

Model Expedited Eviction of Drug Traffickers Act

Table of Contents

	A-13	Policy Statement
	A-17	Highlights
<i>Section One</i>	A-21	Short Title
<i>Section Two</i>	A-21	Legislative Findings
<i>Section Three</i>	A-22	Purpose
<i>Section Four</i>	A-22	Definitions
<i>Section Five</i>	A-24	Nature of Actions and Jurisdiction
<i>Section Six</i>	A-24	Standard of Proof
<i>Section Seven</i>	A-24	Parties
	A-24	(a) Who May Bring Action
	A-24	(b) Defendants to the Action
	A-24	(c) Notice to Interested Parties
	A-24	(1) Notice to Defendants
	A-24	(2) Notice to Affected Tenants, Residents, and Guests
	A-24	(d) Naming and Service of Owners in Actions Brought by Tenant Organizations of Prosecutors
	A-25	(e) Protections Against Frivolous Actions and Sanctions for Unfounded or Unwarranted Pleadings, Motions or Other Papers
	A-25	(f) Ready Availability of Ownership Information to Potential Plaintiffs
<i>Section Eight</i>	A-26	Remedies and Judicial Orders
	A-26	(a) Grounds for Complete Eviction
	A-27	(b) Grounds for Partial Eviction and Issuance of Removal Orders
	A-27	(c) Removal Orders Directed Against the Tenant
<i>Section Nine</i>	A-29	Affirmative Defense or Exemption to a Complete Eviction
	A-29	(a) Affirmative Defense
	A-29	(b) Exemption
	A-29	(c) Burden of Proof

<i>Section Ten</i>	A-30	Mandatory Partial Eviction Where Affirmative Defense or Exemption to Complete Eviction is Established
	A-30	(a) General Rule
	A-30	(b) Acknowledgement of Conditional Tenancy
<i>Section Eleven</i>	A-30	Substitution of Plaintiff
<i>Section Twelve</i>	A-31	Execution of Removal or Eviction Order
<i>Section Thirteen</i>	A-31	Obstructing the Execution or Enforcement of a Removal or Eviction Order
<i>Section Fourteen</i>	A-31	Motion to Enforce Removal Order and Mandatory Evictions
	A-31	(a) General Rule
	A-31	(b) Expedited Hearings
	A-31	(c) Mandatory Eviction
<i>Section Fifteen</i>	A-32	Impermissible Defense
<i>Section Sixteen</i>	A-32	Expedited Proceedings
	A-32	(a) Expedited Hearing
	A-32	(b) Standards for Continuances
<i>Section Seventeen</i>	A-33	Notice to Interested Parties
<i>Section Eighteen</i>	A-33	Inapplicability of Exclusionary Rule
<i>Section Nineteen</i>	A-33	Relation to Criminal Proceedings
	A-33	(a) Criminal Proceedings, Conviction or Adjudication Not Required
	A-33	(b) Effect of Conviction or Adjudication
	A-33	(c) Admissibility of Criminal Trial Recordings or Transcripts
	A-33	(d) Use of Sealed Criminal Proceeding Records
<i>Section Twenty</i>	A-34	Discovery
<i>Section Twenty-One</i>	A-35	Protection of Threatened Witnesses or Affiant
<i>Section Twenty-Two</i>	A-35	Availability of Law Enforcement Resources to Plaintiffs or Potential Plaintiffs
<i>Section Twenty-Three</i>	A-36	Ongoing Collection of Rent
<i>Section Twenty-Four</i>	A-36	Recovery of Cost by Prevailing Plaintiff
<i>Section Twenty-Five</i>	A-37	Preliminary or Emergency Relief
<i>Section Twenty-Six</i>	A-37	Cumulative Remedies

<i>Section Twenty-Seven</i>	A-37	Civil Immunity
<i>Section Twenty-Eight</i>	A-37	Probationary Tenancy During Period of Court-Ordered Rehabilitation
	A-37	(a) Temporary Suspension of Eviction or Removal Order Pending Referral for Addiction Assessment and Treatment Recommendation
	A-38	(b) Application to Stay Execution of Eviction or Removal Order
	A-38	(c) Right of Interested Persons to be Heard
	A-38	(d) Participation in Recommended Course of Treatment
	A-39	(e) Period of Probationary Tenancy
	A-39	(f) Prompt Initiation of Treatment
	A-39	(g) Reporting of Progress in Course of Treatment
	A-39	(h) Supervisory Jurisdiction of Probation Department
	A-39	(i) Effect of Violation
	A-40	(j) Action Upon Violation
	A-40	(k) Discharge of Order of Eviction or Removal
<i>Section Twenty-Nine</i>	A-44	Notification and Provision of Treatment Resources
	A-44	(a) Notification to Person Removed
	A-44	(b) Notification to Social Services Agencies
	A-44	(c) Preparation and Dissemination of Treatment Resource Information
	A-44	(d) Compensation to Treatment Programs for Services Provided
	A-44	(e) Funding Source for Treatment Services
<i>Section Thirty</i>	A-45	Relocation Assistance
<i>Section Thirty-One</i>	A-45	Severability
<i>Section Thirty-Two</i>	A-45	Liberal Construction
<i>Section Thirty-Three</i>	A-45	Effective Date

Model Expedited Eviction of Drug Traffickers Act

Policy Statement

This Act is part of the series of statutes proposed by the Commission that are designed to establish and codify a number of innovative civil actions to supplement traditional criminal sentencing sanctions directed against convicted drug offenders. The ability of private litigants and public agencies to use innovative civil remedies to redress injuries related to the illicit drug trade and to safeguard the interests of law abiding citizens who are the constant victims of drug-related crimes is especially important given the level of prison and jail overcrowding which exists in most jurisdictions. The state legislatures must recognize that, given existing budgetary constraints and the current strain on the nation's correctional system, there are inherent limits on the ability of the criminal justice system to deal with the evolving drug crisis.

More importantly, carefully crafted civil remedial legislation can help to provide law abiding citizens with important new incentives to organize and to work cooperatively with law enforcement, other governmental officials, and with private sector concerns, in addressing the drug problem at the neighborhood and community level. It is thus the overriding intention of this Act to help inspire and support grassroots efforts to reclaim buildings, streets and entire neighborhoods from the influence of drug traffickers and violent street criminals.

The Model Expedited Eviction of Drug Traffickers Act is designed to be fast and easy to use by landlords, tenant organizations and prosecuting agencies to evict drug dealers from neighborhood properties. It is designed to provide practical economic incentives for landlords to take those actions that are necessary and appropriate under the circumstances to protect the interests of their law abiding tenants. At the same time, it is designed to provide incentives to these tenants to organize into bona fide tenant associations in order to protect their own rights and interests without the need to resort to vigilantism or other manifestations of the frustrations which have gripped many neighborhoods, and especially urban communities, throughout the nation. The Act recognizes that tenants have an inalienable right to reside in a safe premises, one which is free from violence and intimidation typically associated with the illicit drug trade. This right to safety is no less fundamental, and no less an appropriate subject of civil enforcement actions, than are the commonly asserted civil rights to heat, running water and other basic attributes of a habitable environment.

Currently, the landlord-tenant statutes in many jurisdictions are known as "anti-eviction" acts, which are designed principally to protect the legal rights of tenants as against those landlords who seek to remove them in civil eviction proceedings. Although this Act, in contrast, is designed to facilitate and expedite eviction actions in certain circumstances, this Act nonetheless continues to effect this general philosophy by seeking to protect the rights of law abiding tenants and residents

as against those tenants and residents who engage in illicit drug activities on or near the leased residential premises. This Act thus recognizes that drug trafficking activities, by their very nature, attract crime and violence as offenders seek to use force and violence to protect their “wares” and “turf”. This Act provides in unequivocal terms that drug-trafficking activities are incompatible with the basic rights of law abiding tenants and residents.

A tenant’s involvement in drugs and the often coincident decline in community living standards engendered by drug-related activity (random criminal violence, pressure on neighborhood children to buy, open sale of drugs, loud noise, out-of-state vehicles, trash) clearly violates contractual lease obligations and common law principles requiring that citizens live peaceably with their neighbors.

As noted above, the Act should be adopted and implemented in conjunction with other statutes proposed by the Commission, including the Model Drug Nuisance Abatement Act. That Act is designed principally to close down properties which constitute a drug nuisance, while the Act focuses on the removal of the offending individuals from the premises which remain open. It is important to understand that these two statutes are designed to work in tandem. The Model Drug Nuisance Abatement Act, for example, creates a legal duty on landlords expeditiously to evict drug-trafficking tenants as a means to abate drug nuisances. The Model Expedited Eviction of Drug Traffickers Act therefore is a necessary companion law to the Model Drug Nuisance Abatement Act, since it provides landlords with critical tools needed to satisfactorily carry out this legal duty.

It is critical to note that the provisions of this Act are intended to be remedial, rather than punitive, in their nature and effect. The Act attempts carefully to balance the rights of other parties and acknowledges that the eviction remedy can, historically, prove to be an extremely harsh and unforgiving sanction. The Act, nonetheless, puts all tenants and residents on clear notice that drug trafficking activity on or near leased residential premises will not be tolerated.

The Act includes a number of important innovations in landlord-tenant law. For one, the Act includes important new provisions concerning who may initiate an eviction action. Under traditional principles of landlord-tenant law, only the landlord or owner of the property, or his or her agent, is authorized to initiate an eviction proceeding. Any such limitation in defining the scope of persons who have standing to bring such a lawsuit has proven unacceptable in the context of the nation’s current drug crisis. Consider, for example, that:

1. The owner of a parcel of property may not live on the property or even in the neighborhood. Such an owner may have no real economic incentive for taking responsibility for the property, so long as he or she continues to receive rent. In many cases, such an “absentee” owner, may honestly not be aware of the drug trafficking activity occurring on his or her premises.
2. The owner may live on or near the premises, but may be deterred from instituting action to remove drug-involved tenants for fear of violent retaliation.
3. An “absentee” owner may actually benefit indirectly from the drug trafficking activities, in that the drug-involved tenants typically pay their rent on time and in cash. In those circumstances, the landlord may have no economic incentive to intervene or otherwise take action against the drug-trafficking residents.

For all of these reasons, this Act expands the scope of permissible plaintiffs, specifically authorizing, in certain circumstances, a bona fide tenant organization or local prosecutor's agency to initiate an eviction action, and especially where the landlord for any reason refuses to do so after being provided notice of the factual basis for commencing the action.

These innovative and important provisions of the statute are modeled roughly after well-established corporate law, which authorizes class action or so-called "shareholder derivative" suits. In that context, any shareholder of a corporation may initiate a civil lawsuit in the right of the corporation where the shareholder has reason to believe that the corporation has suffered a civil wrong in tort or in contract, and the Board of Directors of the corporation refuses to protect the corporation's interest by filing a lawsuit after having been demanded to do so by the aggrieved shareholder. By expanding the permissible range of plaintiffs in this fashion, such provisions of law serve to encourage corporate directors aggressively and faithfully to protect the legal interests of the corporation and its shareholders.

So too, the provisions of this Act, which authorize under certain circumstances the initiation of an eviction action by a tenant association or prosecuting agency, are designed to provide strong practical incentives for landlords to take action on their own to protect the rights of law abiding tenants. Only in this way can the landlords be certain to maintain control of the conduct and costs resulting from the litigation. This important innovation is designed in a very literal sense to empower the victims of drug-related crime by affording them standing to be heard in the civil courts.

The second major innovation concerns the nature of the remedies which are available to the courts upon the finding that drug-trafficking activity has been committed upon the leased residential premises. Traditionally, an eviction action under landlord-tenant law is an *in rem* suit. The court's jurisdiction is limited to determining whether or not to terminate the leasehold. In other words, the court in a traditional landlord-tenant action may either extinguish the contractual relationship between the landlord and the tenant (thereby giving rise to an action to dispossess the tenant, *ie.* to effect an eviction) or dismiss the suit brought by the landlord. Traditionally, there has been no flexibility or variability in the remedies available to the court. The action is thus *in rem*, as opposed to *in personam*, in as much as most landlord-tenant courts have no authority to direct the tenant to modify his or her behavior, other than to order him or her to vacate the premises entirely.

This Act, in contrast, introduces the concept of a "partial eviction." Under this approach, the court may specifically tailor its eviction order to remove only those persons who are culpable, that is, those who were found to be actually involved in the drug-trafficking activity occurring on or related to the leased residential premises. Under this formulation, under certain circumstances which are carefully described in the Act, the court may preserve the tenancy upon certain conditions, thus allowing an innocent tenant or resident to remain on the premises, while ordering culpable offenders to vacate the premises. Because this Act provides far greater flexibility to the courts in tailoring an appropriate remedy, its effect is to be more fair and more effective, avoiding to the greatest extent possible the phenomenon of "throwing the baby out with the bath water."

In a closely related vein, the third major innovation permits the courts in certain circumstances to establish a "probationary tenancy." Under this unique and enlightened remedy, the court may allow the drug-dependent tenant or resident, who otherwise would be subject to complete eviction, to remain on the premises so long as he or she is undergoing an appropriate and carefully super-

vised course of drug treatment. This provision recognizes that many persons who sell illicit drugs are doing so to support their own drug addiction. The Act should thus become part of a comprehensive panoply of legal remedies, in both the civil and criminal justice systems, which is designed to encourage alcohol or drug dependent offenders to seek and accept help, and at the same time balances the rights and needs of these drug dependent persons with the legitimate and compelling rights of neighbors and other tenants to live in an environment which is free of drug trafficking activities.

Finally, this Act provides firm guidance to the courts as to when and under what circumstances a complete or partial eviction should occur, and under what circumstances a court may decline to order an eviction or removal of an individual notwithstanding that the plaintiff in the action has proven the existence of tenancy-based drug trafficking activities. Most state eviction statutes, in contrast, merely set out the so-called "grounds" for eviction, leaving the courts with wholly unguided discretion to decide whether to effect the eviction when these grounds have been established. The Act recognizes the need for some measure of predictability and uniformity in the implementation of the statutorily authorized remedies. This is necessary for policy reasons, in order to achieve one of the Act's principal objectives, that is, to deter tenants, residents and their guests from engaging in drug trafficking activities in the first place. It is thus intended that by providing precise guidance to the courts, tenants, residents and landlords are placed on clear notice of what will happen to them if they engage in or tolerate drug-related criminal activities occurring on the leased residential premises.

