Continuing Legal Education Course

LANDLORD TENANT TRAINING GUIDE

The Nuts & Bolts of Representing a Tenant in Municipal Court: Introduction to Landlord Tenant Law

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Dechert LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104

Trainers:

Jenna Collins, Esq.
Community Legal Services

Elizabeth Tarloski, Esq.
Philadelphia VIP

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About Philadelphia VIP

Mission Statement: Philadelphia VIP leverages the powerful resources of the community to provide quality volunteer legal services and ensure access to justice for low-income Philadelphians.

Philadelphia VIP is the hub of pro bono legal services in Philadelphia. For the past thirty-seven years, we have provided legal services for low-income residents and families facing civil legal problems that threaten their basic human needs – shelter, employment, financial stability, education and health.

VIP, through its volunteers and staff, serves more than 3,500 individuals and families yearly who could not afford attorneys and whose cases could or would not be handled by other public interest organizations. We are the agency of last resort for the majority of our clients.

Our clients are among the poorest in the City and region and their numbers are growing. To be eligible for our services a client's income must be at or below 200% of the federal poverty guidelines. Thus, our *most financially secure* clients earn approximately $24,980, while a family of 4 lives on $51,500.

VIP serves a multi-lingual population, principally Spanish speaking, but increasingly we see clients who speak Russian, Creole (Haitians), Chinese, Vietnamese and Cambodian, a reflection of growing and changing immigration patterns in the Greater Philadelphia area.

VIP handles any civil matter that is non-fee generating and for which there is no right to counsel. Our caseload has four priority areas:

- Maintaining family income (child support, employment/wage claims, tax issues, disability)
- Preventing homelessness (mortgage foreclosure, landlord-tenant eviction, probate, tangled title, consumer debt, litigation defense)
- Supporting family stability (child custody, adoption/guardianship, special education and school discipline, name change and immigration issues); and
- Promoting community economic development.

The majority of VIP's cases are referred to us from our sister organizations, Community Legal Services and Philadelphia Legal Assistance; an additional number come from specialized legal services organizations throughout Philadelphia.

In stark terms, VIP is the agency of last resort for many low-income individuals and families who face critical legal problems that affect their basic needs.

Frequently Asked Volunteer Questions

Q: What happens after I accept a VIP case?
A: After accepting a VIP case you will be sent a VIP referral form, all information included in the VIP file about the case and the VIP representation agreement. At this same time, your client will receive a letter with your name, address and phone number, and the request that they contact you within 24 hours. At the first meeting you and the client should sign the VIP representation agreement. *The scope of representation should be filled in carefully, so that you and the client are clear about any limitations on your services.* (Contact VIP's Managing Attorney if you have any questions about the extent of your representation.) Keep the original in your file, give a copy to your client and send a copy to VIP.

Q: What if my client does not contact me?
A: Your client may fail to follow through for several reasons. Your client may not be able to read or understand the letter, may not have received the letter or may have other more pressing problems. If your client does not call you within a couple of days of when you receive the case-file, try to call the client. If your client still has not contacted you, call or write VIP, describing your attempts to contact the client. Under most circumstances, VIP will close the case, and another client can be referred to you.

Q: What if my client doesn't have a telephone?
A: Contacting a client who doesn't have a telephone can be challenging. We recommend that you send your client a letter asking the client to call you at a specific time on a specific date and time. If your client calls while you are on another line or away from your desk, ask your assistant to suggest a time for your client to call back. After your client reaches you, ask them for the telephone number of a neighbor, relative, and/or employer where you can leave a message if necessary. Another way that you can keep in touch with a client who doesn't have a telephone is to schedule weekly telephone "appointments". (For example, the client would call you every Friday at 1:00 p.m.) By keeping "appointments" you will have the opportunity to communicate information to the client.

Q: What if my client does not keep our appointments?
A: Terminating representation of a client due to his/her failure to cooperate is left up to the discretion of the volunteer. Some clients are simply uncooperative, while other clients have personal problems or mental impairments that interfere with their ability to keep appointments. Address this problem with your client and make it clear that without his/her cooperation you will be unable to help him/her. If, after the discussion, the situation continues, you should contact VIP's Managing Attorney and discuss closing the case.

Q: What if my client doesn't speak English?
A: If you are not fluent in the primary language of your client, VIP can arrange a volunteer to translate. Our pool of volunteers is limited, however, so we request that you first draw on your firm's resources. If your firm is unable to arrange an interpreter, please contact VIP and we will assist you. If the client speaks Spanish, VIP has Spanish-speaking staff members who have already translated many forms into Spanish. It is a good idea to ask your client for the telephone number of a friend, neighbor or relative of the client who can communicate with both of you. If you plan to relay

confidential information through the client's interpreter, you should discuss this with your client.

Additional steps must be taken with the Court if your client does not speak English. If a hearing has been scheduled, you should contact the Court to inform the Court that your client will need an interpreter. In addition to the Court's interpreter who interprets the proceedings, you may want to have an interpreter with you at counsel table, so that you can communicate confidentially with your client during the proceedings. This interpreter is not provided by the Court. If you are submitting any documents that are not in English, the documents must be translated and the translation must be certified. VIP can provide information on how to certify the translation.

Q: What if I am fluent in a foreign language and would like to volunteer to interpret for other volunteers?
A: VIP is always in need of volunteers with proficiency in foreign languages. We generally need interpreters who speak Spanish, Russian, French or Vietnamese. Whatever foreign languages you speak, however, please contact VIP because we may have a client who needs your help.

Q: What if there are costs associated with my representation?
A: VIP will cover certain costs only if approval is obtained from VIP before the cost is incurred. The costs encountered most often are:

- Photocopying medical records - You should first write the doctor and/or hospital and request that the fee be waived. If the doctor refuses, you should ask the client if he/she has the money to pay for the expense. If they do not, VIP may pay to obtain the records if VIP approves the cost before it is incurred.
- Filing fees - The client should qualify for *In Forma Pauperis* (IFP) status. An IFP petition must be filed with the Court. If the client's IFP petition is denied, the client must pay the filing fees unless VIP determines that the denial was unjustified. VIP has copies of IFP petitions and can explain to you the procedure for filing an IFP.
- VIP determines whether or not to cover litigation expenses on a case-by-case basis. If you would like VIP to cover a cost that is not listed above, please contact VIP's Managing Attorney or Executive Director before incurring any expense.

Q: What if I determine that my case lacks merit?
A: You should not represent a client if you believe the case is not meritorious. Even if you do not represent your client, you provide a valuable service by explaining the situation to your client, advising your client of available options, and suggesting ways to avoid the problem in the future. If you are not sure of the merits of the case, call VIP and discuss the matter with the Managing Attorney or the Executive Director.

Q: What do I do when my case is finished?
A: You should write a letter to VIP stating the outcome of the case, estimating the number of hours you spent on the case, and indicating whether you are available to take another case.

Thank You for Volunteering!

NOTE: Each subject and each appendix is hyperlinked to the relevant subject/appendix

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***This training guide and the appendices are available online at https://www.phillyvip.org/resources/?_sft_resource-category=landlordtenant.**

***Please contact a VIP staff member for any samples forms and pleadings you need for your VIP client's case. (See contact information, below, p. 5)**

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HELPFUL RESOURCES AND CONTACT INFORMATION

The following are very informative resources that will be of help to you in handling a VIP landlord-tenant case.

COURTS

Philadelphia Court website: http://www.courts.phila.gov/

Municipal Court dockets: https://fjdclaims.phila.gov/phmuni/login.do#

- If you are an attorney, you may apply to have a private login through the CLAIMS system. This login will also allow you to file documents and entries of appearance.

Court of Common Pleas, Civil Trial Division dockets: http://fjdefile.phila.gov/efsfjd/zk_fjd_public_qry_00.zp_disclaimer

- If you are an attorney, you may apply for a login to access the court's Electronic Filing System. This will allow you both to e-file and to view documents in a case in which you are counsel of record.

RULES AND STATUTES

Philadelphia County Municipal Court Rules of Civil Practice (Local Rules), https://www.courts.phila.gov/pdf/rules/MC-Civil-Division-Compiled-rules.pdf

Pennsylvania Code, Minor Court Civil Rules, http://www.pacode.com/secure/data/246/partItoc.html

Pennsylvania Code, Rules of Civil Procedure, http://www.pacode.com/secure/data/231/231toc.html

Pennsylvania Consolidated and Unconsolidated Statutes, http://government.westlaw.com/linkedslice/default.asp?SP=pac-1000 – including:

- Title 68 (Real and Personal Property), Chapter 8 (Landlord and Tenant)

The Philadelphia Code, http://www.amlegal.com/codes/client/philadelphia_pa

SAMPLE FORMS

Please contact a VIP staff member for any samples forms and pleadings you need for your VIP client's case. (See contact information, below, page 5.)

EMERGENCY RENTAL ASSISTANCE PROGRAMS AND OTHER RESOURCES

If your VIP client needs help paying delinquent rent, or if s/he ultimately must leave his/her housing unit, the following are Emergency Rental Assistance programs that may be of help:

Philadelphia Office of Homeless
Services Emergency Assistance &
Response Unit
Appletree Family Center
1430 Cherry Street
Philadelphia, PA 19102
(215) 686-7177
www.phila.gov/osh
**Provides grants for delinquent rent payments or security deposits*

Emergency Shelter Assistance Program/
Philadelphia County Assistance Office
Pennsylvania Department of Human Services
801 Market Street, 5th Floor, Philadelphia, PA
19107
(215) 560-1976
http://www.dhs.pa.gov/
**Provides grants for delinquent rent payments or security deposits*

Many other great resources are available at http://www.phillytenant.org/

FINANCIAL COUNSELING

Clarifi is an organization that works to promote financial literacy throughout the Delaware Valley. Clarifi dedicates one financial counselor to help tenants in Philadelphia negotiate financially feasible JBAs and reach financial goals in the aftermath of an eviction hearing. The current tenant counselor, Tyler Young, is in the courtroom and available to speak with tenants on Thursday mornings and Friday mornings from 9:00-11:00; he can be reached at tyoung@clarifi.org or 267-765-2760.

VIP CONTACT INFORMATION

Most importantly, you can always contact VIP staff members with any questions or concerns that you cannot otherwise resolve. We are always here to provide guidance and advice. **We also strongly encourage our volunteers to make use of our mentors for consultation on substantive or procedural legal issues.** Please do not hesitate to contact VIP for referral to a mentor.

The VIP staff can be reached at 1500 Walnut Street, Fourth Floor, Philadelphia, PA, 19102, (215) 523-9550, fax (215) 564-0845. The following are staff members at VIP whom you may also contact directly:

Lindsay H. Schoonmaker
Supervising Attorney
(215) 523-9555
lschoonmaker@phillyvip.org

Elizabeth Tarloski
Staff Attorney
(215) 523-9558
etarloski@phillyvip.org

Hannah Long
AmeriCorps VISTA
215-798-4374
hlong@phillyvip.org

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LANDLORD-TENANT COURT AND EVICTION PROCEDURE

Landlords must go through a judicial process to evict a tenant. The Philadelphia Code contains criminal penalties for landlords who engage in self-help to evict residential tenants.[1] This includes penalties for not just an actual changing of the locks or forcible eviction, but also for shutting off water or other essential services, removing possessions or doors, or any other means that substantially deprive the tenant of the enjoyment of the premises. Attorneys should advise clients who have been forcibly evicted without an Alias Writ of Possession (see below, p. 25) to call the police. Police can instruct the landlord to return possession to the tenant and can make arrests if the landlord refuses. The following is a description of the judicial eviction process, including the appeal process.

I. Notice to Vacate/Quit

Many leases contain a provision whereby the tenant waives the requirement that the landlord provide notice to vacate/quit. If the lease does *not* waive this requirement, then the landlord must send the tenant a written notice to vacate the premises to begin the eviction process.[2]

- For cases based on nonpayment of rent, tenant must be given ten days' notice.
- For cases **not** involving non-payment of rent, if the lease is a year or less, tenant must be given fifteen days' notice.
- For cases **not** involving non-payment of rent, if the lease is for more than a year, tenant must be given thirty days' notice.

There is some case law support for the proposition that the court lacks jurisdiction to hear a case filed before the relevant unwaived notice period has lapsed. However, that is not necessarily a prevailing view in Philadelphia Municipal Court.

II. Filing a Municipal Court Complaint

The landlord must next file an eviction complaint against the tenant in Municipal Court. The complaint must be personally served on the tenant or posted at the leased premises.[3] If the tenant is unsure whether the landlord has filed a complaint, the tenant can call Municipal Court to check. On the complaint, the landlord must state whether s/he is filing for eviction based on (A) nonpayment of rent, (B) termination of term, or (C) breach of a condition of the lease (a landlord can file for eviction for one, two, or all three

[1] Phila. Code § 9-1600.
[2] 68 P.S. § 250.501 (1995).
[3] 68 P.S. § 250.502(b).

reasons). When processed by the court, the complaint will state the date and time of the hearing.

New procedures now require the landlord to file a valid rental license for every period for which rent is sought, together with a copy of a Certificate of Rental suitability, as well as to make certain attestations in the complaint. Failure to follow these new procedures will generate a Notice of Noncompliance that will be served on all parties and need to be addressed at the hearing.

III. Interviewing Your Client and Gathering the Facts

You will be representing tenants through VIP for their upcoming hearing in Municipal Court. That hearing could be 2 to 3 weeks out from the time you accept the case, but more commonly it will be about one week out. As a result, it is particularly important that your first interview with your client be as focused and productive as is possible.

Your first interview with your VIP client may occur by phone or in person, depending on what works for you and your client. Please know that VIP volunteer attorneys are always welcome to use VIP's meeting rooms to meet with their clients; please contact a VIP staff member to let us know when you and the client would like to come by. (See contact information, above, page 5.)

The following is a checklist that may guide your first interview with your client and help spot any defenses that your client may raise to the eviction proceeding:

1) What is the lease term?

   - If the lease is not included in your VIP case file or on the court's docket, you should ask your client to provide you with the lease as soon as possible. However, the lease is often on the court's docket.

   - As you develop strategy, keep in mind how long is left on the lease. If the original lease has expired, determine if the lease states whether a month-to-month, year-to-year, or other type of tenancy results.

2) Did the landlord provide a proper Notice to Vacate/Quit? And was the eviction complaint filed <u>after</u> the expiration date provided in the Notice to Vacate/Quit?

   - If the lease specifically addresses when and how the landlord must give the tenant a notice to vacate/quit, then the terms of the lease govern.

   - If the lease is silent as to when and how the landlord is to give a notice to vacate/quit, then Pennsylvania law governs. Waivers of the notice contained in the lease are enforceable.

- See the Checklist for Landlord-Tenant Issues at Appendix 3 for more information.

3) Is the unit in need of repairs?

- Any evidence that the client has of needed repairs – e.g., pictures, bills, correspondence with the landlord – should be gathered. The client should also bring this evidence to the Municipal Court hearing.

- If there are any outstanding License and Inspection ("L&I") violations, the landlord may not be able to collect rent for a certain period of time and/or evict the tenant. This can be viewed on the Philadelphia License & Inspection website at http://www.phila.gov/li by searching the Property History. (See the Checklist for Landlord-Tenant Issues at Appendix 3 for more information.) More information on the violation code can be found in The Philadelphia Code.

4) Does your client want to stay in the unit or vacate?

- Your client may not want to stay in a unit that is in disrepair. Your client may also have other reasons for wanting to vacate the unit. If this is the case, it provides you with tremendous leverage in negotiations with opposing counsel, because their goal is often to force the tenant out of the unit. You may be able to use your client's willingness to leave to bargain for enough time to allow the client to find alternative housing.

- If your client has the ability to leave the unit soon, it will mitigate the landlord's damages and allow the tenant to collect his/her security deposit much more quickly. Alternatively, giving up the security deposit may help to fund a settlement.

5) Does your client want to collect damages from the landlord?

- You should discuss with your client whether s/he is looking for an abatement in rent, a reduction in future rent, and/or past damages for the landlord's breach of the lease.

- You should also be clear with your client that s/he may not be successful in collecting damages from the landlord. It is very important to discuss this with you client before the Municipal Court hearing, so that your client is open to any reasonable negotiations by the landlord.

6) Does your client need Emergency Rental Assistance?

- There are a few programs available that provide grants to low-income Philadelphians who need assistance with delinquent rent payments or with putting down a security deposit to secure a rental unit. These programs have requirements that are important to keep in mind when negotiating with the landlord, such as the requirement to provide a letter from the landlord. Additionally, it may take several weeks to receive a check from one of these programs so counsel your client accordingly. (See above, p. 4, for more information on these programs.)

7) Are there any other circumstances that may affect your strategy in this case?

- If there are minor children or elderly individuals residing with your client in the unit, you may need to negotiate accommodations for them – such as additional time if it becomes necessary to vacate the unit. The law contains certain special protections for children and victims of domestic violence.

- If your client has plans to move in with a family member or friend after vacating the unit, you should discuss the timing of this new living situation with your client.

- If your client lives in subsidized or "Section 8" housing, program rules, procedures, timelines and regulations must be considered as part of your negotiating strategy.

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AFFIRMATIVE DEFENSES

There are several affirmative defenses available to tenants. These defenses are vital tools in negotiating with landlord's counsel and, if necessary, in presenting your client's case to the court.

Please see the Checklist for Landlord-Tenant Issues at Appendix 3 for a full discussion of these defenses, including citations to applicable statutes and case law. This is the law that you are most likely to utilize when representing a tenant in Municipal Court.

While the Checklist includes a description of ***all*** key affirmative defenses – and should be referenced in addition to this Guide – some of the most important defenses are briefly mentioned below. There is also supplemental information provided on security deposits, for your reference.

I. Housing Inspection License

According to the Philadelphia Code, a landlord cannot collect rent for a period during which s/he does not have a Housing Inspection License ("License"), and s/he can similarly not evict a tenant without a License.[4] Because having a License is a prerequisite to filing a complaint, most (but not all) landlords have a License at the time of filing. However, it is still wise to ensure that:

- the landlord has a License, *and*
- the landlord had a License for the entire time for which s/he is trying to collect rent. As noted above, new Municipal Court procedures require the filing of such a license for every period for which rent is sought. *and* the information on the License is accurate

If the landlord did not have a License for some of the period for which s/he is attempting to collect rent, s/he is barred from collecting rent for that time. Documentation of a License can be found on the Philadelphia Licenses and Inspections website at http://www.phila.gov/li/. To determine whether there was a gap in licensing for a prior period, you may have to go (or send the client) to L&I's Office at the Municipal Services Building to inquire or call Philly 3-1-1. You may also be able to determine whether there is a gap by using the Philly 3-1-1 phone application. Under the amended ordinances, effective July 2015, L&I may not issue a license if there has been an outstanding L&I violation for 30 days prior to application. See the Checklist at Appendix 3, Tab A for more information and to see a sample rental license.

[4] Phila. Code § 9-3901(4)(e).

II. Certificate of Rental Suitability

The Philadelphia Code similarly requires that before the lease term begins, a landlord give the tenant a signed Certificate of Rental Suitability ("Certificate") issued no more than 60 days earlier and a "City of Philadelphia Partners for Good Housing" Handbook ("Handbook"). The Certificate must be delivered to the tenant during the 60-day period in which it is valid. If the Certificate has expired when given to a tenant, it is as if the landlord did not deliver a Certificate. Just as with the Housing Inspection License, no rent may be collected for a period prior to the issuance and delivery of the Certificate and the Handbook to the tenant, nor may possession be recovered. This ordinance only applies to tenancies that commenced after October 12, 2011 or to leases entered into between November 2006 and April 17, 2008.[5]

According to Municipal Court Rule 109(c), newly adopted on January 2, 2018, a Certificate will now be required for landlords to be filed with the landlord's complaint. It is important, therefore, to look for and point out any deficiencies in the Certificate of Rental Suitability, such as whether the Certificate was actually delivered to the client, whether the Handbook was delivered to the client along with the Certificate, and whether the Certificate was improperly obtained during periods when there were outstanding violations to the implied warranty of habitability. See the Checklist at Appendix 3, Tab B for additional information and to see a sample of the Certificate.

III. Implied Warranty of Habitability

The landlord has an obligation to rent to the tenant a dwelling that is safe and sanitary and fit for human habitation. A tenant cannot waive the right to lease a habitable property. Defects that interfere with habitability include: lack of heat or cooling, utility issues, exposed electrical wires, broken locks, and fire code violations. If the unit has habitability issues, the implied warranty of habitability permits the tenant to withhold rent until the landlord fixes the defects and ensures that the property is habitable.

As a practical matter, the implied warranty of habitability is frequently invoked in Municipal Court. Many factual disputes center around the condition of the unit in question, so it is wise to ensure that your client brings all of his or her evidence (including photographs) to court. In addition, you may claim that rent should have been reduced based on habitability issues, and it is sometimes useful to prepare a chart quantifying the amount of this reduction. Sample charts are at Tab J of Appendix 3.

Under recently established Municipal Court procedure, if the court determines that a tenant (a) is not be subject to a "termination of term" or "breach of condition" judgment and (b) has justifiably withheld certain rent on account of a habitability issue but in fact has over-withheld, the tenant will have four days within which to pay the over-withheld

[5] Phila. Code §§ 9-3903, 9-3901(4)(e).

amount and obtain a defense judgment.

IV. Other Defenses

See the Checklist at Appendix 3 for an extensive discussion of other defenses, including those based on the Philadelphia Lead Ordinance, Domestic Violence, Retaliation, and Unfair Legal Practices.

V. Supplemental Information on Security Deposits

While a hearing date in Municipal Court for the disposition of a landlord-tenant complaint is not the proper forum for demanding the return of a security deposit (as the tenant typically is still in possession), as a practical matter, security deposit issues are frequently intertwined with landlord-tenant disputes.

A landlord may only request two months' rent as a security deposit during the first year of the lease (in addition to first month's rent), and one month's rent thereafter.[6] As a result, you may be claiming that excess moneys held must be returned or applied to the rent. After five years, the landlord cannot increase the security deposit even if the rent has increased. It should not matter whether the money held by the landlord is labeled "security deposit" or "last month's rent," though some landlords (and judges) disagree with this view.

The tenant is entitled to interest on the security deposit, minus a one percent administrative fee, after the second anniversary of the deposit. After the first year, this excess security deposit can be used to cover rent owed.

The tenant must give written notice of his/her forwarding address when s/he surrenders keys to the unit or when the lease terminates (preferably whichever occurs earlier) in order to receive the returned security deposit. It is also a good idea to take pictures of the unit prior to vacating in case the landlord tries to claim damage and deduct for that damage from the security deposit.

If the tenant gives proper notice to terminate the lease, the landlord must return the security deposit or explain his/her refusal to do so in writing within 30 days of the tenant vacating the unit. The landlord must provide a written list of any damages, excluding reasonable wear and tear, and must refund the security deposit less the costs of the repairs listed. If the landlord does not respond within 30 days after the tenant leaves and provides notice, the landlord can be liable for damages equal to double the security deposit and also waives the right to sue the tenant for damages to the property.

See the Checklist at Appendix 3, Tab L for more information.

[6] 68 P.S. § 250.511(a).

MUNICIPAL COURT PROCEDURES

I. File Any Potential Counterclaims

A tenant may assert a counterclaim for damages incurred – for example, if the tenant has paid to repair the property due to the landlord's inaction. However, damages incurred by the tenant can also, as a practical matter, be used to off-set unpaid rent, so it may not *always* be necessary to assert a counterclaim. If your client is, on the whole, owed money, you should assert a counterclaim. If your client may owe the landlord money on the whole, the decision is a strategic one; however, the threat of a counterclaim can be a powerful tool.

A. TIMING AND TREATMENT OF CLAIMS

Written counterclaims must be filed at least 10 days prior to the hearing. Oral counterclaims, limited to $2,000 or less, can be asserted orally at trial without prior notice.[7] Generally, given the timing of a landlord-tenant case and its intake/referral, you will not have the option of filing counterclaims 10 days in advance of the hearing, and therefore, you will be raising them orally. If a case, in which a capped $2,000 oral counterclaim is asserted, is later appealed, the tenant will retain the right to assert the full counterclaim in the Court of Common Pleas.

In rare instances, there will be enough time to file written counterclaims. In that case, if a tenant files a counterclaim at least 10 days before the hearing *and* serves notice of it at least 7 days before the hearing, the tenant may obtain a default judgment if the landlord fails to appear at the hearing and damages are proven in accordance with the Rules. An unopposed counterclaimant asserting a counterclaim that has been served fewer than 7 days before the hearing can only obtain a default judgment on the landlord's initial claim and not on his/her counterclaim.[8] In such circumstances, the counterclaim will be continued to a future date at which time the landlord will have the opportunity to appear, contest the claim, and request reasonable attorney's fees.

B. REQUIRED STEPS TO FILE A COUNTERCLAIM

As mentioned above, claims in excess of $2,000 can only be filed at least 10 days before the hearing. To file a counterclaim, the below steps must be taken.

[7] Phila. M.C.R. Civ. P. 115.
[8] Phila. M.C.R. Civ. P. 120.

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1. Obtain Access to the CLAIMS System

As an attorney, to file a counterclaim, you must obtain a Philadelphia Municipal Court CLAIMS electronic filing system username and password. To do this, send the following email with your PA ID# to erin.ferry@courts.phila.gov and theresa.cannon@courts.phila.gov:

Dear Ms. Ferry and Ms. Cannon:

Can you kindly provide me with a username and password for the Philadelphia Municipal CLAIMS system. Below is the necessary information required for access:

[Name]
PA ID# [Insert ID #]
[Organization Name]
[Address]
[Phone Number]
[Email Address to be associated with the account]

When you have access to the online filing system, you must log onto the website at http://fjdclaims.phila.gov to activate your account and change your temporary password.[9]

2. Enter Attorney's Appearance

Once you are logged onto the CLAIMS system, you must e-file your entry of appearance by clicking on the "Private Attorney Entry of Appearance" link on the homepage, located below the heading "Private Attorney/Non-Attorney." Fill out the required information and click "Submit."

3. Draft a Statement of Claim

The statement of the claim is a brief description of the facts that give rise to your client's claim. The statement of the claim should be brief, but sufficient to describe the events that give rise to your client's claim for recovery as well as the legal basis for the recovery sought. The statement of the claim does **not** need to (i) answer the landlord- tenant complaint filed against your client, (ii) contain numbered paragraphs, or (iii) be verified by your client before filing.

[9] For additional guidance on using the CLAIMS system, go to http://www.courts.phila.gov/pdf/manuals/ONLINE-ATTORNEY-TRAINING-MANUAL.pdf.

4. Create a Praecipe to Proceed *In Forma Pauperis* ("IFP")

An IFP requests that the court waive the usual fees required to file a claim in Municipal Court. This can be done by filing the petition either before you file the counterclaim or as a final step in filing the counterclaim. Taking this step first guarantees that you do not file the counterclaim until IFP has been approved; however, it is an easy step to file for IFP as part of the counterclaim filing (see Section I.B.5 below).

5. Submit the Counterclaim on the CLAIMS System

To initiate the counterclaim, from the homepage, click on the link "Initiate New Additional Claim," located below the heading "Private Attorney/Non-Attorney." You will be required to enter the case number, select counterclaim as the type of additional claim being brought, and then you will be prompted to complete the statement of claim. You can autofill the parties' information in the pleading's heading by clicking on the links listed in the boxes at the top of the form. In the center box you should cut and paste the text of your statement of claim. Make sure the body of your statement of claim contains both a specific demand for judgment and the amount of recovery sought.
Below the statement of claim, there are a series of boxes that allow you to enter the amount of recovery requested, including amounts for the principal prayed for, attorney's fees, and other fees (costs). At the bottom of the form, you can enter comments to the clerk that will not be displayed on the docket. This field can be used to clarify any inconsistencies in your filing or provide guidance to the clerk on why you elected to complete the form in a specific manner. Then click "Save" and "Next" to submit the counterclaim.

Once the counterclaim is submitted, you will be asked to select the type of service for the claim. All claims filed in Municipal Court must be served on the other party. There are a series of service types that you can choose. Some forms of service, including Philadelphia Writ Service, will cause the CLAIMS system to ask you for payment information, as there is a fee associated with certain types of service. The Municipal Court's preferred method is for the attorney to select "Private Service," which allows the counterclaim to be filed and then have the documents privately served on the opposing party after submitting the counterclaim to the Court. There should be no charge incurred at the time of filing if "Private Service" is selected. The client can then simply have an adult friend serve the papers on his or her landlord, or you can arrange to have the complaint served at the landlord's address.

After the counterclaim is submitted, attach exhibits and other ancillary documents. The interface will allow you to add exhibit documents to your counterclaim by clicking on the "Add Exhibit" link. The interface will also allow you to generate or upload a Petition to Proceed *In Forma Pauperis*. Click on the appropriate link and follow the prompts. If you have previously created an IFP petition, click on the upload IFP link to submit your pre-existing version.

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6. Processes Post-Filing

After attaching the ancillary documents, be sure that the entirety of your filing has been submitted and that all portions of the filing are listed on the docket or are pending in the CLAIMS system. The exhibit and ancillary documents should be immediately uploaded to the CLAIMS system, whereas the IFP and counterclaim should be listed as "Pending Approval." You can check the state of your submission by clicking on the "Review" links under the "Private Attorney/Non-Attorney" header on the homepage.

Once the IFP is granted, the counterclaim should be displayed on the docket as "Submitted." If it is not, contact the court to confirm that (i) the counterclaim has been accepted, (ii) the counterclaim will be displayed as "Submitted," and (iii) the Attorney Service Pack will be generated. Once generated, the "Attorney Service Pack," can be printed from the CLAIMS homepage under the heading "Service Packs," and then served on the other side. After the service is processed, the attorney, the process server, or the adult who served the paperwork should file the return of service with the Court on the CLAIMS system. The affidavit of service filed **must** be the affidavit provided in the Attorney Service Pack.

Please contact a VIP staff member if you would like more information on filing a counterclaim for your VIP client, including sample forms. (See contact information, above, page 5.)

C. NEW PROCEDURES FOR LEAD COUNTERCLAIMS

A new Municipal Court policy finds that lead claims are not within landlord- tenant jurisdiction because that jurisdiction is limited to matters under the Landlord Tenant Act of 1951. Therefore, currently, lead claims must be filed as a separate action either in Municipal Court (as a Small Claims matter), where the claims limit is $12,000, or in the Court of Common Pleas for claims greater than $12,000. If filed in Municipal Court, once you have an "SC" filing number for the lead claims, you can then request that the court consolidate the cases and hear them at the same hearing. This can provide the same negotiation leverage that bringing another type of counterclaim in the "LT" case does.

The Checklist at Appendix 3, Tab C has a full description of the lead ordinances. For confirmation of whether or not a lead safe certificate was ever obtained, you should contact the Philadelphia Lead and Health Homes Program:

Paulette Smith, Program Administrator 2100
West Girard Avenue
Building #3
Philadelphia, PA 19130-1400
215-685-2788
215-685-2978 (fax)
http://www.phila.gov/health/ChildhoodLead/LandlordTenants.html

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II. The Hearing

Landlord-tenant cases are heard in Municipal Court, located at 1339 Chestnut Street, on the 6th floor, generally in Courtroom 3. First listings are scheduled for either 8:45 a.m. or 12:45 p.m., Monday through Friday (the Wednesday 12:45 p.m. listing is reserved for Public Housing cases only). Continuances and petitions may be scheduled for other times. Always check the complaint or the docket for the hearing room, date, and time to confirm.

A. Disability or Language Accommodation

Courts must accommodate for medical needs. Municipal Court has a Request for Reasonable Accommodation form (available on the Court's website) that should be completed when an accommodation is needed and at least three business days before the scheduled appearance. Phone hearings are available.

