TRUTH IN RENTING ACT

Act 454 of 1978

AN ACT to regulate rental agreements for residential premises; to prohibit the inclusion by lessors of certain clauses or provisions in residential rental agreements; to require the disclosure by lessors of certain information; to require the inclusion of certain provisions in residential rental agreements; to regulate the commercial sale of printed rental agreement forms; and to prescribe penalties.

History: 1978, Act 454, Eff. July 1, 1979

The People of the State of Michigan enact:

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554.631 Short title.

Sec. 1.

This act shall be known and may be cited as the "truth in renting act".

History: 1978, Act 454, Eff. July 1, 1979

554.632 Definitions.

Sec. 2.

As used in this act:

(a) "Rental agreement" means a written agreement embodying the terms and conditions concerning the use and occupancy of residential premises, but does not include an agreement the terms of which are limited to 1 or more of the following: the identity of the parties, a description of the premises, the rental period, the total rental amount due, the amount of rental payments, and the times at which payments are due.

(b) "Residential premises" means a house, building, structure, shelter, or mobile home, or portion thereof, used as a dwelling, home, residence, or living place by 1 or more human beings. "Residential premises" includes an apartment unit, a boardinghouse, a rooming house, a mobile home, a mobile home space, and a single or multiple family dwelling, but does not include a hotel, a motel, motor home, or other tourist accommodation, when used as a temporary accommodation for guests or tourists, or premises used as the principal place of residence of the owner and rented occasionally during temporary absences including vacation or sabbatical leave.

History: 1978, Act 454, Eff. July 1, 1979

554.633 Rental agreement; prohibited provisions or clauses; violation.

Sec. 3.

(1) A rental agreement shall not include a provision that does 1 or more of the following:

(a) Waives or alters a remedy available to the parties when the premises are in a condition that violates the covenants of fitness and habitability required pursuant to section 39 of 1846 RS 84, MCL 554.139.

(b) Provides that the parties waive a right established by 1972 PA 348, MCL 554.601 to 554.616, which regulates security deposits.

(c) Excludes or discriminates against a person in violation of the Elliott-Larsen civil rights act, 1976 PA 453, MCL 37.2101 to 37.2804, or the persons with disabilities civil rights act, 1976 PA 220, MCL 37.1101 to 37.1607.

(d) Provides for a confession of judgment by a party.

(e) Exculpates the lessor from liability for the lessor's failure to perform, or negligent performance of, a duty imposed by law. This subdivision does not apply to a provision that releases a party from liability arising from loss, damage, or injury caused by fire or other casualty for which insurance is carried by the other party, under a policy that permits waiver of liability and waives the insurer's rights of subrogation, to the extent of any recovery by the insured party under the policy.

(f) Waives or alters a party's right to demand a trial by jury or any other right of notice or procedure required by law in a judicial proceeding arising under the rental agreement.

(g) Provides that a party is liable for legal costs or attorney's fees incurred by another party, in connection with a dispute arising under the rental agreement, in excess of costs or fees specifically permitted by statute.

(h) Provides for the acquisition by the lessor of a security interest in any personal property of the tenant to assure payment of rent or other charges arising under the rental agreement, except as specifically allowed by law.

(i) Provides that rental payments may be accelerated if the rental agreement is breached by the tenant, unless the provision also includes a statement that the tenant may not be liable for the total accelerated amount because of the landlord's obligation to minimize damages, and that either party may have a court determine the actual amount owed, if any.

(j) Waives or alters a party's rights with respect to possession or eviction proceedings provided in section 2918 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2918, or with respect to summary proceedings to recover possession as provided in chapter 57 of the revised judicature act of 1961, 1961 PA 236, MCL 600.5701 to 600.5759.

(k) Releases a party from a duty to mitigate damages.

(l) Provides that a lessor may alter a provision of the rental agreement after its commencement without the written consent of the tenant, or, in the case of a rental agreement between a consumer cooperative that provides housing and a member of the consumer cooperative, without the approval of the board of directors of the cooperative or other appropriate body elected by members who are also tenants of the cooperative, except that an agreement may provide for the following types of adjustments to be made upon written notice of not less than 30 days:

(i) Changes required by federal, state, or local law or rule or regulation.