Highlights of the Model Expedited Eviction of Drug Traffickers Act

ASSUMPTIONS AND REMEDIAL GOALS

- Recognizes and seeks to promote the right of all citizens to be safe and secure in their residences, and to live and raise their children in apartment complexes, neighborhoods and communities which are free from the destructive influence of drug dealers and drug related crime and violence.
- Recognizes that persons who commit drug distribution offenses on or near leased residential premises, or who permit or tolerate such offenses to be committed, violate the civil rights and jeopardize the health and safety of the other tenants and residents.
- Recognizes that tenants are responsible, and holds them accountable, for any drug distribution activities which occur within their individual rental units, including those illegal activities committed by members of the tenants' household and guests. Tenants, in other words, are held to have an affirmative obligation to take such actions as are reasonable and necessary in the circumstances to prevent the commission of drug-related criminal¹ within their households and to prevent guests from committing such criminal activities on or near any portion of the leased residential premises.
- Establishes the policy of encouraging owners and landlords to protect the rights, safety and health of their tenants and residents by promptly commencing and fully pursuing civil eviction and removal proceedings against those tenants and other persons who engage in drug-related crimes on or near their properties.

PROCEDURES AND REMEDIES

- Ensures swift disposition of all civil eviction and removal actions, and ensures the certain and uniform

enforcement by the courts of the rights and remedies established in the Model Act.

- Authorizes civil actions to evict tenants and members of the tenants' household, as well as civil actions termed "partial evictions," to remove from the premises persons who commit drug crimes but who are not themselves signatories to a lease and who therefore have no contractual obligations to the landlord. Thus, a defendant to a civil action brought pursuant to the Model Act need not have a contractual relationship to any authorized plaintiff or otherwise have any cognizable property right or interest in the leased residential premises involved. This represents a significant departure from traditional landlord-tenant law, which generally limits the jurisdiction of the court to enforcing or terminating the terms of a contractual lease agreement between the landlord and tenant.
- Authorizes a "complete eviction," except under certain circumstances, whenever the court finds that:
 1. drug-related criminal activity has occurred on or within the individual rental unit leased to the tenant; or
 2. the individual rental unit leased to the tenant was used in any way in furtherance of or to promote drug-related criminal activity; or
 3. the tenant, any member of the tenant's household or any guest has engaged in drug-related criminal activity on or near any portion of the entire leased residential premises; or

¹ Drug-related criminal activity is defined as the unlawful manufacture, sale, distribution or possession with intent to sell or distribute, a controlled substance in violation of the state's controlled substances law, or an unlawful attempt or conspiracy to commit such as act.

4. the tenant has given permission to or invited a person who has been removed and barred from the premises pursuant to the Model Act to return to or re-enter the premises; or
 5. the tenant has failed to notify appropriate law enforcement or public housing authorities immediately upon learning that a person who has been removed and barred from returning to the premises pursuant to the Model Act has returned to or re-entered the tenant's individual rental unit.
- Provides that a civil action to evict a tenant engaged in drug-related criminal activity or to remove any non-tenant engaged in such activity from the premises may be brought by:
 1. the owner or landlord of the leased residential premises, or his or her agent; or
 2. a tenant organization; or
 3. a criminal prosecuting agency.
 - Provides that where non-tenants engaged in drug-related criminal activity are not named as a party defendant or otherwise not subjected to the jurisdiction of the court, the removal order is to be directed against the tenant; such an order provides that as an express condition of the tenancy, the tenant shall not give permission to the barred person or persons to return to or re-enter the leased residential premises.
 - Provides an "affirmative defense," using a preponderance of the evidence standard, where the defendant was not involved in the drug-related criminal activity and:
 1. he or she did not know or have reason to know that the illegal conduct giving rise to the eviction action was occurring; or
 2. he or she did everything that could reasonably be expected in the circumstances to prevent the commission of the drug-related criminal activity; or
 3. he or she promptly reported the drug-related criminal activity to appropriate law enforcement authorities.
 - Requires the court, where it finds that a tenant has satisfactorily established an affirmative defense, to order that any and all persons found to have engaged in drug-related criminal activity on any portion of the entire premises, including but not limited to adult or minor members of the tenant's household, be permanently removed and barred from returning to the premises. The Model Act requires the court, under such circumstances, also to order as an express condition of the tenancy, that the tenant not permit or invite any such person who has been barred to return to or re-enter any portion of the leased residential premises.
 - Requires the court to order the immediate eviction of the tenant where the court finds that:
 1. the tenant has given permission to or invited any person removed or barred from the leased residential premises pursuant to the Model Act to return to or re-enter any portion of the premises; or
 2. the tenant has failed to notify appropriate law enforcement or public housing authorities immediately upon learning that any person who has been removed and barred has re-entered the tenant's individual rental unit; or
 3. the tenant has otherwise knowingly violated an express term or condition of or order issued by the court pursuant to the Model Act.
 - As an alternative means of making certain that innocent persons are not unwittingly punished, the Model Act authorizes a court to refrain from evicting a tenant where, having regard to the circumstances of the criminal activity and the condition of the tenant, the court is clearly convinced that immediate eviction would be a serious injustice which overrides the need to protect the rights, safety and health of the other tenants and residents of the leased residential premises.
 - Makes clear that the civil causes of action established in the Model Act need only be proved by a preponderance of the evidence, affirming common law traditions that it is not necessary that any person be convicted in a criminal prosecution as a predicate to commencing a civil proceeding such as an eviction. Where, however, a criminal prosecution involving the drug-related criminal activity results in a criminal conviction, that conviction constitutes rebuttable proof that drug-related criminal activity occurred.

² A "complete eviction" would be defined as the eviction and removal of a tenant and all members of the tenant's household. A "partial eviction," in contrast, would mean the removal of specified persons, other than the tenant, from a leased residential premises.

- Affirms the admissibility in the civil action of any evidence or testimony admitted in a related adult or juvenile criminal proceeding.
- Protects plaintiffs or witnesses from the violent and intimidating tactics used by drug dealers by establishing a privilege so that any plaintiff or witness may refuse to disclose the identity of any person who has furnished information concerning the suspected commission of drug-related criminal activity, unless the court finds that the disclosure of the informant's identity is essential to assure a fair determination of the civil suit.
- Authorizes, in certain circumstances, non-law enforcement plaintiffs (i.e., landlords or tenant associations) to have access to information in police or forensic laboratory reports concerning the drug-related criminal activity committed on or near the leased residential premises. The Model Act authorizes law enforcement officers to testify in the civil action as fact or expert witnesses. It does not require a law enforcement agency to divulge information as to the identity of any confidential informant or undercover officer, or information derived from electronic surveillance or grand jury proceedings which have not already been made public.
- Authorizes a prevailing tenant organization/plaintiff to recover the cost of the suit, including but not limited to reasonable attorney fees and costs from the landlord/owner, who is deemed to be the beneficiary of the successful eviction action. Such cost recovery applies only where the landlord or owner, or his or her agent, has refused to bring the action in his or her own right after having been requested in writing to do so.
- Permits the court, under certain circumstances, to establish a "probationary tenancy" in lieu of eviction, so long as the otherwise-evicted tenant or resident is undergoing and cooperating with an appropriate and carefully supervised course of drug treatment.

Model Expedited Eviction of Drug Traffickers Act

Section 1. Short Title.

The provisions of this [Act] shall be known and may be cited as the “Model Expedited Eviction of Drug Traffickers Act.”

Section 2. Legislative Findings.

(a) All citizens, regardless of their income or economic status, have the right to be safe and secure in their residences. All citizens further have the right to live and raise their children in apartment complexes, neighborhoods and communities which are free from the destructive influence of drug dealers and drug-related crime and violence.

(b) Persons who commit drug distribution offenses on or in the immediate vicinity of leased residential premises, or who permit or tolerate such offenses to be committed, violate the rights and jeopardize the health and safety of the other tenants, residents, and on-site employees of the premises.

(c) It is the policy of this state to ensure the swift eviction and removal of persons who engage in certain drug-related criminal activity on or in the immediate vicinity of leased residential premises, or who permit members of their households or guests to engage in this criminal activity on or in the vicinity of the premises.

(d) Tenants have an obligation to take such actions as are reasonable and necessary under the circumstances to prevent the commission of drug-related criminal activity within their individual rental units and also to prevent members of their household and guests from committing such criminal activity on or in the immediate vicinity of any portion of the leased residential premises.

(e) It is the policy of this state to encourage owners and landlords to protect the rights, safety and health of their tenants and residents by promptly commencing and fully prosecuting civil eviction and removal proceedings against those tenants and other persons

who engage in drug-related criminal activity on or in the immediate vicinity of their properties.

(f) The civil causes of action and remedies authorized by this [Act] are remedial rather than punitive in nature, and are designed first and foremost to protect the rights, safety and health of law-abiding tenants, residents, and on-site employees, while affording due process of law to persons alleged to have allowed such criminal activity to occur on or in the immediate vicinity of leased residential premises.

(g) Except as may otherwise be expressly provided, it is the general policy of this state to afford the same rights and privileges under this [Act] to the tenants and residents of publicly owned, publicly-assisted and privately-owned premises and housing facilities.

(h) Tenants should be empowered to take legal action to protect and enforce their own rights to live in a peaceful community. Tenant organizations should have access to the courts and should therefore be afforded legal standing to initiate eviction for drug-related criminal activity on or in the immediate vicinity of the leased residential premises.

(i) It is the policy of this state to ensure that the causes of action and remedies authorized by this [Act] are heard by the courts on an expedited and priority basis so as to evict and remove as soon as practicable all persons who engage in drug-related criminal activity on or in the immediate vicinity of leased residential premises or who allow such criminal activity to occur.

(j) In addition to ensuring the swift disposition of all civil actions brought pursuant to this [Act], it is necessary and appropriate to ensure certain and uniform enforcement by the courts of the rights and remedies provided by this statute. Such certainty, predictability and uniformity is essential to discourage persons from committing or tolerating the commission of drug-related criminal activity, and thereby to protect the rights, safety and health of law-abiding tenants and residents.

COMMENT

By identifying the purposes to be achieved by this remedial legislation, this declaration will aid the courts in interpreting and implementing the specific provisions of the [Act]. Accordingly, where appropriate, all questions of statutory construction should be made by reference to various provisions of this section. *See also* Section 32 (providing that the provisions of this [Act] shall be liberally construed to effectuate the various remedial purposes, objectives and policies set forth in the Legislative Findings).

Section 3. Purpose.

This [Act] is intended to provide a legal process to ensure prompt eviction of persons engaging in specified drug-related criminal activity on or near leased residential premises, or who permit others to engage in such criminal activity. This [Act] is further intended to authorize courts to order persons other than tenants who engage in certain drug-related criminal activity to stay away from the location where the criminal activity occurred.

COMMENT

This section sets out in the simplest possible terms the overriding goals of this [Act], and focuses on the need for swift handling by the courts of civil actions brought pursuant to this [Act]. This section further recognizes that one of the innovative remedies created by the [Act] is that courts are authorized to order persons other than the tenant who engage in certain criminal activity to stay away from the leased residential premises. This introductory section thus makes clear that one of the key features of the [Act] is to authorize courts to impose a so-called “partial eviction.”

Section 4. Definitions.

As used in this [Act]:

- (a) “Complete eviction” means the eviction and removal of a tenant and all members of the tenant’s household.
- (b) “Controlled substance,” “manufacture,” “distribution,” and “possession with intent to sell or distribute” shall have the same meaning as those terms are used in [cite to applicable state controlled substances law].
- (c) “Drug dependent person” means a person who is a chemically dependent person as defined by the [single

state authority on alcohol and other drugs].

(d) “Drug-related criminal activity” means the unlawful manufacture, sale, distribution or possession with intent to sell or distribute, a controlled substance in violation of [cite to applicable state controlled substances law], or an unlawful attempt or conspiracy to commit such an act.

(e) “Entire premises” or “leased residential premises” means a house, building, mobile home or apartment, whether publicly or privately owned, which is leased for residential purposes. These terms include the entire building or complex of buildings or mobile home park and all real property of any nature appurtenant thereto and used in connection therewith, including all individual rental units and common areas. These terms do not include a hotel, motel or other guest house or part thereof rented to a transient guest.

(f) “Felony” means a criminal offense punishable by more than one year of imprisonment.

(g) “Guest” means any natural person who has been given express or implied permission by a tenant, a member of the tenant’s household, or another guest of the tenant to enter an individual rental unit or any portion of the entire premises.

(h) “Individual rental unit” means an apartment or individual dwelling or accommodation which is leased to a particular tenant, whether or not it is used or occupied or intended to be used or occupied by a single family or household.

(i) “Owner” or “landlord” means a person, entity, corporation or governmental authority or agency who or which owns, operates or manages any leased residential premises.

(j) “Partial eviction” means the eviction and removal of specified persons other than the tenant from a leased residential premises.

(k) “Resident” means any natural person who lawfully resides in a leased residential premises who is not a signatory to a lease or otherwise has no contractual relationship to a landlord or owner. The term includes but is not limited to members of the household of a tenant.

(l) “[Single state authority on alcohol and other drugs]” means the state agency designated by the governor to plan, manage, monitor and evaluate alcohol and other drug treatment services in the state.

(m) “Tenant” means any natural person or entity who is a named party or signatory to a lease or rental agreement, and who occupies, resides at or has a legal right to possess and use an individual rental unit.

(n) “Tenant organization” means an organization or association, whether or not incorporated, which is representative of the tenants or residents of a leased residential premises, the membership of which consists of tenants of the leased residential premises which the organization or association represents. The term also includes a community-based organization with members who are tenants of the leased residential premises.

COMMENT

This section provides the definitions used throughout the [Act]. Although most of these definitions are either self-explanatory or are taken verbatim from other related civil and criminal statutes, several deserve special note. The term “complete eviction,” defined in paragraph (a), is used to describe the traditional remedy available in landlord-tenant courts, that is, to terminate a leasehold and to evict, dispossess, and remove a tenant and all members of the tenant’s household. In this regard, the term “tenant” is defined in paragraph (m) to mean the named party or signatory to the lease, and is thus distinguished from the term “resident,” defined in paragraph (k), which includes any natural person who lawfully resides at the leased premises but who is not the signatory to the lease. This distinction is important in that this [Act] authorizes certain remedies and orders directed against residents and other persons in addition to tenants, who alone stand in a direct contractual relationship with the landlord.

