
**SELECTED LANDLORD AND TENANT LAWS AND RULES
KNOW YOUR RIGHTS**

**DELAWARE COUNTY BAR ASSOCIATION
DISTRICT JUSTICE COMMITTEE
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I ABANDONED PERSONAL PROPERTY ACT

1. The Act amend The Landlord and Tenant Act of 1951 by adding a section requiring Landlords to provide tenants with notice of the disposition of their personal property after possession of the rental property is relinquished by the Tenant. Tenant deemed to relinquish possession of the rental property if:
 - i. a forcible eviction; or
 - ii. tenant physically vacates, removes substantially all personal property and provides a forwarding address or written notice that they have vacated,
2. Act does not apply to personal property of tenant that abandons.
3. Tenant has ten days to contact Landlord regarding intention to retrieve the personal property after written notice from landlord. If tenant conveys notice of intent to retrieve personal property within ten days of Landlord notice, Landlord must retain custody of property for thirty days; and thereafter may dispose of same.
4. Notice from landlord is provided: (1) in the writ form; or (2) in lease, then by mail to forwarding address (date of postmark commences ten day period) or personal delivery to tenant; (3) if no notice in lease, then to tenant to forwarding address and to emergency contact (date of postmark commences ten day period).
5. Does not resolve issues:
 - i. how tenant is to provide notice (i.e. written etc)
 - ii. time for removal (ie during business days and hours)
 - iii. rules to guide tenant in removal (do not simply allow to pick through)
6. Provides for standard of care
7. Provides for reimbursement of coats to store if picked up after ten days– not on mechanism to collect.

II SECURITY DEPOSIT

1. Collecting the Security Deposit – Section 511a of the Landlord and Tenant Act: A residential landlord may not require a sum in excess of two months' rent as a security deposit during the first year of a lease and not more than one month's rent during any successive month of the original lease or any renewal of the lease. 68 P.S. § 250.511a(a)-

(b). After five years, any increases in rent shall not require an increase in the security deposit.

2. Any security deposit in excess of \$100.00 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.
3. The landlord must notify tenants, in writing, of the name and address of the bank in which the deposit is held and the amount of the deposit.
4. The security deposit may be placed in either an interest or non-interest bearing account until after the second year of the lease or during a renewal after the first two years of the lease, when the security deposit must be placed in an interest bearing escrow savings account. The landlord shall be entitled to receive 1% of the money deposited per year (in lieu of administrative assessments), with the balance paid annually to the tenant.

Q: Is the landlord permitted to receive 1% of the money deposited even if the account does not bear interest equal to or greater than 1% and the result would be a reduction in the principal deposited? Is the tenant then responsible for replacing the reduction in the principal as a result of the administrative fee?

5. Distributing the Security Deposit – Section 512 of the Landlord and Tenant Act: When the lease terminates or the tenant vacates the premises, the landlord must provide the tenant with a written list of any damages to the premises for which the landlord claims the tenant is liable within 30 days. The landlord must pay the tenant the difference between the escrow deposit and the amount of claimed damages, plus any unpaid interest on the escrow deposit at the same time that the landlord delivers the list of claimed damages.
 - i. If the landlord fails to provide the written list of damages within 30 days, the landlord forfeits all rights to withhold any portion of the security deposit, including unpaid interest, or to sue the tenant for damages to the leasehold premises.
 - ii. If the landlord fails to pay the tenant the difference between the security deposit and the claimed damages, plus the unpaid interest on the security deposit, within 30 days after termination of the lease or abandonment of the leasehold, the landlord is liable for “double the amount by which the sum deposited in escrow, including any unpaid interest thereon, exceeds the actual damages to the leasehold premises as determined by any court... having jurisdiction in civil actions at law.” 68 P.S. § 250.512. In such cases, the landlord has the burden of proving any actual damages the tenant caused to the leasehold

premises. Any attempt to waive any of these requirements and rights also is void and unenforceable.

- iii. However, the landlord is relieved of any liability for failing to provide the tenant with a list of claimed damages or for failing to return escrowed funds if the tenant fails to leave the landlord with a forwarding address in writing when the lease terminates or the tenant surrenders the leasehold and the landlord accepts the premises.
- iv. A sound practice at both the inception and the termination of the lease is to document the condition of the premises by taking photographs or video and/or filling out a conditions/assessment report that is signed by the tenant.