(ii) Changes in rules relating to the property that are required to protect the physical health, safety, or peaceful enjoyment of tenants and guests.

(iii) Changes in the amount of rental payments to cover additional costs in operating the rental premises incurred by the lessor because of increases in ad valorem property taxes, charges for the electricity, heating fuel, water, or sanitary sewer services consumed at the property, or increases in premiums paid for liability, fire, or worker compensation insurance.

(m) Violates the Michigan consumer protection act, 1976 PA 331, MCL 445.901 to 445.922.

(n) Requires the tenant to give the lessor a power of attorney.

(2) A rental agreement shall not include a clause or provision that, not less than 90 days before the execution of the rental agreement, has been prohibited by statute or declared

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unenforceable by a published decision of the supreme court of this state or the United States supreme court relating to the law of this state.

(3) A provision or clause of a rental agreement that violates this section is void.

History: 1978, Act 454, Eff. July 1, 1979 ;-- Am. 1979, Act 50, Imd. Eff. July 7, 1979 ;-- Am. 1991, Act 131, Imd. Eff. Nov. 6, 1991 ;-- Am. 1998, Act 72, Imd. Eff. May 4, 1998

554.634 Rental agreement; mandatory statements.

Sec. 4.

(1) A rental agreement shall state the name and address at which notice required under this act shall be given to the lessor.

(2) A rental agreement shall state in a prominent place in type not smaller than the size of 12-point type, or in legible print with letters not smaller than 1/8 inch, a notice in substantially the following form:

"NOTICE: Michigan law establishes rights and obligations for parties to rental agreements. This agreement is required to comply with the Truth in Renting Act. If you have a question about the interpretation or legality of a provision of this agreement, you may want to seek assistance from a lawyer or other qualified person."

History: 1978, Act 454, Eff. July 1, 1979

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554.635 Notices.

Sec. 5.

(1) A lessor may cure a violation of section 3 by giving written notice to all tenants who are currently parties, with the lessor, to a rental agreement which contains a prohibited provision. The notice shall state that the provision is void and unenforceable or alter the provision to bring it into compliance with this act.

(2) A lessor may cure a violation of section 4 by giving written notice to all tenants who are currently parties, with the lessor, to a rental agreement which does not include a required statement. The notice shall set forth the statement as provided in section 4.

(3) Notices under this section may be given personally or sent by first class or certified mail to the tenant at the address of the leased premises.

History: 1978, Act 454, Eff. July 1, 1979

554.636 Actions; court costs and attorney fees; joinder; actual damages; effect of judicial construction; “tenant” defined.

Sec. 6.

(1) If a rental agreement contains a provision which violates section 3, and if the landlord fails to cure the violation by exercising the notice provisions of section 5 within 20 days after the tenant gives written notice to the landlord of the provision believed to be in violation and the reason therefor, a tenant may bring an action for any of the following relief:

(a) To void the rental agreement and terminate the tenancy.

(b) To enjoin the lessor from including the provision in any rental agreement subsequently entered into and to require the lessor to exercise the notice procedure provided in section 5 to

cure the violation in all rental agreements in which the provision occurs and to which the lessor is currently a party.

(c) To recover damages in the amount of $250.00 per action, or actual damages, whichever is greater.

(2) If a rental agreement fails to contain a provision as required by section 4 or contains a provision which is explicitly and unambiguously prohibited by section 3, and if the landlord fails to cure the violation by exercising the notice provisions of section 5 within 20 days after the tenant, or, where there is more than one plaintiff, each tenant, gives written notice to the landlord of the provision required by section 4 or absence of a provision believed to be in violation and the reason therefor, a tenant may bring an action for any of the following relief:

(a) To avoid the rental agreement and terminate the tenancy.

(b) To enjoin the lessor from including the provision which violates section 3 in any rental agreement subsequently entered into and to require the lessor to exercise the notice procedure provided in section 5 to cure the violation in all rental agreements in which the provision occurs and to which the lessor is currently a party.