The term “drug-related criminal activity” is used to describe the type of illicit conduct which could give rise to an action and remedy under the [Act]. This form of criminal behavior is limited to the sale or distribution of a controlled substance and includes possession with the intent to sell or distribute any such substance. It is thus important to note that the terms “distribution” or “sell” are used in the disjunctive, so that it is not necessary for a plaintiff to establish that the offender distributed illicit drugs in exchange for money or anything else of value, or otherwise reaped or intended to reap a profit from the illicit transaction.

It is also important to note that the term “drug-related criminal activity” does not include simple possession, use or being under the influence of a controlled dangerous substance. Rather, this [Act], as its short title indicates, is designed to remove and deter drug trafficking

activities. This is in contrast to the proposed Model Nuisance Abatement Act, which, in certain limited circumstances, recognizes that the utilization of a facility for the repeated consumption of illicit drugs (e.g., a “shooting gallery” or a “crack house”) warrants a civil remedy. In this [Act], however, the conduct which could give rise to a complete or partial eviction is the distribution of illicit drugs, rather than the use of illicit drugs.

It should be noted, however, that the act of “manufacture” is also included. This reference is derived from general criminal law provisions, and is broadly defined in those laws to mean the production, preparation, propagation, compounding, conversion or processing of a controlled substance, and includes any packaging or re-packaging of the substance or labelling or re-labelling of the container in which it is kept. It is thus clear that any drug production activities, whether or not they actually involve chemical processing or the “cooking” of a controlled substance, are strictly prohibited and would subject the culpable tenant or resident to eviction under this [Act].

The term “partial eviction,” defined in paragraph (j), refers to the innovative remedy available to a court to order the removal of specified persons other than the tenant where such persons have engaged in “drug-related criminal activity” on or involving the leased residential premises.

The term “tenant organization” is broadly defined in paragraph (n) to mean any organization or association which is representative of the tenants or residents of a leased residential premises. It is intended that this term would be interpreted liberally to include virtually any type of organization or association which reasonably claims to be representative of any or all of the tenants or residents of a given premises without regard to the size of the organization, the percentage of the tenants or residents who are members or are represented, or whether or not the organization is formally incorporated. Moreover, this definition makes clear that the membership of the organization need not be restricted to tenants or residents of a given residential premises. Rather, a tenant organization can be an organization representing a broader-based segment of the community or neighborhood, provided that some members of this organization are tenants (that is, formal lease signatories) to a given leased residential premises. This term is important in that tenant organizations are authorized in certain circumstances to initiate a civil action pursuant to this [Act].

Section 5. Nature of Actions and Jurisdiction.

The causes of action established in this [Act] are civil actions to evict or remove tenants or other persons from leased residential premises. These actions shall be brought in the [appropriate court].

COMMENT

This section is designed to allow state legislatures to identify the specific court or courts authorized to hear civil actions brought pursuant to this [Act]. It should be noted that in some states, courts assigned to hear landlord-tenant disputes have extremely limited jurisdiction and are not permitted to issue injunctions or other forms of equitable relief. To the extent that a "partial eviction," as defined in this [Act], contemplates an equitable remedy directed against culpable persons who may not have a direct contractual relationship to the landlord or plaintiff, state legislatures should carefully consider the designation of the appropriate type of court.

Section 6. Standard of Proof.

The civil causes of action established in this [Act] shall be proved by a preponderance of the evidence, except as otherwise expressly provided.

COMMENT

This section makes clear that, except as may otherwise be expressly provided in various provisions of the law, the standard of proof in an action brought pursuant to this [Act] is a preponderance of the evidence. This section, along with Section 5, makes clear that the causes of action available under this [Act] are civil and remedial, notwithstanding that the plaintiff will be required to prove the commission of acts which constitute drug trafficking offenses.

Section 7. Parties.

(a) Who May Bring Action. A civil action pursuant to this [Act] may be brought by:

- (1) The owner or landlord of a leased residential premises, or his or her agent; or
- (2) A tenant organization; or
- (3) A criminal prosecuting attorney, or municipal, county or state attorney.

(b) Defendants to the Action. A civil action pursuant

to this [Act] may be brought against any person within the jurisdiction of the court, including but not limited to a tenant, adult or minor member of the tenant's household, guest or resident of the leased residential premises. If any defendant's true name is unknown to the plaintiff, process may issue against the defendant under a fictitious name, stating it to be fictitious and adding an appropriate description sufficient to identify him or her.

(c) Notice to Interested Parties.

(1) Notice to Defendants. A complaint initiating an action pursuant to this [Act] shall be personally served, and notice to all defendants shall be provided in the same manner as serving [original notices][complaints] in civil actions. After filing an affidavit that personal service cannot be had after due diligence on one or more defendants within twenty days after the filing of the complaint, the plaintiff may:

(A) cause a copy of the complaint to be mailed to the defendant by certified mail, restricted delivery, with return receipt requested to the clerk of court, and

(B) cause a copy of the complaint to be affixed conspicuously to the main entrance to the premises and to all entrances to the individual rental unit where the drug-related criminal activity is alleged to have occurred.

Service shall be deemed completed five days after filing with the court proof of such mailing and an affidavit that a copy of the complaint has been affixed to the premises.

(2) Notice to Affected Tenants, Residents, and Guests. All tenants or residents of any building, place or premises which is used in whole or in part as home, residence or dwelling, other than transient guests of a guest house, hotel or motel, who may be affected by any order issued pursuant to this [Act], shall be provided such reasonable notice as shall be ordered by the court and shall be afforded opportunity to be heard at all hearings.

(d) Naming and Service of Owners in Actions Brought by Tenant Organizations or Prosecutors. Where an action pursuant to this [Act] is initiated by a tenant organization or criminal prosecuting attorney, or municipal, county or state attorney, the owner of the leased residential premises shall be named as a defendant and shall be served with a copy of the complaint

pursuant to subsection (c). Any agent of the owner may be named as a party and shall, in any event, have the right to appear and participate in all proceedings conducted pursuant to this [Act].

(e) Protections Against Frivolous Actions and Sanctions for Unfounded or Unwarranted Pleadings, Motions or Other Papers. No tenant organization shall be permitted to bring an action pursuant to this [Act] unless the organization is represented by an attorney at law who is licensed in this state.

(1) In any action brought pursuant to this [Act], regardless of the identity of the plaintiff, every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated.

(2) An owner, landlord, or his or her agent, who is not represented by an attorney, shall sign the party's pleading, motion or other paper and state the party's address.

(3) Such signature of an attorney or party constitutes a certificate by the signer that:

(A) the signer has read the pleading, motion, or other paper;

(B) to the best of the signer's knowledge, information and belief formed after reasonable inquiry, it is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

(C) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(4) If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(5) If the court finds that:

(A) the signer has not read the pleading, motion or other paper;

(B) the signer does not have knowledge, information or a belief regarding the facts contained in the pleading, motion, or other paper, or that a reasonable inquiry has not been made;

(C) the pleading, motion or other paper is not well-grounded in fact or warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; or

(D) the pleading, motion, or other paper was interposed for any improper delay or needless increase in the cost of litigation;

then the court, upon motion, or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

(f) Ready Availability of Ownership Information to Potential Plaintiffs. Any person or entity who states upon an oath in writing, that he or she is preparing to initiate an action pursuant to this [Act], may request that the [county recorder or equivalent office] promptly provide, without charge, the name and address of all owners of the leased residential premises where the drug-related criminal activity is alleged to have occurred, as reflected upon the current county records.

COMMENT

Subsection (a) describes the persons or entities authorized to initiate a civil action pursuant to this [Act]. While the [Act] expressly recognizes the traditional right of an owner or landlord, or his or her agent, to initiate the eviction action, this section also gives standing to tenant organizations or a criminal prosecuting attorney, or municipal, county, or state attorney. This section is designed to provide incentives to tenants to organize into bona fide organizations or associations so that they can, in appropriate circumstances, take steps to protect their own rights in a court of law. In a very real sense, this provision is designed to "empower" these law-abiding tenants and residents.

Unlike the rules of procedure generally governing a corporate shareholder's derivative suit, the tenant organization has standing to initiate the action in its own right, rather than in the right of the landlord, and need not make any particular demand upon the landlord to bring the action. However, a prevailing tenant organization would not be entitled to recover the costs of the suit from the landlord or owner pursuant to Section 24 of this [Act], unless the landlord or owner refused to bring the action after having being requested to do so in writ-

ing by the tenant association. Under this formulation, tenant associations are automatically empowered to protect their own rights, but are nonetheless encouraged to work cooperatively with the landlord or owner. It is hoped in this way that landlords will fulfill their own responsibilities to protect the interests of their tenants without having to erect unreasonable or time consuming barriers to the right of those tenants to initiate actions on their own behalf.

Subsection (a) expressly authorizes prosecuting attorneys to initiate actions under this [Act]. Tenant associations, even landlords, may be intimidated by the threat of retaliation, given the violent nature of drug traffickers. It is thus envisioned that prosecuting agencies and municipal, county or state attorneys can provide an invaluable service to both landlords and law-abiding tenants by taking responsibility for initiating these actions in appropriate circumstances.

Subsection (b) identifies those persons who are subject to an order issued by a court pursuant to this [Act]. These putative defendants include not only a signatory to a lease who engages in drug-related criminal activity, but also any adult or minor member of such tenant's household, guest or resident of the leased premises. This subsection includes a provision for moving against unknown or unnamed ("John Doe") offenders. This provision is made necessary by the fact that some tenants, residents or their guests may invite other persons onto the premises to engage in drug trafficking activity where it is not possible to determine the true identity of those persons.

Subsection (c) outlines the basic procedures for initiating an action pursuant to this [Act], by serving personal notice or, in certain circumstances, a substitute form of service. This provision generally follows ordinary civil procedure rules, which are used in most jurisdictions. Paragraph (2) of this subsection provides that the court shall order that reasonable notice be given to other tenants or residents of the building, place, or premises, and shall afford them an opportunity to be heard at all hearings. This provision recognizes that given the nature of these actions, all tenants and residents have a vested interest in the outcome of the litigation, and especially with respect to the use of some of the more ameliorative provisions of this [Act] which authorize courts to refrain from evicting or removing a person who has engaged in drug trafficking activity on the premises. *See, e.g.* Sections 9 and Section 28.

Subsection (d) provides that where an action is initiated by a tenant organization or prosecuting agency, the

landlord must be named as a defendant and must be served with a copy of the complaint. In any such action, the landlord would have the right to appear and participate in all proceedings.

Subsection (e) provides important protections against the possibility of frivolous or "nuisance" suits initiated pursuant to this [Act]. The need for such sanctions and protections is especially important given the broad definition of "tenant organization," and the other provision of this section which authorize such associations to initiate eviction actions in their own right and without first having to request the landlord to bring the action or otherwise seek the landlord's concurrence. The [Act] expressly provides that where the eviction action is brought by a tenant association, the association must be represented by an attorney at law licensed in the state. In other words, the tenant association would not be authorized to initiate a pro se action. Under the laws in most states, a corporation appearing in a lawsuit, either as a plaintiff or a defendant, must be represented by a licensed attorney. This ban against pro se representation in an eviction action brought by a tenant association is designed in conjunction with the provisions of subsection (e), to protect against frivolous or unfounded lawsuits, especially since the attorney would be required to certify that there is an adequate factual and legal basis for the law-suit and any and all pleadings, motions, and other papers filed during the course of the civil action. This subsection is patterned after Federal Rule of Civil Procedure 11 and similar state rules of procedure, which require that every pleading, motion and other filing be signed by an attorney-at-law.

Finally, subsection (f) is designed to facilitate the investigation necessary to initiate an eviction action pursuant to this [Act] by authorizing any potential plaintiff to request the appropriate government office to provide promptly, and without charge, the names and addresses of all owners of the leased residential premises as reflected in current government records.

Section 8. Remedies and Judicial Orders.

(a) Grounds for Complete Eviction. Subject to the provisions of Sections 9 and 28, the court shall order the immediate eviction, as set forth in Sections 14(b) and 16, of a tenant where it finds that:

- (1) Drug-related criminal activity has occurred on or within the individual rental unit leased to the tenant; or
- (2) The individual rental unit leased to the tenant

was used in any way in furtherance of or to promote drug-related criminal activity; or

(3) The tenant, any member of the tenant's household or any guest has engaged in drug-related criminal activity on or in the immediate vicinity of any portion of the entire premises; or

(4) The tenant has given permission to or invited a person to return or re-enter any portion of the entire premises, knowing that the person has been removed and barred from the entire premises pursuant to this [Act]; or

(5) The tenant has failed to notify law enforcement or public housing authorities immediately upon learning that a person who has been removed and barred from the tenant's individual rental unit pursuant to this [Act], has returned to or re-entered the tenant's individual rental unit.

(b) Grounds for Partial Eviction and Issuance of Removal Orders. The court shall, subject to the provisions of Subsection 9(b) and Section 28, order the immediate removal from the entire premises of any person other than the tenant, including but not limited to an adult or minor member of the tenant's household, where the court finds that such person has engaged in drug-related criminal activity on or in the immediate vicinity of any portion of the leased residential premises. Persons removed pursuant to this section shall be barred from returning to or re-entering any portion of the entire premises.

(c) Removal Orders Directed Against the Tenant. Where the court finds that a member of the tenant's household, or guest or resident of the tenant's leased residential premises, has engaged in drug-related criminal activity on or in the immediate vicinity of any portion of the leased residential premises, but such person has not been named as a party defendant, has not appeared in the action or otherwise has not been subjected to the jurisdiction of the court, a removal order issued pursuant to subsection (b) shall be directed against the tenant, and shall provide that as an express condition of the tenancy, the tenant shall not give permission to or invite the barred person or persons to return to or re-enter any portion of the entire premises. The tenant shall acknowledge in writing that he or she understands the terms of the court's order, and that he or she further understands that the failure to comply with the court's order will result in the mandatory termination of the tenancy pursuant to Section 14 of this [Act].

