.*, No. 07A-03-001, 2007 WL 2319147, at \*3 (Del. Super. Ct. July 10, 2007); *Brandywine Apartments Assocs., Ltd. v. Justice of the Peace Ct. of Del.*, No. 1998-08-186, 1999 WL 33255921, at \*1 (Del. C.P. Dec. 9, 1999) (concluding that the Court of Common Pleas does not have the authority to issue writs of *certiorari*, which should be issued from the Delaware Superior Court).

<sup>589</sup> *Black v. Justice of the Peace Ct. 13*, 105 A.3d 392, 396 (Del. 2014) (citing *Maddrey v. Justice of the Peace Ct. 13*, 956 A.2d 1204, 1215 (Del. 2008)) (“Justices of the Peace should, in every case insure that the docket sheet, in order to create a reviewable record, reflects a short statement of the decision . . . that explains who prevailed and the burden of proof applied.”).

<sup>590</sup> *Metrodev Newark, LLC*, 2010 WL 939800, at \*4; *Del. State Hous. Auth. v. Justice of the Peace Ct. 16*, No. 07A-11-004, 2008 WL 4120038, at \*3 (Del. Super. Ct. Aug. 8, 2008); *Maddrey v. Arbor Mgmt.*, No. 06A-09-003, 2007 WL 3287942, at \*1 (Del. Super. Ct. Oct. 26, 2007).

JP Court proceeded irregularly.<sup>591</sup> Here, the JP Court issued a forthwith summons, and the docket entry for the ruling only cursorily stated, with no explanation: “PER JUDGE ROBERTS: GRANTED. SCHEDULE FORTHWITH.”<sup>592</sup> The Delaware Supreme Court held that this docket entry was insufficient insofar as it failed to demonstrate what evidence was considered, what standard was applied, and whether the evidence met that standard.<sup>593</sup> According to the Delaware Supreme Court, these errors are reviewable by the Delaware Superior Court on *certiorari*.<sup>594</sup>

Courts are prohibited from issuing the writ of possession during the five-day appeal period.<sup>595</sup> After this five-day period, however, the court may issue the writ of possession at the plaintiff's request if the defendant has filed an appeal, but failed to file a bond, assurance, or an *in forma pauperis* request to stay the issuance of the writ.<sup>596</sup> If the plaintiff executes the writ before the determination of the appeal and the appealing party prevails, the plaintiff will be responsible for court costs and fees and reasonable cover damages (including, without limitation, the cost of substitute housing) for the period of the dispossession resulting from the wrongful execution.<sup>597</sup>

As discussed in section four, above, an indigent party may appeal *in forma pauperis* if the court grants an application for such status.<sup>598</sup> Here, the court may waive the filing fee and bond for a trial *de novo*, a trial on the record, or a request to stay the writ of possession.<sup>599</sup>

## 10. Summary possession: Executing the Judgment

Where final judgment is rendered for the plaintiff, and after the expiration of the time for the filing of an appeal or motion to vacate or open the judgment, the court must issue a writ of possession.<sup>600</sup> This writ of possession authorizes the tenant's removal of the premises, has the effect of cancelling the landlord-tenant agreement, and annuls the landlord-tenant relationship. This writ will be directed to the constable or the sheriff of the county in which the property is located.<sup>601</sup> It will describe the property, and command the officer to remove all persons and put the plaintiff in full possession of the premises.<sup>602</sup> The plaintiff also has an obligation to notify the constable to take the steps necessary to put the plaintiff in possession of

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<sup>591</sup> *Black*, 105 A.3d at 396.

<sup>592</sup> *Id.*

<sup>593</sup> *Id.*

<sup>594</sup> *Id.*

<sup>595</sup> DEL. CODE ANN. tit. 25, § 5717(d) (2017).

<sup>596</sup> *Id.*

<sup>597</sup> *Id.*

<sup>598</sup> *Id.* § 5717(e).

<sup>599</sup> *Id.*

<sup>600</sup> *Id.* § 5715(a).

<sup>601</sup> DEL. CODE ANN. tit. 25, § 5715(a) (2017).

<sup>602</sup> *Id.*

the premises.<sup>603</sup> To protect those in possession of the premises, the Code requires that the officer give the persons in possession at least twenty-four hours notice and execute the writ of possession between the hours of *sunrise and sunset*.<sup>604</sup>

Where the writ of possession relates to the possession of a rented lot for manufactured housing, and, on or before the date the writ of possession is posted the tenant has prepaid a per diem storage fee equal to seven days' rent, then the court may extend the notice period for the removal of the home from the lot.<sup>605</sup> This extension may be for a maximum period of seven calendar days from the date of posting, and, after such seven day period, the landlord may remove the home.<sup>606</sup> If the removal period has not been extended, the landlord may remove the home twenty-four hours after the posting of the writ.<sup>607</sup> The tenant may not, however, inhabit the home after the first twenty-four hours of the notice period.<sup>608</sup> After removal, the home must be stored at the tenant's expense for a period of thirty days before it can be disposed of through further legal action.<sup>609</sup> The tenant may not remove the home from the storage location until the landlord has been reimbursed for any judgment amount and the reasonable cost of removal and storage of the manufactured home.<sup>610</sup>

With regard to removing the tenant's property from the premises where no appeal has been filed, all writs of possession must include the following language:

If you do not remove your property from the premises within 24 hours, then the landlord may immediately remove and store your property for a period of 7 days at your expense, unless the property is a manufactured home and the rental agreement is subject to Chapter 70 of this title, in which case the manufactured home must be stored for a period of 30 days. If you fail to claim your property and reimburse the landlord prior to the expiration of the 7-day period, then the landlord may dispose of your property without any further legal action.

**MANUFACTURED HOME.** If the writ of possession being posted relates to the possession of a rented lot for manufactured housing, under Chapter 70 of this title,

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<sup>603</sup> DEL. CODE ANN. tit. 25, § 5715(c) (2017).

<sup>604</sup> *Id.* § 5715(b).

<sup>605</sup> *Id.*

<sup>606</sup> *Id.*

<sup>607</sup> *Id.*

<sup>608</sup> *Id.*

<sup>609</sup> DEL. CODE ANN. tit. 25, § 5715(b) (2017).

<sup>610</sup> *Id.*

and, on or before the date the writ of possession is posted, the tenant has prepaid a per diem storage fee in an amount equivalent to 7 days' rent, then the court, through its officers, may extend the notice period for the removal of the home from the lot to a maximum period of 7 calendar days from the date of posting. In no event may the tenant inhabit the home after the first 24 hours of the notice period. If the per diem charge above described has been prepaid and the time for removal has been extended, then 7 calendar days after the posting of the writ, the manufactured home may be removed by the landlord. If the period for removal of the home has not been extended by a prepayment of the per diem amount for storage, then 24 hours after the posting of the writ, the home may be removed from the lot by the landlord. In either event, after removal, the home must be stored at the tenant's expense for a period of 30 days before it can be disposed of through further legal action. The tenant may not remove the home from storage location until the landlord has been reimbursed for any judgment amount and the reasonable cost of removal and storage of the manufactured home.<sup>611</sup>

However, if an appeal has been filed, the writ of possession must include this language:

If you do not remove your property from the premises with 24 hours, then the landlord may immediately remove and store your property until 7 days after your appeal has been decided, at your expense. If you fail to claim your property and reimburse the landlord prior to the expiration of the 7-day period, then the landlord may dispose of your property without any further legal action.

**MANUFACTURED HOME.** If the writ of possession being posted relates to the possession of a rented lot for manufactured housing, under Chapter 70 of this title, and, on or before the date the writ of possession is posted, the tenant has prepaid a per diem storage fee in an amount equivalent to 7 days' rent, then the court, through its officers, may extend the notice period for the removal of the home from the lot to a maximum period of 7 calendar days from the date of posting. In no event

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<sup>611</sup> DEL. CODE ANN. tit. 25, § 5715(e)(3) (2017).

may the tenant inhabit the home after the 1st 24 hours of the notice period. If the per diem charge above described has been prepaid and the time for removal has been extended, then 7 calendar days after the posting of the writ, the manufactured home may be removed by the landlord. If the period for removal of the home has not been extended by a prepayment of the per diem amount for storage, then 24 hours after the posting of the writ, the home may be removed from the lot by the landlord. In either event, after removal, the home must be stored at the tenant's expense for a period of 30 days before it can be disposed of through further legal action. The tenant may not remove the home from storage location until the landlord has been reimbursed for any judgment amount and the reasonable cost of removal and storage of the manufactured home.<sup>612</sup>

Certain remedies are available to the landlord where the tenant has failed to remove his or her property at the time of the execution of the writ of possession. Specifically, if the judgment of summary possession has not been appealed at the time of the execution of the writ, then the landlord may immediately remove and store the tenant's property for seven days, at the tenant's expense, unless the property is a manufactured home and the agreement is subject to Chapter 70 of the Code, then the home must be stored for a period of thirty days.<sup>613</sup> Where an appeal has been filed at the time of the execution of the writ, however, then the seven-day period during which the landlord may store the tenant's property commences twenty-four hours after the appeal's resolution, unless the property is a manufactured home and the rental agreement is subject to Chapter 70 of the Code, then the manufactured home must be stored for thirty days.<sup>614</sup> In both cases, if the tenant has failed to claim her property and reimburse the landlord for the reasonable removal and storage expenses after this seven-day storage period, the property is deemed abandoned and may be disposed of by the landlord without further notice or obligation to the tenant.<sup>615</sup>

In addition to gaining possession of the premises the plaintiff may also recover, by an action for summary possession, any sum of money which was payable at the time when the action for summary possession was commenced.<sup>616</sup> The plaintiff may also recover the reasonable value of the use and occupation up to the time when a writ of possession was issued, and for any period of time with respect to which the agreement does not

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<sup>612</sup> DEL. CODE ANN. tit. 25, § 5715(f)(3) (2017).

<sup>613</sup> *Id.* § 5715(e).

<sup>614</sup> *Id.* § 5715(f)(1).

<sup>615</sup> *Id.* §§ 5715(e)(2), (f)(2).

<sup>616</sup> *Id.* § 5715(d).

make any provision for payment of rent, including the time between the issuance of the writ and the landlord's actual recovery of the premises.<sup>617</sup> Notably, the landlord is entitled under the Code to sue the tenant for both rent and possession at the same hearing; however, as noted above, the landlord has a duty of diligence in attempting to rerent the premises, and the landlord will bear the burden of showing such diligence.<sup>618</sup>

Once the plaintiff has full possession of the premises, she has a duty to change the locks if the premises are to be subsequently leased out.<sup>619</sup> If a plaintiff fails to change the locks, she will be liable to any new tenant whose person or property is injured as a result of the dispossessed tenant gaining entry to the premises by use of a key still in their possession that fits the lock to the premises at the time of this tenancy.<sup>620</sup>

## V. CONCLUSION

Although Delaware's General Assembly and judiciary endeavor to simplify the Code to the greatest extent possible, as outlined above, Delaware's residential landlord-tenant law can be complex and intimidating. When confronted with an issue, landlords, tenants, and their respective advisors need to navigate these complexities to achieve the most favorable results. This Guide is intended to elucidate the Code's provisions, advise individuals on how to go about resolving landlord-tenant issues, and recommend preventative steps that can be taken to proactively avert or mitigate future issues.

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<sup>617</sup> DEL. CODE ANN. tit. 25, § 5715(d) (2017).

<sup>618</sup> *Id.* §§ 5715(g), (e).

<sup>619</sup> *Id.* § 5715(h).

<sup>620</sup> *Id.*

VI. APPENDIX 1: RESIDENTIAL LANDLORD–TENANT CODE  
(TITLE 25, PART III OF THE DELAWARE CODE)<sup>621</sup>

A. Chapter 51. General Provisions

1. Subchapter I. Rights, Obligations and Procedures, Generally

**§ 5101 Applicability of Code.**

(a) This Code shall regulate and determine all legal rights, remedies and obligations of all parties and beneficiaries of any rental agreement of a rental unit within this State, wherever executed. Any rental agreement, whether written or oral, shall be unenforceable insofar as the agreement or any provision thereof conflicts with any provision of this Code, and is not expressly authorized herein. The unenforceability shall not affect other provisions of the agreement which can be given effect without the void provision.

(b) Any rental agreement for a commercial rental unit is excluded from this Code. All legal rights, remedies and obligations under any agreement for the rental of any commercial rental unit shall be governed by general contract principles; and only Chapter 57 of Title 25 and Part IV of Title 25 shall have any application to commercial rental agreements.

(c) This Code shall apply to any relationship between parties arising by law under a conditional sales agreement which has been converted to a landlord/tenant agreement by operation of § 314(d)(3) of this title, but shall not apply to any other conditional sales agreement.

**§ 5102 Exclusions from application of this Code.**

The following arrangements are not intended to be governed by this Code, unless created solely to avoid such application:

(1) Residence at an institution, whether public or private, where such residence is merely incidental to detention or to the provision of medical, geriatric, educational, counseling, religious or similar services, including (but not limited to) prisons, student housing provided by a college or school, old-age homes, nursing homes, homes for unwed mothers, monasteries, nunneries and hospitals.

(2) Residence by a member of a fraternal organization in a structure operated for the benefit of the organization.

(3) Residence in a hotel, motel, cubicle hotel or other similar lodgings.

(4) Nonrenewable rental agreements of 120 days or less for any calendar year for a dwelling located within the boundaries of

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<sup>621</sup> To access the Residential Landlord-Tenant Code online, see *Title 25*, STATE OF DELAWARE, <http://delcode.delaware.gov/title25/> (last visited Jan. 13, 2018).

Broadkill Hundred, Lewes-Rehoboth Hundred, Indian River Hundred and Baltimore Hundred.

(5) A rental agreement for ground upon which improvements were constructed or installed by the tenant and used as a dwelling, where the tenant retains ownership or title thereto, or obtains title to existing improvement on the property.

### **§ 5103 Jurisdiction.**

Any person, whether or not a citizen or resident of this State, who owns, holds an ownership or beneficial interest in, uses, manages or possesses real estate situated in this State submits himself, herself or itself or such person's personal representative to the jurisdiction of the courts of this State as to any action or proceeding for the enforcement of an obligation arising under this Code.

### **§ 5104 Obligations of good faith.**

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

### **§ 5105 Disclosure.**

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

(1) The names and usual business addresses of all persons who are owners of the rental unit or the property of which the rental unit is a part, or the names and business addresses of their appointed resident agents; and/or

(2) The names and usual business addresses of any person who would be deemed a landlord of the unit pursuant to § 5141 of this title.