(c) To enjoin the lessor from failing to comply with section 4 in any rental agreement subsequently entered into and to require the lessor to exercise the notice procedure provided in section 5 to cure the violation.

(d) To recover damages in the amount of $500.00, or actual damages, whichever is greater.

(3) A tenant may exercise the remedies of this section without the prior notice to the landlord required by subsections (1) and (2) under any of the following circumstances:

(a) If a rental agreement contains a provision which has previously been determined by a court of record to be in violation of section 3 in an action to which the lessor was a party.

(b) If a rental agreement contains a provision which the lessor actually knew was in violation of section 3 at the time the rental agreement was entered into.

(c) If a rental agreement does not include a provision as required by section 4 and the lessor actually knew that the provision was not included as required at the time the rental agreement was entered into. As used in subdivisions (b) and (c), "actual knowledge" shall be established by written documentation, evidencing the actual knowledge, written or issued by the lessor or an agent of the lessor who is authorized to execute rental agreements or by an admission, evidencing the actual knowledge, made by the lessor or an agent of the lessor who is authorized to execute rental agreements or by showing the lessor has previously given notice under section 5 relating to the same provision which is the subject of the current action.

(4) A party who prevails in an action under this section is entitled to recover court costs plus statutory attorney fees.

(5) All actions brought under subsection (1) with respect to a particular provision of a rental agreement shall be joined, and only 1 judgment for damages of $250.00 shall be awarded with respect to a particular provision even if there are multiple actions or multiple plaintiffs if, before judgment in the initial action and before the passage of 30 days after service of process in any second action, the lessor gives written notice to all tenants who are currently subject to that provision, stating that the enforceability of the provision is under dispute and may be determined by a court of law. However, this subsection does not prohibit a tenant from recovering actual damages, if any, with respect to an unlawful provision of a rental agreement. As used in this subsection, "action" means a court action instituted by a single plaintiff, a representative plaintiff, or multiple plaintiffs.

(6) If a rental agreement contains the provisions as required by section 4 but contains a provision which violates this act, solely because of a judicial construction by a court of record of a provision of a statute cited in section 3 in an action to which the lessor was a party, the

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lessor shall not be subject to the penalties of this act unless the lessor fails to cure the violation by exercising the notice provisions of section 5 within 30 days following the final determination by the court. For purposes of this subsection, section 39(2) of chapter 66 of the Revised Statutes of 1846, being section 554.139 of the Michigan Compiled Laws, shall not be considered to have been judicially construed as of the effective date of this act.

(7) For purposes of this section, "tenant" means a person who is currently a party to a rental agreement with the lessor.

History: 1978, Act 454, Eff. July 1, 1979

554.637 Remedies cumulative.

Sec. 7.

The remedies provided by this act shall be in addition to any other remedies provided by law, and the provisions of this act shall not limit a person's right to use any other cause of action available under law.

History: 1978, Act 454, Eff. July 1, 1979

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554.638 Printed rental agreement form; sale; violation; damages.

Sec. 8.

A printed rental agreement form which fails to include a provision required by section 4, which contains a provision which expressly and unambiguously violates section 3, or which contains a provision which, not less than 90 days before the sale, has been prohibited by statute or declared unenforceable by a published decision of the supreme court of this state or the United States supreme court relating to the law of this state shall not be offered for sale in this state by a commercial seller. A commercial seller who violates this section shall be liable for damages suffered by a purchaser of such a form in an action brought against the purchaser by a tenant under this act.

History: 1978, Act 454, Eff. July 1, 1979

554.639 Waiver prohibited.

Sec. 9.

The requirements of this act may not be waived.

History: 1978, Act 454, Eff. July 1, 1979

554.640 Exception.

Sec. 10.

This act shall not apply to a rental agreement entered into before the effective date of this act.

History: 1978, Act 454, Eff. July 1, 1979

554.641 Effective date.

Sec. 11.

This act shall not take effect until July 1, 1979.

History: 1978, Act 454, Eff. July 1, 1979

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