COMMENT

Subsection (a) sets forth the basic grounds for ordering a complete eviction, that is, court-ordered termination of the affected leasehold. Under this statute, unlike many current state eviction laws, where the court finds that the plaintiff has established one or more grounds for complete eviction by a preponderance of the evidence, the court is required to issue an order terminating the leasehold unless the defendant has established the basis for an affirmative defense or exemption pursuant to Section 9, or the court is otherwise authorized to impose a "probationary tenancy" pursuant to Section 28.

With respect to the individual rental unit leased to the tenant, a complete eviction would be required where the plaintiff has established that drug-related criminal activity has occurred on or within such unit, or that the unit was used in any way in furtherance of or to promote drug-related criminal activity. Under the first such ground, the plaintiff need only establish the occurrence of the drug-related criminal activity on or within the individual rental unit. The plaintiff need not establish the specific identity of the person or persons who actually engaged in the criminal conduct. Thus it is not necessary, for example, for the plaintiff to prove that the tenant or even any member of the tenant's household was actually engaged in criminal activity, provided that the plaintiff has established that such criminal activity was conducted by some person, whether known or unknown, or named or unnamed as a party to the action, on or within the rental unit. The protections set forth in Section 9 are more than adequate to protect the interests of any innocent tenant whose rental unit was unwittingly used in furtherance of drug-related criminal activity.

The ground set forth in paragraph (a) (2) requires proof that the individual rental unit was used in any way, or by any person, in furtherance of or to promote drug-related criminal activity. This language is generally derived from civil forfeiture law, and contemplates a causal as opposed to casual relationship between the rental unit and the criminal activity. It is thought that this ground would appropriately deal with circumstances where a rental unit was used as part of and in furtherance of a drug trafficking conspiracy, even if the actual drugs involved were not kept or distributed on or within the rental unit. Thus, for example, a drug trafficker who used a telephone facility within the individual rental unit as part of a drug trafficking conspiracy, or who otherwise makes the rental unit available for use

by others to support drug-related criminal activity, would subject that rental unit to a complete eviction within the meaning of this [Act].

Paragraph (a)(3) provides a basis for a complete eviction with respect to drug-related criminal activity which need not necessarily occur on or within the individual rental unit leased to the tenant, but rather on or in the immediate vicinity of any portion of the entire premises. The term "entire premises" would include the entire building or complex of buildings associated with the tenancy, including all real property of any nature which is used in connection therewith, which would include the hallways, apartment sidewalks, and other "common areas".

Also, this ground for a complete eviction is not limited to the drug-related criminal activity of the tenant, but would include any such activity conducted by any member of the tenant's household or any guest. In this context, the term "guest," as defined in Section 3, could mean any natural person who has been given express or implied permission by a tenant, a member of the tenant's household, or another guest of the tenant to enter any individual rental unit or any portion of the entire premises. Thus it is not necessary for the plaintiff to establish that the tenant or member of the tenant's household in any way assisted such guests in committing the drug-related criminal activity. Again, the provisions of Section 9 provide adequate safeguards for any such "innocent" tenants and residents.

Paragraph (a)(4) applies to a breach of duty by the tenant in inviting or giving permission to a person to re-enter the premises, knowing that the person has been removed and barred from the premises by the court pursuant to this [Act]. Finally, paragraph (a)(5) applies to a similar breach of duty by a tenant who fails to notify either law enforcement or public housing authorities when a person barred from his or her individual rental unit returns to or re-enters the unit.

Subsection (b) sets forth the grounds for a partial eviction and the issuance of a removal order. Specifically, this subsection requires the court to order the immediate removal from the entire premises of any person where the plaintiff has established that the person has engaged in drug-related criminal activity on or in the immediate vicinity of any portion of the leased residential premises. As in the case of a complete eviction pursuant to subsection (a), the court has no discretion to refrain from issuing a partial eviction removal order where the plaintiff has established the grounds there-

for, unless the defendant or person subject to the removal order establishes the basis for some form of relief pursuant to Section 9 or Section 28.

The provisions of both this subsection and Section 8(a)(3) refer to criminal conduct occurring on or "in the immediate vicinity" of any portion of the leased residential premises. Unlike criminal statutes which define the offense of distributing drugs on or near school property, or other specified places, it is thought that since this is a civil, not criminal, statute, the requirements of due process would not require the legislature to specify the exact distance (e.g., 1000 feet) within which the conduct would be subject to enhanced punishment or, in this case, a complete or partial eviction. Rather, it is thought that courts implementing this [Act] would be able to decide on a case-by-case basis whether the drug-related criminal activity is of such proximity to the outer boundaries of the leased residential premises, given the specific circumstances involved and the nature of the property and surrounding neighborhoods, as to invoke the goals and objectives of this [Act] and to warrant the granting of a complete or partial eviction. The court, in other words, would be required to determine as a matter of both fact and law whether the drug-related criminal activity occurred within the "immediate vicinity" of the leased residential premises, considering the totality of the circumstances and the statutory findings and objectives set forth generally in Section 3 of the [Act].

Subsection (c) provides a specific remedy to be used by the court where the plaintiff has established that some individual associated with the tenant has engaged in drug-related criminal activity on or in the immediate vicinity of the leased residential premises, but the plaintiff is unable to specifically identify such person or otherwise subject him or her to the jurisdiction of the court by naming him or her as a party or otherwise providing personal service. In that event, it would be neither possible nor practicable merely to issue the removal order as part of a partial eviction against the unserved or even unnamed culpable offender. Accordingly, this subsection requires the court to direct the removal order against the tenant and further provides that the lease agreement be amended as a matter of law to provide that, as an express condition of the tenancy, the tenant shall not give permission to or invite the barred person or persons to return to or re-enter any portion of the entire premises. In accordance with the provisions of Section 7(b), it would be sufficient to provide notice to the tenant to identify the barred person under a fictitious name, provided that the person is described with

sufficient specificity that the tenant could reasonably be expected to know who has been barred. This subsection further provides that the tenant must acknowledge in writing that he or she understands the terms of the court's order and that failure to comply with this new condition of the tenancy will result in a mandatory complete eviction.

Section 9. Affirmative Defense or Exemption to a Complete Eviction.

(a) Affirmative Defense. The court may refrain from ordering the complete eviction of a tenant pursuant to Section 8(a) of this [Act], where the tenant has established that he or she was not involved in the drug-related criminal activity, and that:

(1) he or she did not know or have reason to know that drug-related criminal activity was occurring on or within the individual rental unit, that the individual rental unit was used in any way in furtherance of or to promote drug-related criminal activity, or that any member of the tenant's household or any guest has engaged in drug-related criminal activity on or in the immediate vicinity of any portion of the entire premises; or

(2) he or she had done everything that could reasonably be expected in the circumstances to prevent the commission of the drug-related criminal activity; or

(3) he or she had promptly reported the drug-related criminal activity to appropriate law enforcement authorities.

(b) Exemption. Where the grounds for a complete eviction have been established, the court shall forthwith order the eviction of the tenant, unless, having regard to the circumstances of the criminal activity and the condition of the tenant, the court is clearly convinced that immediate eviction or removal would be a serious injustice, the prevention of which overrides the need to protect the rights, safety and health of the other tenants and residents of the leased residential premises.

(c) Burden of Proof. The burden of proof for the affirmative defense set forth in subsection (a) shall be by a preponderance of the evidence. The burden of proof for the exemption set forth in subsection (b) shall be by clear and convincing evidence.

COMMENTS

This section sets forth those circumstances where a

court, in the exercise of its discretion, may refrain from ordering a complete or partial eviction in the interest of fairness or justice. The first circumstance is designated as an affirmative defense to a complete eviction, which must be proved by the tenant by a preponderance of the evidence. The affirmative defense is available when the tenant has established that he or she was not involved in the drug-related criminal activity and that he or she did not know or have reason to know that the drug-related activity was occurring, or had done everything that could reasonably be expected in the circumstances to prevent the commission of the drug-related activity, or otherwise had promptly reported the drug-related criminal activity to appropriate law enforcement authorities. In essence, this affirmative defense is similar to the so-called "innocent owner" exception commonly found in civil forfeiture statutes as a matter of state law or constitutional imperative.

Where the defendant establishes the affirmative defense by a preponderance of the evidence, the court is authorized but not required to refrain from ordering the complete eviction. Moreover, where the court does elect in the exercise of its discretion to refrain from ordering the complete eviction, the court must nonetheless proceed to order the removal of those individuals who were culpably involved in the drug-related criminal activity. *See* Section 10.

In addition to the affirmative defense established in subsection (a), subsection (b) establishes an exemption to complete eviction which must be proved by the tenant by clear and convincing evidence. The court would be authorized in its discretion to grant the exemption only where it is clearly convinced that an immediate eviction or removal would be a serious injustice, the prevention of which overrides the need to protect the rights, safety and health of the other tenants and residents of the leased residential premises. Once again, it is important to note that this exemption is discretionary with the court. Moreover, it would not be sufficient as a matter of law for the tenant to establish only that the eviction would constitute a serious injustice; rather the tenant must also establish that the need to prevent such injustice overrides the need to protect the rights and interests of law-abiding neighbors and other residents of the leased residential premises.

It is intended that this exemption will only rarely be used, and that the more common and appropriate form of "safety valve" would be for the tenant to establish the basis for the affirmative defense in subsection (a). This is especially true in that under subsection (a), the

tenant would have established that he or she was truly innocent. In other words, it is envisioned that the exemption established in subsection (b) would only be used as an alternative means of making certain that a serious injustice is not committed; the preferred mechanism for avoiding the strictures of this [Act] would be to establish by a simple preponderance of the evidence the basis for an affirmative defense in subsection (a).

Section 10. Mandatory Partial Eviction Where Affirmative Defense or Exemption to Complete Eviction is Established.

(a) General Rule. Where the plaintiff has established grounds for a complete eviction but the court finds that the tenant has satisfactorily established the basis for an affirmative defense or exemption pursuant to Section 9, and the court in its discretion elects not to order the complete eviction of the tenant, the court, except as otherwise provided in Section 28, shall order the immediate removal from the entire premises of any person other than the tenant, including but not limited to adult or minor members of the tenant's household, who have engaged in drug-related criminal activity on any portion of the entire premises. Persons removed pursuant to this section shall be permanently barred from returning to or re-entering any portion of the entire premises. The court shall further order as an express condition of the tenancy that the tenant shall not give permission to or invite any person who has been removed pursuant to this [Act] to return to or re-enter any portion of the entire premises.

(b) Acknowledgment of Conditional Tenancy. The tenant upon whom a partial eviction is imposed, shall acknowledge in writing that he or she understands the terms of the court's order issued pursuant to subsection (a) of this section, and that he or she further understands that the failure to comply with the court's order will result in the mandatory termination of the tenancy pursuant to Section 8 of this [Act]. Refusal by the tenant to acknowledge such terms, as required by this subsection, shall vitiate any prior finding by the court that an exemption to a complete eviction exists, or that the tenant has satisfactorily established an affirmative defense.

COMMENT

This section establishes the procedures to be used in the event that a tenant has satisfactorily established the basis for an affirmative defense or exemption pursuant

to Section 9, and where the court elects not to order the complete eviction of the tenant, notwithstanding that the plaintiff in the action has established the basis for a complete eviction. This section thus reflects the careful balancing of rights and interests involved and makes clear that while courts should be authorized to avoid an eviction in certain specified hardship cases, the rights of law-abiding tenants and residents must generally prevail. Accordingly, where the court in its discretion refrains from ordering a complete eviction, the court must proceed at a minimum to order the partial eviction or removal of those individuals who ought not to benefit from the "innocent person" exception. This provision requires the removal of any such persons who have been shown to have engaged in drug-related criminal activity, including adult or minor members of the tenant's household. Where for any reason it is not possible to separate such members from the tenant, it is envisioned that a complete eviction should ensue. However, it is also important to note that Section 28 establishes an innovative remedy which is designed to permit persons subject to a partial eviction or removal order to remain in the premises during their satisfactory participation in a court-ordered course of drug treatment and monitoring.

This section expressly provides that any person removed pursuant to this section is permanently barred from returning to or re-entering any portion of the entire premises. Furthermore, this section provides that as an express condition of the court refraining from ordering the complete eviction pursuant to Section 9, the tenant will be required not to give permission to or otherwise invite any person who has been removed to return to or re-enter any portion of the premises. In essence, this section establishes a "conditional tenancy" which imposes an affirmative duty upon the tenant to keep any and all barred persons from returning to any portion of the leased residential premises. Where the tenant breaches that duty, he or she is subject to a mandatory eviction. This provision is necessary in order to safeguard the rights of law-abiding tenants and residents; it therefore is an appropriate condition of allowing the tenant to remain in the premises despite the basis for a complete eviction pursuant to Section 9.

Section 11. Substitution of Plaintiff.

Where the court determines in its discretion that the plaintiff bringing an action pursuant to this [Act] has failed to prosecute the matter with reasonable diligence, the court may substitute as plaintiff any person or entity

that consents thereto, provided that such person or entity would have been authorized pursuant to the provisions of this [Act] to initiate the action.

COMMENT

The provisions of this section are designed to preclude the possibility of the collusive or incompetent handling of any action brought pursuant to this [Act]. Specifically, the court is authorized to substitute as a plaintiff any person or entity who could have brought the action where the court determines in its discretion that the party which did initiate the action has failed to prosecute the matter with reasonable diligence. However, the court would have no authority under this section to order any person or entity to assume the responsibility for prosecuting the matter; rather, this section contemplates that such a substitute plaintiff would consent to take responsibility for handling the lawsuit.

Section 12. Execution of Removal or Eviction Order.

Any removal or eviction order issued by a court pursuant to this [Act] shall be enforced by the person or entity bringing the action, provided however that the appropriate law enforcement agency shall, upon the request of the person or entity bringing the action, assume responsibility for the actual execution of the removal or eviction.

COMMENT

The provisions of this section state the general rule that the prevailing party in the action is authorized to enforce any removal or eviction order issued by the court. This section makes clear, however, that private litigants ought not be required physically to confront those drug traffickers who are subject to an eviction or removal order. Accordingly, this section provides that the appropriate law enforcement authority must assume responsibility for the actual execution of the removal or eviction order where law enforcement services have been requested by the prevailing party.

Section 13. Obstructing the Execution or Enforcement of a Removal or Eviction Order.