III RIGHTS FLOW THROUGH THE LEASE AGREEMENT

1. **The Lease is a Contract:** Leases are controlled by principles of contract law, including the well-settled rules of interpretation and construction. Pugh v. Holmes, 384 A.2d 1234 (Pa. Super. 1978), aff'd as modified, 486 Pa. 272, 405 A.2d 897 (1979). The purpose in interpreting a lease is to ascertain the intention of the parties, and such intention is to be gleaned from the language of the lease. National Biscuit Co. v. Baehr Bros., 99 A.2d 494 (Pa. Super. 1964). Such intention is to be determined by giving every part of the document its fair and legitimate meaning. Boyd v. Shell Oil Co., 454 Pa. 374, 377, 311 A.2d 616, 618-19 (1973); Friestad v. Travelers Indemnity Co., 393 A.2d 1212 (Pa. Super. 1978). The lease contract will create mutual rights and obligations between the landlord and tenant.
2. **Pennsylvania Consumer Contract Plain Language Act, 73 P.S. Section 2207(b):** Residential Leases that use fine print and legalese violate the Pennsylvania Consumer Contract Plain Language Act and are per se violations of the Act, subjecting the Landlord to damages.
3. **Pennsylvania Unfair Trade Practices and Consumer Protection Law (CPL), 73 P.S. §§ 201-3, 201-4:** prohibits a landlord from engaging in fraudulent or deceptive conduct concerning the leasing of a residential rental unit. The Pennsylvania Supreme Court in Commonwealth by Creamer v. Monumental Properties, Inc., 459 Pa. 450, 485-486, 329 A.2d 812, 830 (1974), held that leasing of residential real estate is covered by the CPL. In Wallace v. Pastore, 742 A.2d 1090 (Pa. Super. 1999), the Superior Court held that lessor's fraudulent representations as to the condition of the apartment, as a basis to retain the security deposit, were actionable under the UTPCPL; award of attorney fees was appropriate under the UTPCPL; and evidence supported finding that entire amount of security deposit was wrongfully withheld.

4. **Notice To Quit.** In the event of a material default of the Lease, a landlord may elect to pursue two courses of action, either independently or simultaneously. A landlord may pursue the collection of rents or damages to the premises exclusively, and permit the tenant to remain in possession of the premises. Alternatively, a landlord may act to reclaim possession of the premises based upon the material default, in lieu of or in addition to collecting monetary damages.

5. **Notice to Quit – Section 501 of the Landlord and Tenant Act:** Prior to commencing an action against a tenant, a landlord must provide a tenant with a notice to quit, absent a waiver provision in the lease. 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. A tenant must quit the premises upon receipt of a notice to quit as follows:

- i. Lease for up to one year, or an indeterminate period of time:
 - a. 15 days from receipt of notice
- ii. Lease for more than one year:
 - b. 30 days from receipt of notice
- iii. Failure to satisfy rent due upon demand:
 - c. 10 days from receipt of notice

a. Waiver of notice to quit otherwise required by § 501 of the Landlord and Tenant Act of 1951, 68 P.S. § 250.101, et seq.

E.g., “WAIVER OF NOTICE: If the Landlord desires to start a Court action to recover possession for nonpayment of rent or for any other reason, the Tenant specifically waives any notice period contained in Section 501 of the Landlord and Tenant Act of 1951, as amended, 68 P.S. 250.101 et seq., or any other notice period established by law. THEREFORE, THE LANDLORD MAY FILE SUIT AGAINST THE TENANT WITHOUT NOTICE IF THE TENANT BREACHES THIS LEASE AGREEMENT, AND TENANT AGREES THAT NO NOTICE IS REQUIRED.”

6. **Prohibited Lease Terms:**

- i. A clause that purports to make all repairs to a residential leasehold premises the obligation of tenant is unenforceable under the implied warranty of habitability. See Fairy v. Negley, 257 Pa. Super. 50, 55, 390 A.2d 240, 243 (1978).