(b) Where there is a written rental agreement, the landlord shall provide a copy of such written rental agreement to the tenant, free of charge. In the case of an oral agreement, the landlord shall, on demand, furnish the tenant with a written statement containing the information required by subsection (a) of this section.

(c) Any owner or resident agent not dealing with the tenant as a landlord shall be responsible for compliance with this section by the landlord and may not take advantage of any failure to serve process upon such owner or resident agent in any proceeding arising under this Code where such failure is due to the owner or resident agent's failure to comply with this section.

**§ 5106 Rental agreement; term and termination of rental agreement.**

- (a) No rental agreement, unless in writing, shall be effective for a longer term than 1 year.
- (b) Where no term is expressly provided, a rental agreement for premises shall be deemed and construed to be for a month-to-month term.
- (c) The landlord may terminate any rental agreement, other than month-to-month agreements, by giving a minimum of 60 days' written notice to the tenant prior to the expiration of the term of the rental agreement. The notice shall indicate that the agreement shall terminate upon its expiration date. A tenant may terminate a rental agreement by giving a minimum of 60 days' written notice prior to the expiration of the term of the rental agreement that the agreement shall terminate upon its expiration date.
- (d) Where the term of the rental agreement is month-to-month, the landlord or tenant may terminate the rental agreement by giving the other party a minimum of 60 days' written notice, which 60-day period shall begin on the first day of the month following the day of actual notice.
- (e) With regard to a tenant occupying a federally-subsidized housing unit, in the event of any conflict between the terms of this Code and the terms of any federal law, regulations or guidelines, the terms of the federal law, regulations or guidelines shall control.

**§ 5107 Renewals of rental agreements with modifications.**

- (a) If the landlord intends to renew the rental agreement subject to amended or modified provisions, the landlord shall give the tenant a minimum of 60 days' written notice prior to the expiration of the rental agreement that the agreement shall be renewed subject to amended or modified provisions, including, but not limited to, amended provisions relating to the length of term or the amount of security deposit or rent. Such notice shall specify the modified or amended provisions, the amount of any rent or security deposit and the date on which any modifications or amendments shall take effect.
- (b) After receipt of such notice from the landlord, unless the tenant notifies the landlord of the tenant's intention to terminate the existing rental agreement a minimum of 45 days prior to the last day of the term, the provisions of the amended or modified rental agreement shall be deemed to have been accepted and agreed to by the tenant, and the terms of the lease, as amended, shall take full force and effect.
- (c) If the tenant rejects the modified terms or provisions set forth in a notice of renewal given under this section, then the rejected notice of renewal shall be considered an effective termination notice.

(d) The terms of subsections (a) through (c) of this section shall not be applicable where the tenant's rent and security deposit are a function of the tenant's income in accordance with any form of regulations or guidelines of the United States Department of Housing and Urban Development (HUD); in the event that they are a function of income, the regulations and guidelines established by HUD with regard to the determination and future adjustments of a tenant's rent and security deposit shall govern. With regard to a tenant's occupying HUD-subsidized units, in the event of any conflict between the terms of this Code and the terms of any HUD regulation or guideline, the terms of a HUD regulation or guideline shall control.

**§ 5108 Rental agreement; automatic extension of agreements where parties fail to terminate or renew subject to modifications.**

(a) Where a rental agreement, other than for farm unit, is for 1 or more years, and 60 days or upward before the end of the term either the landlord does not give notice in writing to the tenant of landlord's intention to terminate the rental agreement and the tenant does not give 45 days' notice to the landlord of tenant's intention to terminate the rental agreement, the term shall be month-to-month, and all other terms of the rental agreement shall continue in full force and effect.

(b) The provisions of § 5107(a) through (c) of this title shall control if a notice of renewal with modifications has been sent.

(c) With regard to a tenant occupying a federally-subsidized housing unit, in the event of any conflict between the terms of this Code and the terms of any federal law, regulations or guidelines, the terms of the federal law, regulations or guidelines shall control.

**§ 5109 Rental agreement; promises mutual and dependent.**

(a) Material promises, agreements, covenants or undertakings of any kind to be performed by either party to a rental agreement shall be interpreted as mutual and dependent conditions to the performance of material promises, agreements, covenants and undertakings by the other party.

(b) A party undertaking to remedy a breach by the other party in accordance with this Code shall be deemed to have complied with the terms of this Code if their noncompliance with the exact instructions of this Code is nonmaterial and nonprejudicial to the other party.

**§ 5110 Rental agreement; effect of unsigned rental agreement.**

(a) If the landlord does not sign a written rental agreement which has been signed and tendered to the landlord by the tenant, acceptance of rent without reservation by the landlord shall give to the rental agreement the same effect as if it had been signed by the landlord.

(b) If the tenant does not sign a written rental agreement which has been signed and tendered to the tenant by the landlord, acceptance of possession and payment of rent by the tenant, without reservation, shall give to the rental agreement the same effect as if it had been signed by the tenant.

(c) Where a rental agreement which has been given effect by the operation of this section provides by its terms for a term longer than 1 year, it shall operate to create only a 1-year term.

**§ 5111 Attorneys' fees prohibited.**

No provision in a rental agreement providing for the recovery of attorneys' fees by either party in any suit, action or proceeding arising from the tenancy shall be enforceable.

**§ 5112 Time computation.**

In computing any period of time prescribed or allowed by order of the Court or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included unless specifically included by statute, order or rule. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded from the computation.

**§ 5113 Service of notices or pleadings and process.**

(a) Any notice or service of process required by this Code shall be served either personally upon the tenant or landlord or upon the tenant by leaving a copy thereof at the person's rental unit or usual place of abode with an adult person residing therein; and upon the landlord by leaving a copy thereof at the landlord's address as set forth in the lease or as otherwise provided by landlord with an adult person residing therein, or with an agent or other person in the employ of the landlord whose responsibility it is to accept such notice. If the landlord is an artificial entity, pursuant to Supreme Court Rule 57, service of the notice or process may be made by leaving a copy thereof at its office or place of business as set forth in the lease with an agent authorized by appointment or by law to receive service of process.

(b) In lieu of personal service or service by copy of the notice or process required by this Code, a copy of such notice or process may be sent by registered or certified mail or first-class mail as evidenced by a certificate of mailing postage-prepaid, addressed to the tenant at the leased premises, or to the landlord at the landlord's business

address as set forth in the lease or as otherwise provided by landlord, or if the landlord is an artificial entity, pursuant to Supreme Court Rule 57, at its office or place of business. The return receipt of the notice, whether signed, refused or unclaimed, sent by registered or certified mail, or the certificate of mailing if sent by first-class mail, shall be held and considered to be prima facie evidence of the service of the notice or process.

(c) In the alternative, service of notice or process may also be obtained by 1 of the following 2 alternatives:

- (1) Posting of the notice on the rental unit, when combined with a return receipt or certificate of mailing; or
- (2) Personal service by a special process-server appointed by the Court.

#### **§ 5114 Notice; contractual notice between the parties.**

A person has notice of a fact if:

- (1) The person has actual knowledge of it;
- (2) The person has received a notice pursuant to the provisions of this Code; or
- (3) From all the facts and circumstances known at the time in question, such person has reason to know that it exists.

#### **§ 5115 Application for a forthwith summons.**

Where the landlord alleges and by substantial evidence demonstrates to the Court that a tenant has caused substantial or irreparable harm to landlord's person or property, or where the tenant alleges and by substantial evidence demonstrates to the Court that the landlord has caused substantial or irreparable harm to the tenant's person or property, the Justice of the Peace Court shall issue a forthwith summons to expedite the Court's consideration of the allegations.

#### **§ 5116 Fair housing provisions.**

(a) No person, being an owner or agent of any real estate, house, apartment or other premises, shall refuse or decline to rent, subrent, sublease, assign or cancel any existing rental agreement to or of any tenant or any person by reason of race, creed, religion, marital status, color, sex, sexual orientation, gender identity, national origin, disability, age or occupation or because the tenant or person has a child or children in the family.

(b) No person shall demand or receive a greater sum as rent for the use and occupancy of any premises because the person renting or desiring to rent the premises is of a particular race, creed, religion, marital status, color, sex, sexual orientation, gender identity, national origin, disability, age or occupation or has a child or children in the family.

(c) In the event of discrimination under this section, the tenant may recover damages sustained as a result of the landlord's action, including, but not limited to, reasonable expenditures necessary to obtain adequate substitute housing.

(d) Notwithstanding subsection (a) of this section relating to age discrimination, and consistent with federal and state fair housing acts, a landlord may make rental units available exclusively for rental by senior citizens. A senior citizen rental unit shall be available for rent solely to senior citizens, without regard to race, creed, religion, marital status, color, sex, sexual orientation, gender identity, national origin, disability or occupation of the senior citizen and without regard to whether or not the senior citizen has a dependent child or children in the residence.

**§ 5117 Remedies for violation of the rental agreement or the Code.**

(a) For any violation of the rental agreement or this Code, or both, by either party, the injured party shall have a right to maintain a cause of action in any court of competent civil jurisdiction.

(b) In satisfaction of any judgment obtained by the landlord for rental arrearage or unlawful destruction of property, the wages of the judgment debtor may be attached in the manner provided by law.

**§ 5118 Summary of residential landlord-tenant code.**

A summary of the Landlord-Tenant Code, as prepared by the Consumer Protection Unit of the Attorney General's Office or its successor agency, shall be given to the new tenant at the beginning of the rental term. If the landlord fails to provide the summary, the tenant may plead ignorance of the law as a defense.

**§ 5119 [Reserved]**

**§ 5120 Landlord liens; distress for rent.**

(a) The right of the landlord of distress for rent is hereby abolished, except as otherwise provided herein.

(b) Unless perfected before the effective date of this Code, no lien on behalf of the landlord in the personal property and possessions of the tenant shall be enforceable, except as otherwise provided herein.

**§ 5121 Confession of judgment.**

A provision of a written rental agreement authorizing a person other than the tenant to confess judgment against the tenant is void and unenforceable.

**§ 5122 Equitable jurisdiction relating to converted conditional sales agreements.**

In addition to any other equitable authority granted to, or inherent in the powers of, the Justice of the Peace Court to hear and properly dispose of actions brought under Chapters 51 through 57, 63 and 70 of this title, that Court shall have the equitable jurisdiction, concurrent with the Court of Chancery, to fully determine the rights of all parties at the time of hearing any matter brought pursuant to the conversion of a conditional sales agreement to a landlord/tenant agreement by operation of § 314(d)(3) of this title. Such authority shall include, but not be limited to, an accounting for all payments made under the conditional sales agreement prior to the conversion of the contract to a landlord/tenant agreement.

2. Subchapter II. Definitions

**§ 5141 Definitions.**

The following words, terms and phrases, when used in this part, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) "Action" shall mean any claim advanced in a court proceeding in which rights are determined.
- (2) "Building and housing codes" shall 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.
- (3) "Certificate of mailing" shall mean United States Postal Form No. 3817, or its successor.
- (4) "Commercial rental unit" shall mean any lot, structure or portion thereof, which is occupied or rented solely or primarily for commercial or industrial purposes.
- (5) "Deceased sole tenant" shall mean the sole leaseholder under a residential rental agreement entitled to occupy a residential rental unit to the exclusion of all others who has died. The right of nonleaseholder authorized occupant(s) of the residential rental unit, if any, to occupy the residential rental unit at the sole discretion of the deceased sole tenant while that tenant was alive shall immediately terminate upon the death of the sole tenant. The deceased sole tenant is also referred to as the "decedent" pursuant to § 2306(c)(3) of Title 12.
- (6) "Disabled or handicapped" person shall have the same meaning as found in the Americans with Disabilities Act (1992) [42 U.S.C. § 12101 et seq.] as amended.
- (7) "Domestic abuse" shall mean any act or threat against a victim of domestic abuse or violence that either constitutes a crime under

Delaware law or any act or threat that constitutes domestic violence or domestic abuse as defined anywhere in the Delaware Code. Domestic abuse can be verified by an official document, such as a court order, or by a reliable third-party professional, including a law-enforcement agency or officer, a domestic violence or domestic abuse service provider, or health care provider. It is the domestic violence or abuse victim's responsibility to provide the reliable statement from the reliable third party.

(8) "Equivalent substitute housing" shall mean a rental unit of like or similar location, size, facilities and rent.

(9) "Extended absence" shall mean any absence of more than 7 days.

(10) "Forthwith summons" shall mean any summons requiring the personal appearance of a party or person or persons at the earliest convenience of the court.

(11) "Gender identity" means a gender-related identity, appearance, expression or behavior of a person, regardless of the person's assigned sex at birth. Gender identity may be demonstrated by consistent and uniform assertion of the gender identity or any other evidence that the gender identity is sincerely held as part of a person's core identity; provided, however, that gender identity shall not be asserted for any improper purpose.

(12) "Good faith dispute" shall mean the manifestation of an honest difference of opinion relating to the rights of the parties to a rental agreement pursuant to such agreement, or pursuant to this Code.

(13) "Holdover" or "holdover tenant" shall mean a tenant who wrongfully retains possession or who wrongfully exercises control of the rental unit after the expiration or termination of the rental agreement.

(14) "Injunction" shall mean a court order prohibiting a party from doing an act or restraining a party from continuing an act.