Any person who knowingly violates any order issued pursuant to this [Act], or who knowingly interferes with, obstructs, impairs, or prevents any law enforcement officer from enforcing or executing any order issued pursuant to this [Act], shall be subject to criminal contempt

under [insert cite to applicable criminal contempt law]. Nothing in this section shall be construed in any way to preclude or preempt a criminal prosecution for [insert cite to applicable obstruction of justice law] or any other criminal offense.

Section 14. Motion to Enforce Removal Order and Mandatory Evictions.

- (a) General Rule. Any person authorized to bring an action pursuant to this [Act] may at any time move to enforce a removal order issued pursuant to this [Act].
- (b) Expedited Hearings. A motion to enforce a removal order shall be heard on an expedited basis and within [___] days of the filing of the motion.
- (c) Mandatory Eviction. The court shall order the immediate eviction of the tenant where it finds that:
 - (1) The tenant has given permission to or invited any person removed or barred from the leased residential premises pursuant to this [Act] to return to or re-enter any portion of the premises; or
 - (2) The tenant has failed to notify appropriate law enforcement or public housing authorities immediately upon learning that any person who had been removed and barred pursuant to this [Act] has returned to or re-entered the tenant's individual rental unit; or
 - (3) The tenant has otherwise knowingly violated an express term or condition of any order issued by the court pursuant to this [Act].

COMMENT

This section expressly provides that any motion to enforce a removal order must be heard by the court on an expedited basis and within a specified number of days following the filing of the motion to enforce. As noted throughout, one of the principal objectives of this legislation is to ensure the prompt handling by the courts of eviction proceedings brought pursuant to this [Act]. The benefits of such prompt litigation would be entirely lost if the enforcement of any resulting eviction order were in any way to be delayed.

This section also provides that the court must order an immediate eviction of the tenant where it finds that the tenant has breached the duty imposed pursuant to other provisions of this [Act] to prevent the return or re-entry of any person who has been barred from the leased residential premises. This [Act] nonetheless recognizes

that some tenants whose premises were used to conduct drug-related criminal activity may themselves be victims. It is not uncommon, for example, for a tenant to be intimidated by an adult or minor child or grandchild who has engaged in drug-related criminal activity and whose unlawful conduct has subjected the tenant to a complete eviction. Accordingly, this section makes clear that where a partial eviction has been ordered, the duties thereafter imposed as a matter of law upon the tenant should be deemed to be satisfied where the tenant notifies appropriate law enforcement or public housing authorities immediately upon learning that any person who has been removed and barred pursuant to this [Act] has returned to or re-entered the tenant's individual rental unit. In other words, the tenant need not physically obstruct the return of the barred drug trafficker or otherwise subject himself or herself to the immediate prospect of retaliation. While it is conceivable that some tenants might be afraid to notify law enforcement authorities for fear of retaliation, it is nonetheless necessary to require such notification in order to protect the rights and interests of law-abiding tenants and residents.

Section 15. Impermissible Defense.

It shall not be a defense to an action brought pursuant to this [Act] that the drug-related criminal activity was an isolated incident or otherwise has not recurred. Nor is it a defense that the person who actually engaged in the drug-related criminal activity no longer resides in the tenant's individual rental unit.

COMMENT

This section makes clear that the plaintiff in an action brought pursuant to this [Act] is not required in any way to establish that the drug-related criminal activity giving rise to the eviction was part of a pattern of activity. Accordingly, it is not a defense if a drug-related criminal activity was an isolated incident or otherwise has not recurred. This section makes clear that the action may be brought and sustained even where the individual who actually engaged in the drug-related criminal activity no longer resides in the tenant's individual rental unit. The provisions of Section 9 are adequate to safeguard the interests of a law-abiding tenant under such circumstances. Thus, for example, where the tenant can establish by a preponderance of the evidence that he or she was innocent of the drug-related criminal activity proven by the plaintiff, and that the person who actually committed the activity no longer resides in his

or her individual rental unit, then the appropriate relief would be the issuance of the removal order directed against the specific drug trafficker, and the establishment of a "conditional tenancy" wherein the tenant would thereafter be required to refuse permission for re-entry to the drug trafficker, and notify law enforcement or public housing authorities if the person does return to or re-enter the tenant's individual rental unit.

Section 16. Expedited Proceedings.

(a) Expedited Hearing. When a complaint is filed initiating an action pursuant to this [Act], the court shall set the matter for a hearing which shall be held on an expedited basis and within [___] days following the filing of the complaint.

(b) Standards for Continuances. The court shall not grant a continuance, nor shall it stay the civil proceedings pending the disposition of any related criminal proceedings, except for compelling and extraordinary reasons or on application of [insert the appropriate criminal prosecuting authority] for good cause shown.

COMMENT

This section establishes and reaffirms the overriding principle in this [Act] that all actions for a complete or partial eviction should be heard as swiftly as possible. Accordingly, this section requires the court to set the matter for a hearing and to convene the hearing within a specified number of days following the filing of the complaint. Furthermore, this section makes clear that the court must not grant a continuance of the proceedings except for compelling and extraordinary reasons.

This section also deals with the difficult issue of whether and to what extent a civil proceeding should be allowed to continue concurrently with criminal proceedings involving the same transaction or parties. The general rule in most states seems to be that civil proceedings are typically stayed pending the outcome of related criminal prosecutions. This is done not only to avoid some of the Fifth Amendment issues which typically attend parallel criminal and civil proceedings, but also to avoid the possibility that the civil litigation might interfere with the conduct of an ongoing investigation or prosecution.

In this context, however, public policy demands that the civil eviction action be heard as expeditiously as possible. Moreover, the interests of the prosecuting authority are protected to some extent in that the prosecutor is

authorized to initiate an eviction action as a plaintiff. In order to achieve the most appropriate balance of these competing interests, this section makes clear that the court must grant a continuance at the request of an appropriate criminal prosecuting agency “for good cause shown.” Although this standard is significantly less than the standard of “compelling and extraordinary reasons,” it is nonetheless envisioned that the prosecuting authority would be required to provide the court with those specific reasons which justify continuing the eviction proceeding. Such reasons would thus override the statutory objective of hearing and concluding such eviction proceedings at the earliest possible opportunity in order to protect the rights and interests of law-abiding tenants and residents. Nothing in this section, however, would preclude the prosecutor from making such specific application in camera or by such other means as may be necessary to safeguard an ongoing investigation, drug enforcement operation, surveillance, or criminal prosecution.

Section 17. Notice to Interested Parties.

Notwithstanding any other provision of law, rule or regulation concerning the procedures otherwise used in eviction proceedings, it shall not be necessary to provide notice to the tenant to vacate the premises prior to filing the complaint initiating a civil action pursuant to this [Act].

COMMENT

In some states, statutes or rules of procedure governing landlord/tenant actions require the landlord to provide notice to the tenant to vacate the premises prior to filing the complaint initiating the eviction action. This section makes clear that in an action brought pursuant to this [Act], such prior notice to the tenant need not be given.

Section 18. Inapplicability of Exclusionary Rule.

No relevant testimony or evidence shall be excluded from any civil action brought pursuant to this [Act] on account of the manner by which it was obtained by a law enforcement officer or agency, notwithstanding that the civil action may have been brought by [an appropriate criminal prosecuting authority].

COMMENT

This section provides that the exclusionary rule will not operate to suppress evidence from any civil action brought pursuant to this [Act] on account of the manner by which it was obtained by a law enforcement officer. This would be true even where the civil action is brought by a prosecuting authority. This section reaffirms that the remedies authorized by this [Act] are remedial not punitive in nature. It would thus be inappropriate to preclude the admission of relevant evidence, especially since it is unlikely that the application of the exclusionary rule in this context would provide any additional incentives for law enforcement officers to comply with the requirements of the Fourth Amendment. It should be noted, however, that many states have already decided the issue of whether unlawfully obtained evidence may be admitted in civil proceedings. In any jurisdiction where the exclusion of such evidence required on independent state constitutional grounds, this section ought not be adopted.

Section 19. Relation to Criminal Proceedings.

(a) Criminal Proceedings, Conviction or Adjudication Not Required. The fact that a criminal prosecution involving the drug-related criminal activity is not commenced or, if commenced, has not yet been concluded or has terminated without a conviction or adjudication of delinquency shall not preclude a civil action or the issuance of any order pursuant to this [Act].

(b) Effect of Conviction or Adjudication. Where a criminal prosecution involving the drug-related criminal activity results in a final criminal conviction or adjudication of delinquency, such adjudication or conviction shall be considered in the civil action as creating a rebuttable presumption that the drug violation occurred, provided however that any such final conviction or adjudication shall estop the convicted defendant or adjudicated juvenile from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought pursuant to this [Act].

(c) Admissibility of Criminal Trial Recordings or Transcripts. Any evidence or testimony admitted in the criminal proceeding, including recordings or transcripts of the adult or juvenile criminal proceedings, whether or not they have been transcribed, may be admitted in the civil action initiated pursuant to this [Act].

(d) Use of Sealed Criminal Proceeding Records. In the

event that the evidence or records of a criminal proceeding which did not result in a conviction or adjudication of delinquency have been sealed in accordance with [cite to applicable state law or procedure], the court in a civil action brought pursuant to this [Act], notwithstanding any other provision of law, may order such evidence or records, whether or not they have been transcribed, to be unsealed if the court finds that such evidence or records would be relevant to the fair disposition of the civil action.

COMMENT

This section again affirms that actions brought pursuant to this [Act] are remedial rather than punitive in nature and thus should be decided by reference to a lower standard of proof than that required in criminal prosecutions. Since the standard of proof generally required in an action pursuant to this [Act] is a mere preponderance of the evidence, the fact that any criminal prosecution involving the drug-related criminal activity is not commenced, or if commenced has not yet been concluded, or has even terminated in an acquittal, should not preclude the civil action or the issuance of any order pursuant to this [Act]. It is possible for the plaintiff to prevail under this [Act] on the basis of evidence which would not be sufficient to convict in a criminal prosecution.

Subsection (b) nonetheless makes clear that the results of a criminal prosecution are relevant and should be considered in a civil action where the prosecution results in a conviction or adjudication of delinquency. In that event, the prosecuting authority would have established the occurrence of the drug-related criminal activity by proof beyond a reasonable doubt, a standard of proof substantially greater than that required for a plaintiff to prevail in an action pursuant to this [Act]. Accordingly, this section provides that any such adjudication of delinquency or conviction should be considered in the civil action as creating a rebuttable presumption that the drug violation occurred.

Furthermore, this subsection provides that where a defendant or person subject to a removal order in an action pursuant to this [Act] has been convicted or adjudicated delinquent, either as a result of a guilty plea or a verdict rendered by a jury or judge, it would be inappropriate for that individual thereafter to deny his or her guilt in the course of any litigation brought pursuant to this [Act]. Accordingly, any such person is estopped to deny the essential allegations of the criminal offense for which he or she has been convicted or adjudicated delinquent.

It would be the responsibility of the court in a civil action pursuant to this [Act] to determine the precise nature of these "essential allegations" of the criminal offense. It is envisioned that this would entail a review by the court of the relevant indictment, criminal complaint, transcript of any plea hearings or trial, or verdict sheet or judgment of conviction in the criminal prosecution. The court would be required to determine that the criminal conviction or adjudication of delinquency unambiguously reflects a finding in a criminal court by proof beyond a reasonable doubt that this individual did commit the acts claimed to be the drug-related criminal activity forming the basis for a complete or partial eviction action pursuant to this [Act].

Subsection (c) provides that any evidence or testimony admitted in the earlier criminal or delinquency proceeding may be admitted in the civil action pursuant to this [Act]. Such evidence would, of course, be subject to the general rules of evidence with respect to determinations of relevancy and hearsay exceptions.

Subsection (d) is included in recognition that some state statutes provide that records of a criminal proceeding that does not result in a conviction or adjudication of delinquency are sealed. This subsection provides that notwithstanding any such state law or procedure, the court in a civil action brought pursuant to this [Act] may order such evidence, transcript or records to be unsealed, provided that the court finds that such materials would be relevant to the fair disposition of the civil action.

Section 20. Discovery.

The parties to an action brought pursuant to this [Act] shall not be entitled to conduct discovery otherwise available in a civil action except by leave of court where required to ensure the fair disposition of the civil action. However, the plaintiff in a civil action brought pursuant to this [Act] shall provide to the tenant and all other named defendants a reasonable opportunity prior to the hearing to examine any relevant documents or records within the plaintiff's possession which directly relate to the action, subject to the limitations of Section 22.

COMMENT

Many provisions and features of this [Act] are designed to ensure that these civil proceedings are heard and resolved as quickly as possible, taking into account the requirements of due process of law. For this reason, this section and several other sections outline procedures

which are designed to minimize pretrial delay which often occurs in civil matters. Accordingly, this section generally prohibits the parties from conducting the forms of discovery which are usually available in a civil action, including service of interrogatories and the taking of depositions. Such modes of discovery are only available to the parties in an action brought pursuant to this [Act] by leave of court and where such discovery is required to ensure the fair disposition of the civil action. Nonetheless, this section, in an effort to ensure both fairness and as swift a resolution of the dispute as possible, requires a plaintiff in a civil action brought pursuant to this [Act] to provide to the tenant and all other named defendants a reasonable opportunity prior to the hearing to examine any relevant documents, records or regulations within the plaintiff's possession which directly relate to the action. Although this section thus envisions an "open discovery" policy, this provision is subject to the limitations set forth in Section 22, which permit law enforcement agencies in certain circumstances to refuse to disclose information in their possession which might jeopardize an ongoing investigation, drug enforcement operation, surveillance, prosecution or other such proceeding.

Section 21. Protection of Threatened Witnesses or Affiant.

If proof necessary to establish the grounds for eviction depends, in whole or in part, upon the affidavits or testimony of witnesses who are not peace officers, the court may, upon a showing of prior threats of violence or acts of violence by any defendant or any other person, issue orders to protect those witnesses, including but not limited to, the nondisclosure of the name, address or any other information which may identify those witnesses.

COMMENT

Regrettably, drug traffickers often use violent and intimidating tactics against not only their competitors, but also any others who might otherwise interfere in any way with their illicit operations. Accordingly, this section authorizes the court to issue such protective orders as may be necessary to safeguard the identity of any non-law enforcement witness upon a showing of prior threats of violence or acts of violence by any defendant or by any other person. Such orders may include, but need not be limited to, the nondisclosure of identifying information about the threatened or potentially threatened witness. Nothing in this section should be construed to preclude or limit the court's

inherent authority, subject to the requirements of due process, to issue such orders as may be necessary to protect the life or property of any person who might have relevant evidence to present in a civil action.