Courts must also provide interpretation services in civil cases where a litigant cannot speak English.[10] An Interpreter Request form (available on the Court's website) may be submitted 10 days in advance of the hearing. Requests may also be made at the hearing, and they generally result in a continuance.

If your client needs accommodation for a disability or needs interpretation services, please do not hesitate to contact a VIP staff member for assistance. (See contact information, above, page 5.)

B. Day of the Hearing Procedures

Please make sure that the client understands, in advance, the critical importance of attending the hearing and arriving on time. You and the client should plan to arrive in the courtroom prior to the listing time. The client will need to bring photo ID to get into the courtroom. You should bring your Attorney ID card with you because by showing that you may not have to wait to go through the security line. For a diagram of the courtroom see Appendix 2.

When you arrive, this may be the first time you are having an in person meeting with your client. You should have a discussion about the scope of your representation and help set the client's expectations for the hearing. You should have already done this by phone, but it is good to do again. Then you should have the client sign the representation agreement.

You will then need to enter your appearance on behalf of the client, if you have not already done so electronically in advance (see instructions in Section I.B.1-2 above on getting an electronic login and entering your appearance electronically). If you are just getting the representation agreement signed, you should probably <u>not</u> have entered your appearance in advance. There are paper Entry of Appearance forms available when you walk into the

[10] 42 Pa. C.S.A. § 4401, *et seq.*

courtroom. You should complete a form and turn it into the clerk. Write the number your case is listed as on the day's listing sheet in the top right corner of that form. The listing sheet is available at the same table where the blank forms are located.

Also on that table is the Attorney Sign-in Sheet. You will only need to sign in if the plaintiff is not represented by an attorney. Otherwise, the plaintiff's attorney will sign in and your case will be called out when that attorney's cases are read. If you need to sign in, you will write your name and the number next to your case on the listing sheet.

At 8:45 a.m. and 12:45 p.m., the Trial Commissioner will call the list to confirm which parties are present. Generally, cases are grouped by landlords' counsel – the list will be read in order of the sign-in sheet. Under a new procedure, the Trial Commissioner will put on hold any case in which a Notice of Noncompliance has been issued, informing the parties that the plaintiff may not have attached documents or made attestations showing compliance with licensing or similar requirements. Those matters will be held until the end of the call of the list, at which time the judge will come out to explain the significance of the Notice of Noncompliance. You should always review the file carefully, there are occasionally times when the court will miss something in the documentation that should have qualified the case for a Notice of Noncompliance.

Once the cases associated with a particular attorney have been called (and for cases with Notice of Noncompliance, once the judge has explained the significance of the Notice), the parties are given an opportunity to reach an agreement in a room adjacent to the courtroom. If an agreement is reached, you can inform the court staff that either a Judgment by Agreement can be entered or the case has been withdrawn and once that is entered in the docket, you and the client can leave. If an agreement cannot be reached, do not be afraid to present your case to the judge. This can be in your client's best interest. The judge will start hearing cases about an hour to an hour and a half after the list is read. Therefore, you should plan to spend the whole three hour session at Municipal Court if you are representing a tenant. Often you will not need to stay the whole time.

C. OUTCOMES

The following are the possible outcomes:

- Default Judgment: If either party (or that party's attorney) does not answer "present" at the call of his/her name, the party who is present will likely request a default judgment in the present party's favor. If the landlord is the party that is not present and a default judgment is entered against the landlord, *res judicata* bars the landlord from pursuing the same claim(s) in another action. However, the landlord may file a Petition to Open Default. Default judgments are entered by the trial commissioner.

- Continuance: Continuances may be granted if requested in writing and if all parties are notified of the request at least 10 days before the hearing.[13] Continuance requests should be sent to Patricia McDermott, Civil Court Administrator, 1339 Chestnut Street, Philadelphia, PA, 19107 (phone (215) 686-2988, fax (215) 569-9254). If either party opposes the continuance, the request will be held for the judge. Continuances may be

marked "must be tried" for the next listing. Landlord's counsel can also generally obtain continuances upon request, even in court, and you may decide to jointly request a continuance. You may or may not be able to obtain a continuance, in court, for good cause.

- Withdrawal of the Case: If both sides agree to a private settlement agreement, or there are other reasons why landlord's counsel agrees to withdraw the case, the case may be withdrawn. (See, below, pages 19-22). There are two types of withdrawal of a case:

    - **Withdrawn without Prejudice** - a dismissal that allows for re-filing of the case in the future
    - **Withdrawn with Prejudice** - a dismissal of a case that barres the plaintiff from bringing an action on the same claim

- Judgment by Agreement ("JBA"): There are several ways that a JBA can occur:

    - The tenant can enter an agreement to resolve either or both the rent and possession issues with the landlord before the court hearing. If the tenant and landlord reach an out-of-court agreement, the tenant and landlord (or their counsel) must properly enter the JBA into the court's electronic system, either remotely or by going to court.
    - The landlord and tenant can reach and sign a JBA at the time of the hearing.

    - Both represented and pro se parties may request the services of a court mediator to negotiate a JBA.

  All JBAs are binding and cannot be appealed. See discussion in Section III, below, for the impact that a JBA may have on the tenant's credit and ability to obtain housing in the future. **You may state in the JBA that you are withdrawing as counsel and concluding the representation.**

- Judgment from the Bench: If the tenant and landlord cannot reach an agreement, the case will go before the judge. The tenant should come prepared with evidence such as licensing and inspection reports, pictures, letters, and witnesses. Judgment will usually be issued from the bench at the end of the hearing.

    - If the landlord wins the hearing, the tenant can be liable for any rent or utilities that have come due and may face a judgment that the property be delivered to the possession of the landlord. The court can order payment of a money judgment over a period not to exceed twelve months if requested by the tenant.[14] Eviction under a judgment for possession can take place as early as 21 days after the judgment date.

    - If the tenant wins the hearing, remind client that s/he is not responsible for paying any back rent and cannot be evicted. Landlord may try to bully or intimidate client into paying what is not owed. It is a good idea to let the

client know what the judgment in his/her favor means, so that the client has a clear understanding of his/her rights and can be more confident asserting same. However, it is also worth letting the tenant know that s/he should be on the lookout for future notices to vacate and court complaints, particularly if the tenancy is month-to-month.

Following a Municipal Court hearing, a copy of the court's order is generally sent electronically to counsel. However, if counsel is not part of the Municipal Court electronic system, then the order is mailed based on the information provided on the Entry of Appearance form. Regardless, counsel should always request a copy of the Order at the end of the hearing. **Further, at the end of the hearing, you may tell the judge that you are withdrawing your appearance, if your representation has ended.**

III. Negotiation and Settlement Considerations: Understanding the Impact of the Case on the Tenant's Credit and Ability to Obtain New Housing

While volunteer attorneys settle a ***majority*** of cases they take on, do not be afraid to go before the court. In most landlord-tenant representations, this decision – whether to settle or to go in front of the judge – is the most important one your client will make. In order to give your client advice that will lead to the best possible outcome for him or her, it is critical that you have a strong understanding of your client's interests and how they overlap with the following settlement considerations:

- **Risk of eviction.** If the judge orders a judgment for possession for the landlord, then absent an appeal (see Section IV.D, below), your client can be evicted in as soon as 21 days. This is a serious concern for many tenants and one of the reasons our clients are so apt to settle.

- **Risk of judgment.** If the judge issues a money judgment against your client, it will affect his or her credit and will likely negatively impact his or her ability to find a new rental unit. However, unlike a JBA in which the parties agree on a judgment to be entered (which is non-appealable), a judgment that is ordered by the judge can be appealed.

- **Willingness to appeal.** If your client is willing to appeal and would like to reap some of the benefits that can come from appealing – either vindicating his or her rights or potentially getting to stay for additional time – then he or she might benefit from going in front of the judge. However, see discussion below, pages 22-24, for considerations that your client should understand before relying on an appeal as a viable option.

- **Structure of potential settlement.** Can you structure a settlement in order to avoid a lasting judgment against your client? On page 21, below, there are suggestions of several ways to structure settlement agreements in order to make it easier for landlord's counsel to agree to a settlement while

simultaneously avoiding a lasting judgment that will negatively impact your client's credit.

- **Likelihood of success.** Of course, an assessment of how likely you are to prevail in front of the judge will help you determine the strength of a proffered settlement. As you gain experience, you will gain a better sense of your likelihood of success. You are also encouraged to reach out to a VIP staff member for help in determining how strong your defenses are. (See contact information, above, page 5.) However, as we all know, there is always a risk in going in front of the judge.

An eviction proceeding by a landlord can follow a tenant for many years after the case has ended. The mere filing of an eviction proceeding may hurt the tenant's ability to rent from a different landlord in the future. Landlords often use tenant screening companies to check on whether potential tenants have been involved in prior landlord/tenant disputes and may decide not to rent to them, even if the court case was resolved in the tenant's favor.

In addition, even an agreement with the landlord may have a negative impact on the client's credit. There are two ways to structure agreements in Municipal Court:

(1) a private settlement agreement that does not involve the court; or
(2) a Judgment by Agreement ("JBA") that is submitted in the court's system.

A private settlement agreement is preferable to a JBA for tenants, because it does not result in a judgment that will harm the tenant's credit. Several settlement structures are each discussed below, in order of preference.

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A. PRIVATE SETTLEMENT AGREEMENTS

The parties may draft a side settlement agreement without involving the court. Private settlement agreements can be structured in many ways. For example, in order of preference:

- **Private Settlement Agreement - Case Withdrawn.** If the parties are able to reach an agreement, the landlord may be willing to withdraw his/her complaint when the agreement is entered. If the landlord agrees, the agreement should clearly indicate that there is no judgment being issued against the tenant and that the landlord is agreeing to withdraw the complaint. Landlord's counsel may be hesitant to agree to this type of private settlement agreement, because s/he will have to initiate proceedings again if the tenant does not comply with the terms of the settlement agreement.

- **Private Settlement Agreement – Continuance.** In order to persuade landlord's counsel to enter into a private settlement agreement rather than a JBA, tenant's counsel can offer to obtain a continuance until after the date of compliance according to the terms of the agreement. The settlement agreement should clearly indicate that if the tenant complies with the terms of the agreement – e.g., by vacating the unit by the agreed- upon date – the landlord will withdraw his/her complaint. If the tenant does not comply with the terms of the agreement, the landlord has the advantage of an upcoming continued court date that s/he can use to obtain a remedy.

- **Private Settlement Agreement – Continuance <u>AND</u> JBA in Escrow.** Again, in order to persuade landlord's counsel to enter into a private settlement agreement rather than filing a JBA with the court, tenant's counsel can offer a signed paper JBA form, along with the private settlement agreement, as protection for landlord's counsel. If the tenant does not comply with the terms of the private settlement agreement, then landlord's counsel can file the paper JBA with the court, thus obtaining a judgment against the tenant. If the tenant does comply with the terms of the private settlement agreement, the landlord will withdraw the case and discard the JBA.

See a sample private settlement agreement at Appendix 1.

B. JUDGMENTS BY AGREEMENT ("JBAs")

While not as favorable as a private settlement agreement, entering into a **<u>non-appealable</u>** JBA in the court's electronic system can also be a good option for tenants – particularly when a tenant is not willing to risk the possibility of eviction by going in front of the judge. While a JBA will result in a judgment and will, at least for a time, have negative implications for your client, that impact can be minimized by following these suggestions for structuring a JBA. Again, in order of preference:

- **JBA for Possession Only**. When the JBA is entered into the computer at court, **only** the "B" box should be checked off, to indicate that the JBA is for possession only. The text of the JBA should also state either that no money is due or that no judgment for money is being entered (if the tenant is agreeing to pay some money as part of the agreement, it can be written in as text but the money judgment box does not need to be checked).

- **JBA with Money Judgment, but to be Vacated Upon Payment.** Even if the JBA provides for a money judgment, the JBA can provide that the judgment will be vacated (not just "satisfied") once the payments are made. This erases the money judgment for credit purposes**. For this reason, it is very important that you attempt to negotiate for a judgment to be vacated (not just satisfied) if a money judgment is issued as part of your settlement. Importantly, judgments are not automatically vacated**. (See Section IV.C below).

Also note that JBA's are initially drafted by the landlord's attorney if the landlord is represented. Watch for subtle language that would allow the landlord to keep the security deposit or "all pre-paid rent" in the event your client has possible affirmative claim for back rent under the lead paint laws, which the client may want to bring as a small claims action. Watch for language that requires the payment of ongoing rent under the JBA – that language may become the basis for filing a breach affidavit if future rent is not paid, shortcutting the complaint filing process.

JBA's may contain a provision withdrawing your appearance, if your representation has ended. See a sample JBA at Appendix 4.

IV. Possible Responses by a Tenant to an Unfavorable Court Disposition

A. Petition to Open Default Judgment

If a tenant does not appear for the Municipal Court hearing, the court will most likely enter a default judgment. To challenge this default judgment, the tenant must file a Petition to Open Default Judgment in Municipal Court. The tenant must (a) file the petition in a timely manner, (b) allege a good reason for failure to appear, and (c) allege a meritorious defense.

The petition is deemed timely if filed within 30 days. If filed within 10 days, the petition will be approved as long as it alleges a meritorious defense.

The eviction should not proceed while this petition is being reviewed by the court, but a stay is not guaranteed by virtue of filing the Petition to Open. If the petition is not rejected on its face (for example, as not asserting a meritorious defense), the court may enter a rule *nisi* with a hearing date, and the eviction will be stayed until the hearing. In some circumstances, the tenant will need to file a Petition to Restore Possession or a Petition to Stay eviction along

with the Petition to Open in order to get a stay.

If, at the hearing, the petition to open the default judgment is granted, the judge will continue with the eviction hearing immediately. If the petition is denied, the petitioner can appeal the denial in the Court of Common Pleas (see Section IV.D below).

If a tenant has failed to appear at a hearing for which a volunteer was present as counsel, the volunteer is not obligated to represent the tenant in filing and pursuing a Petition to Open.

Please contact a VIP staff member for a sample Petition. (See contact information, above, page 5.)

B. SATISFACTION OF A MONEY JUDGMENT

In order to satisfy a money judgment, tenant should mail a money order to the landlord by certified mail, return receipt requested. Tenant can then ask the landlord to sign an Order to Mark Judgment satisfied. If the landlord agrees, the Order can be filed with Municipal Court. If the landlord does not agree, tenant can still file a Petition to Satisfy. See the template at Appendix 5. Tenant should give the return receipt and the money order receipt to his or her attorney, and the attorney can file a petition with the court for the judgment to be marked satisfied (with the return receipt and money order receipt as exhibits).

C. PETITION TO VACATE

In order to vacate an agreement, plaintiff or plaintiff's counsel should sign an Order to Vacate, and then defendant can file a Petition to Vacate, attaching the signed order. There is a $19 filing fee; however, VIP clients may petition to proceed *In Forma Pauperis* (IFP) in order to get this filing fee waived. See the templates at Appendix 5 and 6. Language can also be added within a JBA to have the judgement vacated upon satisfaction of the conditions.

D. APPEAL TO COURT OF COMMON PLEAS

The losing party of a contested Municipal Court hearing can file an appeal in the Court of Common Pleas. Generally, the appellant is the tenant, but not always. Tenants only have 10 days to appeal judgments related to possession and 30 days to appeal money judgments. If the judgment is for both money and possession, it is safer to appeal within 10 days, even if only the money judgment is being contested.

While VIP volunteer representation is generally limited to the initial Municipal Court hearing, awareness of the appellate process and timelines can be very helpful for settlement strategy. On occasion, as well, volunteer attorneys have decided to represent a client on appeal.

1. Challenges of Appeal

If you are not planning to represent a tenant client on appeal and believe that s/he is

interested in appealing, you should let your client know that the appellate process is more formal than Municipal Court and can be difficult to navigate *pro se*. In addition, in order to delay eviction, the tenant must escrow rent with the court. If the client wishes to proceed, you can refer him/her to Community Legal Services, the Landlord-Tenant Help Center, the Elder Justice and Civil Resource Center, or another appropriate legal services agency. If the client is unable to obtain free services, you can inform the client of the Lawyer Referral and Information Service ("LRIS") at (215) 238- 6333, which will put the client in touch with an attorney who will give a $35 half hour consultation and then work out a payment arrangement for representation.

2. Timeline of Appellate Process / Strategic Value

Generally, an appeal after a contested hearing to the Court of Common Pleas takes about 90 days to be disposed of. During that time, if the tenant requests a Supersedeas and meets various requirements (like escrowing rent as required by the court), he or she cannot be evicted. Tenants may file appeals pro se and be guided by the Prothonotary's Office in City Hall about the process of obtaining a Supersedeas stay. Low income tenants must escrow with the court 1/3 of the monthly rent upon filing the appeal, 2/3 of the monthly rent within 20 days thereafter, and one month's rent 30 days after the appeal filing date and every 30 days thereafter. Please note that it is a 30-day cycle, not a monthly cycle.

If a landlord is very interested in your client vacating the unit, reminding landlord's counsel that your client has a right to appeal any decision by the judge – and can thus potentially stay at least 90 days – can be a powerful negotiating tool.

3. Time to File Appeal

If your client is considering appealing a judgment resulting from a contested hearing to the Court of Common Pleas, it is important to let him or her know how much time s/he has to do so. An appeal from a judgment for possession only, or for possession and money, must be filed within 10 calendar days, unless the appellant is a victim of domestic violence, in which case the appellant has 30 calendar days to file the appeal. An appeal from a judgment for money only must be filed within 30 calendar days.[11] If the appellant is represented by an attorney, the attorney must file the appeal electronically. Appeal of a contested judgement results in a *de novo* trial in the Court of Common Pleas. The plaintiff will have to file a new complaint and the defendant will have to file an answer (and new matter, if applicable).

4. Appeals of Denial of a Petition

If the court does not grant a petition (such as petition to open, petition to stay eviction, petition to intervene, petition to restore, petition to mark judgment satisfied, petition to vacate judgment by agreement, etc.), petitioner may file an appeal on the record to the Court of Common Pleas within 30 days. There is no automatic stay of the eviction on appeal unless the party files for a stay of the eviction pending appeal. Such appeals do not result in a *de novo* trial but, instead, the standard appellate standards apply.

[11] Phila. M.C.R. Civ. P. 124; 68 P.S. § 250.513.

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5. Appeals of a Default Judgment

See Section IV.A above.

V. Writs of Possession

In order to legally evict a tenant, a landlord must first obtain a writ of possession (10 days after the judgment) and then obtain an alias writ of possession. A landlord cannot obtain an alias writ of possession until 11 days after the writ of possession.[12] In other words, 21 days from his/her court date is the soonest your client can be evicted. (This is a risk your client needs to be apprised of before you go in front of the judge and can factor heavily into the decision of whether or not to settle.)

The writ of possession must be personally served on the tenant or "posted conspicuously" on the leased premises. However, the Court generally mails a copy of the writ of possession to the tenant and/or notice is given to counsel of record electronically. **Please note that if an attorney's appearance is still entered on the docket, it is likely the attorney of record and not the client will get notification of the writs.** If the landlord wants to file for an alias writ of possession more than 6 months after the date of the judgment for possession, the landlord must seek leave of court.[13]

Once an alias writ of possession has been filed, the landlord can request that the landlord-tenant officer Marissa Shuter schedule an eviction. Tenants can call the landlord-tenant office at (215) 563-2133 from 9:00 a.m. to 3:00 p.m. to find out whether (and, if so, when) the eviction has been scheduled.

If the tenant is home when the landlord-tenant officer serves the alias writ, the tenant will be physically removed from the leased premises, and the locks will be changed. If the tenant is locked out, s/he will still have the right of a one-time entry into the property within thirty days following the lockout to remove belongings, so long as the tenant has contacted the landlord within 10 days after the date of the eviction to arrange this time.

Remember that if no alias writ has been filed, the lock-out is illegal, and the tenant should call the police.

VI. "Pay and Stay" Following a Writ of Possession

If the judgment for money and possession is an "A-only" judgment (nonpayment of rent) and is entered by a judicial decision, a tenant may stay in the rental unit for the remaining term of the lease by paying the amount of the money judgment *plus* all court and writ costs (or by tendering proof that the judgment and any costs were paid prior to the date of the eviction), any time after the landlord files the writ of possession. We believe that this right exists even with respect to a money judgment contained in a JBA, but not all

[12] 68 P.S. § 250.503(b); Phila. M.C.R. Civ. P. 126(b).
[13] Phila. M.C.R. Civ. P. 126(e) ("the 180-day rule").

practitioners or judges agree. A tenant can exercise this right any time before actual eviction. Payment need not include money that came due after the court judgment. Payment can be made directly to the landlord-tenant officer performing the eviction.

VII. Affidavits of Breach

If one party breaches a JBA, the other party should first contact opposing counsel to try to resolve the issue. If the issue is not resolved, the non-breaching party should file an Affidavit of Breach. The breaching party must then file a Counter Affidavit within 5 business days after receipt of the initial Affidavit. If the breaching party does so, the court will generally schedule a hearing to determine whether the agreement was kept. At this hearing the sole issue before the judge is whether the JBA was breached.
Some judges allow a substantial compliance argument.

If the breaching party is a tenant who does not file a Counter Affidavit, the landlord may proceed with the eviction process. As a volunteer attorney, depending on the scope of representation (see discussion below at p. 27), you are generally not expected to represent a client who has breached the JBA or whose landlord has breached the JBA. You can feel free to give the client advice and/or refer the client back to VIP if your representation has ended.

SCOPE OF REPRESENTATION

I. Representation Agreement

VIP has a template representation agreement that you will receive with the case file. Please be specific with your description of the scope of the representation you are agreeing to take on and have a conversation with your client as you both sign the representation agreement. If you have any questions about the scope of representation, please contact a VIP staff member. You may elect to use your own form of pro bono representation agreement.

II. Withdrawal of Appearance

As mentioned above, you can withdraw your appearances as counsel if you are concluding your representation, either by informing the judge of your withdrawal at the end of a hearing or by including a reference to your withdrawal in the JBA (or possibly settlement agreement) and letting the mediation staff know so that it can be reflected on the docket. This procedure appears to allow such a withdrawal whether it is under a JBA or a private settlement agreement, but that is not absolutely clear. Presumably, the withdrawal should be consistent with the terms of your engagement letter.

Judge Neifield, Former President Judge of the Philadelphia Municipal Court, gave the following instructions regarding a limited entry of appearance:

> The conditional limited entry of appearance. Attorneys who wish to withdraw after a matter has been heard by a judge should state that on the record while in court and it will be noted on the docket. Attorneys who wish to withdraw

after a matter has been resolved by way of an agreement should write that on the agreement and let the mediation staff know so that the withdrawal is noted on the docket.

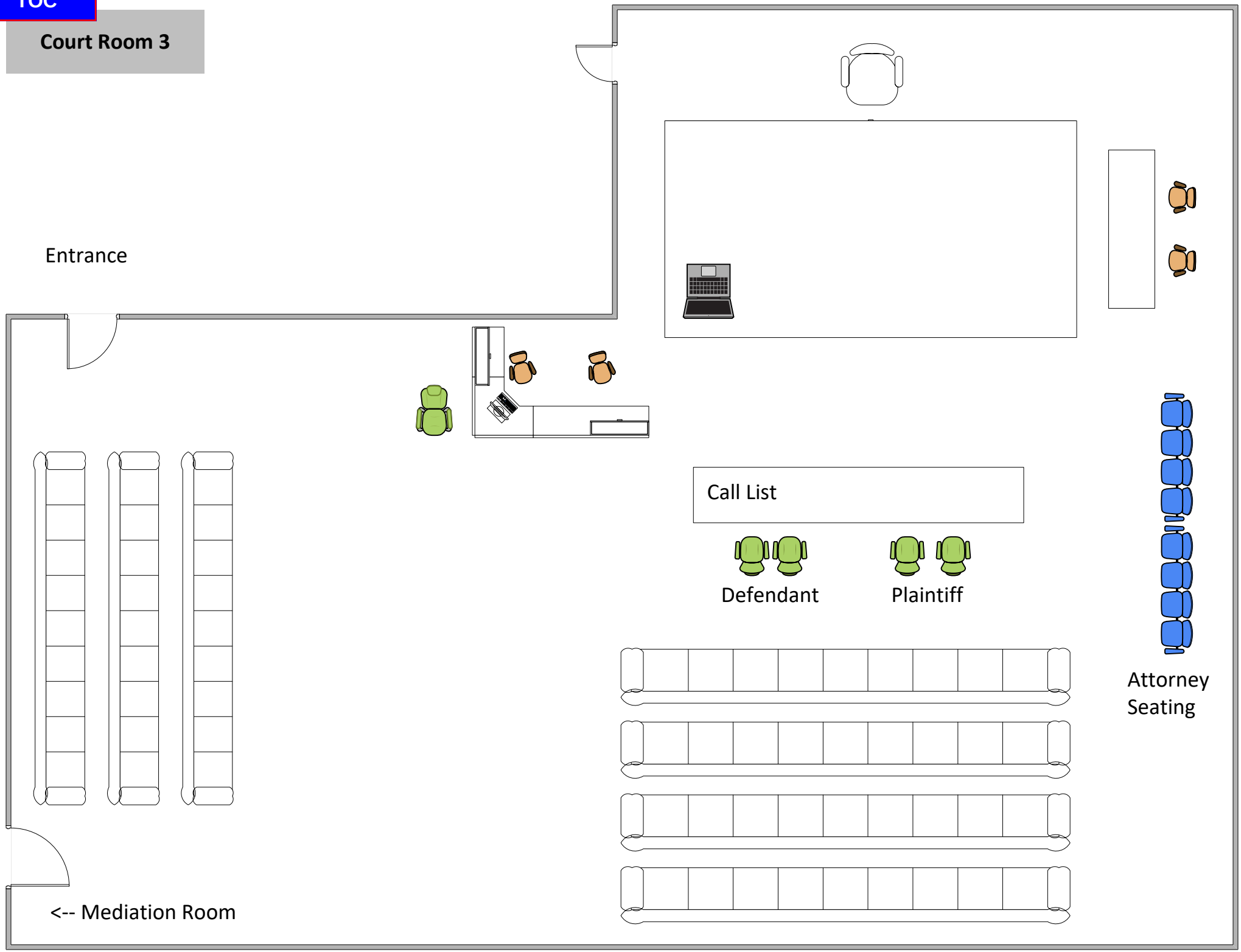
III. Closing Letter

VIP strongly suggests that you send a closing letter to formally end your representation with your client. A sample closing letter is at Appendix 7. The letter should generally describe your representation, inform the client of the results of the case, state that the representation has concluded, and attach any relevant documents such as copies of the docket, judgment, or settlement agreement. VIP would appreciate a copy of this letter as well as information on approximately how many hours you spent on the client matter. This is especially important for Philadelphia VIP's ongoing grant applications and financials.

Once your representation of your client has concluded, if the client reaches out to you with additional questions, you are welcome to respond but also please feel free to refer him/her back to VIP.

TOC

Court Room 3



TOC

SETTLEMENT AGREEMENT

This is an agreement dated _____, by and between _____ ("Landlord") and _____("Tenant") relating to (Docket# LT-XX-XX-XX-XXXX), filed in Philadelphia Municipal Court.

The parties agree as follows:

1. Tenant will vacate the real property located at_____ Philadelphia, PA_____ ("Property") on or before_____, 20___.

2. Tenant will owe no money with respect to the Property for any period prior to _____. 20___.

OR

Money due to Landlord. Total : $_____

Past Due: Month: $____

Month: $____

Future Due: Month: $____

Payments will be made as follows:

$_____ on _____

$_____ on _____

$_____ on _____

$_____ on _____

OR

If (and only if) Tenant does not vacate the Property by_____, 20__, Landlord will be entitled to collect rent for (and only for) the period beginning on the date that Landlord obtains and delivers to Tenant a valid Certificate of Rental Suitability, the attestation related thereto, and the Handbook entitled "Partners for Good Housing."

3. **Last Month's Rent**: Landlord is in possession of the last month's rent for the month of _____. No rent will be paid by the tenant for _____and landlord will apply previously paid rent to this month.

4. **Security Deposit**: Security Deposit will be returned to the tenant in accordance with Pennsylvania law.

5. Landlord will withdraw with prejudice, the case referenced above today and will only seek rent for the period mentioned above (OR will not seek rent for the period mentioned above).

THE PARTIES UNDERSTAND THAT NO JUDGMENT IS BEING ISSUED BY THE COURT AND THAT IF A BREACH IS ALLEGED IN THE FUTURE, THE PARTY ALLEGING THE BREACH WILL NEED TO FILE A NEW COMPLAINT TO ENFORCE THIS AGREEMENT.

_____ _____

LANDLORD TENANT

TOC

CHECKLIST FOR PHILADELPHIA LANDLORD –TENANT ISSUES

September 23, 2019

Tab

A. **Housing Inspection License: No rent** due for any unlicensed period; **no eviction**.

B **Certificate of Rental Suitability: No rent due and no eviction** if landlord fails to deliver to tenant a signed Certificate issued no more than 60 days prior to inception of lease **and** the "City of Philadelphia Partners for Good Housing" Handbook. (For pre- 10/12/2011 leases, see attached). Certain L&I violations constitute noncompliance (see Tab B materials attached).

C. **Lead Paint Ordinances:** a. **Violation Orders – No eviction; no collection of rent** if landlord failed to comply with Health Department **lead-paint violation order** within 30 days.

b. **Lead Safe Certifications – No eviction; no collection of rent; damages; refund** if landlord failed to provide Certification, if child 6 or under is living (or will live) in property during lease term.
c. **Disclosures** – Lead disclosure required (can be in lease) for all pre-1978 buildings; if not given, tenant can conduct inspection and terminate. Also, remedies mentioned above.

D. **Domestic Violence: No eviction or subsidy termination due to incidence of domestic violence.** For all housing, victim has right to terminate lease on 30 days' written notice (with documentation).

E. **Notice to Vacate: There is disagreement among counsel on this issue. Tenant advocates believe no Municipal Court jurisdiction for any complaint filed prior to expiration** of the notice period under a valid Notice to Vacate: at least 10 days for non-payment, 15 days for termination/breach of condition, 30 days for a lease longer than 1 year. Service must be in person or by posting, not by mail. Notice can be waived in lease.

F. **Retaliation /Unfair Rental Practices:** No retaliation by landlord for reporting to L&I, etc. Limited right to terminate while a notice of violation is pending. Notice required for rent increases upon lease renewal.

G. **Fair Housing Commission:** If a Fair Housing Commission (FHC) complaint has been filed before the Municipal Court LT complaint was filed, the **matter should be continued** until the FHC reaches a resolution. MC court may, and in some cases (e.g. retaliation) should, refer to FHC.

H. **Public / Subsidized Housing:**

a. Good Cause: Public housing, Section 8 project-based/HUD housing, and low income housing tax credit housing requires "good cause" (defined as serious and repeated violations or other itemized reasons) **for termination or non-renewal** of the lease.
b. Section 8: In a section 8 subsidized lease, landlord can **only sue tenant for tenant's portion of the rent**, not for amount unpaid by PHA. PHA must sometimes be added as third-party defendant to pursue its share of the rent. Also, no attorney's fees can be collected unless there is a separate, signed and approved lease addendum/agreement providing for fees.

I. **Attorney's Fees:** No attorney's fees awarded unless the **lease expressly so provides and the landlord is successful.** Must be reasonable.

J. **Implied Warranty of Habitability: Not waivable.** Tenant must have informed landlord of repair issues. **No escrow account is required by law** for withheld rent. No adverse judgment if tenant pays amount determined by the Court to be owed.