(15) "Landlord" shall mean:

a. The owner, lessor or sublessor of the rental unit or the property of which it is a part and, in addition, shall mean any person authorized to exercise any aspect of the management of the premises, including any person who, directly or indirectly, receives rents or any part thereof other than as a bona fide purchaser and who has no obligation to deliver the whole of such receipts to another person; or

b. Any person held out by any landlord as the appropriate party to accept performance, whether such person is a landlord or not;  
or

- c. Any person with whom the tenant normally deals as a landlord; or
  - d. Any person to whom the person specified in paragraphs (15)b. and c. of this section is directly or ultimately responsible.
- (16) "Legal holiday" shall mean any date designated as a legal holiday under § 501 of Title 1.
- (17) "Local government unit" shall mean a political subdivision of this State, including, but not limited to, a county, city, town or other incorporated community or subdivision of the subdivision providing local government service for residents in a geographically limited area of the State as its primary purpose, and has the power to act primarily on behalf of the area.
- (18) "Month to month" shall mean a renewable term of 1 month.
- (19) "Normal wear and tear" shall mean the deterioration in the condition of a property or premises by the ordinary and reasonable use of such property or premises.
- (20)a. "Owner" shall mean 1 or more persons, jointly or severally, in whom is vested:
- 1. All or part of the legal title to property; or
  - 2. All or part of the beneficial ownership, usufruct and a right to present use and enjoyment of the premises.
- b. The word "owner" shall include a mortgagee in possession.
- (21) "Person" shall include an individual, artificial entity pursuant to Supreme Court Rule 57, government or governmental agency, statutory trust, business trust, 2 or more persons having a joint or common trust or any other legal or commercial entity.
- (22) "Pet deposit" shall mean any deposit made to a landlord by a tenant to be held for the term of the rental agreement, or any part thereof, for the presence of an animal in a rental unit.
- (23) "Premises" shall mean a rental unit and the structure of which it is a part, and the facilities and appurtenances therein, grounds, areas and facilities held out for the use of tenants generally, or whose use is contracted for between the landlord and the tenant.
- (24) "Rental agreement" shall mean and include all agreements, written or oral, which establish or modify the terms, conditions, rules, regulations or any other provisions concerning the use and occupancy of a rental unit.
- (25) "Rental unit," "dwelling unit" or "dwelling place" shall mean any house, building, structure, or portion thereof, which is occupied, rented or leased as the home or residence of 1 or more persons.
- (26) "Security deposit" shall mean any deposit, exclusive of a pet deposit, given to the landlord which is to be held for the term of the rental agreement or for any part thereof.

(27) "Senior citizen" shall mean any person, 62 years of age or older, regardless of the age of such person's spouse.

(28) The terms "sexual offenses" and "stalking" shall here have the same meanings as in Title 11. Sexual offenses and stalking can be verified by an official document, such as a court order, or by a reliable third party professional, including a law-enforcement agency or officer, a sexual assault service provider, or health care provider. It is the sexual assault or stalking victim's responsibility to provide the reliable statement from the reliable third party.

(29) "Sexual orientation" exclusively means heterosexuality, homosexuality, or bisexuality.

(30) "Support animal" shall mean any animal individually trained to do work or perform tasks to meet the requirements of a disabled person, including, but not limited to, minimal protection work, rescue work, pulling a wheelchair or retrieving dropped items.

(31) "Surety bond fee or premium" shall mean the amount of money the tenant pays to the surety for enrollment in a surety bond program in lieu of posting a security deposit.

(32) "Tenant" shall mean a person entitled under a rental agreement to occupy a rental unit to the exclusion of others, and the word "tenant" shall include an occupant of any premises pursuant to a conditional sales agreement which has been converted to a landlord/tenant agreement pursuant to § 314(d)(3) of this title.

(33) "Utility services" shall mean water, sewer, electricity or fuel.

### *B. Chapter 53: Landlord Obligations and Tenant Remedies*

#### **§ 5301 Landlord obligation; rental agreement.**

(a) A rental agreement shall not provide that a tenant:

- (1) Agrees to waive or forego rights or remedies under this Code;
- (2) Authorizes any person to confess judgment on a claim arising out of the rental agreement;
- (3) 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.

(b) A provision prohibited by subsection (a) of this section which is included in the rental agreement is unenforceable. If a landlord attempts to enforce provisions of a rental agreement known by the landlord to be prohibited by subsection (a) of this section the tenant may bring an action to recover an amount equal to 3 months rent, together with costs of suit but excluding attorneys' fees.

**§ 5302 Tenant remedy; termination at the beginning of term.**

(a) If the landlord fails to substantially conform to the rental agreement, or if there is a material noncompliance with any code, statute, ordinance or regulation governing the maintenance or operation of the premises, the tenant may, on written notice to the landlord, terminate the rental agreement and vacate the premises at any time during the first month of occupancy, so long as the tenant remains in possession in reliance on a promise, whether written or oral, by the landlord to correct all or any part of the condition or conditions which would justify termination by the tenant under this section.

(b) If the tenant remains in possession in reliance on a promise, whether written or oral, by the landlord, to correct all or any part of the condition or conditions which would justify termination by the tenant under this section; and if substantially the same act or omission which constitutes a prior noncompliance, of which prior notice was given under subsection (a) of this section, recurs within 6 months, the tenant may terminate the rental agreement upon at least 15 days' written notice, which notice shall specify the breach and the date of termination of the rental agreement.

(c) If there exists any condition which deprives the tenant of a substantial part of the benefit or enjoyment of the tenant's bargain, the tenant may notify the landlord in writing of the condition; and, if the landlord does not remedy the condition within 15 days, the tenant may terminate the rental agreement. The tenant must then initiate an action in the Justice of the Peace Court seeking a determination that the landlord has breached the rental agreement by depriving the tenant of a substantial part of the benefit or enjoyment of the bargain and may seek damages, including a rent deduction from the date written notice of the condition was given to the landlord.

(d) If the condition referred to in subsection (c) of this section was caused wilfully or negligently by the landlord, the tenant may recover the greater of:

(1) The difference between the rent payable under the rental agreement and all expenses necessary to obtain equivalent substitute housing for the remainder of the rental term; or

(2) An amount equal to 1 month's rent and the security deposit.

(e) The tenant may not terminate the rental agreement for a condition caused by the want of due care by the tenant, a member of tenant's family or any other person on the premises with the tenant's consent. If a tenant terminates wrongfully, the tenant shall remain obligated under the rental agreement.

**§ 5303 Landlord obligation to supply possession of rental unit.**

The landlord shall supply the rental unit bargained for at the beginning of the term and shall put the tenant into full possession.

**§ 5304 Tenant's remedies for failure to supply possession.**

(a) If the landlord fails to put the tenant into full possession of the rental unit at the beginning of the agreed term, the rent shall abate during any period the tenant is unable to enter and:

(1) Upon notice to the landlord, the tenant may terminate the rental agreement at any time the tenant is unable to enter into possession; and the landlord shall return all moneys paid to the landlord for the rental unit, including any pre-paid rent, pet deposit and security deposit; and

(2) If such inability to enter is caused wrongfully by the landlord or by anyone with the landlord's consent or license due to substantial failure to conform to existing building and housing codes, the tenant may recover reasonable expenditures necessary to secure equivalent substitute housing for up to 1 month. In no event shall such expenditures under this subsection exceed the agreed upon rent for 1 month. Such expenditures may be recovered by appropriate action or proceeding or by deduction from the rent upon the submission of receipts for same.

(b) If such inability to enter results from the wrongful occupancy of a holdover tenant and the landlord has not brought an action for summary possession against such holdover tenant, the entering tenant may maintain an action for summary possession against the holdover tenant. The expenses of such proceeding and substitute housing expenditures may be claimed from the rent in the manner specified in paragraph (a)(2) of this section.

**§ 5305 Landlord obligations relating to the rental unit.**

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

(1) Comply with all applicable provisions of any state or local statute, code, regulation or ordinance governing the maintenance, construction, use or appearance of the rental unit and the property of which it is a part;

(2) Provide a rental unit which shall not endanger the health, welfare or safety of the tenants or occupants and which is fit for the purpose for which it is expressly rented;

(3) Keep in a clean and sanitary condition all common areas of the buildings, grounds, facilities and appurtenances thereto which are maintained by the landlord;

(4) Make all repairs and arrangements necessary to put and keep the rental unit and the appurtenances thereto in as good a condition

- as they were, or ought by law or agreement to have been, at the commencement of the tenancy; and
- (5) Maintain all electrical, plumbing and other facilities supplied by the landlord in good working order.
- (b) If the rental agreement so specifies, the landlord shall:
- (1) Provide and maintain appropriate receptacles and conveniences for the removal of ashes, rubbish and garbage and arrange for the frequent removal of such waste; and
- (2) Supply or cause to be supplied, water, hot water, heat and electricity to the rental unit.
- (c) The landlord and tenant may agree by a conspicuous writing, separate from the rental agreement, that the tenant is to perform specified repairs, maintenance tasks, alterations or remodeling, but only if:
- (1) The particular work to be performed by the tenant is for the primary benefit of the rental unit; and
- (2) The work is not necessary to bring a noncomplying rental unit into compliance with a building or housing code, ordinance or the like; and
- (3) Adequate consideration, apart from any provision of the rental agreement, or a reduction in the rent is exchanged for the tenant's promise. In no event may the landlord treat any agreement under this subsection as a condition to any provision of rental agreements; and
- (4) The agreement of the parties is entered into in good faith and is not for the purpose of evading an obligation of the landlord.
- (d) Evidence of compliance with the applicable building and housing codes shall be prima facie evidence that the landlord has complied with this chapter or with any other chapter of Part III of this title.

**§ 5306 Tenant's remedies relating to the rental unit; termination.**

- (a) If there exists any condition which deprives the tenant of a substantial part of the benefit or enjoyment of the tenant's bargain, the tenant may notify the landlord in writing of the condition and, if the landlord does not remedy the condition within 15 days following receipt of notice, the tenant may terminate the rental agreement. If such condition renders the premises uninhabitable or poses an imminent threat to the health, safety or welfare of the tenant or any member of the family, then tenant may, after giving notice to the landlord, immediately terminate the rental agreement without proceeding in a Justice of the Peace Court.
- (b) The tenant may not terminate the rental agreement for a condition caused by the want of due care by the tenant, a member of the family or any other person on the premises with the tenant's consent. If a

tenant terminates wrongfully, the tenant shall remain obligated under the rental agreement.

(c) If the condition referred to in subsection (a) of this section was caused wilfully or negligently by the landlord, the tenant may recover the greater of:

- (1) The difference between rent payable under the rental agreement and all expenses necessary to obtain equivalent substitute housing for the remainder of the rental term; or
- (2) An amount equal to 1 month's rent and the security deposit.

**§ 5307 Tenant's remedies relating to the rental unit; repair and deduction from rent.**

(a) If the landlord of a rental unit fails to repair, maintain or keep in a sanitary condition the leased premises or perform in any other manner required by statute, code or ordinance, or as agreed to in the a rental agreement; and, if after being notified in writing by the tenant to do so, the landlord:

- (1) Fails to remedy such failure within 30 days from the receipt of the notice; or
- (2) Fails to initiate reasonable corrective measures where appropriate, including, but not limited to, the obtaining of an estimate of the prospective costs of the correction, within 10 days from the receipt of the notice;

Then the tenant may immediately do or have done the necessary work in a professional manner. After the work is done, the tenant may deduct from the rent a reasonable sum, not exceeding \$200, or 1/2 of 1 month's rent, whichever is less, for the expenditures by submitting to the landlord copies of those receipts covering at least the sum deducted.

(b) In no event may a tenant repair or cause anything to be repaired at the landlord's expense when the condition complained of was caused by the want of due care by the tenant, a member of the tenant's family or another person on the premises with the tenant's consent.

(c) A tenant who is otherwise delinquent in the payment of rent may not take advantage of the remedies provided in this section.

(d) The tenant is liable for any damage to persons or property where such damage was caused by the tenant or by someone authorized by the tenant in making said repairs.

**§ 5308 Essential services; landlord obligation and tenant remedies.**

(a) If the landlord substantially fails to provide hot water, heat, water or electricity to a tenant, or fails to remedy any condition which materially deprives a tenant of a substantial part of the benefit of the tenant's bargain in violation of the rental agreement; or in violation of a provision of this Code; or in violation of an applicable housing code

and such failure continues for 48 hours or more, after the tenant gives the landlord actual or written notice of the failure, the tenant may:

- (1) Upon written notice of the continuation of the problem to the landlord, immediately terminate the rental agreement; or
  - (2) Upon written notice to the landlord, keep 2/3 per diem rent accruing during any period when hot water, heat, water, electricity or equivalent substitute housing is not supplied. The landlord may avoid this liability by a showing of impossibility of performance.
- (b) If the tenant has given the notice required under subsection (a) of this section and remains in the rental unit and the landlord still fails to provide water, hot water, heat and electricity to the rental unit as specified in the applicable city or county housing code in violation of the rental agreement, the tenant may:
- (1) Upon written notice to the landlord, immediately terminate the rental agreement; or
  - (2) Upon notice to the landlord, procure equivalent substitute housing for as long as heat, water, hot water or electricity is not supplied, during which time the rent shall abate, and the landlord shall be liable for any additional expense incurred by the tenant, up to 1/2 of the amount of abated rent. This additional expense shall not be chargeable to the landlord if landlord is able to show impossibility of performance; or
  - (3) Upon written notice to the landlord, tenant may withhold 2/3 per diem rent accruing during any period when hot water, heat, water or equivalent substitute housing is not supplied.
- (c) Rent withholding does not act as a bar to the subsequent recovery of damages by a tenant if those damages exceed the amount withheld.
- (d) Where a landlord files an action for summary possession, claiming that a tenant has wrongfully withheld rent or deducted money from rent under this section and the court so finds, the landlord shall be entitled to receive from the tenant either possession of the premises or an amount of money equal to the amount wrongfully withheld ("damages") or, if the court finds the tenant acted in bad faith, an amount of money equal to double the amount wrongfully withheld ("double damages"). In the event the court awards damages or double damages and court costs excluding attorneys' fees, then the court shall issue an order requiring such damages or double damages to be paid by the tenant to the landlord within 10 days from the date of the court's judgment. If such damages are not paid in accordance with the court's order, the judgment for damages or double damages, together with court costs, shall become a judgment for the amount withheld, plus summary possession, without further notice to the tenant.

**§ 5309 Fire and casualty damage; landlord obligation and tenant remedies.**

(a) If the rental unit or any other property or appurtenances necessary to the enjoyment thereof are damaged or destroyed by fire or casualty to an extent that enjoyment of the rental unit is substantially impaired, and such fire or other casualty occurs without fault on the part of the tenant, or a member of the tenant's family, or another person on the premises with the tenant's consent, the tenant may:

(1) Immediately quit the premises and promptly notify the landlord, in writing, of the tenant's election to quit within 1 week after vacating, in which case the rental agreement shall terminate as of the date of vacating. If the tenant fails to notify the landlord of the tenant's election to quit, the tenant shall be liable for rent accruing to the date of the landlord's actual knowledge of the tenant's vacating the rental unit or impossibility of further occupancy; or

(2) If continued occupancy is lawful, vacate any part of the premises rendered unusable by fire or casualty, in which case the tenant's liability for rent shall be reduced in proportion to the diminution of the fair rental value of the rental unit.

(b) If the rental agreement is terminated, the landlord shall timely return any security deposit, pet deposit and prepaid rent, except that to which the landlord is entitled to retain pursuant to this Code. Accounting for rent in the event of termination or apportionment shall be made as of the date of the fire or casualty.