- ii. A clause purporting to deny the tenant the right to admit a salesman into the leased premises is unenforceable because it breaches the tenant's right to quiet enjoyment of the premises. See Landlord and Tenant Act of 1951, 68 P.S. Section 250.504-A.
- iii. A clause purporting to reserve in the landlord a discretionary right to keep off the leased premises any persons the landlord believes to be undesirable also is unenforceable because it breaches the tenant's right to quiet enjoyment of the premises. See Branish v. NHP Property Mgmt., Inc. 694 A.2d 1106, 1107 (Pa. Super. 1997).
- iv. A lease provision that requires security deposit of more than the equivalent of two months rent during the first year of the lease and more than one month's rent in any subsequent year or for any renewal year is unlawful because it violates the Landlord and Tenant Act. See 68 P.S. 250.511a(a)-(b).

Q: Is a requirement in the lease that the tenant pre-pay the last month's rent in addition to remitting a security deposit a violation of this section of the Act?

- v. A warrant of attorney provision in a residential lease is not only unenforceable but is a *per se* violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law (CPL) and subjects the landlord to damages. See 73 P.S. Section 201-2(4)(xviii). (Many old form leases still in circulation contain this type of clause.)
- vi. Confession of judgment clauses within residential leases are unenforceable. Smith v. Coyne, 555 Pa. 21, 722 A.2d 1022, (1999). The inclusion of a confession of judgment clause would also constitute a "Unfair method of competition" and "unfair or deceptive acts or practices" as defined and prohibited by Section 2 of the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-2. That section, in particular, prohibits, "[u]sing a contract, form or any other document related to a consumer transaction which contains a confessed judgment clause that waives the consumer's right to assert a legal defense to an action." 73 P.S. § 201-2(4)(xviii).

7. **Duty to Mitigate.** In Pugh v. Holmes, 486 Pa. 272, 405 A.2d 897 (1979), the Supreme Court of Pennsylvania stated that a residential lease "is in the nature of a contract and is to be controlled by principles of contract law." Id. at 284, 405 A.2d at 903. The court also ruled that since the lease is a contract, traditional contract remedies will govern the enforcement. In the Allegheny County case of Essex House Apartments v. Max Keyser, 22, Pa. D. & C.4th 253 (Pa.Com.Pl. 1992), the Court following the rationale in Pugh v. Holmes concluded that a landlord has a duty to mitigate damages based on the Restatement (Second) of Contracts §350 and stated: "Since Commonwealth v.

Monumental Properties and Pugh v. Holmes establish that the principles of contract law, including contract remedies governing the breach of contractual obligations, govern residential leases, I find to be valid the tenant's defense that the landlord failed to take reasonable measures to mitigate damage.” The duty to mitigate a claim of default involving a residential lease agreement was also found to be an affirmative obligation of a residential landlord in Mon Valley Travel Inc. v. Morgan Management Company, 23 Pa. D. & C.4th 494(Pa.Com.Pl 1995; see also Kahn v. Bancamerica-Blair Corp., 327 Pa. 209, 214, 193 A. 905, 907 (1937). (“After a tenant vacates the property leased, the landlord has the right to reenter and take such steps as may be necessary and proper towards subletting the premises.”).

As a matter of law, Landlords are not entitled to a double recovery by collecting rent from the Plaintiffs as well as the Successor Tenant. In general, a landlord may not take possession and recover rent from the defaulting tenant and the replacement tenant during the term in dispute. The Court in Homart Development Co. v. Sgrenci, 443 Pa. Super. 538, 662 A.2d 1092 (1995), the Superior Court stated:

“It is a basic tenet of our system of civil justice that a plaintiff may not obtain a double recovery for a single wrong” Id., 443 Pa. Super. at 555, 662 A.2d at 1100.

IV WARRANTY OF HABITABILITY:

1. “Habitability” is a legal term of art meaning that the premises are free from serious defects to health and safety; most states determine whether a landlord has fulfilled an implied or express “warranty of habitability” by compliance with building and sanitation codes. See Black's Law Dictionary 710 (6th ed. 1990);
 - i. In Pugh v. Holmes, 486 Pa. 272, 405 A.2d 897 (1979), the Pennsylvania Supreme Court adopted the implied warranty of habitability in private residential leases to keep up with the realities of modern day leasing and did away with the previously followed doctrine of *caveat emptor*. In Pugh v. Holmes, the Supreme Court reasoned that “[t]he implied warranty is designed to insure that a landlord will provide facilities and services vital to the life, health, and safety of the tenant and to the use of the premises for residential purposes....”
 - ii. In order to constitute a breach of the warranty, the defect must be of a nature and kind which will prevent the use of the dwelling for its intended purpose to provide premises fit for habitation by its dwellers. At a minimum, this means the premises must be safe and sanitary-of course, there is no obligation on the part of the landlord to supply a perfect or aesthetically pleasing dwelling. Pugh, 486 Pa. at 289, 405A.2d at 905.