K. **Illegal Lockouts/Self-Help Evictions: No self-help lockout, including shutting off of utility service.**

L. **Excess Security Deposit/Escrow:** During first year, limit is two months' rent; **after one year, only one month's rent in escrow to secure damages or rent.** According to the Philadelphia Code, how escrow is

labeled (security or last month's rent) is not relevant. There is disagreement among counsel on interpretation of this issue.

M. **Burden of Proof:** Plaintiff by preponderance of evidence re rent, fees, licensing and certificate compliance. Licenses and Certificates to be proven by documentary evidence. Defendant by preponderance of evidence, including testimony, on warranty of habitability. No L&I violation is necessary to prove habitability issue. If retaliation is alleged, landlord must prove eviction action is not in retaliation for complaint to L&I.

N. **Utility Bills:** Bills must be presented to court for collection. Tenants have right to receive notice from utilities of imminent shutoff and to pay amounts owed in order to maintain service. Tenants may then deduct amounts paid from rent.

O. **Appeals:** Appeals for *de novo* review of contested judgments must be filed within 10 days, unless the judgment is a money-only judgment, in which case the deadline is 30 days. See attached for further details, as well as for rules applying to the filing of petitions to open default judgments and for appeals of denials of petitions.

P. **Property Left in Unit:** Prior to disposing of property left on premises, the landlord must provide 10 days' notice of tenant's right to retrieve property or to have it stored for up to 30 days at tenant's cost. Special rules apply to tenants (or immediate family) subject to a protection from abuse order.

Q. **Effect of Foreclosure Sales on Tenants' Rights:** Federal law supplements certain state law protections available to tenants whose rental residence undergoes a mortgage foreclosure or tax sale.

R. **Effect of Bankruptcies:** The Bankruptcy Code may stay certain enforcement actions and affect certain rights of landlords and tenants.

S. **"Good Cause":** "No owner, landlord, agent or other person operating or managing any residential premises, upon expiration of a lease of less than one year, shall issue a notice to vacate, notice of non-renewal, or notice to terminate the lease, unless (1) the landlord has good cause not to renew the lease; and (2) the landlord provides the tenant with notice…." See Philadelphia Code at Tab S for what is considered "good cause" and proper notice. It is unclear whether a holdover after the end of the initial term fits the definition (i.e., a one year lease that converts to month to month). As of early May 2019, the Fair Housing Commission had not yet issued regulations.

(Updated September 23, 2019)

SELECTED LANDLORD-TENANT ISSUES

September 27, 2019

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Edited by Ethan Fogel, Dechert LLP. Contributions by Kenneth L. Baritz, Baritz & Assoc.; Rosemary Branigan, Fair Housing Commission; Michael Carroll, CLS; Michele Cohen, Philadelphia Legal Help Center; Ethan Fogel, Dechert LLP; Rachel Garland, CLS; George Gould, CLS; Phil Lord, TURN; Cateria McCabe, SeniorLaw Center; Rasheedah Phillips, CLS; and Robert Willwerth, Cohen, Willwerth & Marraccini, LLC. Reviewed by Judy Berkman, RHLS and David Denenberg, Abramson & Denenberg, P.C.

(Updated September 23, 2019)

HOUSING INSPECTION LICENSE

Subject to very limited exceptions (see below), no rent may be collected (or eviction sought) during or for any period for which no license was obtained or during which such license was suspended. Proof of a Housing Inspection License is a requirement in order to obtain a judgment for collection of rent or an order for eviction in Philadelphia Municipal Court. The Municipal Court has implemented a procedure under which any complaint that does not attach such a license for all periods for which the landlord is seeking collection of rent or eviction (as well as a copy of the Certificate of Rental Suitability – see Tab B) will be flagged by the clerk's office for judicial review. Such a review may generate a Notice of Non-Compliance that will be delivered to the judge and to the parties. After the call of the list on the hearing date, the judge will explain the significance of such notices to the parties.

No rent or eviction can be awarded for any period in which no appropriate license was issued. Phila. Code § 9-3901(4)(e), § 3-902; Goldstein v. Weiner (Shuter, J., Phila. Ct. of Common Pleas, 2011).

Philadelphia Code § 9-3901(4)(e):

Non-compliance. Any owner who fails to obtain a rental license as required by §9-3902, or to comply with § 9-3902, or to comply with §9-3903 regarding a Certificate of Rental Suitability, or whose rental license has been suspended, shall be denied the right to recover possession of the premises or to collect rent during or for the period of noncompliance or during or for the period of license suspension. In any action for eviction or collection of rent, the owner shall attach a copy of the license.

Philadelphia Code § 9-3901(4)(f):

Private Right of Action. **Any tenant of any property subject to the provisions of this Chapter shall have the right to bring an action against the owner of such property to compel compliance with this Chapter. Such private right of action neither limits nor expands the rights of private parties to pursue any legal rights and claims they may possess under a written agreement or at Common Law.**

PRACTICE POINTS:

Did the landlord have an appropriate housing inspection license at all times for which rent is sought? Call 311/ L&I to determine gaps, especially if the license filed with complaint is recent. Also check to see that appropriate license (e.g. multi-unit, if applicable) was obtained. For example, if a single-unit license was obtained and it is a multi-unit building, arguably it is not an appropriately compliant license. When applying for a rental license, a landlord is required to pay a fee and fill out a form. The information they provide on this form is not verified and therefore should not be trusted as fact, especially when there is a potential lead defense.

License information can be found at www.phila.gov/li

The license requirement applies even if a landlord lives at the same address. There are very limited exceptions from the license requirement: for multiple dwelling units (for which a single license will suffice), for "limited lodging facilities" as defined in § 14-604(13), and for

certain units occupied by a member of the owner's family (see below). See Philadelphia Code § 9-3902 (1) (b). **The "unit occupied by member of the owner's family" exception arguably applies only if that family member is not paying any rent**. See below the Code provision regarding L&I's right to obtain an Affidavit of Non-Rental:

Philadelphia Code § 9-3902(1)(b) (ii): A rental license is not required for any dwelling unit that is occupied by the owner or a member of the owner's family, provided that the Department may require the owner to submit an Affidavit of Non-Rental.

New owners must obtain a new license within ten business days after transfer of ownership. Philadelphia Code § 9-3901 (3) (b).

L&I will not (or should not) renew or issue a license if outstanding violation notices have been of record for more than 30 days, unless there is a pending appeal.

City of Philadelphia
Department of
Licenses & Inspections
P.O. Box 53310
Philadelphia, Pa. 19105

DISPLAY PROMINENTLY
If required by law

[redacted]

[redacted]

Certify compliance?: No
Child aged 6 or under?: No
Owner Occupied: No

Constructed before 1978?: No
Number of Units: 1

THIS LICENSE IS GRANTED TO THE PERSON AND LOCATION FOR THE PURPOSE STATED ABOVE. IT IS SUBJECT TO IMMEDIATE CANCELLATION BY THIS DEPARTMENT FOR VIOLATIONS OF CITY ORDINANCES AND REGULATIONS. INQUIRIES 311 (215-686-8686).

LICENSE CODE	LICENSE NO.	COMMERCIAL ACTIVITY LIC.	EXPIRATION DATE	EFFECTIVE DATE
[redacted]	[redacted]	[redacted]	3/22/2018	3/23/2017

The Philadelphia Property Maintenance Code (Section PM-102.6.4) requires an owner offering residential property for rent to provide to the tenant, at the inception of each tenancy, a Certificate of Rental Suitability Issued by the Department of Licenses and Inspections no more than sixty (60) days prior to the inception of the tenancy. Visit the Licenses, Permits & Certificates section at www.phila.gov to obtain this required Rental Suitability Certificate.

LICENSE

Interpreter services available. | خدمات الترجمة الشفهية متوفرة لدينا | มีบริการล่ามแปลภาษาพูดให้บริการ | 提供口译服务 | Services d'interprétation disponibles. | 통역이 제공됩니다 | Предоставляются услуги устного перевода. | Se brindan servicios de interpretación. | Có sẵn dịch vụ thông dịch.

The Philadelphia Code

CHAPTER 9-3900. PROPERTY LICENSES AND OWNER ACCOUNTABILITY 1145

§ 9-3901. General Provisions.

(1) *Administration.* Subcode A of Title 4 (the Philadelphia Administrative Code) shall apply to the provisions of this Chapter, and govern their administration and Chapter 9-100 shall not apply to this Chapter. 1146

(2) *Application and Issuance.* In addition to the provisions set forth in Subcode A of Title 4, the following provisions shall also apply to licenses required by this Chapter:

(a) An applicant for a new license or the renewal of a license shall complete an application provided by the Department. The application shall contain the following information, and such other information as the Department may require:

(i) The name and address of the owner of the property.

(ii) The address of the property for which application is made and the type of dwelling, if any.

(iii) The name, address and telephone number of the Managing Agent for the property, in compliance with § 9-3907. The address provided for the Managing Agent shall not be a Post Office Box.

(iv) The owner's commercial activity license number, if the owner is required to have such license.

(b) The Department shall issue or renew a license if it finds:

(i) The applicant has completed the application and paid the license fee;

(ii) The owner has a valid commercial activity license, if required;

(iii) There are no outstanding violation notices associated with the property for which the application is made that were issued under Title 4 which have been of record for more than 30 days, unless the owner has filed an appeal of the violation which is pending, and the owner has notified the Department of such appeal in a manner prescribed by the Department; and

(iv) Any other license issuance requirements set forth in Subcode A of Title 4 have been satisfied.

(3) *Fee, Term and Transfer.* In addition to the provisions set forth in Subcode A of Title 4, the following provisions shall also apply to licenses required by this Chapter:

(a) Except as otherwise provided in this Chapter, the license term shall be determined by the Department by regulation. License fees shall be as provided in § A-906 of Subcode A of Title 4.

(b) Licenses are not transferable. If the ownership of a property changes during a license term, the new owner must obtain a new license within ten business days after such transfer of ownership.

(c) If any of the information set forth in a license application or license renewal application changes during the term of a license, the owner shall provide updated information in writing to the Department within ten business days of such change.

(4) *Non-compliance, Private Right of Action and Suspension.* In addition to the provisions for license suspension set forth in Subcode A of Title 4, the following provisions shall also apply to licenses required by this Chapter:

(a) The Department is authorized to immediately suspend a license if a property is deemed unfit or unsafe or imminently dangerous.

(b) The Department is authorized to suspend a license at the request of the District Attorney with respect to any property subject to forfeiture to the Commonwealth under the provisions of 42 Pa. C.S. § 6801 or other applicable law.

(c) A license issued may be suspended by the Department for failure to comply with the requirements of this Code after a re-inspection has been made to determine compliance pursuant to Section A-503.1 of Subcode A, or for failure to pay any fine and/or cost imposed under this Chapter or Subcode A, and such suspension shall continue until there has been compliance and until any unpaid fines and costs have been paid.

(d) The Department shall provide written notice and an opportunity for a hearing prior to any suspension of a license under this Section.

(e) *Non-compliance.* Any owner who fails to obtain a rental license as required by § 9-3902, or to comply with § 9-3903 regarding a Certificate of Rental Suitability, or whose rental license has been suspended, shall be denied the right to recover possession of the premises or to collect rent during or for the period of noncompliance or during or for the period of license suspension. In any action for eviction or collection of rent, the owner shall attach a copy of the license.

(f) *Private Right of Action.* Any tenant of any property subject to the provisions of this Chapter shall have the right to bring an action against the owner of such property to compel compliance with this Chapter. Such private right of action neither limits nor expands the rights of private parties to pursue any legal rights and claims they may possess under a written agreement or at Common Law.

(5) *Definitions.* 1147 The following terms shall have the following meanings in this Chapter.

(a) *Dormitory*: A space in a building where group sleeping accommodations are provided in one room, or in a series of closely associated rooms, for persons not members of the same family group.

(b) *Dwelling unit*: A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation, including such units contained within residential condominium buildings.

(c) *Family*: A person living independently or a group of persons living as a single household unit using housekeeping facilities in common, but not to include more than three persons who are unrelated by blood, marriage, adoption, or foster-child status, or are not Life Partners.

(d) *Hotel*: Any building containing six or more guestrooms, intended or designed to be occupied, or which are rented or hired out to be occupied, for sleeping purposes by guests.

(e) *Let for occupancy*: To permit, provide or offer possession or occupancy of a dwelling, dwelling unit, rooming unit, building, premise or structure pursuant to a written or unwritten lease, agreement or license, or pursuant to a recorded or unrecorded agreement of contract for the sale of land.

(f) *Multiple-family dwelling*: A building containing more than two dwelling units.

(g) *Occupancy*: The purpose for which a building or portion thereof is used or occupied.

(h) *One-family dwelling*: A building containing one dwelling unit with not more than five lodgers or boarders in addition to the primary family.

(i) *Operator*: Any person who has charge, care, management, or control of a structure or premises, or portion of a structure or premises, which is occupied.

(j) *Owner*: Any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the Commonwealth of Pennsylvania or City and County of Philadelphia as holding title to the property; or otherwise having control of the property; including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

(k) *Person*: An individual, corporation, firm, partnership, association, organization, or any other group acting as a unit.

(l) *Premises*: A lot including all buildings and structures erected on that lot.

(m) *Rooming house*: A building containing rooming units arranged or occupied for lodging, with or without meals, and not occupied as a one-family dwelling or a two-family dwelling.

(n) *Rooming unit*: Any room or group of rooms which together form a single habitable unit occupied or intended to be occupied by an individual or family for sleeping or living, but not for cooking purposes.

(o) *Two-family dwelling*: A building containing two dwelling units with not more than five lodgers or boarders in addition to the primary family in each dwelling.

§ 9-3902. Rental Licenses.

(1) *Required.*

(a) The owner of any dwelling unit, multiple family dwelling, rooming house, dormitory, hotel, one-family dwelling, two-family dwelling, or rooming unit let for occupancy must obtain a rental license. No person shall collect rent with respect to any property that is required to be licensed pursuant to this Section unless a valid rental license has been issued for the property. For purposes of this subsection, the operator of limited lodging, not the booking agent (both terms as used in § 14-604(13)), shall be treated as the person collecting rent, whether or not the booking agent collects rent on behalf of the operator. 1148

(b) *Exceptions.*

(i) If a building contains multiple dwelling units, a single rental license may be obtained for the entire building, provided that such license shall specify each unit in such building governed by such license. 1149

(ii) A rental license is not required for any dwelling unit that is occupied by the owner or a member of the owner's family, provided that the Department may require the owner to submit an Affidavit of Non-Rental.

(iii) The holder of a housing inspection license under former Section PM-102.1 for 2015, or the owner of any dwelling or dwelling unit subject to the requirements of this Section that is part of a building governed by a housing inspection license applicable to such building in its entirety in 2015, need not obtain a rental license in order to let the property or any portion of such property for occupancy in 2015. 1150

(iv) A rental license shall not be required for limited lodging activity, as defined at § 14-604(13), so long as the activity is compliant with the Zoning Code and the primary resident is the owner of the dwelling unit. 1151

(2) *Suspension.* In addition to the provisions for license suspension and revocation set forth in Subcode A of Title 4, a rental license may also be suspended for any violations of § 6-803 ("Lead Disclosure Obligation"), subsection (3) ("Rental Protections").

§ 9-3903. Certificate of Rental Suitability; Required Tenant Documents.

(1) *Required.*

(a) The owner of any property for which a rental license is required shall, at the inception of each tenancy, provide to the tenant a Certificate of Rental Suitability that was issued by the Department no more than sixty days prior to the inception of the tenancy. The owner shall at the same time provide the tenant a copy of the owner's attestation to the suitability of the dwelling unit as received by the Department pursuant to § 9-3903(2)(b)(iii), and a copy of the "City of Philadelphia Partners for Good Housing Handbook" issued by the Department, or such other document as the Department shall require. The Certificate of Rental Suitability may be for either an individual dwelling unit, or for the entire building in which the unit is located.

(b) *Exception.* The provisions of § 9-3903(1)(a) shall not apply with respect to any rental to a tenant who is a member of the owner's family.

(2) *Application and Issuance.*

(a) Applications for a Certificate of Rental Suitability shall be made on forms provided by the Department.

(b) The Department shall issue a Certificate of Rental Suitability only after it determines that:

(i) The owner of the property has obtained all required licenses with respect to the property, including a rental license.

(ii) There are no outstanding violation notices under this Code with respect to the property, except with respect to violations for which there is a pending appeal of which the owner has notified the Department in a manner prescribed by the Department.

(iii) The owner of the premises to be leased acknowledges the obligation to provide a fit and habitable property and states that: (1) all fire protection and smoke detection equipment for the premises are present and in proper operating order in accordance with all applicable requirements of The Philadelphia Code and regulations and standards adopted thereunder; (2) the operating systems are working properly to provide a fit and habitable condition; and (3) the owner will continue to maintain all fire protection and smoke detection equipment for the premises in accordance with all applicable requirements of The Philadelphia Code and regulations and standards adopted thereunder, will continue to maintain the operating systems in proper working order, and will continue to maintain the property in a fit and habitable condition.

(c) The Certificate shall set forth the applicable rental license number for the property, the date of the last inspection conducted by the Department (where applicable) and the applicable zoning designation, and shall set out the process by which a tenant may request a further inspection of the property by the Department.

(d) Failure by the owner to correct code violations covered by subsection (2)(b)(iii) within thirty (30) days of receiving a notice of violation, or sooner as indicated by the Department, shall be considered to be noncompliance with this Section.

(3) *Fee.*

(a) The owner of the property shall not be required to pay a fee.

§ 9-3904. Vacant Lot License.

(1) *Required.*

(a) The owner of any lot on which no structure is built and no productive activity has been conducted with the owner's permission for at least the past three (3) months shall obtain a Vacant Lot License.

(b) *Exceptions.* No license is required for the following:

(i) Vacant lots contiguous to and in common ownership with a vacant lot that has a current vacant lot license. This exception shall include building lots in common ownership within an approved subdivision, provided there is a current vacant lot license for the subdivision tract.

(ii) Vacant lots contiguous to or separated by a driveway from a building where there is common ownership of the lot and the building. This exception includes a contiguous lot owned and maintained by the abutting property owner as a side yard.

(iii) A lot that is continuously maintained as a garden.

§ 9-3905. Vacant Structure License.

(1) *Required.* The owner of any structure that lacks the habitual presence of human beings who have a legal right to be on the premises, or at which substantially all lawful business or construction operations or residential occupancy has ceased within the past three (3) months, shall obtain a Vacant Structure License.

(a) *Exception.* The owner of a vacant structure for which a current and valid rental license has been issued shall not be required to obtain a Vacant Structure License.

(2) *Additional Requirements for LVCIPs.* 1152

(a) *Bonding.* In addition to the license issuance requirements set forth in § 9-3901(2), the Department shall issue or renew a vacant structure license for a Large Vacant Commercial and Industrial Property (as defined in PM-202) only if the applicant has also posted a bond or other security or a deposit in form approved by the Law Department and in an amount determined by the Department to be necessary to secure the City's potential cost of correcting Code violations or abating unsafe or imminently dangerous conditions as authorized by § PM-108.2, § PM-110.4, § PM-902.13 or any other provision of this Code. If the City does incur such costs, the City may recover such costs from the posted bond or other security or deposit, in addition to pursuing any other remedy authorized by law. The bond or other security shall provide that it will not expire and the City need not release it upon transfer of the property unless and until a subsequent owner posts a comparable bond or other security or deposit. Failure to post the required security or deposit or to maintain such security or deposit may result in the suspension or denial of any license issued to the owner under this Code, which license suspension(s) or denial(s) shall continue until the owner has posted the required security. No license shall be suspended under this provision until the owner has been provided written notice.

(b) *Owner Consent Statement.* At the time of license application, a building owner may complete a written statement on a form provided by the Department granting consent to the City for access to the building for purposes of inspection, enforcement of the City Code and protection of public safety.

(c) *City Inspections of LVCIPs.* In connection with inspections of LVCIPs conducted pursuant to Section F-108.6 of the Code or otherwise, if consent has not been provided under subsection (b) and is not otherwise provided by the owner or lawful occupant, the City shall take such steps as may be necessary to gain access to the property in order to carry out the inspection, including, when needed, obtaining an administrative warrant.

§ 9-3906. Vacant Waterfront Structure License.

(1) *Required.*

(a) The owners of vacant piers, bulkheads, wharves, docks, moored vessels, and other structures that have structural elements partly or totally below water along the shorelines of the Delaware River, Schuylkill River, or estuaries shall obtain a Vacant Waterfront Structure License. Occupied waterfront structures shall comply with the requirements of PM-314 and are not required to be licensed under this Section.

(2) *Additional Issuance Requirement.* In addition to the license application requirements set forth in § 9-3901(2), an application for a new Vacant Waterfront Structure License or the renewal of such license shall also contain the following information:

(a) A certification that the structure for which application is made has a barrier to human occupancy which is maintained at all points of access from the on-shore side of the structure.

(b) Proof that the structure is posted on all sides, in a visible and conspicuous manner, with "Danger - No Trespassing" signs.

§ 9-3907. Managing Agents.

(1) *Required Designation of Managing Agent.*

(a) The owner of any property required to obtain a rental license, Vacant Lot License, Vacant Structure License, or Vacant Waterfront Structure License, shall designate a Managing Agent for the property.

(2) *Managing Agent Requirements.*

(a) A Managing Agent must be a natural person over the age of eighteen years who resides within the City or customarily or regularly attends a business office maintained within the City, who has agreed to carry out the responsibilities set forth in subsection (3).

(b) An owner (or, in the case of a corporate owner, a principal of the corporation) who meets the qualifications of subsection (2)(a) may be designated as the Managing Agent.

(3) *Duties of a Managing Agent.* A Managing Agent shall:

(a) Receive, on behalf of the owner, any notices, orders, or summonses issued by the Department.

(b) In the case of a Managing Agent for an owner who is required to obtain a rental license, the Managing Agent shall at the inception of each tenancy (i) provide to the tenant contact information (including telephone number and address, which must be a Philadelphia address and not a post office box) for the Managing Agent, and information as to whether the Managing Agent is responsible for routine maintenance of the property and, if not, contact information for the person who is responsible for such routine maintenance; and (ii) ensure that the information required to be provided to the tenant under § 9-3903(1)(a) is in fact provided.

§ 9-3908. Notification of License Obligation. 1153

(1) *Notification of License Obligation.*

(a) Whenever the City issues a certificate to an owner indicating the zoning classification and the legality of the existing use of a property to be sold, as required by the act of November 28, 1973 (P.L. 348, No. 121), as amended (21 P.S. § 613), such certificate shall include a summary of the license and owner accountability responsibility requirements of this Chapter and the property maintenance requirements of Title 4, Subcode PM (the Philadelphia Property Maintenance Code). Such summary shall contain, at minimum, the following information:

(i) an explanation of the property license requirements, including the following statement: "No person shall collect rent with respect to any property without first obtaining a license pursuant to Chapter 9-3900 of The Philadelphia Code";

(ii) an explanation of the license requirements applicable to vacant lots, structures and waterfront structures, including the following statement: "The owner of a vacant lot, structure or waterfront structure is required to obtain a license pursuant to Chapter 9-3900 of The Philadelphia Code." 1153.1

(iii) an explanation of how an owner can obtain a copy of the Philadelphia Property Maintenance Code; and

(iv) the following statement: "Failure of the buyer to obtain a property license, if required by Chapter 9-3900 of The Philadelphia Code, within ten (10) days after the transfer of ownership shall constitute a violation of The Philadelphia Code and may result in fines and penalties."

Notes

1145 Added, Bill No. 120647 (approved January 20, 2014). Bill No. 120647 is effective July 1, 2015. See Bill No. 140894 (approved December 19, 2014). Chapter repealed and replaced by Bill No. 140892-A (approved February 11, 2015). Section 2 of Bill No. 140892-A provides that it shall take effect upon the effective date of Bill No. 120647.

1146 Amended, Bill No. 150266 (approved June 16, 2015), effective July 1, 2015.

1147 Added, Bill No. 150266 (approved June 16, 2015), effective July 1, 2015.

1148 Amended, Bill No. 150441-A (approved June 18, 2015), effective July 1, 2015.

1149 Amended, Bill No. 150266 (approved June 16, 2015), effective July 1, 2015.

1150 Added, Bill No. 150266 (approved June 16, 2015), effective July 1, 2015. Section 2 of Bill No. 150266 provides: "The holder of a housing inspection license for 2015 shall not be entitled to a refund of any fee paid in connection with such license in connection with a property, or portion of a property, with respect to which a rental license is not required in 2015 pursuant to Section 9-3902 of The Philadelphia Code as it shall go into in effect on July 1, 2015, pursuant to Bill No. 140892-A."

1151 Amended, Bill No. 150441-A (approved June 18, 2015), effective July 1, 2015. Enrolled bill numbered this as subsection (iii); renumbered by Code editor.

1152 Amended, Bill No. 150650 (approved December 23, 2015).

1153 Added, Bill No. 140939 (approved January 15, 2015). Section 2 of Bill No. 140939 provides: "This Ordinance shall take effect upon the effective date of Bill No. 140892." Bill No. 140892-A is effective July 1, 2015.

1153.1 Added and subsequent subsections renumbered, Bill No. 160249 (approved June 28, 2016).

CERTIFICATE OF RENTAL SUITABILITY & PARTNERS FOR GOOD HOUSING HANDBOOK

Subject to a very limited exception relating to rental to family members (see below), no rent may be collected (or eviction sought), for any unit requiring a license, during or for any period before which an unexpired Certificate of Rental Suitability (containing the appropriate landlord attestation) **and** Partners for Good Housing Handbook were obtained and provided to the tenant, or for any period during which the landlord is in noncompliance with the Certificate requirement. **The existence of certain Code violations (see below) constitutes noncompliance with the Certificate requirement.** The Municipal Court has implemented procedures under which any complaint that does not attach such a Certificate and attest that the Handbook was also delivered (and also attach a copy of the renter's license – see Tab A) will be flagged by the clerk for judicial review. Such a review may generate a Notice of Non-Compliance that will be delivered to the judge and to the parties. After the call of the list on the hearing date, the judge will explain the significance of such notices to the parties.

Philadelphia Code § 9-3903. Certificate of Rental Suitability; Required Tenant Documents.

(1) Required.

(a) The owner of any property for which a rental license is required shall, at the inception of each tenancy, provide to the tenant a Certificate of Rental Suitability that was issued by the Department no more than sixty days prior to the inception of the tenancy. The owner shall at the same time provide the tenant a copy of the owner's attestation to the suitability of the dwelling unit as received by the Department pursuant to § 9-3903(2)(b)(iii), and a copy of the "City of Philadelphia Partners for Good Housing Handbook" issued by the Department, or such other document as the Department shall require. The Certificate of Rental Suitability may be for either an individual dwelling unit, or for the entire building in which the unit is located.

(b) Exception. The provisions of § 9-3903(1)(a) shall not apply with respect to any rental to a tenant who is a member of the owner's family.

Philadelphia Code § 9-3901(4)(e):

Non-compliance. Any owner who fails to . . . comply with §9-3903 regarding a Certificate of Rental Suitability . . . shall be denied the right to recover possession of the premises or to collect rent during or for the period of noncompliance . . . .

Philadelphia Code § 9-3903(2)(d):

Failure by the owner to correct Code violations covered by subsection (2)(b)(iii) within thirty (30) days of receiving a notice of violation, or sooner as indicated by the Department, shall be considered to be noncompliance with this Section.

Philadelphia Code § 9-3903(2)(b)(iii):

(iii) The owner of the premises to be leased acknowledges the obligation to provide a fit and habitable property and states that: (1) all fire protection and smoke detection equipment for the premises are present and in proper operating order in accordance with all applicable requirements of The Philadelphia Code and regulations and standards adopted thereunder; (2) the operating systems are working properly to provide a fit and habitable condition; and (3) the owner will continue to maintain all fire protection and smoke detection equipment for the premises in accordance with all applicable requirements of The Philadelphia Code and regulations and standards adopted thereunder, will continue to maintain the operating systems in proper working order, and will continue to maintain the property in a fit and habitable condition.

Note: The Code requires that no rent be due and no eviction occur if landlord fails to timely deliver to tenant a signed Certificate issued no more than 60 days prior to inception of lease **and** the "City of Philadelphia Partners for Good Housing" Handbook . This means that a late delivery of the Certificate and Handbook will not result in an ability to collect rent for prior periods or the ability to evict on the basis of nonpayment during such prior period but would allow for collecting rent moving forward.

Effective dates of Certificate/Handbook requirement: This ordinance requirement was reinstated and became effective for all new tenancies commenced after October 12, 2011. See attached Consent Order regarding this reinstatement. Also, leases entered into between November, 2006 (effective date of enactment of ordinance is 180 days after 5/9/2006) and 4/17/08 (date of its suspension) are subject to the requirement.

See attached January 8, 2015 Order of Court of Common Pleas in Cobblestone Properties v. Tanisha Carter, (DeLeon, J).

PRACTICE POINTS:

A. **Compliance.** Did the landlord provide the tenant with a "City of Philadelphia Partners for Good Housing Handbook and a Certificate of Rental Suitability, signed by the landlord, that was issued less than 60 days before the tenant moved in?

· No rent may be collected or possession recovered during or for any period prior to the issuance and delivery of the Certificate of Rental Suitability and Handbook to a tenant renting a vacant unit. However, rent may collected for any period after delivery of the Certificate and Handbook.

If eviction is sought, is there any period for which rent is owed, taking into account that no rent is due if both the Certificate and Handbook were not delivered prior to the date for which rent is sought?

· This Certificate requirement does not apply to lease renewals for the same tenant at the same unit. It only applies to new tenancies.

· If a "Conditional" Certificate is issued for a multi-unit building any outstanding violations must not affect the subject matter unit and the landlord must certify this in the Certificate.

Philadelphia Code § 9-3901(4)(f) creates a private right of action to compel compliance with this Chapter. See ordinance text set out in Topic 2, Licenses, above.

Code Section 9-3903(2)(d):provides that failure to correct Code violations covered by subsection 2(b)(iii) of Section 3903 (fire protection, smoke detection, operating systems, and habitable conditions) constitutes noncompliance with the Certificate provision.

The Code requires that the Certificate and Handbook be provided to the Tenant at the inception of any new residential lease, that it be valid (unexpired) and signed by the landlord. The Code also requires delivery of the Department of Licenses and Inspections' handbook entitled "Partners for Good Housing." Certificates are only valid for sixty (60) days after being issued.

B. **Mechanics of obtaining the Certificate and Handbook**. Landlords may obtain the required Certificate of Rental Suitability from the Department of Licenses and Inspections' (L&I) website at no cost, provided there are no outstanding Code violations flagged for the subject leased premises, at:
https://secure.phila.gov/CRS-Onlinev2/

The Landlord generating the Certificate online must certify that the following is true:

"The owner of the premises to be leased acknowledges the obligation to provide a fit and habitable property and states that all fire protection and smoke detection equipment for the premises is present and in proper operating order in accordance with all applicable requirements of the Philadelphia Code and regulations and standards adopted there under, and that the operating systems are in a fit and habitable condition, and the owner will continue to maintain all fire protection and smoke detection equipment for the premises in accordance with all applicable requirements of the Philadelphia Code and regulations and standards adopted there under, and the operating systems and the property in a fit and habitable condition."

Certificates are returned in the form of a Adobe Portable Document Format (PDF), which is available immediately for download. During days when the online system is busy, it may take up to thirty (30) seconds for the Certificate to be generated. A copy of the PDF is also forwarded to the email address provided by the Landlord during the process.

As noted previously, Certificates of Rental Suitability are only valid for sixty (60) days after issuance from the L&I website, after which time they expire and are no longer valid. The Certificate should be delivered to the Tenant while valid.