**§ 5310 "Assurance money" prohibited.**

(a) In every transaction wherein an application is made by a prospective tenant to lease a dwelling unit, the prospective landlord or owner of the dwelling unit shall not ask for, nor receive, any "assurance money" or other payment which is not an application fee, security deposit, surety bond fee or premium, pet deposit or similar deposit reserving the dwelling unit for the prospective tenant for a time certain. The prospective landlord shall not charge the prospective tenant, as a fee for any credit or other type of investigation, any more than the specific cost of such investigation. For purposes of this section, "assurance money" shall mean any payment to the prospective landlord by a prospective tenant, except an application fee, a payment in the way of a security deposit, surety bond fee or premium, pet deposit or similar deposit reserving the dwelling unit for the prospective tenant for a time certain or the reimbursing of the specific sums expended by the landlord in credit or other investigations.

(b) Each landlord shall retain, for a period of 6 months, the records of each application made by any prospective tenant. Upon any

complaint of a violation of this section, the Consumer Protection Unit of the Attorney General's office shall investigate the same, shall interview tenants of the landlord and shall, under appropriate search warrant, have the right to investigate all records of the landlord pertaining to applications made within the preceding 6 months. If such investigation reveals good cause for the Attorney General's office to believe there has been a violation of this section, the Attorney General's office may issue such cease and desist orders in accordance with Chapter 25 of Title 29 as are required to remedy the violation.

**§ 5311 Fees.**

Except for an optional service fee for actual services rendered, such as a pool fee or tennis court fee, a landlord shall not charge to a tenant any nonrefundable fee as a condition for occupancy of the rental unit. Nothing in this section shall prevent the tenant from electing, subject to the landlord's acceptance, to purchase an optional surety bond instead of or in combination with a security deposit.

**§ 5312 Metering and charges for utility services.**

(a) A landlord may install, operate and maintain meters or other appliances for measurement to determine the consumption of utility services by each rental unit. Only if the rental agreement so provides, and in compliance with this section, may a landlord charge a tenant separately for the utility services as measured by such meter or other appliance. With the exception of metering systems already in use prior to July 17, 1996, a landlord shall not separately charge a tenant for any utility service, unless such utility service is separately metered. The metering system may be inspected by and must be approved by the Division of Weights and Measures.

(b) No landlord shall require that any tenant contract directly with the provider of a utility service for service to a tenant or to a rental unit, unless such rental unit is separately metered. No landlord who purchases utility services in bulk shall charge any tenant individually for utility services, unless such utility services are either individually metered or the cost of such services is included as part of each monthly rental payment, as provided for in the rental agreement.

(c) A landlord who charges a tenant separately for utility services under this section shall not charge the tenant an amount for such services which exceeds the actual cost of the utility service as determined by the cost of the service charged by the provider to the landlord or to any company owned in whole or in part by the landlord.

(d) Any tenant who is charged and who pays for utility services separately to the landlord shall be entitled to inspect the bills and

records upon which such charges were calculated, during the landlord's regular business hours at the landlord's regular business office. A landlord shall retain such bills and records for 1 year from the date upon which tenants were billed.

(e) Charges for utility services made by a landlord to a tenant shall be considered rent for all purposes under this Code. With respect to security deposits, and unless the rental agreement otherwise provides, the rights and obligations of the parties as to payment and nonpayment of utility charges shall be enforced in the same manner as the rights and obligations of the parties relating to payment and nonpayment of rent. A landlord shall not discontinue or terminate utility service for nonpayment of rent, utility charges or other breach.

(f) A landlord who charges separately for utilities in accordance with this section shall bill the tenant for such charges not less frequently than monthly, and shall use reasonable efforts to obtain actual readings of meters or appliances for measurements, which readings shall reasonably coincide with the landlord's bulk billing. If, despite reasonable effort, a landlord is unable to obtain an actual reading, the landlord may estimate the tenant's utility consumption and bill the tenant for such estimated amount; provided however, that a landlord may not send more than 2 consecutive estimated billings. Notwithstanding the foregoing, an actual reading shall be made upon the commencement of the lease and at the expiration or termination of the lease.

(g)(1) A landlord, upon request by a tenant, shall cause to be examined or tested the meter or appliance for measurement. If the meter or appliance so tested or examined is found to be accurate within commercially reasonable limits, the costs and expenses of such test or examination shall be paid by the tenant as additional rent; but if the meter or appliance is found to be not accurate, then such costs and expenses shall be borne by the landlord, who shall forthwith replace the inaccurate meter or other appliance.

(2) In addition to those rights and powers vested by law in the Consumer Protection Unit of the Attorney General's office or its successor agency, the Attorney General's office may enter, by and through its agents, experts or examiners, upon any premises for the purpose of making the examination and tests provided for in this section, and may set up and use on such premises any apparatus and appliances necessary therefor.

(h) A landlord who installs, operates and maintains meters or other appliances for measurement and who bills tenants separately for utilities, shall not be deemed a public utility, nor shall the Public Service Commission have any authority, power or jurisdiction over such landlords or their practices in connection with the installation, operation and maintenance of meters or other appliances for

measurement, the reading of meters, calculation and determination of charges for utility services or otherwise. The Consumer Protection Unit of the Attorney General's office shall have authority to enforce this section.

**§ 5313 Unlawful ouster or exclusion of tenant.**

If removed from the premises or excluded therefrom by the landlord or the landlord's agent, except under color of a valid court order authorizing such removal or exclusion, the tenant may recover possession or terminate the rental agreement. The tenant may also recover treble the damages sustained or an amount equal to 3 times the per diem rent for the period of time the tenant was excluded from the unit, whichever is greater, and the costs of the suit excluding attorneys' fees.

**§ 5314 Tenant's right to early termination.**

(a) Except as is otherwise provided in this part, whenever either party to a rental agreement rightfully elects to terminate, the duties of each party under the rental agreement shall cease and all parties shall thereupon discharge any remaining obligations as soon as is practicable.

(b) Upon 30 days' written notice, which 30-day period shall begin on the first day of the month following the day of actual notice, the tenancy may be terminated:

(1) By the tenant, whenever a change in location of the tenant's employment with the tenant's present employer requires a change in the location of the tenant's residence in excess of 30 miles;

(2) By the tenant, whenever the serious illness of the tenant or the death or serious illness of a member of the tenant's immediate family, residing therein, requires a change in the location of the tenant's residence on a permanent basis;

(3) By the tenant, when the tenant is accepted for admission to a senior citizens' housing facility, including subsidized public or private housing, or a group or cooperative living facility or retirement home;

(4) By the tenant, when the tenant is accepted for admission into a rental unit subsidized by a governmental entity or by a private nonprofit corporation, including subsidized private or public housing;

(5) By the tenant who, after the execution of such rental agreement, enters the military service of the United States on active duty;

(6) By a tenant who is the victim of domestic abuse, sexual offenses, stalking, or a tenant who has obtained or is seeking relief

from domestic violence or abuse from any court, police agency, or domestic violence program or service; or

(7) By the surviving spouse or personal representative of the estate of the tenant, upon the death of the tenant.

**§ 5315 Taxes paid by tenant; setoff against rent; recovery from owner.**

Any tax laid upon lands or tenements according to law which is paid by or levied from the tenant of such lands or tenements, or a person occupying and having charge of same, shall be a setoff against the rent or other demand of the owner for the use, or profits, of such premises. If there is no rent or other demand sufficient to cover the sum so paid or levied, the tenant or other person may demand and recover the same from the owner, with costs. This provision shall not affect any contract between the landlord and tenant.

**§ 5316 Protection for victims of domestic abuse, sexual offenses and/or stalking.**

(a) A landlord may not pursue any action for summary possession, demand any increase in rent, decrease any services, or otherwise cause any tenant to quit a rental unit where said tenant is a victim of domestic abuse, sexual offenses, or stalking, and where said tenant has obtained or has sought assistance for domestic abuse, sexual offenses, or stalking from any court, police, medical emergency, domestic violence, or sexual offenses program or service.

(b) If the tenant proves that the landlord instituted any of the actions prohibited by subsection (a) of this section, above, within 90 days of any incident in which the tenant was a victim of domestic abuse, sexual offenses and/or stalking, it shall be a rebuttable presumption that said action is in violation of subsection (a) of this section, above.

(c) A landlord may rebut the presumption that the prohibited action is in violation of subsection (a) of this section, above, if:

(1) The landlord is seeking to recover possession of the rental unit on the basis of an appropriate notice to terminate which was given to the tenant prior to the incident of domestic abuse, sexual offenses, or stalking;

(2) The landlord seeks in good faith to recover possession of the rental unit for immediate use as the landlord's own residence;

(3) The landlord seeks in good faith to recover possession of the rental unit for the purpose of substantially altering, remodeling or demolishing the premises;

(4) The landlord seeks in good faith to recover possession of the rental unit for the purpose of immediately terminating, for at least 6 months, use of the premises as a rental unit;

(5) The landlord has in good faith contracted to sell the property and the contract of sale contains a representation from the

- purchaser confirming that purchaser's intent to use the property in consistency with paragraphs (2), (3) or (4) of this subsection;
- (6) The landlord has become liable for a substantial increase in property taxes or a substantial increase in other maintenance or operating costs, and such liability occurred not less than 4 months prior to the demand for the increase in rent, and the increase in rent does not exceed the prorata portion of the net increase in taxes or cost;
- (7) The landlord has completed a substantial capital improvement of the rental unit or the property of which it is a part, not less than 4 months prior to the demand for increased rent, and such increase in rent does not exceed the amount which may be claimed for federal income tax purposes as a straight-line depreciation of the improvement, prorated among the rental units benefited by the improvement;
- (8) The landlord can establish, by competent evidence, that the rent now demanded of the tenant does not exceed the rent charged other tenants of similar rental units in the same complex;
- (9) The landlord can establish, by competent evidence, that the domestic abuse, sexual assault and/or stalking constitutes a viable and substantial risk of serious physical injury to a tenant who currently resides in another unit of the same multi-unit building as the domestic violence, sexual assault or stalking victim; or
- (10) The landlord, after being given notice of the tenant's victimization per § 5141(7) or (28) of this title, discontinues those actions prohibited by subsection (a) of this section, above.
- (d) A tenant who is otherwise delinquent in the payment of rent may not take advantage of the protection provided in this section.

*C. Chapter 55. Tenant Obligations and Landlord Remedies*

**§ 5501 Tenant obligations; rent.**

- (a) The landlord and tenant shall agree to the consideration for rent. In the absence of such agreement, the tenant shall pay to the landlord a reasonable sum for the use and occupation of the rental unit.
- (b) Rent shall be payable at the time and place agreed to by the parties. Unless otherwise agreed, the entire rent shall be payable at the beginning of any term for 1 month or less, while 1 month's rent shall be payable at the beginning of each month of a longer term.
- (c) Except for purposes of payment, rent shall be uniformly apportioned from day to day.
- (d) Where the rental agreement provides for a late charge payable to the landlord for rent not paid at the agreed time, such late charge shall not exceed 5 percent of the monthly rent. A late charge is considered as additional rent for the purposes of this Code. The late charge shall

not be imposed within 5 days of the agreed time for payment of rent. The landlord shall, in the county in which the rental unit is located, maintain an office or other permanent place for receipt of payments, where rent may be timely paid. Failure to maintain such an office, or other permanent place of payment where rent may be timely paid, shall extend the agreed on time for payment of rent by 3 days beyond the due date.

(e) If a landlord accepts a cash payment for rent, the landlord shall, within 15 days, give to the tenant a receipt for that payment. The landlord shall, for a period of 3 years, maintain a record of all cash receipts for rent.

### **§ 5502 Landlord remedies for failure to pay rent.**

(a) A landlord or the landlord's agent may, any time after rent is due, including the time period between the date the rent is due and the date under this Code when late fees may be imposed, demand payment thereof and notify the tenant in writing that unless payment is made within a time mentioned in such notice, to be not less than 5 days after the date notice was given or sent, the rental agreement shall be terminated. If the tenant remains in default, the landlord may thereafter bring an action for summary possession of the dwelling unit or any other proper proceeding, action or suit for possession.

(b) A landlord or the landlord's agent may bring an action for rent alone at any time after the landlord has demanded payment of past-due rent and has notified the tenant of the landlord's intention to bring such an action. This action may include late charges, which have accrued as additional rent.

(c) If a tenant pays all rent due before the landlord has initiated an action against the tenant and the landlord accepts such payment without a written reservation of rights, the landlord may not then initiate an action for summary possession or for failure to pay rent.

(d) If a tenant pays all rent due after the landlord has initiated an action for nonpayment or late payment of rent against the tenant and the landlord accepts such payment without a written reservation of rights, then the landlord may not maintain that action for past due rent.

### **§ 5503 Tenant obligations relating to rental unit; waste.**

A tenant shall:

- (1) Comply with all obligations imposed upon tenants by applicable provisions of all municipal, county and state codes, regulations, ordinances and statutes;
- (2) Keep that part of the premises which the tenant occupies and uses as clean and safe as the conditions of the premises permit;

- (3) Dispose from the rental unit all ashes, rubbish, garbage and other organic or flammable waste, in a clean and safe manner;
- (4) Keep all plumbing fixtures used by the tenant as clean and safe as their condition permits;
- (5) Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating and other facilities and appliances in the premises;
- (6) Not wilfully or wantonly destroy, deface, damage, repair or remove any part of the structure or rental unit or the facilities, equipment or appurtenances thereto, nor permit any person on the premises with the tenant's permission to do any such thing;
- (7) Not remove or tamper with a properly functioning smoke detector installed by the landlord, including removing any working batteries, so as to render the smoke detector inoperative;
- (8) Not remove or tamper with a properly functioning carbon monoxide detector installed by the landlord, including removing any working batteries, so as to render the carbon monoxide detector inoperative; and
- (9) Comply with all covenants, rules, requirements and the like which are in accordance with §§ 5511 and 5512 of this title; and which the landlord can demonstrate are reasonably necessary for the preservation of the property and persons of the landlord, other tenants or any other person.

**§ 5504 Defense to an action for waste.**

- (a) It shall be a complete defense to any action, suit or proceeding for waste if the tenant alleges and establishes that the tenant notified the landlord a reasonable time in advance of the repair, alteration or replacement and that such repair, alteration or replacement:
  - (1) Is one which a prudent owner of an estate in fee simple absolute of the affected property would be likely to make in view of the conditions existing on or in the neighborhood of the affected property; or
  - (2) Has not reduced the market value of the reversion or other interest of the plaintiff; and
  - (3) If the conditions set forth in paragraph (a)(1) or (a)(2) of this section exist, and the landlord makes a demand that the tenant posts security to protect against a failure to complete the proposed work, and against any responsibility for expenditures incident to the making of such proposed repairs, alterations or replacements as the court demands.
- (b) This section shall not be interpreted to bar an action for damages for breach of a written rental agreement nor bar an action or summary proceeding based on breach of a written rental agreement.