- iii. A landlord cannot attempt to waive of the implied warranty of habitability in a residential lease, which is viewed by the court as “unconscionable” and “ineffective.” Fair v. Negley, 390 A.2d 240 (Pa. Super. 1978).
- iv. The Supreme Court in Pugh specified the remedies available for a landlord’s breach of the warranty of habitability, which include: (1) termination of the obligation to pay rent where the tenant surrenders possession of the premises; (2) rent abatement where the tenant remains in possession of the premises; (3) the “repair and deduct” remedy; and (4) *other traditional contract remedies*, such as specific performance. Pugh, 486 Pa. at 291-295, 405 A.2d at 907-908. The claim stated in breach of the implied warranty of habitability is a contract claim for which only contract remedies are available. Tort claims and tort remedies are not an available theories of recovery under an implied warranty of habitability.

V COVENANT OF QUIET ENJOYMENT

1. The covenant of quiet enjoyment is breached when the tenant’s possession is impaired, in whole or in part, by acts of the landlord or by the actions of a holder of a superior title. Lichtenfels v. Bridgeview Coal Co., 366 Pa. Super. 304, 531 A.2d 22 (1987); Jonnet Development Corp. v. Dietrich Industries, Inc., 316 Pa. Super. 533, 463 A.2d 1026 (1983); Pollock v. Morelli, 245 Pa. Super. 388, 369 A.2d 458 (1976). Any wrongful act of the landlord that interferes with the tenant's possession, in whole or in part, is a breach of the implied covenant of quiet enjoyment. Branish v. NHP Property Management, Inc., 694 A.2d 1106 (Pa. Super. 1997); Kohl v. PNC Bank Nat. Ass'n, 2004 Pa Super 414, 863 A.2d 23 (2004), appeal granted, 584 Pa. 695, 882 A.2d 479 (2005). A breach of the covenant of quiet enjoyment constitutes an eviction. Com. v. Kitchen Appliances Distributors, Inc., 27 Pa. D. & C.3d 91, 1981 WL 199 (Com. Pl. 1981).
 - i. To constitute a breach, the impairment of the lessee's possession need not be total, but the utility of the premises must be substantially decreased by the landlord's interference with a right or privilege that is necessary to the enjoyment of the premises. Jonnet Development Corp. v. Dietrich Industries, Inc., 316 Pa. Super. 533, 463 A.2d 1026 (1983); Kohl v. PNC Bank Nat. Ass'n, 2004 Pa Super 414, 863 A.2d 23 (2004), appeal granted, 584 Pa. 695, 882 A.2d 479 (2005). If the tenant substantially contributes to the condition that impairs his or her possession, the tenant cannot maintain a claim against the landlord for breach of the covenant of quiet enjoyment. Versatile Metals, Inc. v. Union Corp., 693 F. Supp. 1563 (E.D. Pa. 1988) (applying Pennsylvania law).
 - ii. A material breach of the covenant of quiet enjoyment releases the tenant from his or her obligations under the lease. Thus, for as long as the landlord is in breach of the covenant, the lessee is released from the duty to pay rent. 2401 Pennsylvania Ave. Corp. v. Federation of Jewish Agencies of Greater Philadelphia, 507 Pa. 166, 489 A.2d 733 (1985).

VI PROHIBITION ON SELF HELP

1. A landlord who desires to repossess a leased premises from a tenant may not undertake a self-help eviction or dispossession of the tenant since the landlord's only remedies are to bring an action under the Landlord and Tenant Act of 1951, 68 P.S. § 250.501 et seq., or an action in ejectment. Lenair v. Campbell, 31 Pa. D. & C.3d 237 (Pa. Com. Pl. 1984). A self-help eviction may include removing the tenant's property, using or threatening to use force or violence, reducing or disconnecting utility services, or removing parts of the structure, i.e. doors and windows.