Section 22. Availability of Law Enforcement Resources to Plaintiffs or Potential Plaintiffs.

A law enforcement agency may make available to any person or entity authorized to bring an action pursuant to this [Act] any police report or edited portion thereof, or forensic laboratory report or edited portion thereof, concerning drug-related criminal activity committed on or in the immediate vicinity of the leased residential premises. A law enforcement agency may also make any officer or officers available to testify as a fact witness or expert witness in a civil action brought pursuant to this [Act]. The agency shall not disclose such information where, in the agency's opinion, such disclosure would jeopardize an investigation, prosecution, or other proceeding, or where such disclosure would violate any federal or state statute.

COMMENT

Because the required proofs in an action brought pursuant to this statute necessarily involve an alleged criminal activity, it is conceivable if not likely that local law enforcement or prosecuting agencies may be in possession of information which would be relevant and admissible in the civil action. Accordingly, this section authorizes in certain circumstances non-law enforcement plaintiffs (landlords or tenant associations) to request access to police or forensic laboratory reports concerning the drug-related criminal activity committed on or near the leased residential premises. Thus, the appropriate prosecution or law enforcement agency could provide to the plaintiffs a forensic laboratory report that confirms that a substance seized from a particular apartment was, in fact, a controlled dangerous substance. This section also expressly authorizes law enforcement officers to testify in the civil action as either fact or expert witnesses.

To a large extent, the problems associated with the need for law enforcement agencies to maintain control over the information in their possession is ameliorated by the fact that this [Act] expressly authorizes the prosecuting authority to serve as the plaintiff and to initiate and litigate the civil eviction action. It is thought that in this way, the prosecuting agency can provide this vital service to law-abiding tenants victimized by drug-related criminal activity occurring on or near the leased resi-

dential premises, and at the same time can be certain that the civil litigation in no way disrupts or interferes with an ongoing investigation, drug enforcement operation, surveillance or prosecution.

This section makes clear, moreover, that the law enforcement agency in possession of any such relevant information may not disclose that information in the course of the civil litigation where, in the law enforcement agency's opinion, such disclosure would jeopardize an investigation, prosecution, or other proceeding such as a civil forfeiture action. It is intended that the court hearing the civil action pursuant to this [Act] would have no authority to compel a law enforcement agency, over its objection, to divulge information as to the identity of a confidential informant or undercover officer or any other information which the law enforcement agency deems necessary to keep confidential. Moreover, this section makes clear that nothing in this [Act] is intended to overrule other federal or state statutes concerning, for example, the confidentiality of information in the possession of a law enforcement agency which is derived from electronic surveillance or grand jury proceedings.

Section 23. Ongoing Collection of Rent.

A landlord or owner shall be entitled to collect rent due and owing from the tenant during the pendency of any civil action brought pursuant to this [Act].

Section 24. Recovery of Costs by Prevailing Plaintiff.

A tenant organization, prosecuting attorney, or a municipal, county or state attorney bringing a successful action pursuant to this [Act], including where such action is ultimately discharged under Section 28(k), shall be entitled to recover the cost of the suit, including but not limited to reasonable attorney fees and costs, from the landlord or owner of the leased residential premises involved, provided that the landlord or owner, or his or her appropriate agent, had refused to bring the action within ten days after having been requested to do so in writing, delivered personally or by certified mail, return receipt requested. Where the court determines, pursuant to Section 11 of this [Act], that an owner or landlord of the leased residential premises, or his or her agent, has failed to prosecute the action with reasonable diligence, such owner, landlord or agent shall be responsible for the payment of all reasonable costs of the suit expended by a prevailing substitute

plaintiff designated pursuant to Section 11 of this [Act] notwithstanding that the owner, landlord or agent had initiated the action.

COMMENT

Many states permit a prevailing plaintiff to recover the costs of the suit only where such recovery is expressly authorized by statute. Accordingly, this section makes clear that any authorized plaintiff who brings a successful action pursuant to this [Act] shall be entitled to recover the costs of the suit. Such costs include, but are not limited to, reasonable attorney's fees. It should be noted that this section creates an absolute right to recovery by a prevailing plaintiff. Accordingly, the court would have no discretion to deny recovery of costs to any such prevailing plaintiff, although the court would have discretion to determine the amount of such costs in accordance with the general provisions of law or court rules.

This section provides that the prevailing plaintiff may recover such reasonable costs only from the landlord or owner of the leased residential premises involved. It is thought that, consistent with the general model of a corporate shareholder's derivative suit, an eviction action successfully brought by a tenant organization or prosecuting agency serves also to benefit the interests of the landlord. This recovery provision only applies, however, where the landlord or owner, or her or his appropriate agent, has refused to bring the action within ten days after having been requested to do so in writing. In other words, the landlord or owner can avoid the possibility of having to pay costs of a suit brought by a tenant association or criminal prosecuting agency simply by initiating the action in his or her own right. Where the court determines, however, that the landlord or agent has failed to prosecute the matter with reasonable diligence, any such landlord or agent would be responsible for the reasonable costs expended by a prevailing substitute plaintiff designated pursuant to Section 11.

This section is designed to create substantial economic and practical incentives for landlords diligently to investigate, initiate and prosecute civil eviction actions against tenants or residents who engage in drug-related criminal activity on or within the immediate vicinity of the leased residential premises. Nothing in this section or any other provision of this [Act] should be construed to preempt, preclude or limit a civil action brought by a landlord to recover actual damages from any culpable person who engaged in drug-related criminal activity on or near the leased residential premises. *See also* Section

26. Such actual damages might include, but need not be limited to, the costs of a suit brought pursuant to this [Act].

Section 25. Preliminary or Emergency Relief.

The court before which the civil action has been brought pursuant to this [Act] shall have the authority at any time to issue a temporary restraining order, grant preliminary relief or take such other actions as the court deems necessary to enjoin or prevent the commission of drug-related criminal activity on or in the immediate vicinity of leased residential premises, or otherwise to protect the rights and interests of all tenants and residents. A violation of any such duly issued order or preliminary relief shall subject the violator to being held in civil or criminal contempt.

COMMENT

This section makes clear that the court has the authority at any time to issue such temporary restraining orders, or to grant such preliminary relief or to take such other actions as the court deems necessary to enjoin or prevent the commission of drug-related criminal activity. This section thus restates the general inherent powers of the courts. It should be noted, however, that landlord/tenant courts in many states have extremely limited jurisdiction and are not permitted to issue injunctions or other forms of equitable relief. In those jurisdictions, the state legislatures may wish to delete this section or, alternatively, to consider providing another venue for cases brought under this [Act]. See also Section 5 and accompanying comments.

Section 26. Cumulative Remedies.

The causes of action and remedies authorized by this [Act] shall be cumulative with each other and shall be in addition to, not in lieu of, any other causes of action or remedies which may be available at law or equity.

COMMENT

This section makes clear that nothing in this [Act] shall be construed in any way to preempt, preclude or limit any other civil action or remedy which may be available at law or at equity, including an action for damages against persons who engage in drug-related criminal activity on or near any leased residential premises.

Section 27. Civil Immunity.

Any person or organization who, in good faith, institutes, participates in, or encourages a person or entity to institute or participate in, a civil action brought pursuant to this [Act], or who in good faith provides any information relied upon by any person or entity in instituting or participating in a civil action pursuant to this [Act], shall have immunity from any civil liability that might otherwise be incurred or imposed. Any such person or organization shall have the same immunity from civil liability with respect to testimony given in any judicial proceeding conducted pursuant to this [Act].

COMMENT

This sections provides a qualified immunity for any person or organization who institutes, participates in, or in any way encourages a person or entity to institute or participate in a civil action brought pursuant to this [Act]. So too, this section provides qualified, good-faith immunity to any person or organization that provides any information relied upon by any person or entity in instituting or participating in a civil action pursuant to this [Act]. Finally, this section makes clear that any such person or organization shall have the same immunity from civil liability with respect to any testimony given in any judicial proceeding conducted pursuant to this [Act]. Nothing in this section is designed to provide immunity to persons who act in bad faith. It is intended that this section be interpreted to provide the same type and extent of qualified immunity as is generally afforded law enforcement officers and agencies.

Section 28. Probationary Tenancy During Period of Court-Ordered Rehabilitation.

(a) Temporary Suspension of Eviction or Removal Order Pending Referral for Addiction Assessment and Treatment Recommendation. The court on the application of the tenant or other person subject to removal may suspend the execution of an order of complete or partial eviction for a period of not more than ten days in order to refer the person to a licensed substance abuse treatment program or facility for an alcohol and other drug addiction assessment and treatment recommendation, in order to determine whether the person is a suitable candidate for a stay of execution of eviction or removal pursuant to subsection (b), provided that the person asserts that:

- (1) he or she is drug dependent within the meaning of this [Act]; and

(2) he or she is willing to participate in a licensed treatment and monitoring program recommended by the program or facility and approved by the court; and

(3) he or she meets the requirements set forth in subsection (b), (4), (5), and (6); and further provided that the court is clearly convinced that the temporary suspension of execution of the order of eviction or removal will not endanger the safety of the community or otherwise unduly jeopardize the rights or interests of other tenants and residents of the leased residential premises. Pending the filing of an application for a stay of execution pursuant to subsection (b), a temporary suspension issued pursuant to this subsection shall automatically expire on the date fixed by the court, or ten days after the suspension is granted, whichever is earlier. At such time, the order of eviction or removal shall be immediately enforced unless a stay is granted in accordance with the provisions of subsection (b).

(b) Application to Stay Execution of Eviction or Removal Order. On application of the tenant or other person subject to removal, the court may stay execution of an order of complete or partial eviction, for a period of time as provided in subsection (f) and during which the person is participating in a court-approved and licensed alcohol and other drug treatment program, provided that the tenant or other person subject to complete or partial eviction establishes by clear and convincing evidence all of the following:

(1) the person is drug dependent, and the drug-related criminal activity that was the basis for the order of eviction or removal was committed in order to support the person's drug dependency; and

(2) no evidence is presently proffered or has been presented that the person is an adult and, in the commission of such drug-related criminal activity, distributed a controlled substance to a person under 16 years of age; and

(3) no evidence is presently proffered or has been presented that the person unlawfully used or possessed a firearm on the leased premises, or that the person used or threatened to use violence in committing any of the acts which are the basis for the order of eviction or removal; and

(4) the person has not previously undergone

court-approved treatment pursuant to the provisions of this section; and

(5) the person has agreed to participate in the course of alcohol and other drug treatment recommended by the treatment facility conducting the court-ordered addiction assessment; and

(6) the stay of execution of the order of complete or partial eviction will not endanger the safety of the community or otherwise unduly jeopardize the rights or interests of other tenants and residents of the leased residential premises; and

(7) admission to the recommended course of treatment will serve to benefit the person by addressing his or her drug dependency and will thereby remove the incentive for the person to engage in drug-related criminal activity.

(c) Right of Interested Persons to be Heard. The plaintiff in the civil action and the tenant organization for the premises, whether or not such organization joined in the civil action, shall be provided an opportunity to be heard with respect to an application to temporarily suspend execution of an eviction order pursuant to subsection (a) or to stay execution of such an order pursuant to subsection (b), or to discharge the order of eviction or removal pursuant to subsection (k), and shall also have the right to participate in any action upon a violation pursuant to subsection (j).

(d) Participation in Recommended Course of Treatment. Where the court is satisfied that the grounds for a stay set forth in subsection (b) have been clearly and convincingly established, the court as a condition of the stay of execution of the eviction or removal order shall order the person to participate in the recommended course of treatment, which program shall include periodic drug testing. Such course of treatment shall take place in a program licensed by the [single state authority on alcohol and other drugs] to provide substance abuse treatment. The court shall impose reasonable terms and conditions of the person's participation in the court-approved treatment program as if the person were placed on probation following a conviction for a crime. Such terms and conditions shall include a requirement that the person comply with all rules and regulations established by the treatment program. The terms and conditions imposed by the court may also include but need not be limited to establishing a curfew or imposing restrictions on the person's associations and places where he or she may travel. The court may at any time modify or impose additional terms or

conditions, provided that the court, prior to its removal of any significant term or condition, provides notice to all persons or entities entitled pursuant to subsection (c) to participate in the proceedings. The person placed on probationary tenancy shall consent to such original or amended terms and conditions, as a condition of the stay of execution of the eviction or removal order, and shall acknowledge in writing that he or she understands and accepts all such terms and conditions. In the event that the person refuses to accept or comply with any such original or amended terms and conditions, the stay of execution shall be automatically rescinded and the order of eviction or removal shall be immediately enforced in accordance with the provisions of this [Act].

(e) Period of Probationary Tenancy. Where the person maintains compliance with the terms and conditions of the court and with the requirements of the course of treatment and monitoring, the stay of execution of an order of eviction or removal shall remain in force for a period of six months. The court, upon recommendation by the treatment program, may extend the initial period of the probationary tenancy for an additional six months.

(f) Prompt Initiation of Treatment. A stay of execution of an order of eviction or removal pursuant to this section shall be contingent upon the person commencing his or her participation in the recommended course of treatment, or being placed on a certified waiting list until a position for the recommended course of treatment becomes available, within ten days of the entry of the court's order granting the stay of execution of eviction or removal. If the person is placed on a certified list, he or she must submit to regular drug testing as ordered by the court and must also attend, with verification, no fewer than five twelve-step recovery meetings per week, until the course of treatment can begin. If the person for any reason fails to comply with the conditions of this subsection within this time period, the stay of execution shall be automatically rescinded unless the court determines that there are extraordinary and compelling reasons to reinstate the stay pending the person's participation in the recommended course of treatment, by a date certain to be fixed by the court.

(g) Reporting of Progress in Course of Treatment. The treatment program shall, as a condition of the stay of execution of the eviction or removal order, agree in writing to report periodically to the court as to the person's progress and compliance with court-imposed

terms and conditions. The treatment program shall further agree to promptly report any significant failure to comply with the requirements of the course of treatment. The treatment program shall also agree immediately to advise the court in the event that the person for any reason terminates his or her participation in the course of treatment. The person and, where necessary, the person's parent or legal guardian, shall, as a condition of the stay of execution, sign such consent forms as are necessary to release information to the court pursuant to this section, with respect to his or her participation in the course of treatment.