**§ 5505 Tenant's obligation relating to defective conditions.**

(a) Any defective condition of the premises which comes to the tenant's attention, and which the tenant has reason to believe is the duty of the landlord or of another tenant to repair, shall be reported in writing by the tenant to the landlord as soon as is practicable. The tenant shall be responsible for any liability or injury resulting to the landlord as a result of the tenant's failure to timely report such condition.

(b) A tenant on whom a complaint in ejectment or an action against the premises is served shall immediately notify the landlord in writing.

(c) The provisions of this section shall not apply where the landlord has actual notice of the defective condition.

**§ 5506 Tenant obligation; notice of extended absence.**

The landlord may require in the rental agreement that the tenant notify the landlord in writing of any anticipated extended absence from the premises no later than the 1st day of such absence.

**§ 5507 Landlord remedies for absence or abandonment.**

(a) If the rental agreement provides for notification to the landlord by the tenant of an anticipated extended absence as defined in this Code or in the rental agreement, and the tenant fails to comply with such requirement, the tenant shall indemnify the landlord for any harm resulting from such absence.

(b) The landlord may, during any extended absence of the tenant, enter the rental unit as is reasonably necessary for inspection, maintenance and safekeeping.

(c) Unless otherwise agreed to in the rental agreement, the tenant shall use the rental unit only as the tenant's abode. A violation of this covenant shall constitute the breach of a rule under § 5511 of this title, and shall entitle the landlord to proceed as specified elsewhere in this chapter.

(d) If the tenant wrongfully quits the rental unit and unequivocally indicates by words or deeds the tenant's intention not to resume tenancy, such action by the tenant shall entitle the landlord to proceed as specified elsewhere in this chapter and the tenant shall be liable for the lesser of the following for such abandonment:

(1) The entire rent due for the remainder of the term and expenses for actual damages caused by the tenant (other than normal wear and tear) which are incurred in preparing the rental unit for a new tenant; or

(2) All rent accrued during the period reasonably necessary to re-rent the premises at a fair rental; plus the difference between such fair rental and the rent agreed to in the prior rental agreement; plus

expenses incurred to re-rent; repair damage caused by the tenant (beyond normal wear and tear); plus a reasonable commission, if incurred by the landlord for the re-renting of the premises. In any event, the landlord has a duty to mitigate damages.

(e) If there is no appeal from a judgment granting summary possession under subsection (c) or (d) of this section, the landlord may immediately remove and store, at the tenant's expense, any and all items left on the premises by the tenant. Seven days after the appeal period has expired, the property shall be deemed abandoned and may be disposed of by the landlord without further notice or liability.

**§ 5508 Landlord remedies; restrictions on subleasing and assignments.**

(a) Unless otherwise agreed in writing, the tenant may sublet the premises or assign the rental agreement to another.

(b) The rental agreement may restrict or prohibit the tenant's right to assign the rental agreement in any manner. The rental agreement may restrict the tenant's right to sublease the premises by conditioning such right on the landlord's consent. Such consent shall not be unreasonably withheld.

(c) In any proceeding under this section to determine whether or not consent has been unreasonably withheld, the burden of showing reasonableness shall be on the landlord.

**§ 5509 Tenant obligation to permit reasonable access.**

(a) The tenant shall not unreasonably withhold consent for the landlord to enter into the rental unit in order to inspect the premises, make necessary repairs, decorations, alterations or improvements, supply services as agreed to or exhibit the rental unit to prospective purchasers, mortgagees or tenants. A tenant shall have the right to install a new lock at the tenant's cost, on the condition that:

- (1) The tenant notifies the landlord in writing and supplies the landlord with a key to the lock;
- (2) The new lock fits into the system already in place; and
- (3) The lock installation does not cause damage to the door.

(b) The landlord shall not abuse this right of access nor use it to harass a tenant. The landlord shall give the tenant at least 48 hours' notice of landlord's intent to enter, except for repairs requested by the tenant, and shall enter only between 8:00 a.m. and 9:00 p.m. As to prospective tenants or purchasers only, the tenant may expressly waive in a signed addendum to the rental agreement or other separate signed document the requirement that the landlord provide 48 hours' notice prior to the entry into the premises. In the case of an emergency the landlord may enter at any time.

(c) The tenant shall permit the landlord to enter the rental unit at reasonable times in order to obtain readings of meters or appliances for measurement of utility consumption in accordance with § 5312 of this title.

**§ 5510 Landlord remedy for unreasonable refusal to allow access.**

(a) The tenant shall be liable to the landlord for any harm proximately caused by the tenant's unreasonable refusal to allow access. Any court of competent jurisdiction may issue an injunction against a tenant who has unreasonably withheld access to the rental unit.

(b) The landlord shall be liable to the tenant for any theft, casualty or other harm proximately resulting from an entry into the rental unit by landlord, its employees or agents or with landlord's permission or license:

(1) When the tenant is absent and has not specifically consented to the entry;

(2) Without the tenant's actual consent when tenant is present and able to consent; and

(3) In any other case, where the harm suffered by the tenant is due to the landlord's negligence.

(c) Repeated demands for unreasonable entry or any actual entry which is unreasonable and not consented to by the tenant may be treated by the tenant as grounds for termination of the rental agreement. Any court of competent jurisdiction may issue an injunction against such unreasonable demands on behalf of 1 or more tenants.

(d) Every agreement or understanding between a landlord and a tenant which purports to exempt the landlord from any liability imposed by this section, except consent to a particular entry, shall be null and void.

**§ 5511 Rules and regulations; tenant obligations.**

(a) The tenant and all others in the premises with the consent of the tenant shall obey all obligations or restrictions, whether denominated by the landlord as "rules," "regulations," "restrictions" or otherwise, concerning the tenant's use, occupation and maintenance of the rental unit, appurtenances thereto and the property of which the rental unit is a part, if:

(1) Such obligations and restrictions promote the health, safety, quiet, private enjoyment or welfare, peace and order of the tenants; promote the preservation of the landlord's property from abuse; and promote the fair distribution of services and facilities provided for all tenants generally; and

- (2) Such obligations and restrictions are brought to the attention of the tenant at the time of the tenant's entry into the agreement to occupy the rental unit; and
  - (3) Such obligations and restrictions are reasonably related to the purpose for which they are promulgated; and
  - (4) Such obligations and restrictions apply to all tenants of the property in a fair manner; and
  - (5) Such obligations and restrictions are sufficiently explicit in the prohibition, direction or limitation of the tenant's conduct to fairly inform tenant of what tenant must or must not do to comply; and
  - (6) Such obligations or restrictions, if not made known to the tenant at the commencement of tenancy, are brought to the attention of the tenant and if said obligations work a substantial modifications of the lease agreement they have been consented to in writing by tenant.
- (b) All tenants and other guests of the premises with the consent of tenant shall conduct themselves in a manner that does not unreasonably interfere with the peaceful enjoyment of the other tenants.

**§ 5512 Rules and regulations relating to certain buildings; landlord remedies.**

Any provision of the Landlord-Tenant Code [Chapters 51 through 59 of this title] to the contrary notwithstanding, all rental agreements for the rental of single rooms in certain buildings may be terminated immediately upon notice to the tenant for a tenant's material violation of a regulation which has been given to a tenant at the time of contract or lease, and the landlord shall be entitled to bring a proceeding for possession where:

- (1) The building is the primary residence of the landlord; and
- (2) No more than 3 rooms in the building are rented to tenants; and
- (3) No more than 3 tenants occupy such building.

**§ 5513 Landlord remedies relating to breach of rules and covenants.**

(a) If the tenant breaches any rule or covenant which is material to the rental agreement, the landlord shall notify the tenant of such breach in writing, and shall allow at least 7 days after such notice for remedy or correction of the breach. This section shall not apply to late payment of rent which is covered under § 5502 of this title.

- (1) Such notice shall substantially specify the rule allegedly breached and advise the tenant that, if the violation continues after 7 days, the landlord may terminate the rental agreement and bring an action for summary possession. Such notice shall also state that it is given pursuant to this section, and if the tenant commits a

substantially similar breach within 1 year, the landlord may rely upon such notice as grounds for initiating an action for summary possession. The issuance of a notice pursuant to this section does not establish that the initial breach of the rental agreement actually occurred for purposes of this section.

(2) If the tenant's breach can be remedied by the landlord, as by cleaning, repairing, replacing a damaged item or the like, the landlord may so remedy the tenant's breach and bill the tenant for the actual and reasonable costs of such remedy. Such billing shall be due and payable as additional rent, immediately upon receipt.

(3) If the tenant's breach of a rule or covenant also constitutes a material breach of an obligation imposed upon tenants by a municipal, county or state code, ordinance or statute, the landlord may terminate the rental agreement and bring an action for summary possession.

(b) When a breach by a tenant causes or threatens to cause irreparable harm to any person or property, or the tenant is convicted of a class A misdemeanor or felony during the term of the tenancy which caused or threatened to cause irreparable harm to any person or property, the landlord may, without notice, remedy the breach and bill the tenant as provided in subsection (a) of this section; immediately terminate the rental agreement upon notice to the tenant and bring an action for summary possession; or do both.

(c) Upon notice to tenant, the landlord may bring an action or proceeding for waste or for breach of contract for damages suffered by the tenant's wilful or negligent failure to comply with tenant's responsibilities under the preceding section. The landlord may request a forthwith summons.

#### **§ 5514 Security deposit.**

(a)(1) A landlord may require the payment of security deposit.

(2) No landlord may require a security deposit in excess of 1 month's rent where the rental agreement is for 1 year or more.

(3) No landlord may require a security deposit in excess of 1 month's rent (with the exception of federally-assisted housing regulations), for primary residential tenancies of undefined terms or month to month where the tenancy has lasted 1 year or more. After the expiration of 1 year, the landlord shall immediately return, as a credit to the tenant, any security deposit amount in excess of 1 month's rent, including such amount which when combined with the amount of any surety bond is in excess of 1 month's rent.

(4) The security deposit limits set forth above shall not apply to furnished rental units.

(b) Each security deposit shall be placed by the landlord in an escrow bank account in a federally-insured banking institution with an office that accepts deposits within the State. Such account shall be designated as a security deposits account and shall not be used in the operation of any business by the landlord. The landlord shall disclose to the tenant the location of the security deposit account. The security deposit principal shall be held and administered for the benefit of the tenant, and the tenant's claim to such money shall be prior to that of any creditor of the landlord, including, but not limited to, a trustee in bankruptcy, even if such money is commingled.

(c) The purpose of the security deposit shall be:

(1) To reimburse the landlord for actual damages caused to the premises by the tenant which exceed normal wear and tear, or which cannot be corrected by painting and ordinary cleaning; and/or

(2) To pay the landlord for all rental arrearage due under the rental agreement, including late charges and rental due for premature termination or abandonment of the rental agreement by the tenant; and/or

(3) To reimburse the landlord for all reasonable expenses incurred in renovating and rerenting the premises caused by the premature termination of the rental agreement by the tenants, which includes termination pursuant to § 5314 of this title, providing that reimbursement caused by termination pursuant to § 5314 of this title shall not exceed 1 month's rent.

(d) Where a tenant is required to pay a fee to determine the tenant's credit worthiness, such fee is an application fee. A landlord may charge an application fee, not to exceed the greater of either 10 percent of the monthly rent for the rental unit or \$50, to determine a tenant's credit worthiness. The landlord shall, upon receipt of any money paid as an application fee, furnish a receipt to the tenant for the full amount paid by the tenant, and shall maintain for a period of at least 2 years, complete records of all application fees charged and amounts received for each such fee. Where the landlord unlawfully demands more than the allowable application fee, the tenant shall be entitled to damages equal to double the amount charged as an application fee by the landlord.

(e) If the landlord is not entitled to all or any portion of the security deposit, the landlord shall remit the security deposit within 20 days of the expiration or termination of the rental agreement.

(f) Within 20 days after the termination or expiration of any rental agreement, the landlord shall provide the tenant with an itemized list of damages to the premises and the estimated costs of repair for each and shall tender payment for the difference between the security deposit and such costs of repair of damage to the premises. Failure to

do so shall constitute an acknowledgment by the landlord that no payment for damages is due. Tenant's acceptance of a payment submitted with an itemized list of damages shall constitute agreement on the damages as specified by the landlord, unless the tenant, within 10 days of the tenant's receipt of such tender of payment, objects in writing to the amount withheld by the landlord.

(g) *Penalties.* —

(1) Failure to remit the security deposit or the difference between the security deposit and the amount set forth in the list of damages within 20 days from the expiration or termination of the rental agreement shall entitle the tenant to double the amount wrongfully withheld.

(2) Failure by a landlord to disclose the location of the security deposit account within 20 days of a written request by a tenant or failure by the landlord to deposit the security deposit in a federally-insured financial institution with an office that accepts deposits within the State, shall constitute forfeiture of the security deposit by the landlord to the tenant. Failure by the landlord to return the full security deposit to the tenant within 20 days from the effective date of forfeiture shall entitle the tenant to double the amount of the security deposit.

(h) All communications and notices, including the return of any security deposit under this section, shall be directed to the landlord at the address specified in the rental agreement and to the tenant at an address specified in the rental agreement or to a forwarding address, if provided in writing by the tenant at or prior to the termination of the rental agreement. Failure by the tenant to provide such address shall relieve the landlord of landlord's responsibility to give notice herein and landlord's liability for double the amount of the security deposit as provided herein, but the landlord shall continue to be liable to the tenant for any unused portion of the security deposit; provided, that the tenant shall make a claim in writing to the landlord within 1 year from the termination or expiration of the rental agreement.

(i) *Pet deposits.* —

(1) A landlord may require a pet deposit. Damage to the rental unit caused by an animal shall first be deducted from the pet deposit. Where the pet deposit is insufficient, such damages may be deducted from the security deposit. A pet deposit is subject to subsections (b), (e), (f), (g) and (h) of this section.

(2) No landlord may require a pet deposit in excess of 1 month's rent, regardless of the duration of the rental agreement.

(3) A landlord may require an additional deposit from a tenant with a pet, but shall not require any pet deposit from a tenant if the pet is a duly certified and trained support animal for a disabled person who is a resident of the rental unit.