VII MILITARY EXEMPTION, 51 PA. C.S. § 7315

1. A tenant may terminate or cancel a lease for dwelling, professional, business or agricultural purposes without penalty if he or she is a member of the Armed Forces or Pennsylvania National Guard, and is called to duty for consecutive periods longer than 30 days (does not apply to calls for training purposes).
 - i. Tenant must provide written notice by personal service or first class mail.
 - ii. Termination of the lease becomes effective 30 days after the first date upon which the next rental payment is due following the notice, if rental payment is monthly. For all other leases, termination is effective the last day of the month following the month in which the notice is sent.
 - iii. Landlord may make application to the Court of Common Pleas, prior to termination, to modify or restrict the tenant's right to termination if "justice and equity" require.
 - iv. Landlord may apply any security deposit to any damages to the premises during the termination period.
2. **Military Stay of Eviction, 51 Pa.C.S. § 7312:** A landlord may not evict or make a claim for distress upon a tenant that is a member of the Armed Forces or Pennsylvania National Guard and is called for active duty, except upon leave of court or granted in an action affecting the right of possession. The court shall stay any such proceedings by the landlord for 6 months upon application of the tenant, unless the ability of the tenant to pay the rent is not materially affected by the military service. The Court may issue orders as are just under the circumstances, including a temporary adjustment to the rental payment or an order requiring the tenant to pay the arrearage in rent upon release from military duty.

VII WAGE ATTACHMENT – The Judicial Code, 42 P.S. § 8127: The wages, salaries and commissions of individuals shall while in the hands of the employer be exempt from any attachment, execution or other process **except** upon an action or proceeding...[f]or amounts awarded to a judgment creditor-landlord arising out of a residential lease upon which the court has rendered judgment which is final.”

1. Limitations on Attachment: A landlord's right to collect against a tenant is limited as follows:

- i. A landlord must deduct from the amount subject to attachment any security deposit held by the judgment creditor-landlord and forfeited by the judgment debtor-tenant...unless the security deposit has been applied to payment of rent due on the same premises for which the judgment for attachment has been entered. 42 P.S. § 8127(a)(3.1).
- ii. The judgment creditor landlord must prove that the security deposit has been applied to payment of the rent due or damages caused.
- iii. The wages attached can be no more than 10% of the NET wages per pay period of the judgment debtor tenant. 42 Pa.C.S. § 8127(a)(3.1).
 - a. "Net Wages" means all wages paid, less the following items:
 - Federal, State and Local Income Tax
 - F.I.C.A. Payments and Non-voluntary Retirement Payments
 - Health Insurance Premiums
- iv. The wages attached may not place the judgment debtor tenant below the poverty income guideline as provided by the Federal Department of Health and Human Service website.
- v. Judgment debtor tenant must have been personally served with the Complaint; or appeared at the hearing; or filed papers with the Court in order for wages to be attached. Pa. R.C.P. 3301(b)(2)(ii).
- vi. Attachment must be initiated by filing the Praecipe to Attach Wages within **5 years of the judgment date.**

2. Procedure to Attach Wages - Pennsylvania Rules of Civil Procedure_Nos. 3301-3313

- i. **Obtain a Judgment:** The provisions for wage attachment only apply to "judgments" as defined in Pa.R.C.P. 3301. May be an action commenced for delinquent rent or physical damage to a leased premises. If the judgment is entered in a Magisterial District Court, it must be **transferred to a Court of Common Pleas** in order to attach wages.
- ii. **Commence Action with the Court:** The judgment creditor landlord commences an action to attach wages by filing a Praecipe for Notice of Intent to Attach Wages with the Prothonotary of the Court of Common Pleas (in Delaware County it is the Office of Judicial Support). Pa. R.C.P. 3302(a). The Praecipe may be filed in a county in which the judgment

was entered, where the judgment debtor tenant resides or works, or where the residential property which is the subject of the action is located.