Note to Practitioners: a Landlord may provide documents at the inception of a new eviction matter that will include a copy of the previously obtained Certificate of Rental Suitability. Check to see whether or not that Certificate has been properly signed and delivered to the Tenant while valid. In some instances, practitioners may find that the Landlord will not have recognized the importance of the Certificate, will have left it unsigned and undelivered, and the Certificate will have expired without ever having been delivered to the Tenant. Be certain that the Tenant has been provided a valid, i.e. non-expired, Certificate of Rental Suitability with Handbook. **Delivery of a late Certificate will not reinstate a right to collect rent accrued prior to delivery. Nor will it create a right to evict for such prior periods.**

The Partners for Good Housing Handbook is available online from the Department, and can be downloaded from the following URL:

http://www.phila.gov/li/Documents/partnersinhousing.pdf

C. **Conditional Certificate of Rental Suitability**. If Code violations exist for the leased premises, Landlords may receive a conditional Certificate of Rental Suitability from the L&I online system, in which case, the Landlord must certify that the outstanding violations do not affect the subject leased premises.

More likely, if Code violations exist for the subject leased premises, the Landlord will be prevented from obtaining a Certificate of Rental Suitability. In this case, the Landlord is well advised to make every conceivable effort to correct outstanding Code violations as soon as is practicable, and coordinate with the L&I Inspector working on the Code violation matter in order to have outstanding Code violations marked as "COMPLIED," in order to obtain their Certificate of Rental Suitability.

Landlords would be well advised to add the following or similar language to a new lease:

(initial) _____: By initialing here, Tenant(s) hereby agrees that the Landlord has provided to Tenant(s) a copy of the City of Philadelphia Department of Licenses and Inspections' Certificate of Rental Suitability No. _____, dated [MM/DD/YYYY], for the rental premises located at (address), as well as having been provided to Tenant a copy of the Department of Licenses and Inspections' handbook entitled "Partners for Good Housing."

Some Landlords take an extra step of having two (2) copies of each of the Certificate and Handbook prepared at the time of a lease signing. When providing one copy of each document to the Tenant, the Tenant is asked to sign and return the alternate copy, which may, in the future if an eviction situation arises, serve as proof that the documents were provided to the Tenant.

D. **Providing the Certificate and Handbook in connection with Litigation**. In cases where the Landlord client has failed to provide the Tenant with these documents at the time of inception of a lease, and the Landlord wishes to file a Landlord-Tenant Complaint, it is good practice to work with the Landlord to obtain the Certificate, have the Landlord sign it, and enclose the completed Certificate of Rental Suitability and L&I Handbook as part of preparing and serving the Notice to Quit for the leased premises to the Tenant. This Notice to Quit with Certificate and Handbook should be submitted as an exhibit in the Municipal Court's CLAIMS system when filing the new matter. The Landlord may always deliver the Certificate and Handbook to the Tenant via hand delivery, as well. **However, such a late delivery of the Certificate and Handbook will not result in an ability to collect rent for prior periods or the ability to evict on the basis of nonpayment during such prior periods.**

The practitioner who has been hired by a pro-se Landlord who has already filed a Landlord-Tenant Complaint, and where Tenant has already retained counsel, must take care not to violate Rule 4.2 of Professional Responsibility, which prohibits communication between the practitioner and the Tenant.

There remains an open question as to whether or not the Landlord's attorney providing the Certificate and Handbook to the Tenant's attorney during the course of litigation constitutes

delivery of the Certificate and Handbook to the Tenant. The Court is unwilling, in some cases, to utilize dates upon which Certificates and Handbooks were provided to Tenant's counsel, but rather inquires as to when the Certificates and Handbook were actually delivered to Tenant.

City of Philadelphia

Certificate of Rental Suitability

CITY OF PHILADELPHIA
DEPARTMENT OF
LICENSES & INSPECTIONS
1401 JOHN F. KENNEDY BLVD.
PHILADELPHIA, PA 19102-1867

Date Issued: 11/17/2015 **Expiration Date:** 1/16/2016 **Certificate Number:** [redacted]

Address: [redacted]

Rental License Number: [redacted] **Number of Licensed Units (Zoning):** 2

In accordance with Philadelphia Code Section PM-102.6.4, at the inception of each tenancy, an owner shall provide to the tenant a Certificate of Rental Suitability issued by the Department of Licenses and Inspections no more than sixty (60) days prior to the inception of the tenancy.

A search of the Department of Licenses & Inspections' data records indicates that on the date issued there are no available notices of uncorrected code violations on file for the property.

Owner's Affidavit:

The owner of the premises to be leased acknowledges the obligation to provide a fit and habitable property and states that all fire protection and smoke detection equipment for the premises is present and in proper operating order in accordance with all applicable requirements of the Philadelphia Code and regulations and standards adopted there under, and that the operating systems are in a fit and habitable condition, and the owner will continue to maintain all fire protection and smoke detection equipment for the premises in accordance with all applicable requirements of the Philadelphia Code and regulations and standards adopted there under, and the operating systems and the property in a fit and habitable condition. In addition, I attest that I have provided the tenant with a copy of the City of Philadelphia's "Partners for Good Housing" brochure in one of the published languages requested by the tenant.

Rental Unit Number: 1 ST FLOOR

Signature: [redacted] **Date:** 11/18/15

Name: [redacted]
(please print)

NOTICE TO TENANT:

This Certificate is valid only if signed by the owner and a copy of "Partners for Good Housing" is attached. To report code violations please contact the Department of Licenses & Inspections at 311 or 215-686-8686 if outside the City. All complaints are confidential.

Received today on 11/18/15

[redacted]

COBBLESTONE PROPERTIES **5952-54 Germantown Avenue** **Philadelphia, PA 19144** **Plaintiff,** **v.** **TANISHA CARTER** **17 West Allens Lane #3** **Philadelphia, PA 19144** **Defendant**	:	**COURT OF COMMON PLEAS** **PHILADELPHIA COUNTY** **Civil Division** **Case ID No.: 140802828**

DOCKETED
JAN 08 2015
A. LEBRON
JUDICIAL RECORDS

ORDER

AND NOW, this 5th day of Jan, 2015, after hearing a nonjury trial in the above-captioned action, and following review of briefs submitted by the parties, the court returns the following decision pursuant to Pa.R.Civ.P. 1038:

Find in favor of Defendant, Tanisha Carter, and against Plaintiff, Cobblestone Properties. This finding is based upon the court's determination that Plaintiff was in violation of the relevant provisions of the Philadelphia Property Maintenance Code, PM 102.1 and 102.6.4 as follows: 1) operated a 19 unit rental property, and collected rent for the aforementioned rental property, without a valid housing license from March 1, 2014 to July 17, 2014; and, 2) failed to obtain and provide Defendant with a Certificate of Rental Suitability and related documentation at the inception of the tenancy on April 1, 2012.

Possession of the premises was relinquished by Defendant to Plaintiff on August 1, 2014.

It is also **ORDERED** that the judgment entered in the Philadelphia Municipal Court at LT-14-07-23-5786 is hereby **AFFIRMED.**

All costs incurred by Defendant for filing her Answer to Plaintiff's Complaint, as waived by Defendant's IFP petition filed in the instant action, are to be paid by Plaintiff to the Prothonotary's Office.

BY THE COURT:

DeLeon, J.

Cobblestone Properties -ORDRF

140802828000017

COPIES SENT PURSUANT TO Pa.R.C.P. 236(b) A. LEBRON 01/08/2015

LEAD PAINT

Lead Paint Ordinance compliance can be raised as a defense in Landlord/Tenant Cases. Complaints seeking affirmative money recoveries under the Lead Paint Ordinance must be filed in Small Claims Court (subject to jurisdictional limits) rather than as Landlord Tenant cases. If there is a Landlord Tenant case and also a separate Small Claims Court case that involves the same premises, they can be consolidated for trial. Complaints seeking recoveries in excess of the Municipal Court Small Claims jurisdictional limit ($12,000) must be filed in the Court of Common Pleas.

Note: Practitioners should be mindful of the application of the doctrine of res judicata and the potential effect on future litigation under the Lead Ordinance if a tenant fails to raise a Lead Ordinance defense or claim in a landlord-tenant case. Additionally, practitioners should consider whether or not a former tenant as opposed to current tenant will be entitled to bring an action or assert a defense under the Lead Ordinance.

a. **Violation Orders –** No eviction; no collection of rent if landlord failed to comply with Health Department lead-paint violation order within 30 days.

b. **Lead Safe Certifications** – No eviction; no collection of rent; damages; refund if landlord failed to provide Certification in a building built before March 1978, if child 6 or under is living (or will live) in property during lease term. The landlord must provide a copy to the tenant and the Health Department. The landlord must also advise the tenant, in writing, to notify the landlord of any peelings, flaking or chipping paint and the landlord should inspect and correct any defective condition.

c. **Disclosures/Statements** – Lead warning statements are required for all leases in Philadelphia, regardless of the date of construction. Phila. Health Code § 6-805(2). Lead disclosure required (can be in lease) for all pre-1978 buildings; if not given, tenant can conduct inspection and terminate. Landlord must provide notice of the right to obtain a lead inspection at tenant's expense. For pre-1978 housing, tenant has a limited right to rescind the lease upon a certification that there is a lead paint hazard. See Phila. Health Code § 6-804 for time frames for providing notice and electing to rescind. Also,see remedies mentioned above.

For any property built before 1978: Did the landlord disclose (in lease or otherwise) the absence or presence of lead-based paint or provide a Health Department form? Did the landlord provide a lead hazard information pamphlet prepared by the Health Department? If not, the tenant is entitled to damages in the amount of double the reasonable cost of a residential lead inspection and attorney's fees and costs. Phila. Health Code §§ 803, 809.

d. **Tenant Protection Against Retaliation:**
Is there any outstanding Health Department lead-based paint hazard violation? Court should have access to the information. If so, the owner is prohibited from:
(1) Evicting or attempting to evict the tenant;
(2) Coercing the tenant into abandoning the unit;
(3) Changing or attempting to change the lease term;
(4) Re-renting the unit until such time as the lead-based paint hazard violation has been corrected;

(5) Collecting or attempting to collect further rent if the owner has failed to comply with the order in 30 days as determined by the Health Department.

e. **Additional Remedies for noncompliance with lead safe certification.**
If landlord does not comply, the tenant may bring an action to provide the certification, damages, exemplary damages of up to $2,000 and attorney's fees and costs. Landlord is also denied the right to collect rent (and tenant is entitled to refund of rent paid) during or for the period of noncompliance. Also subject to fine of up to $ 2,000 per offense and/or imprisonment of up to 90 days. Each day of noncompliance is a separate offense. Chapter 6, §§ 803(3), 802-12, 811.

f. **Additional Penalties for noncompliance with Lead Ordinance.**
Municipal Court (or Common Pleas Court) can award actual damages and to not less than triple the monthly rent for each violation plus attorney's fees and costs. Court can also impose a fine of $300 and/or imprisonment of 90 days and a continuing violation constitutes a separate violation for each day. Phila. Health Code §§ 403(5), (5)(b)(.1) and (5)(b)(.2).

The following is a more detailed description of certain Federal and Philadelphia laws relating to lead:

Lead-Based Paint Disclosure, Anti-Retaliation and Lead Safe Rental Certification

I. Federal Law

A. Introduction

On October 28, 1992, Congress enacted the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. §§ 4851-4856) (the "Act") to, inter alia, address the threat posed to small children by the presence of lead-based paint in residential housing. It is important that persons involved in landlord/tenant issues become familiar with the disclosure requirements contained in the Act and their impact on the leasing of certain residential property. Although the Act applies both to the sale and lease of residential housing, for purposes of these materials, this discussion is confined to the obligations imposed on landlords by the Act.

B. Scope of the Act

The disclosure provisions of the Act are applicable only to "target housing," defined as "any housing constructed prior to 1978, except housing for the elderly or persons with disabilities ... [unless a child who is less than six will reside therein] or any 0-bedroorn dwelling...." 42 U.S.C. § 485lb(27). The HUD Secretary has the discretion to designate a date earlier than 1978 for jurisdictions that banned the use of lead-based paint prior to that year. Absent this special designation, the Act applies to all housing built before 1978.

C. Disclosure Required by the Act

The disclosure provisions of the Act are set forth in 42 U.S.C. § 4852d. Under this section, a lease of housing built before 1978 is not effective until the landlord:

1. Provides a prospective tenant with an EPA approved pamphlet on lead-based paint.

2. Discloses to the prospective tenant any known lead-based paint or lead based paint hazards present in the housing, including any lead hazard evaluation report available to the landlord. The landlord shall also disclose any additional information concerning the lead-based paint and/or lead-based paint hazards, such as the location of the lead-based paint and/or lead based paint hazards, and the condition of the painted surfaces. 24 C.F.R. § 35.88(3).

Additionally, under the Act and regulations published by EPA and HUD, a standard warning in the language of the lease (e.g. English, Spanish) is required to be attached to or be part of all leases. The requirements of the Act and regulations cover both the oral and written leases.

The Act also applies to leasing agents. Thus, where a landlord employs an agent to lease residential housing, the Act imposes an obligation on the agent to ensure compliance with the above disclosure requirements. 42 U.S.C. §§ 4852d(a)(4).

D. Penalties for Violation

The Act imposes civil monetary penalties in the amount of $10,000 per violation and criminal penalties including fines and imprisonment. Also, the HUD Secretary is authorized to seek an injunction of any action in violation of the Act. Finally, the Act authorizes tenants to sue for harm caused by a violation of the Act and to recover treble damages and costs, including reasonable attorney fees and expert witness fees if the tenant prevails.

However, in *Cudjoe v. Department of Veteran Affairs*, 426 F. 3d 241 (3rd Cir. 2005), the Third Circuit held that Department of Veteran Affairs did not waive sovereign immunity for suits for money damages filed by tenants under the Act. The Court, however noted that the plaintiff, a lead poisoned child may have standing to sue under the Act even though other courts had held that non-lessee minor children could not sue under the Act because they were not the purchasers or lessees. *See*, *Mason v. Morrisette*, 403 F. 3d 28 (1st Cir. 2005), *L.B. III v. Housing Authority of Louisville*, 345 F. Supp 2d 725, 729 (W.D. Ky. 2004).

E. Effective Date of Act and Implementing Regulations

In Section 4852d of the Act, Congress expressly required HUD and EPA to promulgate implementing regulations no later than October 28, 1994 with such regulations to take effect one year later on October 28, 1995. In fact, however, proposed regulations were not published in the Federal Register until November 2, 1994, over one year beyond the deadline established by Congress for final regulations. Finally, on March 6, 1996, almost a year and a half behind the Congressionally mandated schedule, final implementing regulations were published by HUD and EPA.

Notwithstanding this delay, the final regulations adopted a phased-in approach to implementation. For owners and landlords of structures containing more than four residential

dwellings, the disclosure requirements became applicable on September 6, 1996. For owners and landlords of structures containing one to four residential dwellings, the requirements became applicable on December 6, 1996. Accordingly in *Sweet v. Sheahan*, 235 F.3d 80, 2000 U.S. App. LEXIS 31843 (2d Cir. N.Y. 2000), the court held that that the clear language of the act did not impose disclosure obligations on private parties before the promulgation of the regulations. The court rejected the district court's holding that HUD's delayed effective date in the regulations should not apply. *Id.* Similarly, the court in *Sipes v. Slaughter*, 89 F.Supp. 2d 1199 (D. Kansas 2000) rejected the statutory deadline of October 28, 1994 and applied the effective date as established by HUD. EPA and HUD have also published "Interpretive Guidance" on the disclosure requirements. . *But see*, *National Multi-Housing Council* v. EPA, 194 F.3d 174 (D.C. Cir. 1999). Provision in Interpretative Guidance relating to lead dust hazards (from mini-blinds) was not ripe for judicial review because EPA had not published final 403 hazard definition rules and the interpretative guidance relating to this part was not enforceable.

II. Local Legislation

Under the federal Act, state and local governments may enact additional or more stringent lead paint disclosure requirements. Therefore, one should check the local jurisdiction for any legislation on the subject.

Such an ordinance has been enacted in the City of Philadelphia. Although the Philadelphia ordinance largely tracks the federal legislation, it does contain several key differences.

First, the lead paint warning statement required by the Philadelphia ordinance contains slightly different wording than the warning statement contained in the federal regulations. Philadelphia Health Code §§ 6-805(2). In addition, if the landlord does not have the results of a comprehensive lead paint inspection and risk assessment, the landlord must provide a separate form statement indicating the likelihood that the property contains lead-based paint. Philadelphia Health Code §§ 6-803(l)(b). In addition the Philadelphia Ordinance requires that in the warning statement to tenants that for all residential housing that the property may have a lead water service or lead plumbing components.

Another important difference between the local and federal law is that the Philadelphia ordinance confers additional rights on tenants not found in the federal Act. Chiefly, this consists of the provision to tenants of a 10-day recession period in order to do an independent lead inspection and should the lead inspection reveal lead hazards paint hazards in an property built before 1978, or in any residential housing a lead service or lead plumbing components the tenant may terminate the lease within 2 business days from receipt of the inspection report.

The landlord must provide the tenant at the time of entering into a lease a current pamphlet prepared by the City Water Department that provides the best practices for reducing the risk of lead exposure from lead service lines and lead plumbing components. The landlord is also required to disclose the existence of any known lead service line.

In the Philadelphia ordinance the disclosure by the landlord of lead paint hazards, lead service lines or lead plumbing components does not relieve the landlord of liability for damages under any applicable law or legal theory. Section 6-810(1)

The City of Philadelphia has also enacted an "anti-retaliation" ordinance to address the problem of eviction actions brought by landlords after they have been cited for lead-based paint hazard violations. Philadelphia Health Code §§ 6-403(5). The ordinance provides that if the City Health Department issues an order requiring the landlord to eliminate lead-based paint hazard violations, the landlord cannot:

1. Evict or attempt to evict the tenant;

2. Coerce the tenant into leaving the property;

3. Change the lease terms;

4. Re-rent the unit to another tenant until the lead-based paint hazard has been eliminated; or

5. Collect rent if the owner fails to substantially comply with the order within thirty days.

The ordinance also provides for penalties and gives the tenant the right to enforce the ordinance, obtain damages and attorney fees.

In December, 2011, the Mayor signed into law the Lead Safe Certification Bill. The law amended Chapter 6-800 of The Philadelphia Code, entitled "Lead Paint Disclosure," requiring a landlord, prior to leasing a residential unit, to have a certified lead inspector issue a certification that they have inspected the unit, there is no deteriorated paint and that they have done dust wipes in accordance with EPA standards that show lead dust levels are below federal levels. The ordinance applies to properties built before 1978, but does not apply to educational housing, public housing or Section 8 voucher housing and dwelling units in which children six and under do not and will not reside in the dwelling. The certification must be provided to both the tenant and the City Health Department. If the landlord fails to provide a certification, the tenant has a cause of action to obtain the certification, damages and attorney's fees. During the period of time the landlord did not have a certification, the landlord is denied the right to collect rent. In addition, Chapter 6-809(3)(d) provides that if a landlord fails to provide the lead-safe certification in Section 6-803 the tenant can bring a an "action in an court of competent jurisdiction and shall be entitled to…refund of rent for any period in which the lessee occupies the property without a certification having been provided."

There can no waiver of the provisions of the ordinance. Section 6-813. The law went into effect on December 21, 2012. The provisions relating to lead service lines and lead plumbing components went onto effect March 30, 2017

The Philadelphia Code

CHAPTER 6-800. LEAD PAINT DISCLOSURE AND CERTIFICATION 114

§ 6-801. The Council makes the following findings.

(1) Forty-five percent (45%) of the Philadelphia children who were screened for lead poisoning in 1993 had levels of concern as defined by the Centers for Disease Control. This amounts to 22,302 children.

(2) The Centers for Disease Control has determined that the presence of lead in the bloodstream at levels as low as ten (10) micrograms per deciliter indicate a level of concern requiring minimally that such children be monitored and tested every three to four months.

(3) The Philadelphia Department of Health has estimated that sixty-five thousand (65,000) Philadelphia children under the age of six (6) years are poisoned by lead and most of those poisoned are undiagnosed and untreated.

(4) Environmental exposure to even low levels of lead increases a child's risk of developing permanent learning disabilities, reduced concentration and attentiveness, and behavior problems which may persist and adversely affect the child's chances for success in school and life.

Exposure to higher levels of lead can cause an intellectual disability, seizures and death. 115

(5) The most significant remaining source of environmental lead is lead-based paint in housing built prior to 1978 and house dust and soil contaminated by lead deposits and lead-based paint. The ingestion of household dust containing deteriorating lead or abraded lead-based paint is the most common cause of lead poisoning in children.

(6) Since there is no effective medical treatment for the great majority of lead-poisoned children, and the damage from lead can be irreversible, prevention efforts such as information dissemination and disclosure requirements are vitally necessary and critical tools for the eradication of lead poisoning.

(7) The United States Congress has enacted the "Residential Lead-Based Paint Hazard Reduction Act of 1992", with the purpose of commencing the elimination of lead-based paint hazards and creating a national approach to the presence of lead-based paint, and proposes that the partnership between the Federal and local governments envisioned by the Congress will be enhanced and the dangers of lead-based paint reduced, by the enactment of regulations within The Philadelphia Code, codifying, implementing, supplementing and enforcing the disclosure requirements of the federal law.

(8) The purpose of this legislation is to provide an educational tool which will assist the Department of Health in identifying, reducing and combating lead poisoning in Philadelphia children.

(9) The task of eliminating lead from those properties that house children will be a costly one and will require a public/private collaboration and partnership in order to preserve and to protect Philadelphia's affordable housing stock.

§ 6-802. Definitions. 116

In this Chapter, the following definitions shall apply:

(1) *Certified Lead Inspector.* A person who is certified by the Philadelphia Department of Public Health as qualified by training and experience to conduct comprehensive lead inspections and risk assessments, or by the Commonwealth of Pennsylvania as an "inspector-risk assessor" pursuant to the Pennsylvania Department of Labor and Industry's Lead-Based Paint Occupation Accreditation and Certification Regulations; or is certified by the EPA and trained as a lead dust sampling technician.

(2) *Comprehensive Lead Inspection.* A surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

(3) *Deteriorated Paint.* Paint or other coating that is cracking, flaking, chipping, peeling, chalking, not intact or otherwise separating from the substrate of a building component, except that pinholes and hairline fractures attributable to the settling of a building shall not be considered deteriorated coating.

(4) *Lead-based Paint.* Paint or other surface coatings that contain lead in excess of limits established by Federal Law or Regulation.

(5) *Lead-based Hazard.* Any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces or impact surfaces, or lead service lines or plumbing components that would result in adverse human health effects as established by the appropriate Federal agency or the Philadelphia Department of Public Health. 116.1

(6) *Lead-Contaminated Dust.* Surface dust that contains a mass per area concentration of lead equal to or exceeding 40 micrograms per square foot on floors or 250 micrograms per square foot on interior windowsills based on a wipe sample, or such other lesser level of lead either: (a) used to define a "dust-lead hazard" under 40 C.F.R. § 745.65 or (b) determined by the Board of Health by regulation to be dangerous.

(7) *Lead-Contaminated Soil.* Soil that contains lead in excess of 400 ppm or such other lesser level of lead either: (a) used to define a "soil-lead hazard" in a play area under 40 C.F.R. § 745.65 or (b) determined by the Board of Health by regulation to be dangerous.

(8) *Lead Free.* The circumstance in which the interior and exterior surfaces of a property do not contain any lead-based paint and the property contains no lead-contaminated soil or lead-contaminated dust.

(9) *Lead Safe.* The circumstance in which a property is free of a condition that causes or may cause exposure to lead from lead-contaminated dust, lead-contaminated soil, deteriorated lead-based paint, deteriorated presumed lead-based paint, or other similar threat of lead exposure due to the condition of the property itself.

(10) *Lead Plumbing Component.* Any pipe, pipefitting, plumbing fitting, solder, flux or fixture through which drinking water may pass that is not lead-free within the applicable standard set pursuant to the Safe Drinking Water Act, 42 U.S.C. § 300g-6. 116.2

(11) *Lead Service Line.* A service line made of lead which connects the water main to the building inlet and any lead fitting which is connected to such lead service line. 116.3

(12) *Presumed Lead-Based Paint.* Surface coating affixed to a surface that was constructed prior to March 1978 that a landlord is unable to demonstrate contains no lead. 116.4

(13) *Risk Assessment.* An on-site investigation to determine and report the existence, nature, severity and location of lead-based paint hazards in residential dwellings, including: 116.5

(a) information gathering regarding the age and history of the housing and occupancy by children under age 6;

(b) visual inspection;

(c) limited wipe sampling or other environmental sampling;

(d) other activity as may be appropriate; and

(e) provision of a report explaining the results of the investigation.

(14) *Targeted Housing.* For purposes of the provisions of this Chapter relating to lease agreements, residential property built before March 1978, but excluding: (a) dwelling units developed by or for an educational institution for the exclusive residential use and occupancy by that institution's students; (b) buildings containing dwelling units all of which are leased only to students enrolled in a college or university degree program; (c) dwelling units owned or subsidized by the Philadelphia Housing Authority or its subsidiaries, or privately owned but currently leased under the Housing Choice Voucher Program and therefore subject to federal requirements administered by HUD; and (d) dwelling units in which children aged six (6) and under do not and will not reside during the lease term. 116.6

(15) *Valid Certification.* For a certification that a property is lead safe, a certification based on an inspection no more than 24 months prior to the date a lease is entered into or the date of an application for a Family Child Day Care facility license. For a certification that a property is lead free, a certification based on an inspection performed at any time prior to the date a lease is entered into or any time prior to the date of an application for a Family Child Day Care facility license. 116.7

§ 6-803. Lead Disclosure Obligation. 117

(1) Before any buyer is obligated under any contract to purchase residential housing constructed prior to 1978, the seller shall disclose the absence or presence of lead-based paint or lead-based paint hazards. This disclosure shall take one of the two following forms:

(a) the production of the results of a comprehensive lead inspection and risk assessment by a certified lead inspector; or

(b) provision of a multi-lingual form provided by the Philadelphia Department of Public Health containing the following statement:

"The Philadelphia Department of Public Health has determined that most housing built in Philadelphia before 1978 contains dangerous lead paint. This property was built before 1978. Therefore, without a comprehensive lead inspection, conducted by a certified lead inspector, showing there is no lead paint or there are no lead-based paint hazards, you can assume that this property likely contains lead-based paint."

(2) Before any buyer is obligated under any contract to purchase residential housing constructed prior to 1978, the seller is also required to provide the buyer with a lead hazard information pamphlet as prescribed or approved by the Philadelphia Department of Public Health.

(3) *Rental Protections.*

(a) No lessor shall enter into a lease agreement with a lessee, other than a renewal lease, to rent any Targeted Housing, or a unit in such Targeted Housing, unless (.1) he or she provides the lessee with a valid certification prepared by a certified lead inspector stating that the property is either lead free or lead safe; and (.2) the lessee acknowledges receipt of the certification by signing a copy.

(a.1) No lessor shall enter into a lease agreement with a lessee to rent any residential housing unless (.1) the lessor provides the lessee with a current pamphlet produced by the City that describes best practices for reducing the risk of lead exposure from lead service lines and lead plumbing components; and (.2) the lessor discloses to the lessee the existence of any known lead service line. 117.1

(b) A valid certification that a property is lead safe under this section shall state that the certified lead inspector determined that the property or unit was free of any Deteriorated Paint, and that interior dust samples were collected in compliance with EPA regulations, including 40 C.F.R. § 745.227 and any amendments or successor regulations, were tested and were found not to contain Lead-Contaminated Dust as defined in this Chapter. Additional statements or test results are not required. Any corrective action taken in order to qualify the property for such certification shall be performed in compliance with applicable laws.

(c) Upon entering into a lease agreement for Targeted Housing, the lessor shall (.1) provide a copy of the signed certification to the Department of Public Health; and (.2) provide to the tenant, in addition to any written notifications required by applicable laws, a written notification advising the tenant to perform a visual inspection of all painted surfaces periodically during the term of the lease, and advising that the tenant may inform the lessor of any cracked, flaking, chipping, peeling, or otherwise deteriorated paint surfaces. Upon receipt of any such tenant notification the lessor shall promptly inspect and correct any defective conditions as required by section PM-305.3 of the Philadelphia Property Maintenance Code and in compliance with other applicable laws. 117.2

(d) Upon a City inspection for lead safety at any property rented by a lessor for which a lessor has not provided the lessee the certification required in this section, the lessor shall be liable to the City for the costs of such inspection.

§ 6-804. Right to Conduct Independent Inspection or Risk Assessment and Right to Rescind.

(1) Every contract for the purchase of residential housing constructed prior to 1978, shall provide, in writing, that the buyer has a ten (10) day period (unless the parties agree to a different period of time), during which time the buyer may, at the buyer's expense, obtain a comprehensive lead inspection or risk assessment from a certified lead inspector. Should the inspection reveal lead-based paint or lead-based paint hazards on the premises, the buyer may terminate the contract of purchase within five (5) days of the receipt of the inspection report by the buyer, with all deposit moneys paid on account to be refunded to the buyer (unless the parties agree in writing to a different disposition of such deposit moneys). Failure of the buyer to obtain such inspection within the permitted ten (10) days and/or failure to terminate the contract upon a finding of lead-based paint or lead-based paint hazard within the five (5) day period will constitute a waiver of the right to conduct an independent inspection and the contract will remain in full force and effect.

(2) Every lease, whether oral or written, shall provide in writing, that the lessee has a ten (10) day period during which time the lessee may, at the lessee's expense, obtain a comprehensive lead inspection and risk assessment from a certified lead inspector. In the case of residential housing constructed prior to 1978, should the inspection reveal lead-based paint or lead-based paint hazards on the premises; or in the case of any residential housing, should the inspection reveal a lead service line or lead plumbing components, the lessee may terminate the lease within two business days of the receipt of the inspection report, with all moneys paid on account to be refunded to the lessee. Failure of the lessee to obtain such inspection within the permitted ten days and/or failure to terminate the lease upon a finding of lead-based paint or lead-based paint hazards or a lead service line or lead plumbing components within the two-day period will constitute a waiver of the right to conduct an independent inspection and the lease will remain in full force and effect. 117.3

(3) Upon renewal of an existing lease, any lessee shall have the right to proceed with an inspection or risk assessment as provided by Section 6-804(2) except that such renewing lessee shall not be required to terminate the lease within two (2) days of performance of a comprehensive lead inspection or a risk assessment, but shall be afforded a ten (10) day period to notify lessor in writing of lessee's intention to terminate the lease, with actual termination and vacation of the premises to occur at a time not to exceed ninety (90) days after receipt of the comprehensive lead inspection or risk assessment, during which period all lease obligations shall remain in full force and effect. 118

§ 6-805. Lead Warning Statement.

(1) Every contract for sale of residential housing constructed prior to 1978 shall contain the following lead warning statement in large type:

> "Every purchaser of any interest in residential property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavior problems and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to disclose to the buyer the presence or absence of any lead-based paint and/or lead-based paint hazards. A comprehensive lead inspection or a risk assessment for possible lead-based paint and/or lead-based paint hazards is recommended prior to purchase or lease."

(2) Rental agreements for residential housing shall contain the following lead warning statements, as applicable, in large type: 118.1

For residential housing constructed prior to 1978:

> "Every lessee of any interest in residential property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavior problems and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The lessor of any interest in residential real property is required to disclose to the lessee the presence or absence of any lead-based paint and/or lead-based paint hazards. In residential housing constructed prior to 1978, a comprehensive lead inspection or risk assessment for possible lead-based paint and/or lead-based paint hazards is recommended prior to lease."