(h) Supervisory Jurisdiction of Probation Department. The court may assign the [insert designation of county probation agency] and, in the case of a juvenile the [insert designation of the county child welfare or protective services agency] the responsibility to assist in monitoring and supervising the person's participation in the recommended course of treatment and his or her compliance with all court-imposed terms and conditions of the probationary tenancy. The court may also assign the [insert designation of county probation agency] the responsibility to administer the periodic drug testing, which agency shall immediately report any significant violation of the court-imposed terms and conditions, in accordance with the provisions of subsection (g).

(i) Effect of Violation. Upon a first significant violation of any court-ordered term or condition of the probationary tenancy, the court may and upon recommendation of the treatment program or upon subsequent violation, shall in the absence of extraordinary and compelling reasons, rescind the stay of execution of the order of eviction or removal, in which event such order shall be immediately enforced. In making its determination whether to rescind the stay after a first significant violation, the court shall consider the nature and seriousness of the infraction in relation to the person's progress in the course of treatment, and shall also consider the recommendations of the treatment program. Where the treatment program determines to discontinue the person's course of treatment, the court shall revoke the probationary tenancy and rescind the stay of execution or the order of eviction or removal, unless the treatment program recommends that another treatment program be engaged to provide the course of treatment. Notwithstanding any other provision of this section, where the court finds reasonable grounds to believe that the person, during the term of the probationary tenancy, has been involved in drug-related

criminal activity, whether or not such activity occurred on the leased residential premises, the court shall immediately rescind the stay of execution of the order of eviction or removal, in which event such order shall be immediately enforced.

(j) Action Upon Violation. An action for a violation of any term or condition of the probationary tenancy may be brought by the plaintiff in the eviction action, any person or entity which could have initiated the eviction action pursuant to this [Act], by the treatment program, any agency assigned by the court to assist in monitoring or supervising the probationary tenancy, or by the court on its own motion. Such action shall be summary in nature and shall be heard and decided within five days of the notice to the court of the violation.

(k) Discharge of Order of Eviction or Removal. If after the expiration of the term of probationary tenancy, the court determines that the person has satisfactorily complied with the terms and conditions of the recommended course of treatment, and that the person no longer poses a risk to the other residents and tenants of the leased residential premises, the court shall discharge the order of eviction or removal and shall dismiss the action brought pursuant to this [Act]. Nothing in this section shall be construed in any way to prevent the initiation at any time of a new action pursuant to this [Act].

COMMENT

As noted in the accompanying Policy Statement, this statute includes a number of innovative provisions which are designed to temper the “all or nothing” remedies which traditionally have been available in eviction actions brought in landlord/tenant courts. This section establishes one such important innovation in the law of eviction - the concept of a probationary tenancy. To some extent, the provisions of Sections 9 and 10 establish a closely related principle, that is, a “conditional eviction” whereby the court is authorized to permit a tenant to remain in the premises subject to the condition that he or she cooperates with a removal order directed against a person or persons who actually committed drug-related criminal activity on the leased premises. That section was designed to provide the court with a remedy which carefully balances the interests of less culpable tenants as against the interests of law-abiding neighbors and other tenants and residents who are adversely affected by the conduct of drug-related criminal activity occurring within the apartment building or complex of buildings.

Similarly, this section is designed to balance important public policy interests: the need to protect the rights of law-abiding tenants by ensuring the swift removal of all tenancy-based drug distributors, as against the need and opportunity to provide meaningful alcohol and other drug rehabilitation services to drug dependent offenders who are willing to accept such help. In fact, the rehabilitation of addicted offenders is perhaps the most effective long-term means to advance the right of law-abiding tenants to live in an environment free of drug trafficking, since addicts in recovery are among the most militant activists against drug trafficking in their neighborhoods. Nonetheless, in the short-term view, this also involves a delicate balancing, and for this reason, this section includes a number of important substantive and procedural safeguards.

Many drug distributors are themselves drug dependent. Essentially, these offenders engage in drug trafficking activities in order to support their own drug habits. Because this category of trafficker is not motivated entirely by greed, it is possible to prevent the occurrence of future criminal activity by addressing their underlying drug problems. This is a vital public policy objective, of course, in that an eviction or removal order pursuant to this [Act] would only displace the drug dependent distributor, forcing him or her to distribute drugs at some other location, thereby endangering another set of innocent individuals. In other words, while a successful eviction or removal pursuant to this [Act] would undoubtedly benefit the plaintiffs in this civil action, it would not necessarily benefit society-at-large. It is thus important to take advantage of all available judicial remedies, whether civil or criminal and whether prosecuted by government agencies or by private litigants, to encourage if not require drug dependent offenders to accept the drug rehabilitation they need.

Treatment, handled properly, has proven to be effective. Few addicts, however, voluntarily and under their own initiative seek help for substance abuse problems. More often, the decision to participate in alcohol and other drug rehabilitation is a result of pressure brought to bear by others, including employers, family members, medical and health care professionals, education officials, law enforcement agencies or courts. This section is designed to provide one such means by which to effect an intervention and thereby to induce drug dependent offenders to accept help and to participate and remain in a meaningful treatment program.

In essence, this section provides that the addicted person subject to eviction or removal may avoid the called-

for sanction by agreeing to participate in a carefully monitored drug treatment program approved by the court. Where the person refuses to accept such help, or otherwise fails satisfactorily to comply with all terms of conditions of this “probationary” tenancy, the eviction or removal order is automatically and immediately enforced.

Subsection (a) authorizes a person who is to be evicted or removed to apply to the court for a temporary stay in order to allow him or her to undergo a substance abuse diagnostic assessment to determine whether he or she is a suitable candidate for probationary tenancy. Any such application to the court would only be made after the court has already determined that the plaintiff has established a factual basis pursuant to this [Act] to order a complete or partial eviction. The stay authorized pursuant to this subsection may not exceed ten days, and the court is not authorized to extend any such temporary stay. Rather, as noted throughout this [Act], it is the express intent that all remedies and sanctions would be imposed as swiftly as possible in order to protect the rights and interests of law-abiding tenants.

A temporary stay and referral for substance abuse diagnostic assessment is authorized by this subsection in recognition that in most cases, the court at the time of finding the basis for an eviction or removal would not have a sufficient factual basis to determine whether or not the person subject to eviction or removal is a suitable candidate for probationary tenancy pursuant to subsection (b). The referral authorized pursuant to this subsection must be made to a program or facility which is licensed by the [single state authority on alcohol and other drugs] to conduct a substance abuse diagnostic assessment and to determine whether and to what extent the subject needs and would benefit from some form of drug treatment.

The specific prerequisites for the temporary stay established in subsection (a) are patterned after the elements required for a probationary tenancy set forth in subsection (b). The applicant seeking a subsection (a) temporary suspension of the execution of the complete or partial eviction order need only “assert” the existence of these required elements, whereas the applicant must ultimately provide clear and convincing evidence in order to become eligible for a subsection (b) probationary tenancy.

Subsection (b) authorizes the court, on the application of the tenant or other person who otherwise would be ordered evicted or removed, to stay execution of the

order of complete or partial eviction. In order to receive such stay of execution, the person ordered to be evicted or removed must make formal application to the court and must further establish by clear and convincing evidence the existence of a series of required elements. The person must establish, for example, that he or she not only is drug dependent within the meaning of applicable state law, but that the drug-related criminal activity which formed the factual basis for the order of eviction or removal was committed in order to support the person’s drug dependency. In addition, the court must be satisfied that the person at no time committed the offense of distributing a controlled substance to a person under 16 years of age, and that the person at no time unlawfully used or possessed a firearm on the leased premises, or used or threatened to use force or violence to commit any of the acts which are the basis for the order of eviction or removal.

It is not necessary for the plaintiff to have established any such especially egregious criminal conduct committed on or involving the leased residential premises. Thus, if any testimony or evidence has been presented, whether or not such evidence was required in order to establish the plaintiff’s case, that the person distributed drugs to any such minor or unlawfully possessed or carried a firearm or used force or violence, that person would be ineligible for probationary tenancy. It is thought that these provisions are necessary to give due weight to the compelling right and interest of law-abiding tenants to be free of the force and violence typically associated with the drug trade, and to raise their children in an environment free from the influence of drug traffickers who seek to peddle their wares to this especially vulnerable population.

In addition, the person seeking a probationary tenancy must provide clear and convincing evidence that he or she has not previously undergone court-approved treatment and monitoring pursuant to the provisions of this section. In other words, this ameliorative and rehabilitative option may occur only once with respect to any person subject to eviction under this [Act].

The applicant for probationary tenancy must agree, as part of the initial application pursuant to this subsection, to participate in the course of residential or outpatient treatment and monitoring recommended by the licensed treatment facility which conducted the court-ordered substance abuse diagnostic assessment authorized pursuant to subsection (a). The court must also be satisfied that allowing the person to undergo the recommended course of treatment will serve to benefit the

person by addressing his or her drug dependency, and in this way will remove the incentive for the person to engage in any future drug-related criminal activity. Finally, the applicant must convince the court that granting a probationary tenancy will not endanger the safety of the community or otherwise unduly jeopardize the rights and interests of other tenants and residents of the leased residential premises. In making this determination, it is intended that the court consider the totality of the known circumstances, including the same types of factors which typically attend a criminal sentencing proceeding, where courts are required to consider the "whole person."

It is important to note that the court's authority to grant the stay of execution and to order a probationary tenancy is discretionary with the court. Thus, the court is not required to grant a stay of execution or establish a probationary tenancy even where the person subject to complete or partial eviction has clearly and convincingly established all of the required elements.

Subsection (c) provides that the plaintiff and any tenant organization have an opportunity to be heard with respect to an application for a probationary tenancy, as well as the right to be heard with respect to any enforcement proceedings concerning a probationary tenant's compliance with all court-imposed terms and conditions. The tenant association is expressly accorded the right to be heard at all such proceedings, even where such organization is not a plaintiff and was not previously involved in formal litigation. *See also* Section 7(c)(2).

Subsection (d) provides that where the court has, in its discretion, granted a stay of execution in accordance with the provisions of subsection (b), the court must thereupon order the person applying for a probationary tenancy to participate in a course of treatment and which was recommended by the substance abuse diagnostic assessment conducted pursuant to subsection (a). It is thought that in these circumstances, the court would have less discretion to determine the appropriate type, form and duration of treatment than would ordinarily be accorded to a criminal sentencing court. Thus, under this statute, the specific recommendations of the professional diagnostic assessment program should be followed. Those recommendations may provide for either residential or outpatient treatment. This subsection also expressly provides that any such course of treatment must include periodic drug testing. Moreover, the course of treatment must take place in a program licensed by the [single state authority on alcohol

and other drugs] to provide substance abuse treatment.

Subsection (d) further requires the court to impose reasonable terms and conditions of the person's participation in a court-approved treatment program. In essence, the court would be authorized to include any term or condition which a criminal court would be authorized to impose as a condition of probation following a conviction for a crime or an adjudication of delinquency. However, such terms and conditions must include a requirement that the person comply with all rules and regulations established by the treatment program. Note also that the court is expressly authorized to establish a curfew or to impose restrictions on the person's associations and places where he or she may travel. Finally, subsection (d) further requires the person placed on probationary tenancy to consent to all such original or amended terms and conditions of the stay of execution, and to acknowledge in writing that he or she understands and accepts all of the terms and conditions. In the event that the person refuses to accept and comply with any such original or amended term, the stay of execution must automatically be rescinded and the person shall thereupon be subject to the immediate enforcement of the eviction or removal order.

Subsection (e) provides that the term of probationary tenancy is fixed at a period of six months, although the term of probationary tenancy may be extended for an additional six months where the court-designated treatment program recommends such extension.

Subsection (f) provides that the stay of execution authorized pursuant to this section is contingent upon the person commencing his or her participation in the recommended course of treatment within ten days of the entry of the court's order. This time period could be satisfied with the person's being placed on a certified waiting list until a position for the recommended course of treatment becomes available. In that event, however, the person must submit to regular drug testing and must also attend no fewer than five 12-step (*ie.* Narcotics Anonymous or Alcoholics Anonymous) recovery meetings per week, until the course of court-approved treatment can begin.

Subsection (g) provides that the designated treatment program must, as a condition of the stay of execution, agree in writing to report periodically to the court as to the person's progress. By the same token, the treatment program must agree to promptly report any significant failure to comply with the requirements of the course of treatment and to immediately advise the court in the

event the person for any reason terminates his or her participation in the course of treatment. Because this treatment is ordered following the civil action rather than a criminal conviction, this subsection provides that in the case of a juvenile, and when necessary, the person's parent or legal guardian must sign such consent forms as are necessary to release the information to the court in accordance with any applicable state or federal statutes, rules or regulations.

Subsection (h) authorizes the court to assign the local or county probation agency, and in the case of a juvenile, an appropriate child welfare or protective services agency, to assist in monitoring and supervising the person's participation in the recommended course of treatment and the person's compliance with all court-imposed terms and conditions of the probationary tenancy period. Thus, for example, the court may assign any such government agency the responsibility to administer the periodic drug tests required as a condition of the probationary tenancy. This section thus represents an intended departure from general law which limits the authority of probation departments to persons who have been convicted of crimes or adjudicated delinquent. It is thought as a matter of overriding policy that it would be necessary in certain cases to use the supervisory and monitoring resources of a probation department to make certain that a person granted a probationary tenancy complies with all court-ordered terms and conditions. Where any such government agency is assigned by the court the responsibility to assist in monitoring and supervising the person, such agency shall be required to report any positive drug test or any other significant violation to the court.

Subsection (i) establishes the standards and procedures for enforcing the terms of a probationary tenancy. Specifically, this subsection authorizes the court to revoke the probationary tenancy and order the immediate eviction or removal of the person upon any first significant violation, provided, however, that the court must revoke the probationary tenancy upon the determination of any first significant violation where such revocation has been recommended by the court-designated treatment program unless the court finds that there are extraordinary and compelling reasons to disregard the recommendations of the treatment program. This provision is designed not only to hold probationary tenants accountable, but also to make clear that the recommendations of the treatment program will carry considerable weight with the court. It is intended in this way that probationary tenants undergoing court-ordered treatment will understand the importance of

complying with all rules and regulations established by the treatment program.