- iii. **Provide Judgment Debtor Tenant with Notice:** Upon the filing of a Praecipe for Notice of Intent to Attach Wages, the Prothonotary (Office of Judicial Support) must issue a Notice of Intent to Attach Wages, to be served upon the judgment debtor tenant. Pa. R.C.P. 3302(b). The Prothonotary (Office of Judicial Support) must attach to the Notice of Intent to Attach Wages both (1) the Praecipe for the Notice of Intent to Attach Wages and (2) the most recent HHS Poverty Guidelines, broken down my monthly amounts (can be found at www.aopc.org).
- a. The Notice of Intent to Attach Wages must be served upon the judgment debtor tenant in the manner provided for service of original process in a civil action: In Delaware County, the local rules of civil procedure require that the Notice of Intent to Attach Wages be served by the Sheriff's Office. Del. Co. Civil R. 400.1. If service cannot be accomplished through the Sheriff's Office, a judgment creditor landlord may seek the Court's intervention and file a Motion with the Court of Common Pleas requesting the Court enter a special order directing an alternative method of service, such as publication in a designated legal publication and one newspaper of general circulation within the county. Pa. R.C.P. 430(b)(1).
- iv. **Judgment Debtor Tenant Presents Defenses/Exemptions:** A judgment debtor tenant is entitled to claim an exemption from wage attachment based upon the Federal Poverty Guidelines. A Claim for Exemption from Wage Attachment must be filed with the Prothonotary (Office of Judicial Support) within 30 days of service of the Notice of Intent to Attach Wages. Pa. R.C.P. 3303(a).
- a. If a judgment debtor tenant files a Claim for Exemption within 30 days, the Prothonotary (Office of Judicial Support) shall not issue a Writ of Attachment.
- The Prothonotary (Office of Judicial Support) must send a Notice of Claim Exemption of Wages from Attachment to the judgment creditor landlord (or landlord's attorney, if represented), along with a copy of the Claim for Exemption from Wage Attachment. Pa. R.C.P. 3303(b)(1).
- b. If a judgment debtor tenant files a Claim for Exemption 30 days after the Notice of Intent to Attach Wages is served, and the Writ of Attachment has already been issued, the attachment

of wages shall continue, unless the judgment debtor tenant obtains a court order staying or vacating the attachment. Pa. R.C.P. 3303(b)(2).

- vii. Judgment Creditor Landlord Challenges Defenses/Exception:** A judgment creditor landlord may challenge a Claim for Exemption from Wage Attachment by filing a Motion with the Court of Common Pleas, requesting the Court to direct the Prothonotary (Office of Judicial Support) to issue a Writ for the Attachment of Wages. Pa.R.C.P. 3303(c). The Motion must set forth facts to establish that the landlord is entitled to attach wages (i.e., that a final judgment was entered in a matter involving a residential lease and that the defendant has not shown an exception to wage attachment, as set forth above). The Court shall either set a hearing date regarding the dispute or set forth another procedure governing the initial consideration of motions, as may be appropriate.
- viii. Attach Wages:** If the judgment debtor tenant is unable to prove a valid exception or defense to the Praeceptum to Attach Wages, the judgment creditor landlord shall file a Praeceptum for Writ of Attachment of Wages with the Prothonotary (Office of Judicial Support) of the Court of Common Pleas, along with a Writ of Attachment of Wages. Pa.R.C.P. 3304. The Prothonotary (Office of Judicial Support) must send the Writ of Attachment of Wages by United States Mail to the judgment debtor tenant and the tenant's employer ("garnishee"). Pa.R.C.P. 3004(b). The Prothonotary (Office of Judicial Support) must issue the Writ of Attachment of Wages if:

 - a. The judgment debtor tenant has not timely filed a Claim for Exemption of Wages from Attachment; or
 - b. A Court entered an Order granting the judgment creditor landlord's Motion in opposition to the tenant's defenses or exceptions.
- ix. Duty of Employer ("Garnishee")** – The employer ("garnishee") of the judgment debtor tenant, once served with the Writ of Attachment of Wages, must send the attached wages to the Prothonotary (Office of Judicial Support) within 15 days from the close of the last pay period in each month. Employer ("garnishee") is entitled to deduct from the wage attachment the costs incurred as a result of the bookkeeping necessary to record the transactions, not exceeding \$5.00. If an employer is served with more than one wage attachment arising out of a residential lease against the same judgment debtor tenant, the attachments shall be satisfied in the order in which they were served. Upon receipt of the wages, the Prothonotary (Office of Judicial Support) shall record and send the wages to the judgment creditor landlord.