(j) If the rental agreement so specifies, a landlord may increase the security deposit commensurate with the rent. If the increase of the security deposit will exceed 10 percent of the monthly rent, payment of the increased security deposit shall be prorated over the term of the rental agreement, except in the case of month-to-month tenancy, in which case payment of the increase shall be prorated over a period of 4 months.

**§ 5514A Surety bond.**

(a) Instead of paying all or part of a security deposit to a landlord under § 5514 of this title, a tenant may purchase a surety bond, the purpose of which shall be:

(1) To reimburse the landlord for actual damages caused to the premises by the tenant which exceed normal wear and tear, or which cannot be corrected by painting and ordinary cleaning; and/or

(2) To pay the landlord for all rental arrearage due under the rental agreement, including late charges and rental due for premature termination or abandonment of the rental agreement by the tenant; and/or

(3) To reimburse the landlord for all reasonable expenses incurred in renovating and rerenting the premises caused by the premature termination of the rental agreement by the tenants, which includes termination pursuant to § 5314 of this title, providing that reimbursement caused by termination pursuant to § 5314 of this title shall not exceed 1 month's rent.

(b) A landlord may not require a tenant to purchase a surety bond instead of paying a security deposit and a landlord is not required to accept the tenant's purchase of a surety bond instead of paying a security deposit.

(c) A surety shall refund to a tenant any premium or other charge paid by the tenant in connection with a surety bond if, after the tenant purchases a surety bond, the landlord refuses to accept the surety bond or the tenant does not enter into a lease with the landlord.

(d) The amount of a surety bond purchased instead of a security deposit may not exceed 1 month's rent per dwelling unit (except as otherwise permitted under § 5514(a)(3) of this title). If a tenant purchases a surety bond and provides a security deposit in accordance with this section, the aggregate amount of both the surety bond and security deposit may not exceed 1 month's rent per dwelling unit (except as otherwise permitted under § 5514(a)(3) of this title).

(e) Before a tenant purchases a surety bond instead of paying all or part of a security deposit, a surety shall disclose in writing to the tenant that:

- (1) Except under the circumstances outlined in subsection (c) of this section, payment for a surety bond is nonrefundable;
- (2) The surety bond is not insurance for the tenant;
- (3) The surety bond is being purchased to protect the landlord against loss due to nonpayment of rent, breach of lease, or damages caused by the tenant;
- (4) The tenant may be required to reimburse the surety for amounts the surety paid to the landlord for any claim made by the landlord against the surety bond;
- (5) Even after a tenant purchases a surety bond, the tenant remains responsible for the following:
  - a. To reimburse the landlord for actual damages caused to the premises by the tenant which exceed normal wear and tear, or which cannot be corrected by painting and ordinary cleaning;
  - b. To pay the landlord for all rental arrearage due under the rental agreement, including late charges and rental due for premature termination or abandonment of the rental agreement by the tenant; and
  - c. To reimburse the landlord for all reasonable expenses incurred in renovating and rerenting the premises caused by the premature termination of the rental agreement by the tenants, which includes termination pursuant to § 5314 of this title, providing that reimbursement caused by termination pursuant to § 5314 of this title shall not exceed 1 month's rent.
- (6) Nothing in this section shall be construed to require the tenant to pay, as between the landlord and the surety, more than the total amount owed to the landlord under subsection (a) of this section.
- (f) Notwithstanding the issuance of a surety bond by the tenant to the landlord, the tenant has the right to pay the amount due under subsection (a) of this section directly to the landlord or to require the landlord to use the tenant's security deposit, if any, before the landlord makes a claim against the surety bond.
- (g) If the surety fails to comply with the requirements of this section, the surety forfeits the right to make any claim against the tenant under the surety bond.
- (h) Within 20 days after the termination or expiration of any rental agreement, the landlord shall provide the tenant with an itemized list of damages to the premises and the estimated costs of repair for each. Failure to do so shall constitute an acknowledgment by the landlord that no payment for damages is due. Tenant's failure to object to the itemized list of damages within 10 days of the tenant's receipt of the list shall constitute the tenant's agreement on the damages specified by the landlord.

- (i) The surety or landlord shall deliver to a tenant a copy of the rental agreement and bond form signed by the tenant at the time of the tenant's purchase of the surety bond.
- (j) If a landlord's interest in the leased premises is sold or transferred, the new landlord shall accept the tenant's surety bond and may not require:
  - (1) During the current lease term, an additional security deposit from the tenant; or
  - (2) At any lease renewal, a surety bond or a security deposit from the tenant that, in addition to any existing surety bond or security deposit, is in an aggregate amount in excess of 1 months' rent per dwelling unit.
- (k) A surety bond issued under this section may only be issued by an admitted carrier licensed by the Delaware Department of Insurance.

**§ 5515 Landlord's remedies relating to holdover tenants.**

- (a) Except as is otherwise provided in this Code, whenever either party to a rental agreement rightfully elects to terminate, the duties of each party under the rental agreement shall cease.
- (b) Whenever the term of the rental agreement expires, as provided herein or by the exercise by the landlord of a right to terminate given the landlord under any section of this Code, if the tenant continues in possession of the premises after the date of termination without the landlord's consent, such tenant shall pay to the landlord a sum not to exceed double the monthly rental under the previous agreement, computed and pro-rated on a daily basis, for each day the tenant remains in possession for any period. In addition, the holdover tenant shall be responsible for any further losses incurred by the landlord as determined by a proceeding before any court of competent jurisdiction.

**§ 5516 Retaliatory acts prohibited.**

- (a) Retaliatory acts are prohibited.
- (b) A retaliatory act is an attempt on the part of the landlord to: pursue an action for summary possession or otherwise cause the tenant to quit the rental unit involuntarily; demand an increase in rent from the tenant; or decrease services to which the tenant is entitled after:
  - (1) The tenant has complained in good faith of a condition in or affecting the rental unit which constitutes a violation of a building, housing, sanitary or other code or ordinance to the landlord or to an authority charged with the enforcement of such code or ordinance; or

- (2) A state or local government authority has filed a notice or complaint of such violation of a building, housing, sanitary or other code or ordinance; or
  - (3) The tenant has organized or is an officer of a tenant's organization; or
  - (4) The tenant has pursued or is pursuing any legal right or remedy arising from the tenancy.
- (c) If the tenant proves that the landlord has instituted any of the actions set forth in subsection (b) of this section within 90 days of any complaints or act as enumerated above, such conduct shall be presumed to be a retaliatory act.
- (d) It shall be a defense to a claim that the landlord has committed a retaliatory act if:
- (1) The landlord has given appropriate notice under a section of this part which allows a landlord to terminate early;
  - (2) The landlord seeks in good faith to recover possession of the rental unit for immediate use as landlord's own residence;
  - (3) The landlord seeks in good faith to recover possession of the rental unit for the purpose of substantially altering, remodeling or demolishing the premises;
  - (4) The landlord seeks in good faith to recover possession of the rental unit for the purpose of immediately terminating, for at least 6 months, use of the premises as a rental unit;
  - (5) The complaint or request of the landlord relates to a condition or conditions caused by the lack of ordinary care by the tenant or other person in the household, or on the premises with the tenant's consent;
  - (6) The rental was, on the date of filing of tenant's complaint or request or on the date of appropriate notice prior to the end of the rental term, in full compliance with all codes, statutes and ordinances;
  - (7) The landlord has in good faith contracted to sell the property and the contract of sale contains a representation by the purchaser conforming to paragraph (d)(2), (3) or (4) of this section;
  - (8) The landlord is seeking to recover possession of the rental unit on the basis of a notice to terminate a periodic tenancy, which notice was given to the tenant prior to the complaint or request;
  - (9) The condition complained of was impossible to remedy prior to the end of the cure period;
  - (10) The landlord has become liable for a substantial increase in property taxes or a substantial increase in other maintenance or operating costs not associated with the landlord complying with the complaint or request, and such liability occurred not less than 4 months prior to the demand for the increase in rent, and the

increase in rent does not exceed the pro-rata portion of the net increase in taxes or cost;

(11) The landlord has completed a substantial capital improvement of the rental unit or the property of which it is a part, not less than 4 months prior to the demand for increased rent, and such increase in rent does not exceed the amount which may be claimed for federal income tax purposes as a straight-line depreciation of the improvement, pro-rated among the rental units benefited by the improvement; or

(12) The landlord can establish, by competent evidence, that the rent now demanded of the tenant does not exceed the rent charged other tenants of similar rental units in the same complex, or the landlord can establish that the increase in rent is not directed at the particular tenant as a result of any retaliatory acts.

(e) Any tenant from whom possession of the rental unit has been sought, or who the landlord has otherwise attempted to involuntarily dispossess, in violation of this section, shall be entitled to recover 3 months' rent or treble the damages sustained by tenant, whichever is greater, together with the cost of the suit but excluding attorneys' fees.

#### **§ 5517 Preference of rent in cases of execution.**

Liability of goods levied upon for 1 year's rent:

(1) If goods, chattels or crops of a tenant being upon premises held by the tenant by demise under a rent of money are seized by virtue of any process of execution, attachment or sequestration, the goods and chattels shall be liable for 1 year's rent of the premises in arrear, or growing due, at the time of the seizure, in preference to such process; accordingly the landlord shall be paid such rent, not exceeding 1 year's rent, out of the proceeds of the sale of such goods and chattels, before anything shall be applicable to such process.

(2) The sheriff, or other officer, who sells the goods and chattels of a tenant upon process of execution, attachment or sequestration shall at least 10 days before such sale give written notice of the time and place thereof to the landlord, if residing in the county, and if not, to any known agent of the landlord in the county.

#### **§ 5518 [Reserved]**

### *D. Chapter 57. Summary Possession*

#### **§ 5701 Jurisdiction and venue.**

An action for summary possession in accordance with § 5702 of this title shall be maintained in the Justice of the Peace Court which hears civil cases in the county in which the premises or commercial rental

unit is located. In the event that more than 1 Justice of the Peace Court in a county hears civil cases, then an action shall be maintained in the Justice of the Peace Court that possesses territorial jurisdiction over the area in which the premises or commercial unit is located. For purposes of this chapter, the term "rental agreement" shall include a lease for a commercial rental unit.

**§ 5701A Establishing territorial jurisdiction.**

In any county in which more than 1 Justice of the Peace Court location has been designated to hear civil cases, each court location shall have a geographical area assigned to it for the purpose of establishing jurisdiction over actions for summary possession. Each court location shall be located within its given territory. Pursuant to § 5701 of this title, any action for summary possession involving a residential or commercial unit within a given territory shall be maintained at the Justice of the Peace Court which has jurisdiction over the given territory. Designation of the boundaries between territories shall be accomplished by court rule. In so doing, the Court may take into account the resources of each Justice of the Peace Court location; how these resources may be utilized best in serving the public good; convenience to the public; and population and demographic information, both current and projected.

**§ 5702 Grounds for summary proceeding.**

Unless otherwise agreed in a written rental agreement, an action for summary possession may be maintained under this chapter because:

- (1) The tenant unlawfully continues in possession of any part of the premises after the expiration of the rental agreement without the permission of the landlord or, where a new tenant is entitled to possession, without the permission of the new tenant;
- (2) The tenant has wrongfully failed to pay the agreed rent;
- (3) The tenant has wrongfully deducted money from the agreed rent;
- (4) The tenant has breached a lawful obligation relating to the tenant's use of the premises;
- (5) The tenant, employee, servant or agent of the landlord holds over for more than 15 days after dismissal when the housing is supplied by the landlord as part of the compensation for labor or services;
- (6) The tenant holds over for more than 5 days after the property has been duly sold upon the foreclosure of a mortgage and the title has been duly perfected;
- (7) The rightful tenant of the rental unit has been wrongfully ousted;

- (8) The tenant refuses to yield possession of the rental unit rendered partially or wholly unusable by fire or casualty, and the landlord requires possession for the purpose of effecting repairs of the damage;
- (9) The tenant is convicted of a class A misdemeanor or any felony during the term of tenancy which caused or threatened to cause irreparable harm to any person or property;
- (10) A rental agreement for a commercial rental unit provides grounds for an action for summary possession to be maintained;
- (11) Or, if, and only if, it pertains to manufactured home lots, for any of the grounds set forth in the Manufactured Home Owners and Community Owners Act, as amended; or
- (12) The tenant who is the sole tenant under the rental agreement has died and become the deceased sole tenant under the residential rental agreement.

**§ 5703 Who may maintain proceeding.**

The proceeding may be initiated by:

- (1) The landlord;
- (2) The owner;
- (3) The tenant who has been wrongfully put out or kept out;
- (4) The next tenant of the premises, whose term has begun; or
- (5) The tenant.

**§ 5704 Commencement of action and notice of complaint.**

- (a) The proceeding shall be commenced by filing a complaint for possession with the court.
- (b) Upon commencement of an action, the court shall issue the process specified in the praecipe and shall cause service of the complaint on the defendant, together with a notice stating the time and place of the hearing. The notice shall further state that if the defendant shall fail at such time to appear and defend against the complaint, defendant may be precluded from afterwards raising any defense or a claim based on such defense in any other proceeding or action.
- (c) The party requesting the issuance of process may file a motion for the appointment of a special process server, consistent with Justice of the Peace Court Civil Rules. The party requesting the appointment of a special process server may prepare a form of order for signature by the clerk of court under the seal of the court. Blank forms for a motion for the appointment of a special process server and for an order appointing such a special process server shall be provided by the clerk of the court on request of the party.

**§ 5705 Service and filing of notice.**

- (a) The notice of hearing and the complaint shall be served at least 5 days and not more than 30 days before the time at which the complaint is to be heard.
- (b) The notice and complaint, together with proof of service thereof, shall be filed with the court before which the complaint is to be heard prior to the hearing, and in no event later than 5 days after service. If service has been made by certified or registered mail, the return receipt, signed, refused or unclaimed, shall be proof of service.
- (c) Service of the notice and complaint may be made in any manner consistent with either § 5704 or § 5706 of this title.