To further emphasize the important role the treatment program must serve in supervising the course of treatment, this subsection provides that where the treatment program for any reason decides to discontinue the person's course of treatment, the court must thereupon revoke the probationary tenancy unless the treatment program recommends that another treatment program be engaged to provide the course of treatment. No substance abuse treatment program or facility should be required against its own interest to provide services for persons subject to a probationary tenancy pursuant to this civil statute.

Subsection (i) further provides that in making its determination whether to revoke the probationary tenancy after a finding of the first significant violation, the court should consider the nature and seriousness of the infraction in relation to the person's overall progress in the course of treatment. A second violation requires revocation of the stay of eviction, absent extraordinary and compelling reasons.

Finally, subsection (i) provides in unambiguous terms that where the court finds reasonable grounds to believe that the person, during the term of probationary tenancy, has been involved in continued drug-related activity, the court must immediately rescind the stay of execution and order the immediate removal of the person. It would not matter for the purposes of this mandate whether the drug-related criminal activity occurred on the leased residential premises. This subsection is designed to make clear that the ameliorative and rehabilitative option of a probationary tenancy is only available to persons who refrain from committing further drug trafficking activities.

Subsection (j) specifies those persons or associations who would be authorized to bring an action before the court to establish a violation of any term or condition of the probationary tenancy. This list includes not only the treatment program, and any agency assigned by the court to assist in monitoring and supervising the probationary tenancy, but any person or organization which would have been authorized to bring the initial eviction action, whether or not such person or organization actually served as the plaintiff in the action. Thus, for example, even where the eviction action is brought by the landlord, a tenant association or criminal prosecuting agency would have standing to initiate an action for violation of the terms of the probationary tenancy.

The subsection further provides that the actual violation of any term or condition of the probationary tenancy must be heard in summary fashion and a hearing must be conducted within five days of the notice to the court of the violation.

Subsection (k) provides that where the probationary tenant has satisfactorily complied with the terms and conditions of the recommended course of treatment, the court may, after the expiration of the term of the probationary tenancy, discharge the order of eviction or removal and dismiss the action brought pursuant to this [Act]. The court must find, however, based on the totality of the circumstances and considering the person's progress in the course of treatment, that the person no longer poses a risk to the other residents and tenants of the leased residential premises. The effect of this provision is to establish a remedy similar to a "conditional discharge" in a criminal proceeding. This section makes clear, however, that it in no way precludes any person from initiating a new eviction action at any time, based upon alleged drug-related criminal activity other than those which were the subject of the original action which was discharged pursuant to this subsection.

Section 29. Notification and Provision of Treatment Resources.

(a) Notification to Person Removed. The court, prior to the removal of any person pursuant to this [Act], shall cause of the removal to be provided to that person outreach information and referral materials on how to obtain alcohol and other drug treatment.

(b) Notification to Social Services Agencies. The court, no less than ten days prior to the removal of any person pursuant to this [Act], shall cause notice of the removal to be provided to the local alcohol and other drug agency, the local child welfare agency if applicable, and other appropriate social service agencies.

(c) Preparation and Dissemination of Treatment Resource Information. The [single state authority on alcohol and other drugs] or its designee shall prepare the outreach information and referral materials and shall disseminate the information and materials to all courts having jurisdiction to issue orders pursuant to this [Act].

(d) Compensation to Treatment Programs for Services Provided. Licensed treatment programs may apply to the [single state authority on alcohol and other drugs] or its designee for compensation for treatment services

provided to persons removed pursuant to this [Act]. The [single state authority on alcohol and other drugs] shall adopt such regulations as it deems appropriate governing the treatment programs and the manner of dispensation of compensation to such programs.

(e) Funding Source for Treatment Services. Such compensation shall be drawn from [the "Treatment for Displaced Residents Fund" provided for in Subsection 18(d) of the Model Nuisance Abatement Act] [and/or][Demand Reduction Assessment Fund provided for in Section 6 of the Model Demand Reduction Assessment Act or equivalent designated state fund], which imposes mandatory fines on all drug violators and earmarks the funds for treatment and prevention.

COMMENT

This section requires the court to cause certain outreach information and referral materials to be provided to persons who are subject to complete or partial eviction. Specifically, the court is required to make certain that prior to the actual removal of any person pursuant to this [Act], such person receives information concerning how to obtain alcohol and other drug treatment services.

Subsection (b) provides that no less than ten days prior to the actual removal of any person pursuant to this [Act], the court must provide notice of the eviction or displacement to the appropriate local alcohol and other drug agency, the local child welfare agency where the eviction involves the removal or displacement of a minor, and to such other appropriate social services agencies as the court deems appropriate. In order to avoid any unnecessary delays, and consistent with the overriding objective of this [Act] for swift execution of removal and eviction orders, it is intended that the court would provide all such information and notices at the same time that the court makes the required findings necessary to establish the factual and legal basis for a complete or partial eviction. Accordingly, it is intended that wherever possible, the enforcement of the eviction or removal order in accordance with Section 12 would occur ten days after the entry of the court's order

Subsection (c) provides that all outreach information referral materials required to be distributed, be prepared by the [single state authority on alcohol and other drugs.]

Subsection (d) provides a mechanism by which to pay for the treatment and monitoring services provided to persons granted a probationary tenancy. Specifically, this subsection authorizes the licensed treatment pro-

gram providing the services to apply to the [single state authority on alcohol and other drugs] for compensation. It is intended that such compensation would be drawn in accordance with rules and regulations established by the [single state authority on alcohol and other drugs] from the “Treatment for Displaced Residents Fund” established in accordance with the [Model Drug Nuisance Abatement Act], the [Model Demand Reduction Assessment Act], see Volume I, Economic Remedies, or from any designated state fund which imposes mandatory fines on all drug violators and earmarks the funds for treatment and prevention.

Nothing in this section or any other provision of this [Act] should be construed to preempt or limit the authority of the court to order any person to pay for his or her own treatment services, where the court is satisfied that the person is able to pay, considering the extent to which the person has health insurance or other benefits, the nature and extent of his or her financial resources and whether or not he or she is engaged in gainful employment and thus is able to reimburse all or some portion of such treatment costs over time and in installments.

Section 30. Relocation Assistance.

Notwithstanding any other provision of law, no landlord or owner shall bear any responsibility or liability for relocating any person who has been evicted, removed or barred pursuant to this [Act].

COMMENT

In many states, statutes require landlords in certain circumstances to bear the cost of relocating persons who have been removed or displaced from the premises. This section makes clear the common sense notion that no such policy should be read to require a landlord or owner to pay any expense or otherwise bear any liability for relocating any person who has been evicted,

removed or barred pursuant to this [Act]. Clearly, such a requirement would be absurd with respect to a person found to be involved in or to have culpably permitted others to commit drug-related criminal activity on the leased residential premises. In those states where no such general requirement for relocation assistance exists, this section will be unnecessary.

Section 31. Severability.

If any one or more sections, clauses, sentences or parts of this [Act] shall for any reason be adjudged unconstitutional, the judgment shall not affect the remaining provisions but shall be confined to the specific provisions held to be unconstitutional.

Section 32. Liberal Construction.

The provisions of this [Act] shall be liberally construed to effectuate the remedial purposes, objectives and policies set forth in Sections 2 and 3 of this [Act].

COMMENT

Given the remedial, non-punitive nature of the rights and remedies established in this [Act], this section provides that the provisions of the [Act] shall be liberally construed. Courts in interpreting and applying the provisions of this [Act] are directed to consider the purposes, objectives and policies which are set forth at length in Section 2 (Legislative Findings).

Section 33. Effective Date.

This [Act] shall be effective on [reference to normal state method of determination of the effective date][reference to specific date].

Appendix A

Questions and Answers Concerning the Model Expedited Eviction of Drug Traffickers Act

1. Who can get evicted under this law?

Any tenant who distributes illicit drugs on the leased premises, or who allows others to distribute drugs there may be evicted. In addition, this law would allow courts to order a drug dealer to stay away from the premises, even if that drug dealer is not a tenant.

2. Drug trafficking is a major problem in some housing developments and apartment complexes. What will happen if the landlord does nothing to stop the problem?

This law allows persons other than the landlord to bring an eviction action to remove drug dealers. A prosecutor or county or municipal attorney, for example, can start the eviction process. Moreover, a tenant organization can also go to court to evict or remove a drug dealer. This feature is designed to give tenants and residents an additional reason for organizing and participating in a tenant association. This law literally “empowers” tenants to use the courts to protect their own interests.

3. Does the tenant organization have to ask the landlord for permission before starting an eviction proceeding?

No. A tenant organization can start the eviction process on its own. However, the law is designed to create an incentive for law abiding tenants to work cooperatively with their landlord to evict drug dealers. If the tenant organization asks the landlord to start the eviction process and the landlord refuses to do so, the tenant organization can make the landlord pay for the cost of the law suit if the organization brings and wins the eviction action.

4. Does a tenant organization need to hire a lawyer and if so, how does the tenant organization pay for his or her services?

The law requires a tenant organization to be represented by an attorney. This is to make sure that there is always a good reason for starting the law suit and to make certain that the law is not abused. Many lawyers agree to handle these types of cases with the understanding that they will only get paid if they win. As noted above, if the tenant organization wins the case and the landlord had refused to bring the case after being requested in writing to do so, the winning lawyer will be paid by the landlord.

5. How long does it take to get drug dealers out under this law?

This law is designed to work as fast as possible so that drug dealers can be removed quickly. The law provides that these cases must be heard by the courts on a priority basis and the courts are generally not allowed to delay the proceedings as happens too often in other civil cases.

6. What if the drug dealer is not a tenant?

This law authorizes courts to remove any person who deals drugs on or near the leased premises. Thus, for example, a member of a tenant's household or a guest, regardless of age, can be evicted if he or she deals drugs, even though the drug dealer never signed the lease. In essence, the court will issue a "stay away" order to the drug dealer, forcing him or her to leave the premises and not return under penalty of arrest.

7. What if the tenant was innocent and was truly helpless to stop the drug dealing from occurring in his or her apartment?

No one wants to evict a grandmother, for example, who simply couldn't stop her grandchild from selling drugs from her apartment. At the same time, in order to protect the rights of law abiding citizens, we simply cannot permit the grandchild to continue to peddle illicit drugs. For this reason, and so as to balance the rights of all concerned parties, the law provides that the tenant can avoid being evicted if he or she can show the court that he or she was not personally involved in drug dealing, and 1) had no way of reasonably knowing that the drug dealing was going on; or 2) did everything he or she could to prevent the drug dealing from taking place or; 3) promptly called the police to report that the drug dealing was taking place.

Where the court allows the innocent tenant to stay, however, the court must also order the drug dealer to leave and not to return. Moreover, from that point on, the tenant must take those steps which are reasonable and necessary to make certain that the drug dealer does not come back to the premises.

8. Besides the person or persons to be evicted, who has to be notified about the lawsuit?

If the action is started by a tenant organization or prosecutor, the landlord must be told about the lawsuit. Remember that in the first instance, it is landlord's responsibility to evict drug dealers from the premises. Moreover, this law provides that any person living in the apartment building who might be affected by the outcome of the case has a right to be notified and to be heard in court.

9. Do the drug dealers have to be arrested or convicted before they can be evicted?

No. This is a civil lawsuit which does not depend upon a criminal prosecution. A person can be evicted or ordered to stay away under this law even if he or she has never been arrested, charged or convicted of drug dealing. If, on the other hand, the person has been convicted of drug dealing, that fact would come out in the eviction proceeding and would pretty much establish that that person is subject to eviction.

10. What happens if the evicted drug dealer comes back?

Any drug dealer who is evicted and who returns to the premises can be arrested for contempt of court. Where a guest or member of a tenant's family is ordered to stay away, and the tenant is allowed to remain, that tenant must make certain that the person ordered to stay away does not return. If the drug dealer does come back, the tenant must call the police to let them know. If the tenant doesn't do this, he or she would be subject to an immediate eviction.

11. Can a landlord or members of a tenant organization be sued for bringing an eviction action or for providing information so that someone else can bring the action?

No. The law provides that as long as a person is acting in good faith, he or she cannot be sued.

12. What if someone is afraid to bring the action for fear that the drug dealer may retaliate?

The law permits the court to take steps to protect witnesses. For example, the court may order that the name or identity of the witness not be disclosed. And remember, this law allows the prosecutor to bring the eviction action.

13. Will the police help landlords and tenant organizations to bring these actions?

The law not only allows prosecutors to take responsibility for bringing the action, but also allows police and prosecutors to provide police and laboratory reports to prove that drug dealing took place. Furthermore, the police are required to assume responsibility for actually removing the drug dealer once the court has issued an order of eviction.

14. What if the drug dealer is a juvenile living with his or her parents on the premises?

Under this law, the drug dealer can be ordered to leave the premises and stay away even if he or she is only a juvenile. However, where a juvenile is involved in the proceedings, the local child welfare agency must be notified so that the juvenile is not simply put out on the street.

15. Many drug dealers are addicts and if they are evicted, they will just move their drug trafficking operation to some other neighborhood. Does this law provide for any long term solution to address their addiction?

This law contains a unique feature which in some cases would allow a court to let an addicted drug dealer stay on the premises so long as he or she is undergoing substance abuse treatment approved by the court. It must be noted, however, that this law is designed first and foremost to protect law abiding residents. For this reason, the treatment option can only be used where the offender agrees to participate in a carefully monitored substance abuse program and even then, the court must be convinced that the offender's continued presence will not endanger his or her neighbors.

The law also requires that any person evicted or removed from the premises receive information concerning how to obtain alcohol and other drug abuse treatment, and even provides a way to make that treatment more affordable by allowing licensed treatment programs to receive compensation for treatment services provided to evicted persons from a fund made up of monies collected from convicted drug offenders.

16. Why do we need this statute? What does it add to landlord tenant law?

This law makes many significant improvements and brings in some new ideas and approaches to state eviction laws. As noted above, it is designed first and foremost to protect the rights of law abiding tenants and residents. It is designed to “empower” these citizens, giving them an opportunity to be heard in the courts. It is designed to give a reason for addicts to accept help to deal with their problem as a condition of avoiding being put out on the streets. Finally, it provides precise guidance to the courts so that this law can be applied predictably and consistently.