

Delaware Residential Landlord-Tenant Code

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Legislative Council,
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State of Delaware

Title 25 - Property

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**Part III
Residential Landlord-Tenant Code**

**Chapter 51
GENERAL PROVISIONS**

**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.

(70 Del. Laws, c. 513, § 1; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 311, § 4.)

§ 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 Broadkill Hundred, Lewes-Rehoboth Hundred, Indian River Hundred, Baltimore Hundred and Cedar Creek 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.

(70 Del. Laws, c. 513, § 1; 80 Del. Laws, c. 8, § 1.)

§ 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.

(70 Del. Laws, c. 513, § 1; 70 Del. Laws, c. 186, § 1.)

§ 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.

(70 Del. Laws, c. 513, § 1.)

§ 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.

(70 Del. Laws, c. 513, § 1; 79 Del. Laws, c. 47, § 20.)

§ 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.

(70 Del. Laws, c. 513, § 1.)

§ 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.

(70 Del. Laws, c. 513, § 1.)

§ 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.

(70 Del. Laws, c. 513, § 1.)

§ 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.

(70 Del. Laws, c. 513, § 1.)

§ 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.

(70 Del. Laws, c. 513, § 1.)

§ 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.

(70 Del. Laws, c. 513, § 1.)

§ 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.

(70 Del. Laws, c. 513, § 1.)

§ 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.

(70 Del. Laws, c. 513, § 1.)

§ 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.

(70 Del. Laws, c. 513, § 1.)

§ 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.

(70 Del. Laws, c. 513, § 1.)

§ 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, source of income, 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, source of income, 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, source of income, 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.

(e) A landlord not be required to participate in any government-sponsored rental assistance program, voucher, or certificate system. A landlord's nonparticipation in any government-sponsored rental assistance program, voucher, or certificate system may not serve as the basis for any administrative or judicial proceeding under this chapter.

(f) The prohibitions in this section against discrimination based on source of income shall not limit the ability of a landlord participating in any government-sponsored rental assistance program, voucher, or certificate system from reserving rental units for tenants who qualify for such governmental program.

(g) The prohibitions in this chapter against discrimination based on source of income shall not limit the ability of any landlord or prospective landlord to consider the sufficiency or sustainability of income of, or the credit rating of, a tenant or prospective tenant, so long as sufficiency or sustainability of income, and the credit requirements, are applied in a commercially reasonable manner and without regard to source of income.

(70 Del. Laws, c. 513, § 1; 77 Del. Laws, c. 90, § 21; 79 Del. Laws, c. 47, § 21; 80 Del. Laws, c. 355, § 8.)

§ 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.

(70 Del. Laws, c. 513, § 1.)

§ 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.

(70 Del. Laws, c. 513, § 1.)

§ 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.

(25 Del. C. 1953, § 6103; 58 Del. Laws, c. 472, § 1; 70 Del. Laws, c. 513, § 5.)

§ 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.

(25 Del. C. 1953, § 6104; 58 Del. Laws, c. 472, § 1; 70 Del. Laws, c. 513, § 6.)

§ 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.

(76 Del. Laws, c. 311, § 5.)

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) "Source of income" shall have the meaning given in § 4602 of Title 6.
- (31) "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.
- (32) "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.
- (33) "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.
- (34) "Utility services" shall mean water, sewer, electricity or fuel.
- (70 Del. Laws, c. 513, § 1; 73 Del. Laws, c. 329, § 70; 75 Del. Laws, c. 293, § 1; 76 Del. Laws, c. 311, § 6; 77 Del. Laws, c. 90, § 20; 79 Del. Laws, c. 47, §§ 22, 23; 79 Del. Laws, c. 57, § 1; 79 Del. Laws, c. 65, § 2; 80 Del. Laws, c. 355, § 9.)

Part III
Residential Landlord-Tenant Code

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.

(70 Del. Laws, c. 513, § 2.)

§ 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.

(70 Del. Laws, c. 513, § 2.)

§ 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.

(70 Del. Laws, c. 513, § 2.)

§ 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.

(70 Del. Laws, c. 513, § 2.)

§ 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.

(70 Del. Laws, c. 513, § 2.)

§ 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.

(70 Del. Laws, c. 513, § 2.)

§ 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.

(70 Del. Laws, c. 513, § 2.)

§ 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.

(70 Del. Laws, c. 513, § 2.)

§ 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.

(70 Del. Laws, c. 513, § 2.)

§ 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.

(70 Del. Laws, c. 513, § 2; 77 Del. Laws, c. 282, § 15; 79 Del. Laws, c. 57, § 2.)

§ 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.

(70 Del. Laws, c. 513, § 2; 79 Del. Laws, c. 57, § 3.)

§ 5312 Metering and charges for utility services [For applicability of subsection (i) of this section, see 80 Del. Laws, c. 71, § 2]

(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.