For all residential housing (including housing constructed prior to 1978):

> "Every lessee of any interest in residential property is notified that any residential dwelling, regardless of construction date, may have a lead water service line or lead plumbing components. Regardless of the construction date, the Lessor of any interest in residential real property is required to disclose to the lessee the known existence of a lead water service line. You are advised to read the pamphlet containing information on lead water service lines and lead plumbing components provided at the time of entering into the lease."

§ 6-806. Acknowledgment by Buyer. 119

(1) The buyer of any residential housing constructed prior to 1978, shall confirm in writing on a certification of disclosure form provided by the Philadelphia Department of Public Health, that he or she:

(a) has received a written disclosure of lead-based paint and/or lead-based paint hazards;

(b) has received and read the lead warning statement;

(c) has received the lead hazard information pamphlet;

(d) was provided with a ten (10) day opportunity (unless the parties mutually agree upon a different period of time, by a separate writing) before becoming obligated under the contract to purchase during which the buyer was permitted access to the housing to obtain an inspection for the presence of lead-based paint and/or lead-based paint hazards.

§ 6-807. Certified Lead Inspectors.

(1) Persons retained to perform comprehensive residential lead inspections pursuant to Sections 6-803 and 6-804, shall be certified by the Philadelphia Department of Public Health until such time as the Commonwealth of Pennsylvania institutes state-wide certification.

(2) The Philadelphia Department of Public Health shall establish by regulation criteria for the certification of residential lead inspectors no later than ninety (90) days after the enactment of this Ordinance.

§ 6-808. Residential Lead Inspections.

(1) Residential lead inspections and risk assessments performed pursuant to Sections 6-803(1)(a) and 6-804, shall be conducted in accordance with regulations promulgated by the Philadelphia Department of Public Health until such time as the Commonwealth of Pennsylvania institutes state-wide regulations.

(2) The Philadelphia Department of Public Health shall promulgate regulations for conducting residential lead inspections and risk assessments no later than ninety (90) days after the enactment of this Ordinance.

§ 6-809. Remedies. 120

(1) Where the seller does not comply with the provisions of Sections 6-803 or 6-804 the buyer shall be entitled to damages in the amount of double the reasonable cost of a comprehensive residential lead inspection plus attorney's fees and costs. An aggrieved party may also obtain injunctive relief plus attorney's fees and costs to enforce the terms of this Section in any court having jurisdiction.

(2) Where the lessor does not comply with the provisions of Section 6-804 the lessee shall be entitled to damages in the amount of double the reasonable cost of a comprehensive residential lead inspection plus attorney's fees and costs. An aggrieved party may also obtain injunctive relief plus attorney's fees and costs to enforce the terms of this Section in any court having jurisdiction. 120.1

(3) Where a lessor does not comply with any provision of Section 6-803, the lessee shall be entitled to bring an action in a court of competent jurisdiction and a prevailing lessee shall be entitled to the following remedies:

(a) an order requiring the lessor to provide the required certification and the performance of the necessary work to make the property lead safe;

(b) damages for any harm caused by the failure to provide the certification;

(c) exemplary damages of up to $2,000;

(d) abatement and refund of rent for any period in which the lessee occupies the property without a certification having been provided; and

(e) attorney's fees and costs.

(4) Where a lessor does not comply with any provision of Section 6-803(3)(a), the lessor shall be denied the right to collect rent during or for the period of noncompliance.

(5) The provisions of this Ordinance shall be liberally construed to effectuate its purpose of disclosure.

§ 6-810. Remedies Not Excluded.

(1) Nothing in the above provisions shall relieve the seller or lessor of the duties to abate any lead-based paint hazards in the housing required by law or regulation, or, if at any time required by law, a lead service line or lead plumbing components, or any other duties otherwise

established by law to protect against lead-based paint hazards, lead service lines, or lead plumbing components. The seller or lessor is also not relieved of any liability for damages or other relief under any applicable law or legal theory arising from the disclosure of lead-based paint, lead service lines, or lead plumbing components in the housing. 120.2

(2) Nothing in the above provision shall relieve the seller or lessor of the obligation under the Pennsylvania Human Relations Act, 43 P.S. § 955, not to discriminate in the sale or rental of housing to families with children.

(3) The inclusion of a provision in a document related to the sale or rental of housing which would preclude the sale or rental to a family with children because the housing contains lead-based paint or lead-based paint hazards, or, in the case of rentals, lead service lines or lead plumbing components, is prohibited. Any seller or lessor who attempts to preclude the sale or rental of housing to a family with children because of the existence of lead-based paint or lead-based paint hazards or, in the case of rentals, lead service lines or lead plumbing components, shall, in addition to any other legal actions, be subject to the penalties provided in Section 6-811 below. 120.3

§ 6-811. Penalties. 121

Any person who fails to comply with the provisions of this Chapter shall be subject to a fine or penalty of no more than two thousand dollars ($2,000) per offense. Each day of non-compliance shall constitute a separate offense.

§ 6-812. Non-Waiverability. 121.1

Any attempted waiver of this Ordinance shall be void and unenforceable. Similarly, the passage of time during the term of a lease or so long as the lessee lawfully occupies the property, shall not constitute a waiver of this Chapter.

§ 6-813. Severability.

Should any clause, sentence, paragraph or part of this Chapter, or the application thereof to any person or circumstance, be for any reason adjudged by a court of competent jurisdiction to be invalid, such judgment shall not effect, impair or invalidate the remainder of this Chapter or the application of such clause, sentence, paragraph or part to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph or part thereof and to the persons or circumstances directly involved in the controversy in which such judgment shall have been rendered.

§ 6-814. Lead-Safe Certification for Family Child Day Care Facilities. 121.2

(1) As a condition of obtaining a license to operate a Family Child Day Care facility, as defined in Sections B-425 and F-409 of the Code, the operator must either:

(a) certify that the property was built after February 1978; or

(b) provide a valid certification, as defined in this Chapter, by a certified lead inspector, stating that the property is lead free or lead safe, under the conditions required for such a certification as established in this Chapter with respect to leased properties.

Notes

114 Added, Bill No. 992 (approved June 21, 1995), 1995 Ordinances, p. 759. Section 2 of the Ordinance provides: "This Ordinance shall take effect on October 28, 1995. All rules, regulations and written materials shall be available ninety (90) days prior to the effective date." Caption amended, Bill No. 100011-A (approved December 21, 2011), effective December 21, 2012.

115 Amended, Bill No. 130723 (approved January 20, 2014).

116 Amended, Bill No. 100011-A (approved December 21, 2011), effective December 21, 2012.

116.1 Amended, Bill No. 160687-AAA (approved March 7, 2017), effective April 6, 2017.

116.2 Added, Bill No. 160687-AAA (approved March 7, 2017), effective April 6, 2017.

116.3 Added, Bill No. 160687-AAA (approved March 7, 2017), effective April 6, 2017.

116.4 Renumbered, Bill No. 160687-AAA (approved March 7, 2017), effective April 6, 2017.

116.5 Renumbered, Bill No. 160687-AAA (approved March 7, 2017), effective April 6, 2017.

116.6 Renumbered, Bill No. 160687-AAA (approved March 7, 2017), effective April 6, 2017.

116.7 Amended, Bill No. 160609 (approved December 20, 2016); renumbered, Bill No. 160687-AAA (approved March 7, 2017), effective April 6, 2017.

117 Amended, Bill No. 100011-A (approved December 21, 2011), effective December 21, 2012.

117.1 Added, Bill No. 160687-AAA (approved March 7, 2017), effective April 6, 2017.

117.2 Amended, Bill No. 160687-AAA (approved March 7, 2017), effective April 6, 2017.

117.3 Amended, Bill No. 160687-AAA (approved March 7, 2017), effective April 6, 2017.

118 Amended, Bill No. 100011-A (approved December 21, 2011), effective December 21, 2012.

118.1 Amended, Bill No. 160687-AAA (approved March 7, 2017), effective April 6, 2017.

119 Caption and section amended, Bill No. 100011-A (approved December 21, 2011), effective December 21, 2012.

120 Amended, Bill No. 100011-A (approved December 21, 2011), effective December 21, 2012.

120.1 Amended, Bill No. 160687-AAA (approved March 7, 2017), effective April 6, 2017.

120.2 Amended, Bill No. 160687-AAA (approved March 7, 2017), effective April 6, 2017.

120.3 Amended, Bill No. 160687-AAA (approved March 7, 2017), effective April 6, 2017.

121 Amended, Bill No. 100011-A (approved December 21, 2011), effective December 21, 2012.

121.1 Amended, Bill No. 160687-AAA (approved March 7, 2017), effective April 6, 2017.

121.2 Added, Bill No. 160609 (approved December 20, 2016).

DOMESTIC VIOLENCE

What laws provide specific protections for tenant victims of domestic and sexual violence?

- Philadelphia's Fair Practices Ordinance § 9-1108 prohibits discrimination on the basis of a Philadelphia applicant or tenant's status as a victim of domestic or sexual violence.

- Philadelphia's Unfair Rental Practices Ordinance § 9-804 provides a procedure for Philadelphia tenants to terminate their leases early due to incidents of domestic or sexual violence.

- Federal Violence Against Women Act of 2013 (VAWA) prohibits applicants to or tenants of subsidized housing from being denied admission or evicted for incidents or criminal activity related to domestic violence, stalking, dating violence or sexual assault.

Who is Covered by These Laws?

The Philadelphia Ordinances apply to all rental housing in Philadelphia, both private and subsidized. VAWA applies only to applicants to and tenants of subsidized housing (Public Housing, Section 8 Housing Choice Voucher, Section 8 Project Based, and Low Income Housing Tax Credit).

How Would These Issues Come up In Municipal Court?
These laws could be used by tenants as a defense to their eviction in a Landlord Tenant hearing Municipal Court, or as a claim for return of their security deposit in Small Claims Court.

Examples:

- Landlord files eviction complaint for breach of the lease due to excessive noise, disturbances, police activity, damage to the unit, unauthorized occupants. Defendant raises these laws as a defense alleging that the breach was due to incidents of domestic violence (abusive incident, calling 911 for protection, police coming to unit to serve Protection from Abuse Order, abuser causing damage to unit, abuser refusing to move out of unit).

- Landlord wants to keep the security deposit as a penalty for tenant moving out prior to the end of the regular lease term. Tenant alleges that she terminated the lease early according to the Unfair Rental Practices Ordinance and is entitled to her full security deposit, minus any charges for tenant-caused damages. Or landlord sues for nonpayment of rent for the months after tenant allegedly terminated the lease early in accordance with the Unfair Rental Practices Ordinance.

What is the Procedure for a Tenant to Terminate the Lease Early?

The Unfair Rental Practices Act § 9-804, provides that at the request of a tenant who is a victim of domestic violence or sexual assault, a landlord shall permit the tenant to terminate the lease, regardless of the lease term and without penalty for early termination provided that:

a. The request is made, in writing, within ninety days of either the reporting of an incident of domestic violence or sexual assault or the issuance of a protection from

abuse order or the approval of a consent agreement and at least thirty days before the requested termination date.

b. The victim vacates the premises no later than the early termination date; and

c. At the time the request is made for termination of the lease, the tenant provides documentation (one of the following: (1) protection from abuse order, (2) police report, OR (3) written certification from a healthcare professional or professional guidance counselor, or a victim's services organization from whom the tenant sought assistance as a victim of domestic violence or sexual assault.

What if the Abuser is a co-tenant?

At the request of the tenant who is a victim of domestic violence or sexual assault, the landlord can bifurcate the lease and either offer the abuser a lease at a different location, or evict the abuser through the Municipal Court eviction process, while allowing the tenant victim to remain in the premises. Both the Philadelphia Unfair Rental Practices Ordinance and VAWA allow for this.

What Documentation is Required?

No documentation of a tenant's status as a victim of domestic or sexual violence is required by Philadelphia's Fair Practices Ordinance which prohibits discrimination in rental housing practices. The only time documentation is required is when a tenant wishes to terminate the lease early due to the violence (see above documentation). Subsidized housing owners may request in writing that subsidized housing tenants provide documentation of the violence, but are not required to under VAWA. If the owner gives a written request, the tenant must provide documentation within fourteen days. That documentation can include a HUD self-certification form, or third party verification such as a police or court record, or a letter from a victim services provider, attorney, medical professional or mental health professional.

The Philadelphia Code

§ 9-1108. Unlawful Housing and Real Property Practices. 1019

(1) It shall be an unlawful housing and real property practice to deny or interfere with the housing accommodation, commercial property or other real property opportunities of an individual or otherwise discriminate based on his or her race, ethnicity, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, disability, marital status, age, source of income, familial status, or domestic or sexual violence victim status, including, but not limited to, the following:

(a) For the owner or any other person having the right to sell, rent, lease, or approve the sale, rental or lease of any housing accommodation, commercial property or other real property to refuse to sell, rent, or lease or otherwise discriminate in the terms, conditions, or privileges of the sale, rental, or lease of any housing accommodation, commercial property or other real property or in the furnishing of facilities or services in connection therewith. 1020

(b) For any lending institution to discriminate against any individual in lending, guaranteeing loans, accepting mortgages or otherwise making available funds for the purchase, acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation, commercial property or other real property. 1021

(c) For any person to make, print or circulate or cause to be made, printed or circulated any written or oral statement, advertisement, or publication, or to use any form of application for the purchase, rental or lease of housing accommodations, commercial property or other real property, or to make real estate appraisals, financial or credit reports or any record or inquiry in connection with the prospective purchase, rental or lease of housing accommodations, commercial property or real property which expresses, directly or indirectly, any limitation, specification or other discrimination, or any intent to make any such limitation, specification or other discrimination. 1022

(d) For any person with the intention of defeating the purposes of this Chapter to sell, lease or transfer any housing accommodation, commercial property or other real property which is the subject of a written verified complaint filed with the Commission.

(e) For any person, after a complaint regarding a housing accommodation, commercial property or other real property has been filed and prior to a final determination by the Commission, to fail to include a notice of the complaint in any subsequent lease or agreement of sale involving that housing accommodation, commercial property or real property.

(f) For any person being the owner, lessee, manager, superintendent, agent or broker of any housing accommodation, commercial property or other real property, or any other person whose duties, whether voluntary or for compensation, relate to the rental, sale or leasing of commercial housing, to establish, announce, or follow a discriminatory policy of denying or limiting, through a quota system or otherwise, the opportunities of any individual or group to obtain such property. 1023

(g) For any person to harass, threaten, harm, damage or otherwise penalize, retaliate or discriminate in any manner against any person because he, she or it has complied with the provisions of this Chapter, exercised his, her or its rights under this Chapter, enjoyed the benefits of this Chapter, or made a charge, testified or assisted in any manner in any investigation, proceeding or hearing hereunder.

(h) For any person subject to this Section to fail to post and exhibit prominently in any place of business where the sale or rental of housing accommodations, commercial property or other real property is carried on, any fair practices notice prepared and made available by the Commission, which the Commission has designated for posting.

(i) For any person to give false or misleading information, written or oral, with regard to the sale or rental of any housing accommodation, commercial property or other real property for the purpose of discriminating, including, but not limited to, representing that a property is not available for inspection, sale or rental when such property is, in fact, so available. 1024

(j) For any person to make any discriminatory distinctions in the location of a housing accommodation, commercial property or other real property, or to make any discriminatory distinctions relating to the time of delivery or the date of availability of such property. 1025

(k) For any person to aid, abet, incite, induce, compel or coerce the doing of any unlawful housing and real property practice or to obstruct or prevent any person from complying with the provisions of this Section or any order issued hereunder or to attempt directly or indirectly to commit any act declared by this Section to be an unlawful housing and real property practice. 1026

(l) For any person selling, renting or leasing housing accommodations, commercial property or other real property, as broker or agent or as an employee or representative of a broker or agent, to refuse or limit service to any person on a discriminatory basis, or to accept or retain a listing of any housing accommodation, commercial property or other real property for sale, rent or lease with an understanding that discrimination may be practiced in connection with the sale, rental or lease thereof. 1027

(m) For any real estate broker or agent, or the employee or representative of any such broker or agent, to solicit any real property for sale or rental, or the listing of any real property for sale or rental, at any time after such broker, agent, employee or representative shall have notice that any owner or other person having the right to sell, rent, lease, or approve the sale, rental or lease of such real property does not desire to sell or rent such real property, or does not desire to be solicited, either by such broker or agent, or by any and all brokers or agents.

NOTICE TO VACATE

Unless waived in the lease, a Notice to Quit must be served prior to the filing of a complaint for eviction or collection of rent.

Landlord Tenant Act, Section 250.501. Notice to quit

(a) A landlord desirous of repossessing real property from a tenant except real property which is a mobile home space as defined in the act of November 24, 1976 (P.L. 1176, No. 261) , known as the "Mobile Home Park Rights Act," may notify, in writing, the tenant to remove from the same at the expiration of the time specified in the notice under the following circumstances, namely, (1) Upon the termination of a term of the tenant, (2) or upon forfeiture of the lease for breach of its conditions, (3) or upon the failure of the tenant, upon demand, to satisfy any rent reserved and due.

(b) Except as provided for in subsection (c), in case of the expiration of a term or of a forfeiture for breach of the conditions of the lease where the lease is for any term of one year or less or for an indeterminate time, the notice shall specify that the tenant shall remove within fifteen days from the date of service thereof, and when the lease is for more than one year, then within thirty days from the date of service thereof. In case of failure of the tenant, upon demand, to satisfy any rent reserved and due, the notice shall specify that the tenant shall remove within ten days from the date of the service thereof.

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(e) The notice above provided for may be for a lesser time or may be waived by the tenant if the lease so provides.

(f) The notice provided for in this section may be served personally on the tenant, or by leaving the same at the principal building upon the premises, or by posting the same conspicuously on the leased premises.

***Sections c, c(1) & d are omitted as they pertain to residential leases in mobile home parks*

PRACTICE POINTS:

How is Notice Given:

1. The requirement for notice and the timing of the notice may be modified or completely waived by the lease. The method by which notice is to be given, under subsection (f), may not be changed (see below).

2. Subsection (f) requires that the Notice, if not waived, be given in one of three ways: personally, or by leaving it at the principal building on the premises, or by posting conspicuously. It does not provide for notice by mail.

3. Landlords' and tenants' attorneys are divided on whether or not a case involving no waiver of the notice provision can be initiated before the notice period has passed and whether the Municipal Court has jurisdiction to hear a case filed before the notice period has passed..

a. Tenants' counsel's perspective is that the court does not have jurisdiction to hear an eviction action under these circumstances, and that the Court should dismiss the action. Although some landlord counsel disagree, as explained below, the cases cited below find that the court does not have jurisdiction to hear an eviction action under these circumstances, and the Court should dismiss the action. Several Courts of Common Pleas in other counties and one Federal Court of Appeals decision have reached this conclusion. See Patrycia Bros, Inc. v. McKeefrey, 38 Pa. D.& C. 2d 149, 151 (C.P. Del. 1966)(adequate notice is a "necessary element of jurisdiction"); Fulton Terrace Ltd. Partn.v. Riley, 4 Pa. D&C 4th 149, 153 (C.P. Fulton 1989)("plaintiff was required to give . . . notice, before filing its complaint . . . ."; Williams v. Kusnairs B. & Tavern, 288 Fed. Appx. 847, 849 (3d Cir. 2008)(unpublished)("a landlord must give a tenant at least 15 days' notice in writing before commencing eviction proceedings); Jankowski v. Orloske, 84 Pa. D. & C. 522, 524 (C.P. Lackwawanna 1952) ("the landlord may file his complaint only after the tenant fails to remove in compliance with the notice provided for in section 501.") No Philadelphia Court of Common Pleas opinion has been found to have reached a contrary conclusion. Some landlord counsel also believe that the courts' statements cited above are dictum.

b. Landlords' counsel's perspective is that the cited cases are not Philadelphia cases and do not apply in Philadelphia.

RETALIATION/ UNFAIR RENTAL PRACTICES

A landlord may not retaliate against a tenant for:

- Exercising a legal right
  Examples include: withholding rent pursuant to Pugh v. Holmes, filing a Complaint with the Fair Housing Commission
- Filing a complaint with the Department of Licensing and Inspection;
- An incident of domestic violence or sexual assault in which a tenant was the victim, or because of tenant's status as a victim of domestic violence or sexual assault.
- Joining of any lawful organization including a tenants' organization. This prohibition applies to prospective tenants.

Retaliation includes terminating the lease and/or making, altering, amending or modifying any condition of the lease. Among other prohibited actions, it is unlawful to modify a lease with the intent to collect the cost or value of correcting a violation.

If the Department of Licensing of Inspection has notified the landlord of a violation of the Philadelphia Code, the landlord cannot terminate the lease or make, alter, amend, modify a condition of the lease unless the tenant fails to pay rent, commits a nuisance, commits waste or causes the premises to be in violation of Philadelphia Code.

The landlord has the burden of proving the lack of retaliation for any notice of termination or alteration of terms/conditions given within a year after the latest of (i) a violation being found, (ii) a right against a landlord being exercised, or (iii) a correction of a violation being made. In addition, the landlord has the burden of proving that more than a year has passed since the correction of violations.

The defense of retaliation applies in any court of competent jurisdiction, including the Philadelphia Municipal Court and the Court of Common Pleas. See Section 9-804(12) below.

It is also an unfair trade practice to increase rent in the context of a renewal, absent appropriate prior notice (60 days for leases of one year or more and 30 days for shorter-term leases). See Section 9-804(11), whose text is set out at Tab G below.

Philadelphia Code § 9-804(1 and 2):

(1) Whenever any premises are found in violation of any provision of The Philadelphia Code and a notice of violation has been issued by any department or agency of the City, it shall be unlawful for any owner, landlord, agent or other person operating or managing such premises to:

(a) terminate the lease with the existing tenant unless the tenant has failed to pay rent, committed a nuisance, committed waste or caused the premises to have been in such violation under The Philadelphia Code;

(b) offer, tender, give, exchange or transfer possession or the right to possession to any person not in possession of the premises upon any terms or conditions until the violation has been corrected; or

(c) make, alter, amend or modify any term or condition of any existing lease or arrangement of tenancy with any person in possession of the premises at the time notice of violation is issued until the violation has been corrected;

(d) make, alter, amend or modify any term or condition of any existing lease or arrangement of tenancy with any tenant for a period of one year after correction of any violations where the action against the tenant is intended to collect the cost or value of making any or all of the corrections necessary to comply with The Philadelphia Code and where also any violation has remained uncorrected, whether or not recorded by the Department of Licenses and Inspections, for a period of one year or more prior to the date of correction. The burden shall be on the landlord to show that the violation has not existed uncorrected for a period of one year or more prior to the date of correction in any legal proceeding in which the provisions of this ordinance shall be relevant.

(2) It shall be unlawful for any owner, landlord, agent or other person operating or managing premises to terminate a lease with a tenant or make, alter, amend or modify any term or condition of any existing lease or arrangement of tenancy with a tenant in retaliation for:

(a) any violation having been found against the premises;

(b) the filing of a complaint alleging a violation;

(c) the joining of any lawful organization, or any other exercise of a legal right. It shall be unlawful for any owner, landlord, agent or other person operating or managing premises to refuse to lease any premises to a prospective tenant because he believes the prospective tenant has exercised any such right;

(d) an incident of domestic violence or sexual assault in which a tenant was the victim, or a tenant's status as a victim of domestic violence or sexual assault. For purposes of this subsection (2)(d) the meaning of the terms "victim", "domestic violence" and "sexual assault" are as defined in Section 9-3201 of this Code.

In any civil proceeding involving this provision in which the notice of termination or alteration of a term or condition of the lease was given within one year after a violation was found, a right of the tenant against the landlord, agent or other person operating or managing premises was exercised, or a correction made, whichever is the latest, it shall be the burden of the owner, landlord, agent or other person operating or managing such premises to prove that the notice was not given in retaliation for the exercise by the tenant of his legal rights.

Philadelphia Code § 9-804(12):

(12) Any person aggrieved under the provisions of this Section may file a complaint with the Fair Housing Commission or may allege any violations in an initial pleading or, where appropriate, in a responsive pleading in a court of competent jurisdiction.

FAIR HOUSING COMMISSION

What should Municipal Court do if a Fair Housing Commission (FHC) complaint has been filed and "accepted" before the Municipal Court LT complaint was filed?

Municipal Court Civil Rule 134 requires that if a Fair Housing Commission (FHC) complaint has been filed before the Municipal Court LT complaint was filed, the matter should be continued until the FHC reaches a resolution. MC court may, and in some cases (e.g. retaliation) should, refer to FHC.

The Court may refer matters to the FHC if:

- there is no rent delinquency & the eviction complaint is retaliatory
- The tenant has exercised the right to repair and deduct
- the tenant has exercised the right to withhold rent
- there are L&I Code violations
- the Health Department has cited for vermin/lead
- utility company cites home as hazardous
- the landlord is responsible for utility payment and fails to pay. To prevent utility from being shut off, tenant may use the rent money to maintain the utility (exercising USTRA rights). Landlord sues for nonpayment.

See attached Municipal Court Rules of Civil Procedure Rule 134 and Philadelphia Code Chapter 9-800. See also attached USTRA - Utility Service Tenants Rights Act

In cases where the landlord has filed an MC complaint before the tenant filed a FHC complaint, the Commission will not accept the tenant's complaint.

However, the tenant may request at the MC hearing to continue the Court hearing for at least 60 days so that the matter can be referred to the Commission. The tenant must establish that there is no rent delinquency and that either uncorrected Code violations exist or that a claim of retaliatory eviction will be made. In such instances, the judge must grant the continuance and direct the case to the Commission for the minimum sixty day period.

What kinds of complaints are accepted by the Commission?
The Commission accepts complaints from tenants who allege the landlord engaged in an unfair rental practice and /or the landlord retaliated against the tenant.

Whenever a rental home is found to be in violation and a notice of violation has been issued by any City department or agency of the City, such as L&I, the Dept. of Health, or a utility company, the landlord/ owner/ agent may not terminate, alter, amend or modify the tenant's lease or tenancy. This does not apply to a tenant who failed to pay rent, committed a nuisance, committed waste or caused the violation.

Under some circumstances, such as unfit properties, the presence of rats or high lead levels, no rental license and absence of a Certificate of Rental Suitability, nonpayment of rent may not be an issue.

The landlord/ owner/ agent may not terminate, alter, amend or modify a lease or arrangement of tenancy in retaliation for violations having been cited on the property, filing a complaint, joining a lawful organization or exercising a right.

The following is a description of the FHC's mission and scope of its activities:

The FHC enforces the Philadelphia Fair Housing Ordinance, Chapter 9-800 of the Philadelphia Code which protects tenants against unfair rental practices (§9-804). A tenant may file a Complaint with the FHC or the FHC may initiate an action. It is authorized to hold hearings, conduct investigations, subpoena witnesses/documents and issue orders. Parties may appeal to the Court of Common Pleas.

Complaints that the FHC addresses include retaliation, utility shut offs (by the landlord responsible to pay for them), eviction, rent increase, or changes in lease terms for L&I reporting. See "Burden of Proof" section regarding burden in connection with allegations of retaliation.

The FHC does not address commercial, PHA or HUD properties. It does cover Housing Choice Voucher (HCV)/Section 8 properties.

Rule 133. ***Discontinuance.***

a. In claims exceeding $2,000, exclusive of costs and interest, a party may file a written application for discontinuance no less than twenty (20) days prior to trial.
b. Such application shall set forth the reasons why the matter cannot be tried expeditiously or without extensive discovery in this Court.
c. If the application is granted, the claim shall be marked "Discontinued without Prejudice" and the claimant may file a complaint in the Court of Common Pleas.

Rule 134. ***Fair Housing Commission***
If a tenant has filed a complaint which has been accepted by the Fair Housing Commission prior to the date a complaint in eviction is filed by the landlord, the Court shall continue the case for a sufficient period to enable the Commission to hold its hearings.
In those cases where the Landlord has filed his complaint in Municipal Court for eviction, the Fair Housing Commission will not accept a complaint from a tenant prior to the date of the eviction hearing. The judge hearing Landlord and Tenant cases will make the initial determination as to whether a matter should be sent to Fair Housing. Those cases (1) where the tenant can prove that there is no rent delinquency and proof is presented of outstanding L & I violations (a copy of the L & I Report or an affidavit from Tenant's counsel will be sufficient), or (2) those cases where there is no rent delinquency and the tenant claims retaliatory eviction shall be continued for at least sixty (60) days to a date certain and the tenant instructed to file a complaint with the Fair Housing Commission.

Note: Adopted December 5, 1986, effective February 1, 1987.

Rule 135. ***Nuisance Complaints.***
The Philadelphia Municipal Court Rules of Civil Procedure shall apply to Nuisance Complaints commenced pursuant to Act #147, enacted November 29, 1990, except as otherwise provided herein.
a. Nuisance Complaints shall be made upon printed forms approved by the Municipal Court Administrator, be verified by the plaintiff and shall set forth:

1. the names and addresses of the parties, including whether plaintiff resides or operates a business within 500 feet of defendant;
2. a brief, concise statement of the relevant and admissible facts, occurrences and transactions upon which the claim is based and damages sustained, including relevant times, dates and places;
3. whether plaintiff personality witnessed the conduct complained of;
4. whether any governmental agencies have been contacted about the conduct complained of;
5. a request for the issuance of an Order restraining the conduct complained of or other appropriate relief;
6. such other information as is required by the Court.

b. Nuisance Complaints shall have annexed thereto a completed Nuisance Complaint Fact Sheet, verified by the Plaintiff, and containing such information as required by the Court.
c. A Rule to Show Cause-Summons and proposed Order shall be annexed to every Nuisance Complaint. If the Rule to Show Cause-Summons is denied, the reason for the denial shall be stated by the Court.

The Philadelphia Code

CHAPTER 9-800. LANDLORD AND TENANT – RENT CONTROL 949

§ 9-801. Legislative Findings. 950

The Council of the City of Philadelphia hereby finds:

(1) In order to protect the health, safety and general welfare of the citizens and inhabitants of the City, the City has enacted a comprehensive Fire Code and a comprehensive Housing Code.

(2) The enforcement of these protective legislative measures has been seriously hampered because the owners of the property against whom tenants have filed complaints with the appropriate City authority revealing Fire Code violations or Housing Code violations, have developed a practice of evicting complaining tenants for these reasons or upon other convenient pretexts.

(3) Fearful of eviction, tenants have been hesitant to report violations and have been compelled to live under conditions which are in violation of existing ordinances and which create situations dangerous to the health and safety of the tenants and the entire community.

(4) Efforts of the existing Mayor's Fair Rent Committee to prohibit unfair rental practices has not proved effective because the Committee has lacked the power to subpoena witnesses or the production of records of owners or their agents who are leasing dwellings which are in violation of the Fire Code or the Housing Code as set forth in The Philadelphia Code.

§ 9-802. Definitions. 951

(1) *Commission.* Fair Housing Commission.

(2) *Family.* Shall have the meaning assigned in § 14-203(115) of this Code.

(3) *Multi-Family Building.* A building that serves as a residence for three or more families with each family occupying a single dwelling unit.

(2) *Premises.* Any single, duplex or multi-family dwelling.

(3) *Unfair Rental Practice.* Any act in violation of § 9-804.

§ 9-803. Fair Housing Commission. 952

(1) A Fair Housing Commission is hereby created to be composed of 5 members to be appointed by the Mayor. The members of the Commission shall select from among the members a chairman. All of the members of the commission shall serve without compensation. The Commission shall have power to hold hearings and conduct investigations in connection with any unfair rental practice upon complaint or upon its own initiative. The Commission shall have

power to compel the attendance of witnesses and the production of documents as provided in Section 8-409 of The Philadelphia Home Rule Charter.