**§ 5706 Manner of service.**

- (a) Service of the notice of hearing and complaint shall be made in the same manner as personal service of a summons in an action.
- (b) If service cannot be made in such manner, it shall be made by leaving a copy of the notice and complaint personally with a person of suitable age and discretion who resides or is employed in the rental unit.
- (c) If no such person can be found after a reasonable effort, service may be made:
  - (1) Upon a natural person by affixing a copy of the notice and complaint upon a conspicuous part of the rental unit within 1 day thereafter, and by sending by either certified mail or first class mail with certificate of mailing, using United States Postal Service Form 3817 or its successor, an additional copy of each document to the rental unit and to any other address known to the person seeking possession as reasonably chosen to give actual notice to the defendant; or
  - (2) If defendant is an artificial entity, pursuant to Supreme Court Rule 57, by sending by certified mail or by sending by first class mail with certificate of mailing, using United States Postal Service Form 3817 or its successor, within 1 day after affixation, additional copies of each document to the rental unit and to the principal place of business of such defendant, if known, or to any other place known to the party seeking possession as reasonably chosen to effect actual notice.
- (d) Service pursuant to this section shall be considered actual or statutory notice.

**§ 5707 Contents of complaint generally.**

The complaint shall:

- (1) State the interest of the plaintiff in the rental unit from which removal is sought;

- (2) State the defendant's interest in the rental unit and defendant's relationship to the petitioner with regard thereto;
- (3) Describe the rental unit from which removal is sought;
- (4) State the facts upon which the proceeding is based and attach a copy of any written notice of the basis of the claim as an exhibit to the complaint; and
- (5) State the relief sought which may include a judgment for rent due if the notice of complaint contains a conspicuous notice that such demand has been made.

**§ 5708 Additional contents of certain complaints.**

If possession of the rental unit is sought on the grounds that the tenant has violated or failed to observe a lawful obligation in relation to tenant's use and enjoyment of the rental unit, the complaint shall, in addition to the requirements of the foregoing section:

- (1) Set forth the rule or provision of the rental agreement allegedly breached, together with the date the rule was made known to the tenant and a copy of the rule or provision as initially provided to the tenant and the manner in which such rule or provision was made known to the tenant;
- (2) Allege with specificity the facts constituting a breach of the rule or provision of the rental agreement and that notice or warning as required by law was given to the tenant;
- (3) Set forth the facts constituting a continued or recurrent violation of the rule or provision of the rental agreement;
- (4) Set forth the purpose served by the rule or provision of the rental agreement allegedly breached; and
- (5) Allege that where the rule is not a part of the rental agreement or any other agreement of the landlord and tenant at the time of the formation of the rental agreement, that it does not work a substantial modification of the tenant's bargain or, if it does, that the tenant consented knowingly in writing to the rule.

**§ 5709 Answer.**

At the time when the petition is to be heard, the defendant or any person in possession or claiming possession of the rental unit may answer orally or in writing. If the answer is oral, the substance thereof shall be endorsed on the complaint. The answer may contain any legal or equitable defense or counter-claim, not to exceed the jurisdiction of the court.

**§ 5710 Trial.**

Where triable issues of fact are raised, they shall be tried by the court. At the time when an issue is joined, the court, at the application of either party and upon proof to its satisfaction by affidavit or orally

that an adjournment is necessary to enable the applicant to procure necessary witnesses or evidence or by consent of all the parties who appear, may adjourn the trial, but not more than 10 days, except by consent of all parties.

**§ 5711 Judgment.**

(a) The court shall enter a final judgment determining the rights of the parties. The judgment shall award to the successful party the costs of the proceeding.

(b) The judgment shall not bar an action, proceeding or counterclaim commenced or interposed within 60 days of entry of judgment for affirmative equitable relief which was not sought by counterclaim in the proceeding because of the limited jurisdiction of the court.

(c) If the proceeding is founded upon an allegation of forcible entry or forcible holding out, the court may award to the successful party a fixed sum as damages, in addition to the costs.

**§ 5712 Default judgment.**

(a) No judgment for the plaintiff shall be entered unless the court is satisfied, upon competent proof, that the defendant has received actual notice of the proceeding or, having abandoned the rental unit, cannot be found within the jurisdiction of the court after the exercise of reasonable diligence. Posting and first-class mail, as evidenced by a certificate of mailing, is acceptable as actual notice for the purposes of a default judgment.

(b) A party may, within 10 days of the entry of a default judgment or a nonsuit, file a motion with the court to vacate the judgment and if, after a hearing on the motion, the court finds that the party has satisfied the requirements of Justices of the Peace Civil Rule 60(b), it shall grant the motion and permit the parties to elect a trial before a single judge or a jury trial.

**§ 5713 Jury trials.**

(a) In any civil action commenced pursuant to this chapter, the plaintiff may demand a trial by jury at the time the action is commenced and the defendant may demand a trial by jury within 10 days after being served. Upon receiving a timely demand, the justice shall appoint 6 impartial persons of the county in which the action was commenced to try the cause. In making such appointments, the justice shall appoint such persons from the jury list being used at time of appointment by the Superior Court in the county where the action was commenced.

(b) The jury shall be sworn or affirmed that they will "faithfully and impartially try the cause pending between the said \_\_\_\_\_ plaintiff and \_\_\_\_\_ defendant and make a true and just report thereupon

according to the evidence" and shall hear the allegations of the parties and their proofs. If either party fails to appear before the jury, they may proceed in that party's absence. When the jury or any 4 of them agree, they shall make a report under their hands and return the same to the justice who shall give judgment according to the report.

(c) If any juror appointed fails to appear or serve throughout the trial the justice may supply a replacement by appointing and qualifying another, but there shall be no trial by jury if the defendant has not appeared.

(d) In all other cases, the justice shall hear the case and give judgment according to the right of the matter and the law of the land.

(e) A Chief Magistrate shall have the authority to designate courts in each county which can accommodate a jury trial.

#### **§ 5714 Compelling attendance of jurors.**

(a) In a proceeding under this chapter, the justice may require the attendance of the jurors the justice appoints, and may issue a summons under hand and seal to a constable for summoning them to appear before the court.

(b) If any juror duly summoned fails to appear as required, or to be qualified and serve throughout the trial, the juror shall, unless the juror shows to the justice a sufficient excuse, be guilty of contempt and shall be fined \$50 which shall be levied with costs by distress and sale of the juror's goods and chattels by virtue of a warrant by the justice.

(c) The warrant shall be directed to a constable in the following manner:

\_\_\_\_\_ County, ss. The State of Delaware.

To any constable, greeting:

Whereas, \_\_\_\_\_ of \_\_\_\_\_ has been adjudged by \_\_\_\_\_, 1 of our justices of the peace, to be guilty of a contempt in making default after due summons as a juror in a case pending before said justice and has been ordered to pay a fine of \$50 in pursuance of the act of assembly in such case provided, and

Whereas, the said \_\_\_\_\_ has neglected to pay the said sum, we therefore command you to levy the said sum of \$50 with \_\_\_\_\_ costs and your costs hereon by distress and sale of the goods and chattels of the said \_\_\_\_\_ upon due notice given as upon other execution process.

Witness the hand and seal of the said justice the \_\_\_\_\_ day of 20 \_\_\_\_

#### **§ 5715 Execution of judgment; writ of possession.**

(a) Upon rendering a final judgment for plaintiff, but in no case prior to the expiration of the time for the filing of an appeal or motion to vacate or open the judgment, the court shall issue a writ of possession

directed to the constable or the sheriff of the county in which the property is located, describing the property and commanding the officer to remove all persons and put the plaintiff into full possession.

(b) The officer to whom the writ of possession is directed and delivered shall give at least 24 hours' notice to the person or persons to be removed and shall execute it between the hours of sunrise and sunset.

**MANUFACTURED HOME.** If the writ of possession being posted relates to the possession of a rented lot for manufactured housing, under Chapter 70 of this title, and, on or before the date the writ of possession is posted, the tenant has prepaid a per diem storage fee in an amount equivalent to 7 days' rent, then the court, through its officers, may extend the notice period for the removal of the home from the lot, to a maximum period of 7 calendar days from the date of posting. In no event may the tenant inhabit the home after the first 24 hours of the notice period. If the per diem charge above described has been prepaid and the time for removal has been extended, then 7 calendar days after the posting of the writ, the manufactured home may be removed by the landlord. If the period for removal of the home has not been extended by a prepayment of the per diem amount for storage, then 24 hours after the posting of the writ, the home may be removed from the lot by the landlord. In either event, after removal, the home must be stored at the tenant's expense for a period of 30 days before it can be disposed of through further legal action. The tenant may not remove the home from the storage location until the landlord has been reimbursed for any judgment amount and the reasonable cost of removal and storage of the manufactured home.

(c) The plaintiff has the obligation to notify the constable to take the steps necessary to put the plaintiff in full possession.

(d) The issuance of a writ of possession for the removal of a tenant cancels the agreement under which the person removed held the premises and annuls the relationship of landlord and tenant. Plaintiff may recover, by an action for summary possession, any sum of money which was payable at the time when the action for summary possession was commenced and the reasonable value of the use and occupation to the time when a writ of possession was issued and for any period of time with respect to which the agreement does not make any provision for payment of rent, including the time between the issuance of the writ and the landlord's actual recovery of the premises.

(e) If, at the time of the execution of the writ of possession, the tenant fails to remove tenant's property, the landlord shall have the right to and may immediately remove and store such property for a period of 7 days, at tenant's expense, unless the property is a manufactured home and the rental agreement is subject to Chapter 70

of this title, in which case the manufactured home must be stored for a period of 30 days. If, at the end of such period, the tenant has failed to claim said property and to reimburse the landlord for the expense of removal and storage in a reasonable amount, such property and possessions shall be deemed abandoned and may be disposed of by the landlord without further notice or obligation to the tenant. Nothing in this subsection shall be construed to prevent the landlord from suing for both rent and possession at the same hearing.

(1) If there is no appeal from the judgment of summary possession at the time of the execution of the writ of possession and the tenant has failed to remove tenant's property, then the landlord may immediately remove and store such property for a period of 7 days, at tenant's expense, unless the property is a manufactured home and the rental agreement is subject to Chapter 70 of this title, in which case the manufactured home must be stored for a period of 30 days.

(2) If, at the end of such period, the tenant has failed to claim said property and to reimburse the landlord for the expense of removal and storage in a reasonable amount, such property and possessions shall be deemed abandoned and may be disposed of by the landlord without further notice or obligation to the tenant.

(3) All writs of possession where no appeal has been filed must contain the following language:

If you do not remove your property from the premises within 24 hours, then the landlord may immediately remove and store your property for a period of 7 days at your expense, unless the property is a manufactured home and the rental agreement is subject to Chapter 70 of this title, in which case the manufactured home must be stored for a period of 30 days. If you fail to claim your property and reimburse the landlord prior to the expiration of the 7-day period, then the landlord may dispose of your property without any further legal action.

**MANUFACTURED HOME.** If the writ of possession being posted relates to the possession of a rented lot for manufactured housing, under Chapter 70 of this title, and, on or before the date the writ of possession is posted, the tenant has prepaid a per diem storage fee in an amount equivalent to 7 days' rent, then the court, through its officers, may extend the notice period for the removal of the home from the lot to a maximum period of 7 calendar days from the date of posting. In no event may the tenant inhabit the home after the first 24 hours of the notice period. If the per diem charge above described has been prepaid and the time for removal has been extended, then 7 calendar days after the posting of the writ, the manufactured home may be removed by the landlord. If the period for removal of the home has not been extended by a prepayment of

the per diem amount for storage, then 24 hours after the posting of the writ, the home may be removed from the lot by the landlord. In either event, after removal, the home must be stored at the tenant's expense for a period of 30 days before it can be disposed of through further legal action. The tenant may not remove the home from storage location until the landlord has been reimbursed for any judgment amount and the reasonable cost of removal and storage of the manufactured home.

(f) If, at the time of the execution of the writ of possession, an appeal of the judgment of possession has been filed:

(1) If there has been an appeal filed from a judgment of summary possession at the time of the execution of the writ of possession and the tenant has failed to remove property within 24 hours, then the landlord may immediately remove and store such property, at the tenant's expense, for a period of 7 days after the resolution of the appeal, unless the property is a manufactured home and the rental agreement is subject to Chapter 70 of this title, in which case the manufactured home must be stored for a period of 30 days.

(2) If, at the end of such period, the tenant has failed to claim said property and to reimburse the landlord for the expense of removal and storage in a reasonable amount, such property and possessions shall be deemed abandoned and may be disposed of by the landlord without further notice or obligation to the tenant.

(3) All writs of possession, where an appeal has been filed, must contain the following language:

If you do not remove your property from the premises with 24 hours, then the landlord may immediately remove and store your property until 7 days after your appeal has been decided, at your expense. If you fail to claim your property and reimburse the landlord prior to the expiration of the 7-day period, then the landlord may dispose of your property without any further legal action.

**MANUFACTURED HOME.** If the writ of possession being posted relates to the possession of a rented lot for manufactured housing, under Chapter 70 of this title, and, on or before the date the writ of possession is posted, the tenant has prepaid a per diem storage fee in an amount equivalent to 7 days' rent, then the court, through its officers, may extend the notice period for the removal of the home from the lot to a maximum period of 7 calendar days from the date of posting. In no event may the tenant inhabit the home after the 1st 24 hours of the notice period. If the per diem charge above described has been prepaid and the time for removal has been extended, then 7 calendar days after the posting of the writ, the manufactured home may be removed by the landlord. If the period for removal of the home has not been extended by a prepayment of

the per diem amount for storage, then 24 hours after the posting of the writ, the home may be removed from the lot by the landlord. In either event, after removal, the home must be stored at the tenant's expense for a period of 30 days before it can be disposed of through further legal action. The tenant may not remove the home from storage location until the landlord has been reimbursed for any judgment amount and the reasonable cost of removal and storage of the manufactured home.

(g) Nothing in subsection (d) of this section shall prevent the landlord from making a claim for rent due from the tenant under the provisions of the lease. The landlord shall have the duty of exercising diligence in landlord's efforts to re-rent the premises. The landlord shall have the burden of showing the exercise of such diligence. The landlord shall have the right to sue for both rent and possession at the same hearing.

(h) Whenever the plaintiff is put into full possession under this chapter it shall be the duty of the plaintiff, at the time actual repossession occurs, to have the locks to the premises changed if said premises are to be further leased out. Any plaintiff who fails to comply with this subsection shall be liable to any new tenant whose person or property is injured as a result of entry to the premises gained by the dispossessed tenant by use of a key still in their possession which fit the lock to the premises at the time of this tenancy.

#### **§ 5716 Stay of proceedings by tenant; good faith dispute.**

When a final judgment is rendered in favor of the plaintiff in a proceeding brought against a tenant for failure to pay rent and the default arose out of a good faith dispute, the tenant may stay all proceedings on such judgment by paying all rent due at the date of the judgment and the costs of the proceeding or by filing with the court an undertaking to the plaintiff, with such assurances as the court shall require, to the effect that defendant will pay such rent and costs within 10 days of the final judgment being rendered for the plaintiff. At the expiration of said period, the court shall issue a warrant of possession unless satisfactory proof of payment is produced by the tenant.