(i) The requirement of separate metering set forth in this section shall not apply to charges for utility services that are not calculated based on consumption. If the rental agreement so provides, a landlord may pass on to the tenant the actual cost of such utility services, as determined by the cost for such service charged to the landlord or to any company owned in whole or in part by the landlord, or, if permitted by the local government unit or public utility, a landlord may require the tenant contract directly with the local government unit or public utility for service to the tenant or rental unit. A landlord may prorate or apportion charges for such utility services among units in a multi-unit or apartment building, provided the total charged to all units does not exceed the actual cost of the utility services charged to the landlord. A landlord may bill a tenant for such utility services monthly or quarterly as set forth in the rental agreement, and a tenant who pays for utility services pursuant to this subsection shall be entitled to inspect the bills and records upon which such charges were calculated as set forth in subsection (d) of this section.

(70 Del. Laws, c. 513, § 2; 80 Del. Laws, c. 71, § 1.)

§ 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.

(70 Del. Laws, c. 513, § 2.)

§ 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.

(70 Del. Laws, c. 513, § 2; 75 Del. Laws, c. 293, § 2.)

§ 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.

(25 Del. C. 1953, § 6502; 58 Del. Laws, c. 472, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 513, § 7.)

§ 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.

(76 Del. Laws, c. 219, § 1; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 47, § 24; 79 Del. Laws, c. 65, § 2.)

Part III
Residential Landlord-Tenant Code

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.

(70 Del. Laws, c. 513, § 3.)

§ 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.

(70 Del. Laws, c. 513, § 3.)

§ 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.

(70 Del. Laws, c. 513, § 3; 79 Del. Laws, c. 52, § 1.)

§ 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.

(70 Del. Laws, c. 513, § 3.)

§ 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.

(70 Del. Laws, c. 513, § 3.)

§ 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.

(70 Del. Laws, c. 513, § 3.)

§ 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.

(70 Del. Laws, c. 513, § 3.)

§ 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.

(70 Del. Laws, c. 513, § 3.)

§ 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.

(70 Del. Laws, c. 513, § 3.)

§ 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.

(70 Del. Laws, c. 513, § 3.)

§ 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.

(70 Del. Laws, c. 513, § 3.)

§ 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.

(70 Del. Laws, c. 513, § 3.)

§ 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.

(70 Del. Laws, c. 513, § 3.)

§ 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.

(70 Del. Laws, c. 513, § 3; 79 Del. Laws, c. 57, § 4.)

§ 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 month's 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. (79 Del. Laws, c. 57, § 5.)

§ 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.

(70 Del. Laws, c. 513, § 3.)

§ 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.
- (70 Del. Laws, c. 513, § 3.)

§ 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.

(25 Del. C. 1953, § 6501; 58 Del. Laws, c. 472, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 513, § 8.)

§ 5518 [Reserved.]

Part III
Residential Landlord-Tenant Code

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.

(70 Del. Laws, c. 513, § 4; 76 Del. Laws, c. 250, § 1.)

§ 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.

(76 Del. Laws, c. 250, § 2.)

§ 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.

(70 Del. Laws, c. 513, § 4; 74 Del. Laws, c. 35, § 3; 79 Del. Laws, c. 65, § 3.)

§ 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.

(70 Del. Laws, c. 513, § 4.)

§ 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.

(70 Del. Laws, c. 513, § 4.)

§ 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.

(70 Del. Laws, c. 513, § 4.)

§ 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.

(70 Del. Laws, c. 513, § 4.)

§ 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.

(70 Del. Laws, c. 513, § 4.)

§ 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.

(70 Del. Laws, c. 513, § 4.)

§ 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.

(70 Del. Laws, c. 513, § 4.)

§ 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.

(70 Del. Laws, c. 513, § 4.)

§ 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.

(70 Del. Laws, c. 513, § 4.)

§ 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.

(70 Del. Laws, c. 513, § 4.)

§ 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.

(70 Del. Laws, c. 513, § 4.)

§ 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

(70 Del. Laws, c. 513, § 4.)

§ 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:

NOTICE WHERE NO APPEAL FILED

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:

NOTICE WHERE APPEAL HAS BEEN FILED

If you do not remove your property from the premises within 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.

(70 Del. Laws, c. 513, § 4.)

§ 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.

(70 Del. Laws, c. 513, § 4.)

§ 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.

(70 Del. Laws, c. 513, § 4.)

§ 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.

(70 Del. Laws, c. 513, § 4.)

§ 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.

(79 Del. Laws, c. 65, § 4.)

Part III
Residential Landlord-Tenant Code

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.

(25 Del. C. 1953, § 5901; 58 Del. Laws, c. 472, § 1.)

§ 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.

(25 Del. C. 1953, § 5902; 58 Del. Laws, c. 472, § 1.)

§ 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.

(25 Del. C. 1953, § 5903; 58 Del. Laws, c. 472, § 1.)

§ 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.

(25 Del. C. 1953, § 5904; 58 Del. Laws, c. 472, § 1.)

§ 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.

(25 Del. C. 1953, § 5905; 58 Del. Laws, c. 472, § 1; 69 Del. Laws, c. 291, § 98(c).)

§ 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.

(25 Del. C. 1953, § 5906; 58 Del. Laws, c. 472, § 1.)

§ 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.

(25 Del. C. 1953, § 5907; 58 Del. Laws, c. 472, § 1.)