§ 9-804. Unfair Rental Practices. 953

(1) Whenever any premises are found in violation of any provision of The Philadelphia Code and a notice of violation has been issued by any department or agency of the City, it shall be unlawful for any owner, landlord, agent or other person operating or managing such premises to:

(a) terminate the lease with the existing tenant unless the tenant has failed to pay rent, committed a nuisance, committed waste or caused the premises to have been in such violation under The Philadelphia Code;

(b) offer, tender, give, exchange or transfer possession or the right to possession to any person not in possession of the premises upon any terms or conditions until the violation has been corrected; or

(c) make, alter, amend or modify any term or condition of any existing lease or arrangement of tenancy with any person in possession of the premises at the time notice of violation is issued until the violation has been corrected;

(d) make, alter, amend or modify any term or condition of any existing lease or arrangement of tenancy with any tenant for a period of one year after correction of any violations where the action against the tenant is intended to collect the cost or value of making any or all of the corrections necessary to comply with The Philadelphia Code and where also any violation has remained uncorrected, whether or not recorded by the Department of Licenses and Inspections, for a period of one year or more prior to the date of correction. The burden shall be on the landlord to show that the violation has not existed uncorrected for a period of one year or more prior to the date of correction in any legal proceeding in which the provisions of this ordinance shall be relevant.

(2) It shall be unlawful for any owner, landlord, agent or other person operating or managing premises to terminate a lease with a tenant or make, alter, amend or modify any term or condition of any existing lease or arrangement of tenancy with a tenant in retaliation for:

(a) any violation having been found against the premises;

(b) the filing of a complaint alleging a violation;

(c) the joining of any lawful organization, or any other exercise of a legal right. It shall be unlawful for any owner, landlord, agent or other person operating or managing premises to refuse to lease any premises to a prospective tenant because he believes the prospective tenant has exercised any such right;

(d) an incident of domestic violence or sexual assault in which a tenant was the victim, or a tenant's status as a victim of domestic violence or sexual assault. For purposes of this subsection (2)(d) the meaning of the terms "victim", "domestic violence" and "sexual assault" are as defined in Section 9-3201 of this Code. 954

In any civil proceeding involving this provision in which the notice of termination or alteration of a term or condition of the lease was given within one year after a violation was found, a right of the tenant against the landlord, agent or other person operating or managing premises was

exercised, or a correction made, whichever is the latest, it shall be the burden of the owner, landlord, agent or other person operating or managing such premises to prove that the notice was not given in retaliation for the exercise by the tenant of his legal rights.

(3) The provisions of this Section shall not apply to:

(a) Any bona fide transfer of title incident to a sale of the premises, but any subsequent owner, landlord, agent or other person operating or managing such premises shall be subject to the provisions of this Chapter.

(b) Any owner, landlord or agent or other person operating or managing any premises against which a notice of violation has been issued who desires to terminate an existing occupancy in order that the premises may be rehabilitated and the violation cured, and the Department of Licenses and Inspections issues a certification that such work requires that the premises be vacated.

(4) No owner, landlord, agent or other person operating or managing any premises shall unlawfully retain any security deposit, however styled in a lease.

(5) No owner, landlord, agent or other person operating or managing any premises shall accept any rental payment under any written lease on the premises until he has given a fully executed copy of the lease to all the parties to the lease.

(6) The owner, landlord, agent or other person operating or managing the premises shall, at the request of a tenant who is a victim of domestic violence or sexual assault, permit the tenant to terminate the lease regardless of the lease term and without penalty for early termination

provided: 955

(a) the request is made, in writing, within ninety (90) days of (i) the reporting of an incident of domestic violence or sexual assault, (ii) the issuance of a protection from abuse order or (iii) the approval of a consent agreement, and at least thirty (30) days before the requested termination date;

(b) the victim vacates the premises no later than the early termination date; and

(c) at the time the request is made for termination of the lease, the tenant provides:

(i) a court order or approved consent agreement for protection from abuse pursuant to the Protection from Abuse Act, Act of December 19, 1990, P.L. 1240, No. 206, § 2 (23 Pa. C.S. § 6101 et seq.);

(ii) an incident report from the Police Department stating that a domestic abuse or sexual assault complaint was filed by the tenant; or

(iii) written certification from a health care professional or professional guidance counselor, licensed under the laws of the Commonwealth of Pennsylvania, or a victim's services organization, as defined in Section 9-3201 of this Code, stating that the tenant sought assistance as a victim of domestic violence or sexual assault.

(7) If the abuser or perpetrator of the domestic violence or sexual assault is a cotenant, the owner, landlord, agent or other person operating or managing the premises may, upon the victim's request, bifurcate the lease in order to evict the abuser or perpetrator of the domestic

violence or sexual assault, while allowing the victim to remain in the premises provided the victim's request complies with (6)(a) and (c) of this Section. 956

The provisions of subsections (6) and (7) shall be implied in all leases and made a written term in all leases reduced to writing for any lease executed or renewed after the effective date of this Section.

(8) All terms and conditions of the lease remain in effect until the date of termination or bifurcation. If any tenant wishes to inhabit the leased premises after early termination or bifurcation, a new lease with the landlord must be executed. 957

(9) Nothing in subsection (6) or (7) limits the authority of the landlord, owner, agent or other person operating or managing the premises to evict a tenant, who is the victim of domestic or sexual violence, for any violation of a lease other than one premised on the act or acts of violence in question against such tenant, provided that, in determining whether to evict, the landlord, owner, agent or other person operating or managing the premises does not apply a more demanding standard, than that applied to other tenants who are not victims of domestic or sexual violence. 958

(10) Nothing in subsection (6) or (7) changes the authority of any court to evict an abuser under the Pennsylvania Protection from Abuse Act, Act of December 19, 1990, P.L. 1240, No. 206, § 2 (23 Pa. C.S. § 6101 et seq.). 959

(11) *Notice Requirement.* 960

(a) *Landlord Notice to Tenant of Rent Increase.* Unless the lease provides a longer period of time for the landlord to notify the tenant that the tenant's rent will be increased at the end of a residential tenancy, the following notice requirements shall apply: At least 60 days prior to the effective date of a rent increase where a residential tenancy is one year or more, and at least 30 days prior to the effective date of a rent increase where a residential tenancy is less than one year, the landlord shall notify the tenant of the following: (i) the amount of the rent increase; (ii) the effective date of the rent increase; and (iii) the new payment amount. The landlord shall provide such notice, in writing, by hand delivery or by first class United States mail with proof of mailing.

(b) *Tenant Notice to Landlord of Non-Renewal of Lease.* For any residential tenancy of one year or more, if the tenant has received timely notice of a rent increase under subsection (11)(a), and if the tenant will not renew the lease at the end of the lease term, the tenant shall notify the landlord of the non-renewal, within 30 days after receiving notice of a rent increase. The tenant shall provide such notice, in writing, by hand delivery or by first class United States mail with proof of mailing.

This subsection (11) shall not apply to any property under the jurisdiction of the Department of Housing and Urban Development.

(c) The provisions of this subsection (11) shall apply to any residential lease that is executed or renewed after the effective date of this subsection.

(12) Any person aggrieved under the provisions of this Section may file a complaint with the Fair Housing Commission or may allege any violations in an initial pleading or, where appropriate, in a responsive pleading in a court of competent jurisdiction. 961

(13) No provision of this Section can be waived or made subject to a contract between the parties depriving a tenant of the benefits of this Section. 962

§ 9-805. Smoking Disclosure Policy in Multi-Family Buildings. 962.1

(1) In addition to any other applicable requirements of Section 10-602, relating to smoking in public places, a landlord who enters into or renews a lease or tenancy for a residential dwelling unit in a multi-family building shall disclose, in writing, to the tenant or prospective tenant, the building policy on smoking in individual dwelling units. The disclosure must be made part of the lease and shall state whether smoking is prohibited in all dwelling units, permitted in all dwelling units or permitted in some dwelling units. If smoking is permitted in some dwelling units, the lease shall identify the units where smoking is permitted.

(2) *Enforcement and Penalties.*

(a) The responsibility of the landlord for any acts of non-compliance with the designated smoking policy shall be limited to the remedies available by law for breach of the lease contract agreement.

§ 9-806. Procedure. 963

(1) Upon any complaint made to the Commission or upon its own initiative, the Commission shall have the power to fix the date, time, and place when it shall conduct a hearing. Written notice of the date, time, and place of the hearing shall be sent, at least 10 days prior to the hearing, to the owner or agent of the premises regarding which it is charged that an unfair rental practice has been committed. The notice shall set forth a brief statement of the facts upon which the complaint is based.

(2) At the hearing the complainant, owner and his agent and their witnesses shall have an opportunity to appear and be represented by counsel.

(3) Upon a finding that an unfair rental practice has been committed, the Commission shall issue an order appropriate under the circumstances.

(4) If the owner or agent shall fail to appear, the Commission may issue a subpoena as provided in Section 8-409 of The Philadelphia Home Rule Charter.

§ 9-807. Penalty. 964

(1) Any person violating an order of the Commission or any provision of this Chapter is subject to a fine of not less than fifty (50) dollars and of not more than three hundred (300) dollars together with costs of prosecution.

Notes

949 **Source:** 1955 Ordinances, p. 88; 1956 Ordinances, p. 1; added, 1962 Ordinances, p. 89.

950 Added, 1962 Ordinances, p. 89.

951 Added, 1962 Ordinances, p. 89; amended, Bill No. 160018-AA (approved April 26, 2016), effective June 25, 2016.

952 Added, 1962 Ordinances, p. 89; amended, 1970 Ordinances, p. 125.

953 Added, 1962 Ordinances, p. 89.

954 Added, Bill No. 110498 (approved October 26, 2011), effective December 25, 2011.

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959 Added, Bill No. 110498 (approved October 26, 2011), effective December 25, 2011.

960 Added, Bill No. 140716-A (approved December 1, 2015), effective January 30, 2016.

961 Added, Bill No. 110498 (approved October 26, 2011), effective December 25, 2011; renumbered, Bill No. 140716-A (approved December 1, 2015), effective January 30, 2016.

962 Renumbered, Bill No. 110498 (approved October 26, 2011), effective December 25, 2011; renumbered, Bill No. 140716-A (approved December 1, 2015), effective January 30, 2016.

962.1 Added, Bill No. 160018-AA (approved April 26, 2016), effective June 25, 2016.

963 Added, 1962 Ordinances, p. 89; renumbered, Bill No. 160018-AA (approved April 26, 2016), effective June 25, 2016.

964 Added, 1962 Ordinances, p. 89; amended, Bill No. 758 (approved July 24, 1995), 1995 Ordinances, p. 1081; renumbered, Bill No. 160018-AA (approved April 26, 2016), effective June 25, 2016.

PUBLIC/SUBSIDIZED HOUSING

Good Cause Requirement for Evictions from Affordable Housing

Public housing, Section 8 project-based/HUD housing, and low income housing tax credit housing require "good cause" (defined as serious and repeated violations or other itemized reasons) for termination or non-renewal of the lease.

Public Housing

HUD Regulations: 24 CFR 966.4(l) and the Fair Housing Act: 42 USC §1437(d)(1)(5)

- Housing Authority may only terminate tenancy for serious or repeated violations of the lease or other good cause.
- This applies to public housing owned and operated by private entities.
- Specific grounds for termination must be in written termination notice.

Section 8 Housing Choice Voucher Program

HUD Regulations: 24 CFR 982.310

- Owner may only terminate tenancy for serious or repeated violations of the lease during the initial lease term.
- After the initial lease term, the owner may also terminate for other good cause (ex. Owner's desire to use unit for personal or non-residential reasons or other business/economic reasons) during the term of the lease. Legislative history and case law is mixed on whether good cause is required to terminate at the end of the lease term.
- Failure by the housing authority to pay housing assistance payments to the landlord on behalf of the tenant is not grounds for termination of the lease.
- Specific grounds for termination must be in written termination notice.

Section 8 Project Based/HUD Housing

HUD Regulations: 24 CFR 247.3 and 247.4

- Owner may only terminate tenancy for substantial or repeated violations of material provisions of the lease.
- The conduct of a tenant cannot be deemed other good cause unless the landlord has given the tenant prior notice that the conduct constitutes a basis for termination.
- The written termination notice must state the reasons for the landlord's action with enough specificity so as to enable the tenant to prepare a defense.

Low Income Housing Tax Credit Housing

Omnibus Budget Reconciliation Act of 1990: Pub. L. 101-508, § 11701(a)(7), 104 Stat. 1388-506 (1990) and IRS Rev. Rul. 2004-82, Q&A 5 (2004)

- Owner may only terminate tenancy for good cause.
- This requirement is in place for the initial 15 year compliance period of the development, the following 15 year "extended use" period for the development, and a further 3 year period, totaling 33 years.
- In Pennsylvania, the good cause requirement must be specifically stated in the lease and PHFA has developed a lease addendum for all LIHTC properties identifying them as such and notifying LIHTC tenants of the good cause requirement.

ATTORNEY'S FEES

Can either party \be awarded attorney's fees?

- No party may be awarded attorney's fees in a contract action unless there is a specific contractual provision in the contract/lease. Corace v. Balint, 418 Pa. 262, 271, 210 A2.d 882, 886-87 (1965)
- If the contract allows for attorney's fees, they may only be awarded to the party that is successful. The court must determine what "successful" means in this context.
- The fees must be reasonable. Danks v. Government Employees Ins. Co., 307 Pa. Super. 421, 453 A.2d 655, 666 (1982)

IMPLIED WARRANTY OF HABITABILITY

Pennsylvania law implies a warranty of habitability into every residential lease (oral and written). See Pugh v. Holmes, 486 Pa. 272, 405 A.2d 897, 903 (1978). Under the implied warranty of habitability, the tenant has an obligation to pay rent and the landlord has an obligation to maintain habitable [safe, sanitary and fit] premises. These mutual obligations depend upon each other. If the landlord breaks his or her obligation to keep the premises in a reasonable fit condition, this may relieve the tenant from his obligation to pay part or all of his rent until the landlord makes all necessary repairs. The landlord must be given notice of needed repairs and a reasonable opportunity to make repairs. The implied warranty of habitability cannot be waived and any attempted waiver in a residential lease is unconscionable. Fair v. Negley,. 257 Pa.Super. 50, 390 A.2d 240 (1978). Pa. Super 76, aff'd 384 A.2d 1234 (1978),

Must the tenant have escrowed the rent to raise an Implied Warranty Defense?
No. An escrow account is NOT required by law for withheld rent, unless the tenant is asserting rights under the Rent Withholding Act, which is not typically invoked. See Pugh v. Holmes, 486 Pa. 272, 405 A.2d 897 (1979), which specifically declined to require tenants to escrow their rent. 486 Pa. at 293, 405 A.2d at 908. The tenant's access to rent money may be relevant to the question of credibility, unless the tenant used withheld money to make necessary repairs or unless there are other relevant circumstances.

Does the tenant need to prove that the Department of Licensing and Inspection has issued violations to the landlord before the tenant can establish a breach of the Warranty of Habitability?
No. Pugh v. Holmes, 486 Pa. 272, 405 A.2d 897 (1979)

Can the implied warrant of habitability be waived?
No. Fair v. Negley, 390 A.2d 240 (Pa. Super. 1978)

Can the landlord lock out a tenant who withholds rent?
No. In Philadelphia, lockouts without court process are expressly illegal. See attached City of Philadelphia Anti-Lockout Ordinance, Philadelphia Code Chapter 9-1600.

What is considered adequate heating during colder months?
Owners must provide continuous heat of at least 68 degrees in all habitable rooms, bathrooms and toilet rooms] from October 1 to April 30 inclusive, and during the months of May or September when the outside temperature falls below 60 degrees. Property Maintenance Code 406.2.

What should the court do if the tenant withheld more rent than the court believes he should have?
The Municipal Court has put into place a mechanism that applies when a tenant has been deemed to be entitled to an abatement of rent because of habitability issues but also to owe some rent after such abatement. In such cases, if the tenant has not been found to have breached a condition or remained past termination of the lease, the tenant may pay the remaining rent due within 4 business days and (following certain court-established procedures) obtain a judgment in her favor. See Topic 6 below.

MUNICIPAL COURT FINDINGS IN HABITABILITY ABATEMENT CASES

In 2017, the Municipal Court of Philadelphia launched its new pilot program applicable to residential landlord-tenant cases in which the court determines that the landlord is entitled to a monetary award based solely on nonpayment of money due under the lease and the rent due should be abated because of conditions of the property that affect its habitability. The Philadelphia Bar Association's Municipal Court Committee brought the idea for the pilot program to the court's attention based on dicta in Pugh v. Holmes, 486 Pa. 272, 292, 405 A.2d 897, 907 (1979), in which the Supreme Court observed that:

If there had been a partial breach of the [implied] warranty [of habitability], the obligation to pay rent would be abated in part only. In such case, a judgment for possession must be denied if the tenant agrees to pay that portion of the rent not abated; if the tenant refuses to pay the partial rent due, a judgment granting possession would be ordered.

Before the launch of the pilot program, tenants were at risk of having judgments entered against them if they withheld more rent due to conditions affecting the habitability of the leased property than the court found was warranted. The pilot program addressed that situation by providing tenants with an opportunity to pay the amount that the court finds is due. If tenants pay the amount found by the court, the court will enter a judgment in favor of the tenants. If, however, the tenants do not make the payment, the court will enter a judgment in favor of the landlord in the amount that the court found was due minus any payments that were made by the tenants after the court's finding. Whether or not tenants avail themselves of the pilot program by making a payment, they and the landlord maintain their right to take a de novo appeal to the Court of Common Pleas after the Philadelphia Municipal Court enters a judgment.

The pilot program involves new forms. At the time of trial, the parties are required to provide contact information so that the court may easily contact them. The court also makes written findings on another form that includes information about the location and person to be paid on behalf of the landlord. Only money orders, bank checks and certified checks are acceptable means of payment. If payment is made within four days, tenants must file an affidavit that includes information about when, where, how and to whom payment was made. If an affidavit is filed, the court contacts the landlord via email to confirm that payment was made. If the landlord disputes the accuracy of the averments contained in the affidavit, the court will schedule a hearing.

The pilot program's method was chosen because it does not unduly delay an eviction and provides an easily verifiable means of payment. The pilot program advances the goal of providing tenants with a way of withholding rent due to conditions of the property that affect its habitability without having to fear that a judgment will be entered against them if they withhold more than the court finds is warranted. All concerned recognized that an adverse judgment may have the collateral effect of impairing tenants in their effort to find housing and credit.

Attached is the court's form of Findings and related instructions:

IN THE PHILADELPHIA MUNICIPAL COURT

_____,	:	
_____,	:	
Plaintiff(s),	:	
v.	:	LT –
_____,	:	
_____,	:	
Defendant(s).	:	

NOTICE OF FINDINGS AND RIGHT OF
TENANT TO PAY THE FULL AMOUNT OF MONEY DUE

On the _____ day of _____, 20___, the court made the following findings:

1. The amount of past due rent, late fees, utilities, attorney's fees, court costs and other amounts that the tenant currently owes to the landlord is $_____.

2. The above-captioned action involves a residential lease.

3. The court has reduced the amount of rent due because of conditions of the property that affect its habitability.

4. The ongoing monthly rent after abatement or reduction is $_____ until necessary repairs are made.

5. The only basis for the court's findings is nonpayment of money due under the lease and not termination of term or breach of a condition.

The tenant may pay the full amount of past due money, which the court has found is $_____,

by no later than _____ by delivering a money order, bank check and/or certified check to _____ (insert name of person) at the following address:_____

_____

_____. Personal checks and cash shall not be acceptable. Whenever possible, a receipt from the landlord is recommended, but not required.

If the tenant pays or tenders to the person designated in paragraph 5 above the full amount of past due money by the date set forth above, the tenant must file a verification in order to have a judgment entered in favor of the tenant instead of in favor of the landlord. The verification must specify the date, time and location at which payment was made or tendered and to whom, if anyone, the payment was delivered. Attached to this notice is a copy of the verification . It must be filed no later than on_____.

If the tenant files a verification, the court will attempt to contact the landlord or the landlord's counsel promptly. If the landlord or counsel agrees that full payment was made in a timely manner or if the landlord or counsel fails to respond, the court shall enter a judgment in favor of the tenant. If the landlord or counsel disputes that full payment was made in a timely manner, the court shall schedule a hearing within three days, exclusive of weekends and state holidays, at which the sole issue will be whether or not the tenant made or tendered full payment in a timely manner. Following that hearing, the court will enter an appropriate judgment.

BY THE COURT:

_____

, J.

The following organizations may be able to assist tenant in completing the verification that must be filed in order for the tenant to have a judgment entered in favor of the tenant.

Community Legal Services
1424 Chestnut Street
Monday-Thursday, 9:00 a.m. to 12:00 p.m.

Landlord/Tenant Legal Help Center
1339 Chestnut Street, 10th floor
Monday-Thursday, 11:30 a.m. to 2:00 p.m.

SeniorLAW Center (only for persons sixty years of age or older)
2 Penn Center, 1500 JFK Blvd Suite 1501
Tuesday & Thursday, 9:00 a.m. to 12:00 p.m.

Examples of Habitability Charts

A v. B & C, # LT-16-02-03-xxxx

Date	Basis for Deduction	Deduction
November 2012 – May 2013	Roof started leaking as soon as tenant moved in, and continued throughout her tenancy. Tenant reported this leak to Landlord and he ignored it until the roof caved in.	$100 – roof $100 X 7 months Total: $700
June 2013 – September 2013	The kitchen sink began leaking and continued to leak throughout the tenancy. Additionally, the doors fell off the door posts. When doors are reattached, they fall of again due to hallowed door posts.	$100 – roof $40 – sink $40 – doors ($20/door) $180 X 4 months Total: $720
October 2013	The roof in the dining room (below the upstairs bathroom) caved in due to consistent leaking.	$300 – roof $40 – sink $40 – doors ($20/door) Total: $380
November 2013 – December 2013	Continued leaking from the roof and the sink, and continued problems with doors.	$100 – roof $40 – sink $40 – doors ($20/door) $180 X 2 months Total: $360
January 2014 – October 2014	While there had always been exposed wires, the outlet in the kitchen became completely useless and began to hang off the wall.	$100 – roof $40 – sink $40 – doors ($20/door) $40 – electricity $220 X 10 months Total: $2,200

November 2014 – June 2015	A third door (the door to the children's room) broke off, and the wood on the door post is completely hollowed, making reattachment impossible for tenant.	$100 – roof $40 – sink $60 – doors ($20/door) $40 – electricity $240 X 8 months Total: $1,920

Total deduction for habitability issues: $6,280

September 15, 2017

[name of client] Habitability Issues (LT 15-xxxxxxxxxxxxxx)

- Because there was no **Housing Inspection License** provided until June 2015, and neither the **Certificate of Rental Suitability** nor the **"City of Philadelphia Partners for Good Housing" Handbook** have yet been provided, rent should not be collected for February through October 2015. Ms. Xxxxxxxxxx's payments for February, March and September should either be refunded or applied to the rent going forward, once the Certificate and Handbook are received.
- Because no **Lead Safe Certification** was ever provided, and Ms. Xxxxxxxxxx has a two-year old child staying in the residence, rent should not be collected for February through October 2015. Ms. Xxxxxxxxxx's payments for February, March and September should either be refunded or applied to the rent going forward, once the Certification is received.
- Because there have been outstanding **L&I violations** since March 2015, and judgment by default has been entered against the landlord for these violations, the implied warranty of habitability has been violated and rent should not be collected for March through October 2015. Ms. Xxxxxxxxxx's payments for February, March and September should either be refunded or applied to the rent going forward, once these violations have been resolved.

Month	**Rent Claimed**	**Late Fee**	**Rent Paid**	**Basis for Deduction: Habitability Issues**	**Amount Property Worth**	**Rent Overpaid/(Underpaid)**
February	$289.29 (pro-rated for the mid-month move in)		$850.00 (includes last month)*	Xxxxxxxxxx paid first, last and security on or before move-in on 2/20/15. Major flooding and water issues (pipes frozen) upon move in and client was 5-6 days without water. Existing electrical heating appliance was insufficient for the winter and the A/C window unit was improperly installed and leaking cold air. Holes in the roof, front porch, walls and basement, which led to pest problems, including a raccoon, as well as leaking when it rains. Holes in the ceiling of the living room and stairs and banister were not fully attached to the wall/functional. The curb trap needs repair; water dept. threatening to shut off water if not repaired. Other incidental issues including no doorbell, siding falling off and needing paint, electrical outlets not working, trash in the basement that needs to be removed, and rotten beams in the basement.	$0.00	$850.00
March	$850.00		$850.00 (included in February payment)	Contractor came and fixed most of the issues above around 3/6, but outstanding issues of defective curb trap, pipe leaking in basement when it rains and stairs remain. Roof was fixed but remains unstable, and tenant is concerned about it falling down. There was a temp fix for the A/C, but it was not fixed properly and tenant is concerned it will continue to leak cold air when it starts getting cold again. Heat not working properly.	$700.00	$150.00
April	$850.00	$85.00		Defective curb trap, pipe leaking in basement when it rains and stairs remain. Roof still unstable, A/C not fixed completely. Heat not working properly (which will become an issue again if not fixed before it gets cold).	$700.00	($785.00)
May	$850.00	$85.00		Defective curb trap, pipe leaking in basement when it rains and stairs remain. Roof still unstable, A/C not fixed completely.	$750.00	($835.00)
June	$850.00	$85.00		Defective curb trap, pipe leaking in basement when it rains and stairs remain. Roof still unstable, A/C not fixed completely.	$750.00	($835.00)
July	$850.00	$85.00		Defective curb trap, pipe leaking in basement when it rains and stairs remain. Roof still unstable, A/C not fixed completely.	$750.00	($835.00)
August	$850.00	$85.00		Defective curb trap, pipe leaking in basement when it rains and stairs remain. Roof still unstable, A/C not fixed completely.	$750.00	($835.00)
September	$850.00		$850.00	Defective curb trap, pipe leaking in basement when it rains and stairs remain. Roof still unstable, A/C not fixed completely.	$750.00	$100.00
Totals	$6,239.29	$425.00	$3,550.00		$5,150.00	**($3,025.00)****

* There is a remaining security balance of $1000.00 as part of Ms. Xxxxxxxxxx's initial payment in February

[name of client] Habitability Issues (LT 15-xxxxxxxxxxxxxx)

** If the security balance were included, the underpaid rent would be **$2,025.00**

The Philadelphia Code

CHAPTER 6
MECHANICAL AND ELECTRICAL REQUIREMENTS

SECTION PM-602 HEATING FACILITIES

PM-602.1 Facilities required. Heating facilities shall be provided in structures as required by this section.

PM-602.2 Residential occupancies. Dwellings shall be provided with heating facilities capable of maintaining a room temperature of 68°F (20°C) in all habitable rooms, bathrooms and toilet rooms. Cooking appliances shall not be used to provide space heating to meet the requirements of this section.

602.3 Heat supply. Heat shall be supplied continuously at the temperature and in the rooms specified in Section PM-602.2 from October 1 to April 30 inclusive, and in addition thereto during the months of May or September when the outside temperature falls below 60 degrees F (15 degrees C) by every owner or operator of every two-family dwelling, multiple-family dwelling and rooming house except where there are separate heating facilities for each dwelling unit, whose facilities are under the sole control of the occupant of such dwelling unit.

Exceptions:

1. When the outdoor temperature is below the winter outdoor design temperature for the locality, maintenance of the minimum room temperature shall not be required provided that the heating system is operating at its full design capacity. The winter outdoor design temperature for the locality shall be as indicated in Appendix D of the International Plumbing Code.

2. In areas where the average monthly temperature is above 30°F (-1°C) a minimum temperature of 65°F (18°C).

PM-602.4 [Reserved]

PM-602.5 Room temperature measurement. The required room temperatures shall be measured 3 feet (914 mm) above the floor near the center of the room and 2 feet (610 mm) inward from the center of each exterior wall.

ILLEGAL LOCKOUTS /SELF-HELP EVICTIONS

Can the landlord lock out a tenant who withholds rent?

- No. See attached City of Philadelphia Anti-Lockout Ordinance, Philadelphia Code Chapter 9-1600. In Philadelphia, lockouts without court process are expressly illegal.
- The landlord cannot change the locks on a residential rental unit without providing the tenant a key, turn off the utilities, threaten the tenant or block or remove the doors to the property without having an Alias Writ served by the Landlord Tenant Officer.
- The statute provides a penalty of $100 to $300 a day, or imprisonment not exceeding 90 days for each offense. See Chapter 9-1600 – Prohibition Against Unlawful Eviction Practices.

  Landlords who violate this Ordinance may be sued under the 73 P.S. § 201-1- 201-9.3 – Pennsylvania Unfair Trade Practices and Consumer Protection Law, which allows for punitive damages, treble damages and the award of attorney fees. There is a dispute between the Landlord and Tenant bar as to whether this issue can be raised as a counterclaim in an eviction case or has to be raised as a separate cause of action

The Philadelphia Code

CHAPTER 9-1600. PROHIBITION AGAINST UNLAWFUL EVICTION PRACTICES 1065

§ 9-1601. Legislative Findings.

The Council of the City of Philadelphia hereby finds:

(1) Each year, thousands of tenants in the City of Philadelphia are subjected to actual or threatened use of self-help eviction practices.

(2) Many tenants victimized by self-help eviction are low and very low income persons and are particularly vulnerable to being deprived of their rights to judicial process.

(3) Self-help evictions exacerbate the incidence of homelessness among the City's low and very low income population.

(4) Existing remedies do not afford adequate protection against unlawful eviction.

(5) Self-help eviction practices include the use of violence and the infliction of physical harm upon tenants in efforts to force tenants to vacate their rental dwellings without recourse to judicial process.

(6) Typical examples of self-help practices include lock-outs without court authorization, intentional interference with vital utilities, such as heat, electricity, water and gas, and the seizure of tenants' personal property.

(7) Self-help evictions deprive tenants of their opportunity to assert defenses, such as the existence of defective conditions within the leased premises, in a judicial proceeding and thereby impacts adversely upon the City's efforts to enforce the Housing and other Chapters of The Philadelphia Code.

(8) Termination of utilities and blockage of means of ingress and egress from dwelling units create conditions that are themselves violations of The Philadelphia Code.

(9) The existing remedy to prevent self-help eviction is limited to a private civil action to obtain injunctive relief in the Court of Common Pleas.

(10) Court costs, attorney fees and, most significantly, the delays inherent in private civil actions, frequently deter tenants from taking action against self-help eviction processes.

(11) The provisions of this Chapter are necessary to discourage unlawful, self-help evictions by providing substantial penalties for said offenses.

§ 9-1602. Definitions.

(1) *Self-Help Eviction Practices.*

(a) Self-help eviction practices are actions by a landlord or landlords' agents taken without legal process to dispossess or attempt to dispossess a tenant from a dwelling unit or engaging or threatening to engage in any other conduct which prevents or is intended to prevent a tenant(s) from lawfully occupying their dwelling unit. Such self-help eviction practices include, but are not limited to, the following activity: plugging, changing, adding or removing any lock or latching device to a dwelling unit or otherwise blocking access to the unit; removing windows and doors from a dwelling unit; interfering with utility services to the unit, including, but not limited to, electricity, gas, hot or cold water, heat, or telephone service; forcing a tenant to vacate by the use of force or threat of violence or injury to a tenant's person or property; by engaging in any other activity or pattern of activity rendering a dwelling unit or any part thereof inaccessible.

(b) Self-help eviction practices include the failure to take reasonable and prompt remedial action to restore access and habitability to a dwelling unit following any incident of the landlord conduct described in subsection (1)(a) above.

(2) *Landlord.* The term "landlord" as used in this Chapter includes the lessor of any residential dwelling unit.