#### **§ 5717 Stay of proceedings on appeal.**

(a) *Nonjury trials.* — With regard to nonjury trials, a party aggrieved by the judgment rendered in such proceeding may request in writing, within 5 days after judgment, a trial de novo before a special court comprised of 3 justices of the peace other than the justice of the peace who presided at the trial, as appointed by the chief magistrate or a designee, which shall render final judgment, by majority vote, on the

original complaint within 15 days after such request for a trial de novo. No such request shall stay proceedings on such judgment unless the aggrieved party, at the time of making such request, shall execute and file with the Court an undertaking to the successful party, with such bond or other assurances as may be required by the Court, to the effect that the aggrieved party will pay all costs of such proceedings which may be awarded against that party and abide the order of the Court therein and pay all damages, including rent, justly accruing during the pendency of such proceedings. All further proceedings in execution of the judgment shall thereupon be stayed.

(b) An appeal taken pursuant to subsection (a) of this section may also include claims and counter-claims not raised in the initial proceeding; provided, that within 5 days of the filing of the appeal, the claimant also files a bill of particulars identifying any new issues which claimant intends to raise at the hearing which were not raised in the initial proceeding.

(c) *Jury trials.* — With regard to jury trials, a party aggrieved by the judgment rendered in such proceeding may request, in writing, within 5 days after judgment, a review by an appellate court comprised of 3 justices of the peace other than the justice of the peace who presided at the jury trial, as appointed by the chief magistrate or a designee. This review shall be on the record and the party seeking the review must designate with particularity the points of law which the party appealing feels were erroneously applied at the trial court level. The decision on the record shall be by majority vote. No such request shall stay proceedings on such judgment unless the aggrieved party, at the time of making such request, shall execute and file with the Court an undertaking to the successful party, with such bond or other assurances as may be required by the Court, to the effect that the aggrieved party will pay all costs of such proceedings which may be awarded against that party and abide the order of the Court therein and pay all damages, including rent, justly accruing during the pendency of such proceedings. All further proceedings in execution of the judgment shall thereupon be stayed.

(d) The Court shall not issue the writ of possession during the 5-day appeal period. After the 5-day appeal period has ended, the Court may issue the writ of possession at the plaintiff's request if the defendant has filed an appeal, but not filed a bond or other assurance or an in forma pauperis request to stay the issuance of the writ of possession. If the plaintiff executes on the writ of possession prior to a determination of the appeal and the appealing party is ultimately successful, then the plaintiff shall be responsible for reasonable cover damages (including, but not limited to, the cost of substitute housing or relocation) for the period of the dispossession as a result of the execution of the writ of possession, plus court costs and fees.

(e) An aggrieved party may appeal in forma pauperis if the Court grants an application for such status. In that event, the Court may waive the filing fee and bond for a trial de novo, a trial on the record or a request to stay the writ of possession.

(f) An appeal taken pursuant to this section may include any issue on which judgment was rendered at the trial court level, including the issue of back rent due, any other statute to the contrary notwithstanding.

**§ 5718 Proceedings in forma pauperis.**

Upon application of a party claiming to be indigent, the Court may authorize the commencement, prosecution or defense of any civil action or civil appeal without prepayment of fees and costs or security therefor by a person who makes an affidavit that such person is unable to pay the costs or give security therefore. Such affidavit shall state the nature of the action or defense and the affiant's belief that the affiant is entitled to redress, and shall state sufficient facts from which the Court may make an objective determination of the petitioner's alleged indigence.

The Court may, in its discretion, conduct a hearing on the question of indigence. In any action in which a claim for damages is asserted by a party seeking the benefit of this rule, the prothonotary shall, before entering a dismissal of the claim or satisfaction of any judgment entered therein, require payment of accrued court costs from any party for whose benefit this rule has been applied if said party has recovered a judgment in said proceedings or received any funds in settlement thereof. A party and such party's attorney of record shall file appropriate affidavits in the event a claim is sought to be dismissed without settlement or recovery.

**§ 5719 Landlord regaining possession of residential rental unit upon the death of a deceased sole tenant.**

(a) Possession of a residential rental unit upon the death of a sole tenant shall be returned to the landlord without an action for summary possession if:

(1) An affiant or personal representative of the deceased sole tenant's estate presents the landlord with valid documentation issued by the register of wills evidencing such representation pursuant to Title 12, in which case the landlord shall allow the affiant or personal representative access to the residential rental unit of the deceased sole tenant to remove the deceased sole tenant's belongings; and

(2) An affiant or personal representative informs the landlord that further access to the deceased sole tenant's residential rental unit is not needed by the affiant or personal representative and/or their

agents or 30 days have elapsed since the death of the deceased sole tenant and the affiant or personal representative has not provided the landlord written notice that access to the deceased sole tenant's residential rental unit is still needed by the affiant or personal representative and/or their agents.

(b) If an affiant or personal representative of the deceased sole tenant's estate presents the landlord with valid documentation issued by the register of wills evidencing such representation pursuant to Title 12, the landlord still retains the right to initiate at any time an action for summary possession and/or moneys due, in which case the landlord shall bring the action against the estate of the deceased sole tenant and serve the complaint upon the affiant or personal representative at the address provided by the affiant or personal representative and, if no such good address is provided, then to serve the complaint upon the register of wills in the county in which the residential rental unit is located. If an affiant or personal representative of the deceased sole tenant's estate does not present the landlord with valid documentation issued by the register of wills evidencing such representation pursuant to Title 12, the landlord must serve the register of wills in the county in which the residential unit is located in order to bring an action for summary possession to obtain possession of the residential rental unit and moneys due, if any. Anytime the register of wills is to be served as a registered agent for an estate, prior to initiating the action, the landlord must place a notice of such action in a paper that is circulated in the county in which the residential rental unit is located. The notice must identify: the name of the landlord; the name of the deceased sole tenant; the residential rental unit address; the type of action to be brought; the court in which such action will be brought; and the amount of the claim, if any.

(c) If at the time of the execution of the writ of possession there is still property inside the deceased sole tenant's residential rental unit that does not belong to the landlord then the landlord shall have the right to immediately remove and store such property for a period of 7 days, at the expense of the estate of the deceased sole tenant. If at the end of such period, a representative of the estate, who has valid documentation of such representation issued by the register of wills pursuant to Title 12, has failed to claim said property and reimburse the landlord for the reasonable expenses of removal and storage, such property shall be deemed abandoned and may be disposed of by the landlord without further notice or obligation to any party. Upon rendering a final judgment for plaintiff, but in no case prior to the expiration of the time for the filing of an appeal or motion to vacate or open the judgment, the court shall issue a writ of possession directed to the constable or the sheriff of the county in which the

property is located, describing the property and commanding the officer to remove all persons and put the plaintiff into full possession.

(d) If the landlord is not entitled to all or any portion of the security deposit, the landlord shall remit the security deposit within 20 days of receiving possession of the residential rental unit (or, if storage of property that was inside the deceased sole tenant's residential rental unit is required, then within 20 days after the storage of said property has ended) to a representative of the estate of the deceased sole tenant, if any, who has valid documentation of such representation issued by the register of wills pursuant to Title 12. Within 20 days after receiving possession of the residential rental unit of the deceased sole tenant (or, if storage of property that was inside the deceased sole tenant's residential rental unit is required, then within 20 days after the storage of said property has ended), the landlord shall provide the representative of the estate of the deceased sole tenant, if any, with an itemized list of damages to the premises and the estimated costs of repair for each and shall tender payment for the difference between any rental amount due and owing, the security deposit and such costs of repair of damage to the premises. Failure to do so shall constitute an acknowledgment by the landlord that no payment is due. The representative's acceptance of a payment submitted with an itemized list of damages shall constitute agreement on the rental amount due, if any, and damages as specified by the landlord, unless the representative of the estate, within 10 days of the representative's receipt of such tender of payment, objects in writing to the amount withheld by the landlord. Failure for a representative of the estate to present the landlord with valid documentation of such representation issued by the register of wills or failure of the representative to provide the landlord with a good address shall relieve the landlord of responsibility to give notice of any damages and potential liability for double the amount of the security deposit, but the landlord shall continue to be liable to the representative of the estate for any unused portion of the security deposit; provided, that the representative of the estate shall make a claim in writing to the landlord within 1 year from the landlord receiving possession of the residential rental unit of the deceased sole tenant.

#### *E. Chapter 59. Tenant's Receivership*

#### **§ 5901 Petition for receivership; grounds, notice and jurisdiction.**

Any tenant or group of tenants may petition for the establishment of a receivership in a Justice of the Peace Court upon the grounds that there has existed for 5 days or more after notice to the landlord:

- (1) If the rental agreement, or any state or local statute, code, regulation or ordinance, places a duty upon the landlord to so

provide, a lack of heat, or of running water, or of light, or of electricity, or of adequate sewage facilities;

(2) Any other conditions imminently dangerous to the life, health or safety of the tenant.

**§ 5902 Necessary parties defendant.**

(a) Petitioners shall join as defendants:

(1) All parties duly disclosed to any of them in accordance with § 5105 of this title; and

(2) All parties whose interest in the property is:

a. A matter of public record; and

b. Capable of being protected in this proceeding.

(b) Petitioner shall not be prejudiced by a failure to join any other interested parties.

**§ 5903 Defenses.**

It shall be sufficient defense to this proceeding, if any defendant of record establishes that:

(1) The condition or conditions described in the petition do not exist at the time of trial; or

(2) The condition or conditions alleged in the petition have been caused by the wilful or grossly negligent acts of 1 or more of the petitioning tenants or members of his or their families or by other persons on the premises with his or their consent; or

(3) Such condition or conditions would have been corrected, were it not for the refusal by any petitioner to allow reasonable access.

**§ 5904 Stay of judgment by defendant.**

(a) If, after a trial, the Court shall determine that the petition should be granted, the Court shall immediately enter judgment thereon and appoint a receiver as authorized herein; provided, however, prior to the entry to judgment and appointment of a receiver, the owner or any mortgagee or lienor of record or other person having an interest in the property may apply to the Court to be permitted to remove or remedy the conditions specified in the petition. If such person demonstrates the ability to perform promptly the necessary work and posts security for the performance thereof within the time, and in the amount and manner, deemed necessary by the Court, then the Court may stay judgment and issue an order permitting such person to perform the work within a time fixed by the Court and requiring such person to report to the Court periodically on the progress of the work. The Court shall retain jurisdiction over the matter until the work is completed.

(b) If, after the issuance of an order under the foregoing provision but before the time fixed in such order for the completion of the work

prescribed therein, there is reason to believe that the work will not be completed pursuant to the court's order or that the person permitted to do the same is not proceeding with due diligence, the Court or the petitioners, upon notice to all parties to the proceeding, may move that a hearing be held to determine whether judgment should be rendered immediately as provided in the following subsection.

(c)(1) If, upon a hearing authorized in the preceding subsection, the Court shall determine that such party is not proceeding with due diligence, or upon the actual failure of such person to complete the work in accordance with the provisions of the order, the Court shall appoint a receiver as authorized herein.

(2) Such judgment shall direct the receiver to apply the security posted to executing the powers and duties as described herein.

(3) In the event that the amount of such security should be insufficient to accomplish the above objectives, such judgment shall direct the receiver to collect the rents, profits and issues to the extent of the deficiency. In the event that the security should exceed the amount necessary to accomplish the above objectives, such judgment shall direct the receiver to return the excess to the person posting the security.

#### **§ 5905 Receivership procedures.**

The receiver shall be the Division of Consumer Protection of the State or its successor agency.

(1) Upon its appointment, the receiver must make within 15 days an independent finding whether there is proper cause shown for the need for rent to be paid to it and for the employment of a private contractor to correct the condition complained of in § 5901 of this title and found by the Court to exist.

(2) If the receiver shall make such a finding, it shall file a copy of the finding with the recorder of deeds of the county where the property lies and it shall be a lien on that property where the violation complained of exists.

(3) Upon completion of the aforesaid contractual work and full payment of the contractor, the receiver shall file a certification of such with the recorder of deeds of the appropriate county, and this filing shall release the aforesaid lien.

(4) The receiver shall forthwith give notice to all lienholders of record.

(5) If the receiver shall make a finding at such time or any other time that for any reason the appointment of a receiver is not appropriate, it shall be discharged upon notification of the Court and all interested parties and shall make legal distribution of any funds in its possession.

**§ 5906 Powers and duties of the receiver.**

The receiver shall have all the powers and duties accorded a receiver foreclosing a mortgage on real property and all other powers and duties deemed necessary by the Court. Such powers and duties shall include, but are not necessarily limited to, collecting and using all rents and profits of the property, prior to and despite any assignment of rent, for the purposes of:

- (1) Correcting the condition or conditions alleged in the petition;
- (2) Materially complying with all applicable provisions of any state or local statute, code, regulation or ordinance governing the maintenance, construction, use or appearance of the building and surrounding grounds;
- (3) Paying all expenses reasonably necessary to the proper operation and management of the property including insurance, mortgage payments, taxes and assessments and fees for the services of the receiver and any agent he should hire;
- (4) Compensating the tenants for whatever deprivation of their rental agreement rights resulted from the condition or conditions alleged in the petition; and
- (5) Paying the costs of the receivership proceeding.

**§ 5907 Discharge of the receiver.**

(a) In addition to those situations described in § 5905 of this title, the receiver may also be discharged when:

- (1) The condition or conditions alleged in the petition have been remedied;
- (2) The property materially complies with all applicable provisions of any state or local statute, code, regulation or ordinance governing the maintenance, construction, use or appearance of the building and the surrounding grounds;
- (3) The costs of the above work and any other costs as authorized herein have been paid or reimbursed from the rents and profits of the property; and
- (4) The surplus money, if any, has been paid over to the owner.

(b) Upon paragraphs (a)(1) and (2) of this section being satisfied, the owner, mortgagee or any lienor may apply for the discharge of the receiver after paying to the latter all moneys expended by him and all other costs which have not been paid or reimbursed from the rent and profits of the property.

(c) If the Court determines that future profits of the property will not cover the costs of satisfying paragraphs (a)(1) and (2) of this section, the Court may discharge the receiver and order such action as would be appropriate in the situation, including but not limited to terminating the rental agreement and ordering the vacation of the

building within a specified time. In no case shall the Court permit repairs which cannot be paid out of the future profits of the property.