- x. **Duty of Judgment Creditor Landlord:** Judgment creditor landlord must maintain an account of amounts received through wage attachment. Once satisfaction of the total amount of the judgment has been received through the wage attachment, the judgment creditor landlord must enter satisfaction of the judgment in the Court of Common Pleas where the judgment is outstanding. If a judgment creditor landlord fails to enter satisfaction of the judgment for more than 30 days after receiving satisfaction, the judgment creditor landlord shall pay liquidated damages to the judgment debtor tenant – 1% of the original amount of the judgment for each day of delinquency beyond such 30 days, but no more than 50% of the original amount of the judgment.
- a. **Transfer Judgment to the Court of Common Pleas:** After judgment is entered in a matter, the plaintiff may wish to transfer the judgment to the Court of Common Pleas to make the judgment more collectible. The judgment may be transferred 30 days after the entry of judgment by the Magisterial District Judge. Upon transfer, the judgment will appear of record in the Court of Common Pleas judgment index and will appear in subsequent credit checks for the party against whom the judgment is entered, making a purchase or lease difficult and incentivizing the judgment debtor to pay off the judgment.
- b. **Satisfaction of Judgment – Magisterial District Court Rule of Procedure 341, 342:** Once a judgment debtor has paid off the judgment in full, the judgment creditor is obligated to enter a request for satisfaction of judgment with the court in which the judgment is filed (either Magisterial District Court or the Court of Common Pleas). Failure to enter a request for satisfaction of judgment may subject the judgment creditor to a separate civil action for damages.

VIII RESTRICTIONS ON USE OF CREDIT REPORTING INFORMATION

1. **Fair Credit Reporting Act (FCRA), 15 U.S.C. §§ 1681-1681v:** Regardless of the type of “consumer report” utilized by a Landlord, the FCRA sets the parameters of what information can be obtained, who it can be obtained from, and what disclosures a Landlord is required to make to an applicant.
- A credit report,¹ a tenant-screening report, and a reference checking report are each a type of “consumer reports”

¹ TransUnion, LLC offers landlords a service called “Credit Retriever,” which was formally operated as an independent service called Rentport. TransUnion promotes Credit Retriever as a “In-depth Resident Screening

governed by the FCRA. To be covered by the FCRA, however, it is important to note a credit report must be issued by a “consumer reporting agency”² (i.e., a business that assembles such reports for other businesses), which *does not include* a Landlord or his or her own employees. See Using Consumer Reports: What Landlords Need to Know (Available at <http://ftc.gov/bcp/online/pubs/buspubs/landlord.htm>).

- i. **No written authorization is required to obtain a consumer report:** while it may be advisable to obtain an applicant’s prior written approval to obtain a consumer report concerning his or her credit, rental history, or general reputation, such written approval is not needed where the Landlord has a “otherwise legitimate business need for the information.” 15 U.S.C. § 1681(b)(2), (3)(F).
- ii. **A Landlord, however, must disclose a request for an “investigative consumer report”:** While not required to get an applicant’s written permission to obtain a consumer report, a Landlord is required to disclose the “scope and nature” of any investigation that will include personal interviews with neighbors, friends or associates concerning information relating to an applicant’s “character, general reputation, personal characteristics, or mode of living,” which is known as an “investigative consumer report.” See 15 U.S.C. § 1681(d).³

Solution” that can: access data from all three major credit bureaus; identify the best applicants; ensure compliance with Fair Housing and Fair Credit Law; search the industry’s largest criminal database; adapt a landlord’s business practices to market and seasonal realities; encourage good payment behavior, and eliminate costly time spent perusing uncollectible accounts. TransUnion offers a complete description of its Credit Retriever service at www.creditretriever.com or toll free at (888)387-1750.

² The FCRA defines “consumer reporting agency” as:

any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

15 U.S.C. § 1681a(f).

³ The FCRA defines “investigative consumer report” as:

a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

- a. Before a Landlord procures an “investigative consumer report,” the Landlord must: (1) disclose, in writing within three days of making the request, that the request is being made; (2) inform the consumer of his right to request a “complete and accurate disclosure of the nature and scope of the requested investigation;” and, (3) certify to the consumer reporting agency that the required disclose(s) have been made to the consumer. See 15 U.S.C. § 1681(d).

iii. **A denial of the application based on a “consumer report” requires the furnishing of an “adverse action report”:** While the FCRA does not require an application to give written permission before a Landlord can obtain a “consumer report,” the FCRA does require Landlords who deny a lease based on information contained an applicant’s consumer report to provide the applicant with an “adverse action notice.”