(3) *Dwelling Unit.* The term "dwelling unit" as used in this Chapter includes any building or structure, or part of a building or structure, which is used for living or sleeping by human occupants, subject to the licensing requirements of Chapter 7-500 1066 of The Philadelphia Code.

(4) *Tenant.* The term "tenant" as used in this Chapter shall include any person or persons in possession of a dwelling unit for a week-to-week term or any longer term by virtue of a written or oral agreement with a landlord. The term "tenant" shall include, for purposes of this ordinance, a purchaser under an installment land sales contract as defined in 68 P.S. § 903, 1965, June 8, P.L. No. 81, § 3. The term shall not include a traveler or transient guest in a hotel or motel.

§ 9-1603. Unlawful Self-Help Eviction Actions Prohibited.

No landlord or landlord's agent may engage in self-help eviction practices, as defined in Section 9-1602 of this Chapter, under any circumstances, in the City of Philadelphia. The requisite, legal process for lawful eviction must consist of execution of a judgment of possession entered by a court of competent jurisdiction in accordance with State law. Lawful execution of judgment may be performed only by a Sheriff or court-appointed landlord and tenant officer.

§ 9-1604. Restoration of Possession.

Where the tenant alleges a violation of this Chapter, the tenant may contact the local police to obtain police assistance in regaining entry into the premises. It shall be the duty of the landlord or the landlord's agent to establish that the eviction action undertaken was lawful by making available to the Police Department a copy of the relevant writ of possession or by verifying the existence of the writ to the Police Department, the Sheriff or the court-appointed landlord-tenant officer for verification thereof. The Sheriff and/or the court-appointed landlord/tenant officers shall maintain records of all current executions of writs issued by the Court so that verification of legal process may be readily obtained. Where the landlord is unable to produce a copy of the relevant proof of lawful execution of a judgement of possession or other verification thereof, the

tenant shall be entitled to regain possession of the premises immediately and the landlord shall be prohibited from blocking or inhibiting re-entry in any way.

§ 9-1605. Penalties.

Any person who engages in the self-help eviction activities described in this Chapter or who assists in such activities shall be subject to a fine or penalty of not less than one hundred (100) dollars nor more than three hundred (300) dollars, or to imprisonment not exceeding ninety (90) days for each offense. Each day a violation continues or is permitted to continue shall constitute a separate offense for which a separate penalty shall be imposed. A violation shall cease when the unlawful conduct as set forth in paragraph (1)(a) ends or when the tenant no longer seeks to exercise his or her rights by regaining possession of said premises.

§ 9-1606. Enforcement.

This ordinance shall be enforced through the applicable Rules of Criminal Procedure for the Philadelphia Municipal Court procedures for summary cases.

§ 9-1607. Remedies Not Excluded.

Nothing contained in this Chapter is intended to limit existing legal remedies provided to a landlord or tenant.

§ 9-1608. Severability.

(1) If any clause, sentence, paragraph or part of this Chapter, or the application thereof to any person or circumstance, shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Chapter nor the application of such clause, sentence, paragraph or part to other persons or circumstances but shall be confined in its operation to the clause, sentence, paragraph or part thereof and to the persons or circumstances directly involved in the controversy in which such judgment shall have been rendered.

Notes

1065 Added, 1987 Ordinances, p. 1173.

1066 Referenced material now appears in Title 4, Subcode PM, Chapter 1.

EXCESS SECURITY DEPOSIT/ESCROW

Statutory Limits on Amount of Security Deposits During An Initial Term

The Landlord-Tenant Act of 1951 ("The Act") provides that during the first year of a residential lease, a Landlord may not require "a sum in excess of two months' rent to be deposited in escrow for payment of damages to the leasehold premises and/or default in rent." 68 P.S. § 250.511a(a). This only applies to residential leases. 68 P.S. § 250.511a(e). Additionally, the Landlord cannot "waive away" this Tenant's right, by contract or otherwise. 68 P.S. § 250.511a(f). Such an attempt is void and unenforceable. Id.

Under the terms of the statute, it does not matter whether the escrow is styled as a security deposit or "last month's rent," as the statute refers to any "escrow" and expressly includes an escrow for rent. In addition, the Philadelphia Fair Housing Ordinance provides that:
"No owner, landlord, agent or other person operating or managing any premises shall unlawfully retain any security deposit, however styled in a lease." Philadelphia Code §9-804(4). (see copy attached at Tab G).

Section 250.511a. Escrow funds limited

(a) No landlord may require a sum in excess of two months' rent to be deposited in escrow for the payment of damages to the leasehold premises and/or default in rent thereof during the first year of any lease.

(b) During the second and subsequent years of the lease or during any renewal of the original lease the amount require to be deposited may not exceed one month's rent.

(c) If, during the third or subsequent year of a lease, or during any renewal after the expiration of two years of tenancy, the landlord requires the one month's rent escrow provided herein, upon termination of the lease, or on surrender and acceptance of the leasehold premises, the escrow funds together with interest shall be returned to the tenant in accordance with sections 511.2 and 512[1].

(d) Whenever a tenant has been in possession of premises for a period of five years or greater, any increase or increases in rent shall not require a concomitant increase in any security deposit.

(e) This section applies only to the rental of residential property.

(f) Any attempted waiver of this section by a tenant by a contract or otherwise shall be void and unenforceable.

Section 250.511b. Interest on escrow funds held more than two years

(a) Except as otherwise provided in this section, all funds over one hundred dollars ($100) deposited with a lessor to secure the execution of a rental agreement on residential property in accordance with section 511.1 [2]and pursuant to any lease newly executed or reexecuted after the effective date of this act shall be deposited in an escrow account of an institution regulated by the Federal Reserve Board, the Federal Home Loan Bank Board, Comptroller of the Currency, or the Pennsylvania Department of Banking. When any funds are deposited in any escrow account, interest-bearing or noninterest-bearing, the lessor shall thereupon notify in writing each of the tenants making any such deposit, giving the name and address of the banking institution in which such deposits are held, and the amount of such deposits.

(b) Whenever any money is required to be deposited in an interest-bearing escrow savings account, in accordance with section 511.1, then the lessor shall be entitled to receive as administrative expenses, a sum equivalent to one per cent per annum upon the security money so deposited, which shall be in lieu of all other administrative and custodial

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[1] 68 P.S. §§250.511b and 250.512.

[2] 68 P.S. §250.511e.

expenses. The balance of the interest paid shall be the money of the tenant making the deposit and will be paid to said tenant annually upon the anniversary date of the commencement of his lease.

(c) The provisions of this section shall apply only after the second anniversary of the deposit of escrow funds.

BURDEN OF PROOF

- Plaintiff has the burden of proof, by a preponderance of the evidence, to prove that Defendant owes rent (and the amount of rent) and fees and/or that the tenant has breached the lease agreement.

- Defendant has the burden, by a preponderance of evidence, to prove that the warranty of habitability has been breached. The tenant is not required to prove that there are violations issued by the Department of Licensing and Inspection. Evidence can consist of oral testimony or documentary evidence such as photographs.

- If the tenant alleges that the eviction action is grounded in retaliation, the landlord must prove the eviction action is not in retaliation for the tenant's exercise of a legal right. Philadelphia Fair Housing Ordinance, §9-804(2). See Tab F for greater detail.

- If the tenant raises the issue that the landlord does not have a current housing license or has not complied with the Rental Suitability Law, the burden shifts to the Landlord to prove compliance with these laws.

UTILITY BILLS

- If there are outstanding utility bills owed by the tenant, all of those bills or a utility statement of account should be attached with the complaint or presented in court to the Trial Commissioner/Judge in order to have those amounts included in the judgment.

- In order for those amounts to be included in a judgment against the tenant, the lease agreement must call for the tenant to be responsible for paying said utility bills.

- Rule of Civil Procedure 1019 generally requires attaching a writing referred to or relied upon or explaining the failure to do so

- If the utility account is in the Tenant's name:

  - In those cases, the Court should consider why the landlord/plaintiff requesting that it be included in the judgment.

    - A tenant remaining in possession will continue to be liable to the utility, and eligible for payment agreements with the utility to get caught up. Low-income customers of PECO, PGW, and PWD/WRB may be eligible for arrearage forgiveness and/or utility grants (UESF and LIHEAP) to pay off these balances. Why should the landlord obtain a judgment for these balances that may never become the liability of the landlord?

    - After possession is relinquished and the tenant requests discontinuance of the utility service at the rental unit, PECO and PGW balances in the tenant's name will follow the tenant. PGW is currently under a federal court order prohibiting the liening of properties for bills of non-owner ratepayers. *Augustin v. City of Philadelphia, et al*, No. 14-4238 (E.D. Pa).

    - Any outstanding water balance in the tenant's name could potentially revert back to the owner/landlord account after the tenant moves and removes his/her name from the bill. Philadelphia Water may lien the premises for unpaid water bills.

  - Is the bill only for utility services provided to the tenant's unit?

    If not, there is "foreign load' on the bill. When a residential tenant's utility bill includes usage from another unit or from common areas, there is foreign load on the bill. In such circumstances, PUC-regulated utilities (PECO and PGW) are required to place the tenant's entire account balance in the owner's name. 66 Pa. C.S.A. § 1529.1. Duty of owners of rental property; *Ace Cash Checking Inc. v. Philadelphia Gas Works*, PA PUC Docket No. C-2008-2056428 (order entered May 21, 2010). Philadelphia Water Department regulations do not allow customer accounts for dwelling units that are not individually metered. PWD Regulation 100.2(c)(3).

- If the utility account is in the Landlord's name:
    - Is the bill only for the period of time that the tenant lived at the property? A current bill could include charges for periods of time from before the tenancy. Better evidence would be bills for each month of the tenancy or a statement of account from the utility delineating the monthly charges for the period of the tenancy.
    - What rights do tenants have when the landlord ratepayer fails to pay the bill? Utilities are required to notify dwelling units likely occupied by tenants with notice of an imminent shut off and notice of tenants' rights to pay the last 30 day bill and 30 day bills going forward to maintain service. Such payments to the utilities may be deducted from rent. For Philadelphia Water, these rules are provided in the Utility Service Tenants' Rights Act, 68 P.S. § 399.1 et seq.; for PECO and PGW, the Public Utility Code provides for these rules at 66 Pa. C.S.A. § 1521 et seq., Discontinuance of Service to Leased Premises.
    - Interfering with utility services to the rental unit may constitute an illegal self-help eviction or unlawful eviction practice in violation of Philadelphia Code 9-1600 – (See Tab K.)

Rule 1019. Contents of Pleadings. General and Specific Averments.

(a) The material facts on which a cause of action or defense is based shall be stated in a concise and summary form.

(b) Averments of fraud or mistake shall be averred with particularity. Malice, intent, knowledge, and other conditions of mind may be averred generally.

(c) In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of such performance or occurrence shall be made specifically and with particularity.

(d) In pleading an official document or official act, it is sufficient to identify it by reference and aver that the document was issued or the act done in compliance with law.

(e) In pleading a judgment, order or decision of a domestic or foreign court, judicial or administrative tribunal, or board, commission or officer, it is sufficient to aver the judgment, order or decision without setting forth matter showing jurisdiction to render it.

(f) Averments of time, place and items of special damage shall be specifically stated.

(g) Any part of a pleading may be incorporated by reference in another part of the same pleading or in another pleading in the same action. A party may incorporate by reference any matter of record in any State or Federal court of record whose records are within the county in which the action is pending, or any matter which is recorded or transcribed verbatim in the office of the prothonotary, clerk of any court of record, recorder of deeds or register of wills of such county.

(h) When any claim or defense is based upon an agreement, the pleading shall state specifically if the agreement is oral or written.

Official Note:

If the agreement is in writing, it must be attached to the pleading. See subdivisioni (i) of this rule.

(i) When any claim or defense is based upon a writing, the pleader shall attach a copy of the writing, or the material part thereof, but if the writing or copy is not accessible to the pleader, it is sufficient so to state, together with the reason, and to set forth the substance of the writing.

Source

The provisions of this Rule 1019 adopted June 25, 1946, effective January 1, 1947; amended April 12, 1999, effective July 1, 1999, 29 Pa.B. 2266; amended November 28, 2000, effective January 1, 2001, 30 Pa.B. 6423. Immediately preceding text appears at serial pages (255201) to (255202).

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UTILITY SERVICE TENANTS RIGHTS ACT

Act of Nov. 26, 1978, P.L. 1255, No. 299 **Cl. 66**

AN ACT

Providing for notice and the right to cure landlord's default to avoid the termination of utility service to tenants.

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the "Utility Service Tenants Rights Act."

Section 2. Definitions.

The following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Landlord ratepayer." One or more individuals or an organization listed on a gas, electric, steam or water utility's records as the party responsible for payment of the gas, electric, steam or water service provided to one or more residential units of a residential building or mobile home park of which building or mobile home park such party is not the sole occupant.

"Mobile home." A transportable, single-family dwelling unit intended for permanent occupancy and constructed as a single unit, or as two or more units designed to be joined into one integral unit capable of again being separated for repeated towing, which arrives at a site complete and ready for occupancy except for minor and incidental unpacking and assembly operations and constructed so that it may be used without a permanent foundation.

"Mobile home park." Any site, lot, field or tract of land, privately or publicly owned or operated, upon which three or

more mobile homes, occupied for dwelling or sleeping purposes, are or are intended to be located.

"Municipal corporation." All cities, boroughs, towns, townships, or counties of this Commonwealth, and also any public corporation, authority, or body whatsoever created or organized under any law of this Commonwealth.

"Public utility." A municipal corporation now or hereafter owning or operating within its corporate boundaries equipment or facilities for:

(1) Producing, generating, transmitting, distributing or furnishing natural or artificial gas, electricity, or steam for the production of light, heat, or power to or for the public for compensation.

(2) Diverting, developing, pumping, impounding, distributing, or furnishing water to or for the public for compensation.

"Residential building." A building containing one or more dwelling units occupied by one or more tenants, but excluding nursing homes, hotels and motels.

"Tenant." Any person or group of persons whose dwelling unit in a residential building or mobile home park is provided gas, electricity, steam or water, pursuant to a rental arrangement for such dwelling unit, mobile home or plot of ground within a mobile home park, but who is not the ratepayer of the company which supplied such gas, electricity, steam or water.

Section 3. Notices before service to landlord ratepayer discontinued.

(a) Except when required to prevent or alleviate an emergency or except in the case of danger to life or property, before any discontinuance of service within the utility's corporate limits, to a landlord ratepayer for nonpayment a public utility shall:

(1) Notify the landlord ratepayer of the proposed discontinuance in writing as prescribed in section 5 at least 37 days before the date of discontinuance of service.

(2) Notify the following agencies which serve the community in which the affected premises are located in writing at the time of delivery of notice to the tenants of the proposed discontinuance of service:

(i) the Department of Licenses and Inspections of any city of the first class;

(ii) the Department of Public Safety of any city of the second class, second class A, or third class; and

(iii) the city or county Public Health Department or in the event that such a department does not exist, the Department of Health office responsible for that county.

(3) Notify each residential unit reasonably likely to be occupied by an affected tenant of the proposed discontinuance in writing as prescribed in section 6 at least seven days after notice to the landlord ratepayer pursuant to this section, and at least 30 days before any such discontinuance of service. However, if within seven days of receipt of the notice issued pursuant to this section, the landlord ratepayer files a petition with the court disputing the right of the utility to discontinue service, such notice shall not be rendered until such petition has been adjudicated by the court. ((3) repealed in part Oct. 5, 1980, P.L.693, No.142)

(b) Before any discontinuance of service by a public utility to a landlord ratepayer due to a request for voluntary relinquishment of service by the landlord ratepayer:

(1) the landlord ratepayer shall state in a form bearing his notarized signature that all of the affected dwelling units are either unoccupied or the tenants affected by the proposed discontinuance have consented in writing to the proposed discontinuance, which form shall conspicuously bear a notice that false statements are punishable criminally;

(2) all of the tenants affected by the proposed discontinuance shall inform the utility orally or in writing of their consent to the discontinuance; or

(3) the landlord ratepayer shall provide the utility with the names and addresses of the affected tenants pursuant to section 4 and the utility shall notify the community service agencies and each residential unit pursuant to sections 3 and 6. Under the voluntary relinquishment discontinuance procedures of this subparagraph the tenants shall have all of the rights provided in sections 7 through 11.

Section 4. Identifying tenants.

(a) Upon receiving a lawful request for the names and addresses of the affected tenants pursuant to this act, it shall be the duty of the landlord ratepayer to provide the utility with the names and addresses of every affected tenant of any building or mobile home park for which the utility is proposing to discontinue service unless within seven days of receipt of the notice, the landlord ratepayer pays the amount due the utility or makes an arrangement with the utility to pay the balance.

(b) Such information shall be provided by the landlord ratepayer:

(1) within seven days of receipt of the notice to the landlord ratepayer required by section 3; or

(2) within three days of any adjudication by a court having jurisdiction that the landlord ratepayer must provide the requested information if the landlord files a petition with the court within seven days of receipt of the notice to the landlord disputing the right of the utility to discontinue service.

(c) It shall be the duty of any public utility to pursue any appropriate legal remedy it has, necessary to obtain from the landlord ratepayer, the names and addresses of all affected tenants of a building or mobile home park for which the utility is proposing discontinuance of service to such landlord ratepayer.

Section 5. Delivery and contents of discontinuance notice to landlord ratepayer.

(a) The notice required to be given to a landlord ratepayer pursuant to section 3 shall contain the following information:

(1) the amount owed the utility by the landlord ratepayer for each affected account;

(2) the date on or after which service will be discontinued;

(3) the date on or after which the company will notify tenants of the proposed discontinuance of service and of their rights under sections 7, 9 and 10;

(4) the obligation of the landlord ratepayer under section 4 to provide the utility with the names and addresses of every affected tenant or to pay the amount due the utility or make an arrangement with the utility to pay the balance including a statement:

(i) that such list must be provided or payment or arrangement must be made within seven days of receipt of the notice; and

(ii) of the penalties and liability which the landlord ratepayer may incur under section 18 by failure to comply; and

(5) the right of the landlord ratepayer to stay the notification of tenants by filing a petition with the court disputing the right of the utility to discontinue service.

(b) Any one of the following procedures shall constitute effective notice to the landlord under section 3:

(1) Notice by certified mail if the utility receives a return receipt signed by the landlord ratepayer or his agent.

(2) Notice by personal service of the landlord ratepayer or his agent.

(3) After unsuccessful attempts at personal service on two separate days, notice by first class mail and conspicuously posting at the landlord ratepayer's principal place of business or the business address which the landlord provided the utility as his address for receiving communications.

Section 6. Delivery and contents of first discontinuance notice to tenants.

The notice required to be given to a tenant pursuant to section 3 shall be mailed or otherwise delivered to the address of each affected tenant, and shall contain the following information:

(1) the date on which the notice is rendered;

(2) the date on or after which service will be discontinued;

(3) the circumstances under which service to the affected tenant may be continued, specifically referring to the conditions set out in section 7;

(4) the bill for the 30-day period preceding the notice to the tenants;

(5) the statutory rights of a tenant to deduct the amount of any direct payment to the utility from any rent payments then or thereafter due; to be protected against any retaliation by the landlord for exercising such statutory right; to recover money damages from the landlord for any such retaliation;

(6) that tenants may make payment to the utility on account of nonpayment by the landlord ratepayer only by check or money order drawn by the tenant to the order of the utility; and

(7) a telephone number at the utility which a tenant may call for an explanation of his rights.

The information in paragraphs (1) through (7) shall be posted by the utility in those common areas of the building or mobile home park where it is reasonably likely to be seen by the affected tenants. Any officer or employee of the utility may at any reasonable time, enter the common hallways and common areas of such building for the purpose of complying with the provisions of this section.

Section 7. Rights of tenants to continued service.

(a) At any time before or after service within the utility's corporate limits is discontinued by a public utility on account of nonpayment by the landlord ratepayer, the affected tenants may apply to the utility to have service continued or resumed. A public utility shall not discontinue such service or shall promptly resume service previously discontinued if it receives from the tenants an amount equal to the bill of the landlord

ratepayer for the 30-day period preceding the notice to the tenants. Thereafter, such utility shall notify each tenant of the total amount of the bill for the second and each succeeding period of 30 days or less and if the tenants fail to make payment of any such bill within 30 days of the delivery of the notice to the tenants, the utility may commence discontinuance procedures: Provided, That no such discontinuance may occur until 30 days after each tenant has received written notice of the proposed discontinuance as prescribed in section 8. All payments by tenants to a utility on account of nonpayment by the landlord ratepayer shall be made by a check or money order drawn by the tenant to the order of the utility. Upon receiving any such payment, the utility shall notify the landlord ratepayer who is liable for the utility service of the amount or amounts paid by any tenant and the amount or amounts credited to the landlord's bill for each tenant pursuant to the provisions of this section. In the event that the tenants fail to satisfy the requirements of this section to maintain or restore service and service to the affected dwelling units is discontinued, the utility shall refund to each tenant the amount paid by such tenant toward the bill which the tenants failed to pay, upon the request of the tenant or after holding the tenant's payment during 60 consecutive days of discontinued service, whichever occurs first.

(b) Any tenant of a residential building or mobile home park who has been notified of a proposed discontinuance of utility service pursuant to section 3 shall have the right to agree to subscribe for future service individually if this can be accomplished without a major revision of distribution facilities or additional right-of-way acquisitions.

Section 8. Delivery and contents of subsequent discontinuance notices to tenants.

Subsequent notices required to be given to a tenant pursuant to section 7 shall be mailed or otherwise delivered to the address of each affected tenant and shall contain the following information:

(1) the date on or after which service will be discontinued;

(2) the amount due, which shall include the arrearage on any earlier bill due from tenants;

(3) a telephone number at the utility which a tenant may call for an explanation of his rights; and

(4) the right of a tenant to file a petition with the court to enforce any legal right that he may have.

Section 9. Tenant's right to withhold rent.

Any tenant who has made a payment to a utility on account of nonpayment by the landlord ratepayer pursuant to this act may subsequently recover the amount paid to the utility either by deducting said amount from any rent or payment on account of taxes or operating expenses then or thereafter due from such tenant to the person to whom he would otherwise pay his rent or by obtaining reimbursement from the landlord ratepayer.

Section 10. Waiver prohibited.

Any waiver of the tenant's rights under sections 3 through 11 shall be void and unenforceable.

Section 11. Retaliation by landlord ratepayer prohibited.

It shall be unlawful for any landlord ratepayer or agent or employee thereof to threaten or take reprisals against a tenant because the tenant exercised his rights under section 7 or 9. Any landlord ratepayer, or agent or employee thereof who threatens or takes such reprisals against any tenant shall be liable for damages which shall be two months' rent or the actual

damages sustained by the tenant, whichever is greater, and the costs of suit and reasonable attorney's fees. The receipt of any notice of termination of tenancy, an increase in rent or of any substantial alteration in the terms of tenancy within six months after the tenant has acted pursuant to section 7 or 9 to avoid discontinuance of utility service, shall create a rebuttable presumption that such notice is a reprisal against the tenant for exercising his rights under section 7 or 9. However, the presumption shall not arise if the notice of termination of tenancy is for nonpayment of rent not withheld under section 9 or lawfully withheld under any other right that the tenant may have under law.

Section 12. Duties of the Attorney General.

The Attorney General shall have the power and it shall be his duty to enforce this act.

Section 13. Assurances of voluntary compliance.

In the administration of this act, the Attorney General may accept an assurance of voluntary compliance with respect to any method, act or practice deemed to be violative of the act from any person who has engaged or was about to engage in such method, act or practice. Such assurance may include a stipulation for voluntary payment by the alleged violator providing for the restitution by the alleged violator to any person in interest of money, property or other things received from them in connection with the violation of this act. Any such assurance shall be in writing and be filed with the court. Such assurance of voluntary compliance shall not be considered an admission of violation for any purpose. Matters thus closed may at any time be reopened by the Attorney General for further proceedings in the public interest.

(13 repealed in part Oct. 5, 1980, P.L.693, No.142)

Section 14. Restraining prohibited acts.

Whenever the Attorney General has reason to believe that any person is using or is about to use any method, act or practice declared in this act to be unlawful and that proceedings would be in the public interest, he may bring an action in the name of the Commonwealth against such person to restrain by temporary or permanent injunction the use of such method, act or practice.

(14 repealed in part Oct. 5, 1980, P.L.693, No.142)

Section 15. Payment of costs and restitution.

In addition, the court may in its discretion direct that the defendant or defendants restore to any person in interest any moneys or property, real or personal, which may have been acquired by means of any violation of this act, under terms and conditions established by the court.

(15 repealed in part Oct. 5, 1980, P.L.693, No.142)

Section 16. Civil penalties; violation of injunction or assurance of voluntary compliance.

Any person who violates the terms of an injunction issued under section 14 or any of the terms of an assurance of voluntary compliance duly filed in court shall forfeit and pay to the Commonwealth a civil penalty of not more than $5,000 for each violation. For the purposes of this section, the court issuing an injunction, or in which an assurance of voluntary compliance is filed shall retain jurisdiction, and the cause shall be continued; and, in such cases the Attorney General, acting in the name of the Commonwealth, may petition for recovery of civil penalties and any other equitable relief deemed needed or proper.

Section 17. Civil penalties; willful violations.

In any action brought under section 14, if the court finds that a person is willfully using or has willfully used a method,

act or practice declared unlawful, the Attorney General, acting in the name of the Commonwealth of Pennsylvania, may recover, on behalf of the Commonwealth of Pennsylvania, a civil penalty not exceeding $1,000 per violation, which civil penalty shall be in addition to other civil penalties which may be granted under this act.

Section 18. Penalties for removing, interfering or tampering with notices.

(a) Any landlord ratepayer who fails to provide a utility with the names and addresses of affected tenants pursuant to section 4 shall forfeit and pay to the Commonwealth a civil penalty of not more than $500 for each day of the landlord ratepayer's failure to respond. The court in its discretion may award the utility reasonable attorneys' fees for any action against the landlord ratepayer which was necessary to obtain the names and addresses of affected tenants pursuant to section 4. ((a) repealed in part Oct. 5, 1980, P.L.693, No.142)

(b) Any person who removes, interferes or tampers with a notice to tenants of proposed discontinuance of service, posted pursuant to section 6 shall be guilty of a violation of this section and shall be punished by a fine not to exceed $25.

Section 19. Effective date.

This act shall take effect immediately.

APPEALS

Types of Appeal Based on Municipal Court Outcome

Continuance	No right to appeal Judge's decision to continue case.
Default Judgment	Losing party must first file a petition to open default judgment in Municipal Court. Only if the petition to open is denied case the petitioner file an appeal to the Court of Common Pleas. Such appeals are "on the record," meaning that conventional appellate review standards apply, rather than being *de novo* appeals – see below under "Denial of Petition.".
Contested Judgment	Losing party may file an appeal for *de novo* consideration of the matter by the the Court of Common Pleas. The appeal deadline is 10 days for judgments for possession and 30 days for judgments for money. For a judgment that awards both money and possession, the safer approach (and the one approved by Municipal Court leadership) is that the appeal deadline is 10 days. Please be aware that the Notice of Judgment in such an instance will state that the defendant has 30 days to appeal the judgment, but it is not safe to rely on this Municipal Court notice.
Denial of Petition	If the court does not grant a petition (such as petition to open, petition to stay eviction, petition to intervene, petition to restore, petition to mark judgment satisfied, petition to vacate judgment by agreement, etc.), petitioner may file an appeal "on the record" to the Court of Common Pleas within 30 days. This means that they are not *de novo* but, rather, subject to conventional appellate review standards. There is no automatic stay of the eviction on appeal unless the party files for a stay of the eviction pending appeal.

Appeal Process in Brief (Please Note: This Checklist primarily addresses Municipal Court practice and only provides a summary description of the appellate process.)

- Appellant files appeal in the Court of Common Pleas. If appellant is requesting a stay of the eviction pending appeal, appellant must file for a supersedeas or motion to stay. If appellant is low income, appellant can request to file In Forma Pauperis. Supersedeas stays require the payment of certain amounts into an account established by the Court of Common Pleas.
- Court will either issue case management order at the time of appeal (appeals of contested judgments) or will issue a briefing schedule within a month (appeals of petitions).
- Appeals from contested hearings will be scheduled for a mandatory settlement conference in City Hall, Courtroom 531 prior to the trial as part of the Landlord Tenant Appellate Mediation Program.
- Appellants must continue to make certain payments to the Office of Judicial Records in City Hall in order to maintain their supersedeas stay. In general terms, low-come tenants who have not paid rent for the month during which the appeal is filed must pay 1/3 of the monthly rent (as determined by the Municipal Court) upon filing their appeal and the remaining 2/3 of that monthly rent 20 days later. After that, tenants must pay the

amount of monthly rent every 30 days (not month) after the filing of their appeal in order to maintain their supersedeas stay and not be evicted.

Appellants and appellees must file all required briefings on time or else risk a default judgment or judgment of non pros.

PROPERTY LEFT IN UNIT

Pennsylvania law (68 P.S. § 250.505a, Landlord Tenant Act) provides that the landlord must provide 10 days' written notice of the tenant's rights regarding property remaining in the property, and that the tenant will have 10 days from the postmark date to retrieve the property or request that it be stored for up to 30 days, at the tenant's cost. The statute sets out 5 specific situations in which property will be deemed abandoned. Notice should be sent by first-class mail to the property address and any forwarding address provided, including emergency contact addresses. The law sets out a form of notice. Subsection (h) sets out special provisions regarding victims of abuse. The law provides that except for this subsection (h), the lease terms control in the event of a conflict between the provisions of the law and the lease. The law also provides for treble damages and attorneys' fees/court costs if the landlord violates the provisions of the law.

This is the provision of the Act:

§ 250.505a. Disposition of abandoned personal property

(a) Upon the termination of a lease or relinquishment of possession of real property, a tenant shall remove all personal property from the leased or formerly leased premises. Abandoned personal property remaining on the premises may be disposed of at the discretion of the landlord, subject to the provisions of this section.

(b) Personal property remaining on the premises may be deemed abandoned if any of the following apply:

(1) The tenant has vacated the unit following the termination of a written lease.

(2) An eviction order or order for possession in favor of the landlord has been entered and the tenant has vacated the unit and removed substantially all personal property.

(3) An eviction order or order for possession in favor of the landlord has been executed.

(4) The tenant has provided the landlord with written notice of a forwarding address and has vacated the unit and removed substantially all personal property.

(5) The tenant has vacated the unit without communicating an intent to return, the rent is more than fifteen days past due and, subsequent to those events, the landlord has posted notice of the tenant's rights regarding the property.

(c) Where the tenant is deceased and leaves personal property remaining in the demised premises, the provisions of this act shall not apply. The disposition of personal property in the case of a decedent shall be governed by the provisions of 20 Pa.C.S. §§ 711(1) (relating to mandatory exercise of jurisdiction through orphans' court division in general) and 3392 (relating to classification and order of payment) and other relevant provisions of 20 Pa.C.S. (relating to decedents, estates and fiduciaries).

(d) Prior to removing or disposing of abandoned property, the landlord must provide written notice of the tenant's rights regarding the property. The tenant shall have ten days from the postmark date of the notice to retrieve the property or to request that the property be stored for an additional period not exceeding thirty days from the date of the notice. If the tenant so requests, the landlord must retain or store the property for up to thirty days from the date of the notice. Storage will be provided at a place of the landlord's choosing and the tenant shall be responsible for costs. At all times, the landlord shall exercise ordinary care in handling and securing the tenant's property and shall make the property reasonably available for purposes of retrieval.