- b. “Adverse action” is any action by a landlord that is unfavorable to the interests of a rental applicant and includes: denying the application; requiring a co-signer on the lease; requiring a deposit that would not be required for another applicant; requiring a larger deposit than might be required for another applicant; and raising the rent to a higher amount than for another. The term “adverse action,” moreover, can be broadly construed to apply to any action where a consumer report is obtained for a permissible purpose and the user takes an action that is adverse to the consumer’s interests. See 15 U.S.C. § 1681a(k); Scharpf v. AIG Marketing, Inc., 242 F. Supp. 2d 455, 467 (W.D. Ky. 2003). Even if the information in the report plays only a small part in the overall decision, the applicant still must be provided with an Adverse Action Report.
- c. If a Landlord takes any “adverse action” with respect to any consumer/applicant that is based in whole or in part on any information contained in a consumer report, the Landlord must:
 - provide oral, written, or electronic notice of the adverse action to the consumer;
 - provide to the consumer orally, in writing, or electronically

15 U.S.C. § 1681a(e).

- the name, address, and telephone number of the consumer reporting agency (including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis) that furnished the report to the person; and
- a statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken; and
- provide to the consumer an oral, written, or electronic notice of the consumer's right
 - to obtain...a free copy of a consumer report on the consumer from the consumer reporting agency referred to in paragraph (2), which notice shall include an indication of the 60-day period under that section for obtaining such a copy; and to dispute...with a consumer reporting agency the accuracy or completeness of any information in a consumer report furnished by the agency. 15 U.S.C. § 1681m(a).

iv. **Penalties for Non-Compliance with the FCRA:** FCRA provides for the imposition of civil penalties, within two years after the time of discovery and in any court of competent jurisdiction, for both knowing and negligent violation by Landlords. See 15 U.S.C. § 1681p. A Landlord who knowingly fails to comply with any requirement imposed by the FCRA is liable to the consumer/applicant for: (1) any damages sustained by the consumer not less than \$100.00 but no more than \$1000.00; (2) punitive damages as the court may allow; and, (3) costs of the actions together with attorney fees. 15 U.S.C. § 1681n. A Landlord who negligently fails to comply with any requirement imposed by the FCRA is liable to the consumer/applicant for: (1) actual damages sustained by the consumer as a result of the failure; and costs of the action together with reasonable attorney's fees. 15 U.S.C. § 1681o.

IX SERVICE ANIMALS – EMOTIONAL SERVICE ANIMALS

1. **Service Animal** – Animals trained to perform tasks or specific functions to benefit or assist persons with physical, intellectual or mental disabilities. A seeing-eye dog used

to assist sight impaired persons walk or commute is a common example. Dogs have also been trained to assist the hearing impaired to alert the deaf person to the operation of a doorbell, telephone and other sounds and trained to assist person with onset of physical manifestation, i.e seizure.

2. No Pet Policies Exemption

No pet policies must be waived for Service Animals. Brook v. Ineichen, 54 F.3d 425 (7th Cir. 1995). The Court of Appeals balanced the landlord's interests in the economics and aesthetics supporting a no pet policy against a deaf tenant's need for a hearing service animal and determined that requiring the landlord to waive the no pet policy was a required reasonable accommodation. See also, Fulciniti v. Village of Shadyside Condominium Association, No 96-1825 (U.S.D.,C.W,D, Pa 1998)(required to waive no pet policy for a service animal).

3. Federal Regulations define and limit Service Animal to function to active specific trained tasks. 28 C.F.R. Section 36.104.

4. Emotional Support Animal. These animals do not require any training or certification but are specifically prescribed to provide some type of therapeutic benefit by their mere presence. If a doctor or other medical professional believes the presence of an ESA in the life of someone suffering a disabling mental or psychiatric disability will ameliorate the condition, the pet becomes an ESA. Refusal to lease to tenant with and ESA may be a violation of the Fair Housing Act.

Federal guidelines blend the Service Animal concept with the ESA – “Assistance Animals” which are animals that provide assistance or perform tasks for the benefit of a person with a disability, See HUD Handbook 4350.3 Occupancy requirements of Subsidized Multifamily Housing Program, Glossery 4 (March 12, 2010).

5. Sec’y HUD on behalf of Elizabeth Exelberth v. Riverbay Corp., ALJ 93-0320-1 (1994). Tenant suffered from severe depression. The terrier dog obtained without prescription could be soothing and have a therapeutic benefit. Landlord no pet policy found to violate FHA.

Sec’y HUD on behalf of Melendez v. Reading Housing Authority., FHEO no. 03-04-0346-8 (2003). Security deposit imposed on ESA was found to violate FHA.