(e) Notice shall be sent by first class mail to the tenant at the address of the leased premises and to any forwarding address provided by the tenant, including any address provided for emergency purposes. The notice shall be in substantially the following form:
Personal property remaining at (address) is now considered to have been abandoned. Within ten days of the postmark date of this notice, you must retrieve any items you wish to keep or contact your landlord at (telephone number and address) to request that the property be retained or stored. If requested, storage will be provided for up to thirty days from the postmark date of this notice at a place of your landlord's choosing, and you will be responsible for costs of storage.

(f) Under no circumstances may a landlord dispose of or otherwise exercise control over personal property remaining upon inhabited premises without the express permission of the tenant. If the conditions under which personal property may be deemed abandoned no longer exist, the landlord shall have no right to dispose of or otherwise exercise control over the property.

(g) Except with respect to the provisions of subsection (h), in the event of a conflict between the provisions of this section and the terms of a written lease, the terms of the lease shall control.

(h) Notwithstanding any provision of this section to the contrary, if a landlord proceeding under the provisions of subsection (b)(3) has actual knowledge or is notified of a protection from abuse order entered for the protection of the tenant or a member of the tenant's immediate family, the landlord shall refrain from disposing of or otherwise exercising control over the personal property of the tenant for thirty days from the date of the notice. If requested, storage shall be provided for up to thirty days from the date of the request.

(i) A landlord that violates the provisions of this section shall be subject to treble damages, reasonable attorney fees and court costs.

EFFECT OF FORECLOSURE SALES ON TENANTS' RIGHTS

When a property leased to a tenant undergoes a mortgage or tax foreclosure sale, State and federal laws define the rights of the purchaser and purchaser with respect to possession and the collection of rent.

Mortgage Foreclosures.

"Senior" Mortgages - Under State law, a purchaser under a foreclosure of a "senior" mortgage may foreclose upon the lease and buy the property free of any existing lease. A mortgage is considered to be "senior" in relation to a lease if it was recorded before the inception of the lease; seniority can also be determined by agreement signed by the mortgagee and tenant. *See Malamut v. Haines*, 51 F. Supp. 837, 842-43 (M.D. Pa. 1943). *See also Peoples-Pittsburgh Tr. Co. v. Henshaw*, 141 Pa. Super. 585, 587-91 (1940); *DeMarco v. City of Philadelphia*, 494 A.2d 875, 877 (Pa. Commw. Ct. 1985).

Federal law, however, provides limited relief to tenants in the context of a foreclosure on a federally related mortgage loan or any dwelling or residential real property. The Protecting Tenants at Foreclosure Act of 2009 ("PTFA"), reinstated in 2018[1], provides that the mortgagee-purchaser (or immediate successor in interest) at foreclosure must first send any bona fide tenant[2] a notice to vacate at least 90 days before the notice's effective date. Unless the purchaser (or the purchaser's successor in interest) intends to use the property as the purchaser's primary residence, the purchase is subject to the rights created by a bona fide tenancy under a bona fide lease entered into prior to notice of foreclosure, until the end of the term of the lease. If the purchaser (or successor) intends to use the property as a primary residence, or if there is no lease or a lease terminable at will, the PTFA provides that the purchaser-mortgagee can terminate the lease upon completion of the foreclosure sale, subject to the 90-day notice mentioned above.[3] The PTFA also preserves any other rights provided under any "Federal- or State-

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[1] Protecting Tenants at Foreclosure Act of 2009, Pub. L. No. 111-22, §§ 701-704 (2009)

[2] A lease or tenancy is "bona fide" if:

- the tenant is not the mortgagor or the child, spouse, or parent of the mortgagor;
- the lease or tenancy results from an arms-length transaction; and
- the rent is not substantially less than fair market rent for the property or the rent is reduced or subsidized due to a Federal, State, or local subsidy.

Id. at section 702(b)

[3] *Id.* at section 702 (a)

subsidized tenancy"[4] or under any State or local law that provides longer time periods or other additional protections for tenants."[5][6]

If the tenant subject to a "senior" mortgage does not voluntarily leave the property at the end of the lease term, the 90-day notice period, or such other period provided for subsidized housing or State or local law, as applicable, the purchaser can pursue ejectment and extinguish the lease. A landlord-tenant action by the purchaser-mortgagee is not appropriate in those circumstances, as the mortgagee and the tenant do not have privity of contract. The tenant need not pay rent to the purchaser-mortgagee, and the purchaser-mortgagee may not sue in assumpsit for collection of rents. *See Malamut*, *supra; Peoples-Pittsburgh Tr. Co., supra.*

"Junior" Mortgages - Where the lease predates the mortgage or has been granted contractual seniority, the purchaser-mortgagee must provide notice to the tenant, and may then sue in assumpsit for collection of rent. *Malamut at 842-43*.[7] This rent collection establishes constructive possession, and creates privity of contract as a basis for the suit in assumpsit. *Id*. However, the purchaser-mortgagee under a "junior" mortgage cannot bring an ejectment action against the tenant in possession under the lease solely based on the default of the mortgagor-landlord. *Id*. Any action to collect rent or exercise other remedies would be under the terms of the lease itself and in a landlord-tenant action, rather than in ejectment.

Tax Lien Foreclosures.

In a tax lien foreclosure, a third-party purchaser's rights to pursue ejectment (not eviction) appears to depend on whether the redemption period has expired. Prior to the expiration of that period, a purchaser "is not invested with any title to the land whatever, because the owner's title is not divested." *Easton v. Sulkin*, 19 Pa. D. & C. 152, 154 (1933)(citations omitted). Only once the redemption expires does the purchaser obtain the right to possession. *Id.* While the tax foreclosure statute has been amended to refer to the conveyance of "absolute title" rather than an inchoate title, the defeasibility of title during the redemption period continues to be good law. A recent decision stated that "[t]he holding in *Easton* has been adopted by many Pennsylvania courts . . . and remains good law today. *In re Pittman*, 549 B.R. 614,

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[4] *Id. See also id.* at section 703, amending section 8(o)(7) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(7)) to provide that an owner vacating the property prior to foreclosure sale shall not constitute good cause, and also to provide that in a foreclosure on any federally-related mortgage loan or on any residential real property in which a recipient of assistance under this subsection resides, the immediate successor in interest takes such interest subject to the lease and to the housing assistance payments contract for the occupied unit.

[5] *Id.* at section 702(a)

[6] One New York court concluded that the federal government's effort under the PTFA to control the effects of a non-federally related mortgage upon tenants' interested violated the U.S. Constitution's reservation of rights to the States.*Collado v. Boklari*, 892 N.Y.S.2d 731 (N.Y. Dist. Ct. 2009). We are not aware of any case that has adopted this view. Another New York state court case declined to follow *Collado*, and in New York there is now a parallel ninety-day notice law.

[7] If the mortgage contains no clause conveying rents, the mortgagee, the tenant must pay rent to the mortgagee upon notice only after default under the mortgage. If the mortgage contains such a conveyance clause, a mere notice suffices to trigger the rent payment obligation. *Id.*

622 (E.D. Pa. 2016), *citing City of Philadelphia v. Novick,* 400 Pa.Super. 101 (1990); *City of Philadelphia v. Chicken's Place, Inc.,* 388 Pa.Super. 198 (1989). Prior to the expiration of the redemption period, the third-party purchaser obtains only partial, defeasible property rights (also referred to as inchoate title) that become complete only upon the expiration of the redemption period. *Id.* (citing). Under Pennsylvania's Municipal Claims and Tax Lien Act ("MCTLA"), a purchaser in a tax lien foreclosure "shall take and forever thereafter have, an absolute title to the property sold, free and discharged of all tax and municipal claims, liens, mortgages, ground rents, charges and estates of whatsoever kind*, subject only to the right of redemption as provided by law.*" 53 Pa. Stat. Ann. § 7283(a)(*emphasis added)*. The property may be redeemed by the original owner, the owner's assignees, or any party whose lien or estate was discharged by the sale, within nine months from the date of acknowledgment of the sheriff's deed by payment of the purchase price. 53 Pa. Stat. Ann. § 7293(a).

Thus, the third-party purchaser has no standing to bring an action in ejectment against the original owner or to seek a judgment for possession against that owner until the end of the redemption period. *See Easton, supra.* As the original owner has the right to remain in possession, that owner can continue to lease the property, collect rent, and pursue remedies against the tenant during the redemption period. Once the redemption period expires, however, the third-party purchaser is vested with full title to the property, free and clear of any leases, and gains the related possessory rights. If possession is not turned over at that time, the purchaser may pursue an ejectment action, not a landlord-tenant action.

As noted above, the MCTLA provides that subject only to the redemption right, a purchaser obtains title "free and discharged of . . . all estates of whatsoever kind." MCTLA at § 7283(a). At least one Pennsylvania Superior Court case refers repeatedly to leases as creating an estate: "One who has a beneficial interest in the *estate created by the lease*, or enjoys the profits thereof, or has a right to enjoy such profits, is in *privity of estate*, as the successor to the title of the lessee." *McClaren v. Citizens' Oil & Gas Co.*, 14 Pa. Super. 167, 172-3 (1900)(*emphasis added*). If such an estate is stripped by the tax lien foreclosure under the MCTLA after expiration of the redemption period, the purchaser may proceed with ejectment of the now-former tenant, as by virtue of the lease having been stripped by the tax sale, the former tenant is a mere occupant without rights to possession. If there is any uncertainty on this issue, it is because the language of the statute cited above, while broad (freeing the purchaser from "all tax and municipal claims, liens, mortgages, ground rents, charges and estates of whatsoever kind, subject only to the right of redemption as provided by law", 53 Pa. Stat. Ann. § 7283(a)), does not expressly mention leases (which are not "ground rents") in its litany of rights that are stripped. However, in light of the language of *McClaren, supra*, a leasehold likely constitutes an "estate" that is deemed stripped by the tax lien sale under the MCTLA.

THE EFFECT OF A TENANT FILING FOR BANKRUPTCY

The filing of a bankruptcy proceeding generally imposes an "automatic stay" of all proceedings against the debtor, including an eviction from rental property. Prior to 2005, a landlord could only file or continue an eviction process if the landlord sought relief from the stay in the Bankruptcy Court.

In 2005, Congress amended the Bankruptcy Code to provide that a landlord may pursue eviction notwithstanding the automatic stay in two contexts, the first involving cases in which the bankruptcy filing occurs after a judgment of possession has been entered, and the second involving property in which the tenant has illegally used controlled substances or the property is endangered.

The first context applies only when the bankruptcy filing occurs **after** the judgment in the landlord-tenant case is entered. Under the amendments, a landlord may continue with the eviction process, subject, however, to the tenant's state law rights (if any) to cure and remain in possession and further subject to certain safeguards enacted by Congress. In Pennsylvania, if the judgment is based on nonpayment of rent only, the tenant may avoid an eviction under the state's pay and stay law. In order to do so, the tenant must take the following steps in the Bankruptcy Court:

- File with the bankruptcy petition a certification under penalty of law with the Bankruptcy Court stating that:
  a. state law allows a tenant to stay in the rental unit and pay the delinquent rent after the issuance of an eviction judgment, and
  b. the tenant has deposited with the bankruptcy clerk the amount of rent that would become due during the 30-day period from the filing of the petition; and

- Serve the landlord with a copy of the certification.

If a tenant takes the above steps, the tenant has thirty days from filing the petition to pay the amount owed under the judgment and file and serve a second certification with the Bankruptcy Court that the tenant has cured the default. A landlord has the right to object to either certification. If an objection is filed, the Bankruptcy Court will hold a hearing within ten days of filing and service of the objection. If the landlord prevails, the court will permit the eviction to proceed.

If a tenant files for the protection of the Bankruptcy Court **before** the entry of a judgment in a landlord-tenant action, the procedures described above do not apply and the "automatic stay" applies as it did prior to 2005, except as noted below. As noted above, the landlord may ask the Bankruptcy Court for relief from the stay.

The second context addressed by the 2005 amendments is when illegal drugs have been used on the property or the leased property is endangered. Under those circumstances, the landlord may begin or continue an eviction process notwithstanding the "automatic stay" if the landlord the landlord files and serves on the debtor a certification under penalty of perjury with the Bankruptcy Court stating that:

- an already-filed action was filed on the basis of property endangerment or the illegal use of controlled substances on the property, or
- the debtor has, during the 30-day period preceding the filing of the certification, endangered the property or allowed a controlled substance to be used on the property.

If the tenant files an objection to the certification, the Bankruptcy Court must hold a hearing on the tenant's objection within ten days of its filing and service. If the tenant establishes that the appropriate grounds do not exist or have been remedied, the "automatic stay" remains in effect. If the tenant cannot establish that the situation did not exist or has been remedied, the Bankruptcy Court will allow the landlord to proceed with the eviction. If the landlord has complied with the certification requirements but the tenant fails to file an objection, the landlord may proceed with the eviction after fifteen days have elapsed since the filing of the bankruptcy petition.

Philadelphia Municipal Court Practice Pointers

-The Philadelphia Municipal Court does not check Bankruptcy Court dockets and is not notified by the Bankruptcy Court of its Orders.

-Make sure that the Philadelphia Municipal Court is aware of any Bankruptcy Court filings by sending a copy of those filings to the Philadelphia Municipal Court.

-If the "automatic stay" applies, a pending landlord-tenant action will be stayed. If the stay is lifted by the Bankruptcy Court or by the bankruptcy case being dismissed or ended, the landlord should notify the Philadelphia Municipal Court so that the landlord-tenant action will be scheduled for trial.

The Philadelphia Code

§ 9-804. Unfair Rental Practices.

(12) *Good cause required.*

(a) No owner, landlord, agent or other person operating or managing any residential premises, upon expiration of a lease of less than one year, shall issue a notice to vacate, notice of non-renewal, or notice to terminate the lease, unless (1) the landlord has good cause not to renew the lease; and (2) the landlord provides the tenant with notice pursuant to subparagraph (c), below. For purposes of this subsection (12)(a), good cause shall include, but is not limited to, any of the following:

(.1) Habitual non-payment or habitual late payment of rent by the tenant.

(.2) Breach of or non-compliance with a material term of the tenant's lease or rental agreement.

(.3) The tenant engages in nuisance activity that creates a substantial interference with the use, comfort or enjoyment of the property by the landlord or other tenants in the building; or that substantially affects the health or safety of the landlord or other tenants in the building.

(.4) The tenant causes substantial deterioration of the property beyond normal wear and tear.

(.5) The tenant, after written notice to cease, refuses the landlord access to the unit for lawful purposes, such as to make repairs or assess the need for repairs, to inspect the premises for damages, to show the premises to insurance or mortgage companies, or during an emergency.

(.6) The tenant refuses to execute an extension of a written lease,that is set to expire, for materially the same terms.

(.7) The owner of the premises or a member of the owner's immediate family is going to move into the unit.

(.8) The tenant refuses to agree to a proposed rent increase or other proposed changes to a lease (for example, a new no-pets policy, the elimination of parking, or charging more for utilities), but only if the following conditions have been met:

(A) The landlord has provided the tenant with the option to accept the proposed rent increase or proposed other change to the lease. The option shall be included in the notice required by subsection 11(a) ("Landlord Notice to Tenant of Rent Increase") or, if no notice is required by subsection (11)(a), in a notice provided to the tenant that comports with subsection (11)(a).

(B) The tenant must accept the option no later than fifteen (15) days prior to the expiration of the current lease, or else the tenant will be deemed to have declined the option. The

tenant must accept the option in writing, by hand delivery or by first class United States mail with proof of mailing; provided that the tenant may accept the option by other means acceptable to the landlord so long as the landlord provides a receipt confirming that the acceptance has been received.

(C) The landlord intends and reasonably expects to apply the proposed rent increase or proposed change to the next tenant, if the current tenant rejects the proposed terms.

(.9) The owner of the premises will not be renting out the premises during upcoming renovations, but only if the following conditions have been met:

(A) The owner provides notice of non-renewal of the lease at least 60 days prior to the date the premises must be vacated.

(B) The owner returns to the tenant any outstanding security deposit as promptly as possible prior to the date of move-out, but in no instance later than provided for by Section 512 of The Landlord and Tenant Act of 1951, 68 P.S. § 250.512.

(C) The owner provides to the tenant the option to renew the tenancy at the market rental rate when the premises become available again for rental, other than for rental to a close family member.

(b) Reserved.

(c) A landlord who has good cause to issue a notice to vacate or notice to terminate a lease under subsection (a), above, shall notify the tenant in writing of the basis for such good cause in the same manner and on the same schedule as set forth in subsection 11(a) ("Landlord Notice to Tenant of Rent Increase"). In the event the owner, landlord, agent or other person operating or managing the premises fails to issue the notice as required by this subsection (12), the lease shall renew on a month-to-month basis, unless the tenant elects otherwise.

(d) A tenant shall have the right to challenge the determination of good cause in a court of competent jurisdiction or by filing a complaint with the Fair Housing Commission, with notice to the landlord, within fifteen (15) business days of the receipt of notice of good cause. The Commission, after investigation and hearing, as it deems appropriate, shall, as promptly as practicable prior to the expiration of the lease, issue such order as it deems appropriate.

(.1) No notice to vacate, notice of non-renewal or notice to terminate a lease shall be effective while a challenge to a determination of good cause is pending before the Commission, unless a court of competent jurisdiction finds that the challenge was filed in bad faith.

(e) Allegations of an owner, landlord, agent or property manager in support of a claim of good cause shall be presumed true if supported by any of the following:

(.1) Time and date stamped video.

(.2) Time and date stamped photographs.

(.3) Police report with reliable information and corroborating police investigation.

(13) Any person aggrieved under the provisions of this Section may file a complaint with the Fair Housing Commission or may allege any violations in an initial pleading or, where appropriate, in a responsive pleading in a court of competent jurisdiction.

(14) No provision of this Section can be waived or made subject to a contract between the parties depriving a tenant of the benefits of this Section.

TOC

PHILADELPHIA MUNICIPAL COURT
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

1339 Chestnut Street, 10th Floor, Philadelphia, PA 19107

Marsha H. Neifield, President Judge John J. Joyce, Deputy Court Administrator

LANDLORD/TENANT COMPLAINT

LT-19-

Plaintiff(s)	*Defendant(s)*

JUDGMENT BY AGREEMENT
(Judgments by Agreement are not appealable)

[ ] Judgment for the Plaintiff for the Amount of: Plus Costs: For a Total of:
[ ] Judgment for Possession as of:
[x] Judgment for Possession only as of: 00-00-2019 (date of hearing)
[ ] Money Judgment only: Plus Costs: For a Total of:
[ ] Money Judgment to be Satisfied if Defendant vacates by:
[ ] Judgment of Possession to be Satisfied if Defendant pays (as outlined in Other Conditions) by:
[ ] Judgment of Possession to be Satisfied if (see Other Conditions)

Other Conditions:

(Add in here any payment plan, if applicable)
Tenant to vacate by (date). Property to be left in broom swept condition. Keys to be returned to landlord. No lockout before (date). Security Deposit to be returned in accordance with PA law. Plaintiff's counsel agrees to not oppose a petition to vacate if tenant complies with the foregoing.

Defendant's counsel hereby withdraws their appearance.

IMPORTANT!
Please read each clause below and on the attached notice.

1. If the agreement is broken, possession may be enforced on this agreement for the following reasons agreed upon by all parties.
   [ ] (a) Non-Payment of rent
   [x] (b) Termination of the term
   [ ] (c) Breach of condition of the lease.
   If you are being sued for non-payment of rent only you cannot be evicted as long as you pay your outstanding rental arrearage up until the time the Alias Writ is served.
2. Any breach of this agreement may allow the eviction to proceed without further Notice.
3. Any Landlord/Tenant action that is not completed within 180 days will require a new filing with a new Notice to Quit unless a Petition to Extend is granted.

ONLY THE TERMS OUTLINED AND WRITTEN ON THIS FORM ARE ENFORCEABLE. ANY AND ALL VERBAL AGREEMENTS MADE BETWEEN THE PARTIES OR WITH AN ATTORNEY ARE NOT ENFORCEABLE.

Plaintiff's Signature:	Defendant's Signature:
Plaintiff's Telephone Number:	Defendant's Telephone Number:
Plaintiff's Attorney:	Defendant's Attorney:
Plaintiff's Attorney's I.D. & Telephone Number:	Defendant's Attorney's I.D. & Telephone Number:
Mediator--Signature:	Mediator--Print Name:

SEE ATTACHED EXPLANATORY NOTICE

THE MUNICIPAL COURT COMPLIES WITH THE AMERICANS WITH DISABILITIES ACT, WHICH REQUIRES THAT ALL COURT SERVICES AND FACILITIES BE ACCESSIBLE TO PERSONS WITH DISABILITIES ON AN EQUAL BASIS TO THOSE WITHOUT DISABILITIES. IF YOU HAVE A DISABILITY, AND REQUIRE REASONABLE ACCOMMODATIONS TO FILE A CLAIM, PARTICIPATE IN A MUNICIPAL COURT PROCEEDING, OR USE ANY SERVICE PROVIDED BY THE COURT, PLEASE CALL 686-7986. REQUESTS FOR REASONABLE ACCOMMODATIONS MUST BE MADE AT LEAST THREE BUSINESS DAYS BEFORE ANY HEARING, OR WITHIN THREE BUSINESS DAYS AFTER SERVICE (DELIVERY) OF THE NOTICE OF THE HEARING WHICHEVER IS LATER.

PLEASE READ THIS!

1. **IF YOU ARE UNSURE OF WHAT THIS AGREEMENT MEANS, YOU CAN ASK ANY MEDIATION UNIT EMPLOYEE OF THE MUNICIPAL COURT OR TRIAL COMMISSIONER TO EXPLAIN IT TO YOU, EVEN IF THAT PERSON DID NOT ASSIST YOU IN PREPARING THIS DOCUMENT.**

   OR, ASK TO HAVE THE AGREEMENT ENTERED BY THE JUDGE.

2. **REMEMBER, YOU ARE BOUND BY EACH AND EVERY CONDITION OF THE AGREEMENT!**

Procedure in the event of breach:

If any party believes this Agreement has been breached (a failure to comply with the promises required by the Agreement) then an Affidavit must be filed with the Judgment and Petitions Unit, 1339 Chestnut Street, Room 1003, Philadelphia, PA 19107.

If an Affidavit is filed claiming you have failed to keep the promises made here, and you believe you have done what you are supposed to do, then you must request a hearing within five (5) working days (weekends and holidays do not count) of the day you receive the Affidavit from Court.

Finally: You are here because there has been a failure in the Landlord/Tenant relationship. This Agreement is a second chance. If you fail to do what this Agreement requires of you, then the Agreement is breached/void (no longer valid) and all available legal consequences may proceed without further Notice.

JUDGMENTS BY AGREEMENT ARE NOT APPEALABLE.

TOC

IN THE MUNICIPAL COURT OF PHILADELPHIA COUNTY

Attorney Name (ID #XXXXX)
Attorney Email
Firm Name
Address 1
Philadelphia, PA 19XXX
Attorney Phone Number

Landlord Name Address 1 Address 2 Plaintiff	:	LT-1X-XX-XX-XXXX
v.	:	
Tenant Name Address 1 Address 2 Defendant	:	

PETITION TO VACATE THE JUDGMENT AND DISMISS MATTER

1. On DATE, a Judgment by Agreement was entered by plaintiff and defendant for possession of the property at ADDRESS [and money judgment for $00,000]. SEE: Exhibit A: JBA.

2. The terms of the judgment are as follows: "Defendant to vacate the premises on or before 02/01/2019 and leave premises in broom swept condition…..As long as above defendants vacate timely and returns the keys plaintiff will not oppose defendant's petition to vacate the judgment."

3. Defendant moved out on DATE and left the property in broom swept condition.

4. Defendant received a receipt from the property manager when she returned the keys. SEE: Exhibit B: Receipt.

5. Defendant therefore fulfilled all of the terms of the Judgment by Agreement.

6. Plaintiff stipulates that the judgment should be marked satisfied and dismissed in line with the terms of the Judgment by Agreement. SEE: Proposed Order to Vacate.

7. Failure to have this Judgment vacated hurts defendant's credit and makes it more difficult for defendant to find reasonable housing.

WHEREFORE, YOUR Petitioner respectfully requests the Court to vacate the Judgment dated DATE.

Dated: DATE

Respectfully submitted,

_____

NAME
Attorney for Defendant

TOC

[Name of Attorney for Plaintiff]
[Address]
[Address]
[Address]

	:	PHILADELPHIA MUNICIPAL COURT
[_____]	:	
	:	
Plaintiff,	:	LT-[_____]
	:	
v.	:	
	:	
[_____]	:	
	:	
Defendant,	:	
	:	

[PROPOSED] ORDER TO VACATE JUDGMENT AND DISMISS MATTER

TO THE PROTHONOTARY:

Kindly mark the judgment in the above matter vacated and the matter dismissed.

_____
[_____]
Plaintiff/Attorney for Plaintiff

_____
JUDGE

TOC

DATE

CLIENT'S NAME
CLIENT'S ADDRESS
CLIENT'S CITY, STATE ZIP

Dear CLIENT:

Philadelphia VIP referred your case to me for assistance with your landlord-tenant hearing in Municipal Court.

I assisted you with this case by taking the following actions:

- gathered [RELEVANT DOCUMENTS]
- analyzed whether you had [LEGAL CLAIM/GOOD DEFENSE/ETC.]
- prepared document and/or filed pleading on your behalf
- represented you at the hearing

As a result of this work, [OUTCOME ACHIEVED].

You should keep in mind that [ADVICE ON NEXT STEPS THAT CLIENT SHOULD TAKE AND/OR THINGS THAT CLIENT SHOULD BE AWARE OF SUCH AS DEADLINES TO MAKE ANY ADDITIONAL PAYMENTS OR MOVE OUT AND ADVICE ABOUT GETTING THE SECURITY DEPOSIT BACK].

It was a pleasure working with you, and I wish you the best of luck in the future. Should any further questions or concerns, please feel free to contact [VOLUNTEER ATTORNEY AND/OR SPECIFIC VIP STAFF MEMBER] at [PHONE NUMBER].

Sincerely,

VOLUNTEER ATTORNEY'S NAME

Enclosures: [RELEVANT DOCUMENTS SUCH AS DOCKET REPORT, ORDER, JBA, AND/OR SETTLEMENT AGREEMENT]

cc: [VIP STAFF MEMBER], via email (without enclosures)

TOC

PHILADELPHIA MUNICIPAL COURT
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

1339 Chestnut Street, 10th Floor, Philadelphia, PA 19107
Patrick F. Dugan, President Judge John J. Joyce, Deputy Court Administrator

LANDLORD AND TENANT COMPLAINT

Date Filed: 03/25/2019 # LT-19-03-00-0000

Complaint Continuation

Landlord Address PHILADELPHIA, PA 19124 ***Plaintiff(s)***	Client, AKA/DBA: AND ALL OTHER OCCUPANTS 1906 N. Address PHILADELPHIA, PA 19121 ***Defendant(s)***

I. Plaintiff states that he/she/it owns the real property located at the following address: Address, PHILADELPHIA, PA 19121. Plaintiff further states that there is a lease between him/her/it and the above-referenced defendant(s). The lease is written, attached and began on 09/03/2017 for the term of month to month. Additionally, plaintiff states that the lease is residential.

II. Plaintiff states that he/she/it is in compliance with Section 9-3902 of the Philadelphia Code by having a valid Rental License at the time of filing this complaint.
* The Effective Date of the license is 09/13/2018 and its Expiration Date is 09/11/2019

III. Plaintiff states that he/she/it is in compliance with Section 9-3903 of the Philadelphia Code as a result of having provided the tenant with a Certificate of Rental Suitability and a copy of the City of Philadelphia Partners for Good Housing Handbook prior to the first month for which he/she/it is seeking unpaid rent in paragraph XI and the Certificate of Rental Suitability that was provided was issued by the Department no more than sixty days prior to the inception of the tenancy. A copy of any Certificate of Rental Suitability provided to the tenant is attached.
* Certificate - Date Issued by Department 09/07/2018

IV. Plaintiff states that the leased property:

A. was built before March of 1978.

B. is not a residential property developed by or for an educational institution for the exclusive use and occupancy by that institution's students.

C. is not owned or subsidized by the Philadelphia Housing Authority or its subsidiaries, or privately owned and leased under the Housing Choice Voucher Program; and

D. has not had and will not have a child aged six or younger.

E. The lease is effective from December 21, 2012 to the present.

PHILADELPHIA MUNICIPAL COURT
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

1339 Chestnut Street, 10th Floor, Philadelphia, PA 19107
Patrick F. Dugan, President Judge John J. Joyce, Deputy Court Administrator

LANDLORD AND TENANT COMPLAINT

Date Filed: 03/25/2019 # LT-19-03-00-0000

Complaint Continuation

V. I have provided the defendant with a valid certification prepared by a certified lead inspector stating that the property is either lead free or lead safe. A copy of the certification is attached.

VI. Plaintiff states that the subject premises is fit for its intended purpose.

Plaintiff states that he/she/it is unaware of any open notice issued by the Department of Licenses and Inspections ("Department") alleging that the property at issue is in violation of one or more provisions of the Philadelphia Code.

VII. Plaintiff states that notice to vacate the subject premises by 04/04/2019 was given to the defendant on 03/25/2019. A copy of the notice is attached.

VIII. The defendant is in possession of the property and refuses to surrender possession of the property.

IX. Plaintiff demands a judgment of possession and a money judgment in the amount itemized below based on the following:

***** Nonpayment of amounts due under the lease, for 4 months, **from:** DEC, 2018 **to and including:** MARCH, 2019

The amount of unpaid rent below and late fees alleged due.

Month	Year	Rent	Late Fee
DEC	2018	$490	$100
JAN	2019	$650	$150
FEB	2019	$650	$125
MAR	2019	$650	$125

Summarized alleged amounts due:

Rent	$2,440.00
Late Fees	$500.00
Gas	$0.00
Electric	$0.00
Water / Sewer	$0.00
Attorney's Fees	$0.00
Other	$0.00
Subtotal	$2,940.00
Court Costs	$116.75
Total	$3,056.75

ONGOING RENT IN THE AMOUNT OF $650.00 FROM THE DATE OF THE FILING OF THIS COMPLAINT TO THE DATE OF THE HEARING ON THE MERITS IN THIS MATTER.

Filing Party: Landlord
Address
PHILADELPHIA, PA 19130
215-867-5309

Phone Number:

I am an attorney for the plaintiff(s), the plaintiff's authorized representative or have a power of attorney for the plaintiff(s) in this landlord tenant action. I hereby verify that I am authorized to make this verification; that I have sufficient knowledge, information and belief to take this verification or have gained sufficient knowledge, information and belief from communications with the plaintiff or the persons listed below and that the facts set forth are true and correct to the best of my knowledge, information and belief. I understand that this verification is made subject to the penalties set forth in 18 Pa. C.S. § 4904, which concerns the making of unsworn falsifications to authorities. If I am an authorized representative or have a power of attorney, I have attached a completed Philadelphia Municipal Court authorized representative form or a completed power of attorney form.
Landlord

Landlord Siganture

_____
Signature Plantiff/Attorney

SUMMONS TO THE DEFENDANT:
You are hereby ordered to appear at a hearing scheduled as follows:

CITATION: Al demandado por la presente, usted esta dirijido a presentarse a la siguiente:

LOCATION (SITO):
1339 Chestnut Street 6th Floor
Philadelphia, PA 19107
Hearing Room: 3

DATE (FECHA):
April 24th, 2019

TIME (HORA):
08:45 AM

NOTICE TO THE DEFENDANT: YOU HAVE BEEN SUED IN COURT. PLEASE SEE ATTACHED NOTICE.

NOTA IMPORTANTE PARA EL ACUSADO: USTED HA SIDO DEMANDO EN CORTE: POR FAVOR MIRA PAPELE ESCRITA.