

New Hampshire

TITLE III TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES

CHAPTER 48-A HOUSING STANDARDS

Section 48-A:14

48-A:14 Minimum Standards Established. – No landlord, as defined by RSA 540-A:1, I, renting or leasing a residential dwelling in a municipality which has not adopted ordinances, codes or bylaws pursuant to this chapter shall maintain those rented premises in a condition in which:

- I. The premises are infested by insects and rodents where the landlord is not conducting a periodic inspection and eradication program;
- II. There is defective internal plumbing or a back-up of sewage caused by a faulty septic or sewage system;
- III. There are exposed wires, improper connectors, defective switches or outlets or other conditions which create a danger of electrical shock or fire;
- IV. The roof or walls leak consistently;
- V. The plaster is falling or has fallen from the walls or ceilings;
- VI. The floors, walls or ceilings contain substantial holes that seriously reduce their function or render them dangerous to the inhabitants;
- VII. The porches, stairs or railings are not structurally sound;
- VIII. There is an accumulation of garbage or rubbish in common areas resulting from the failure of the landlord to remove or provide a sufficient number of receptacles for storage prior to removal unless the tenant has agreed to be responsible for removal under the rental agreement and the landlord has removed all garbage at the beginning of the tenancy;
- IX. There is an inadequate supply of water or whatever equipment that is available to heat water is not properly operating;
- X. There are leaks in any gas lines or leaks or defective pilot lights in any appliances furnished by the landlord; or
- XI. The premises do not have heating facilities that are properly installed, safely maintained and in good working condition, or are not capable of safely and adequately heating all habitable rooms, bathrooms and toilet rooms located therein, to a temperature of at least an average of 65 degrees F.; or, when the landlord supplies heat in consideration for the rent, the premises are not actually maintained at a minimum average room temperature of 65 degrees F. in all habitable rooms.

Source. 1979, 305:7, eff. Aug. 21, 1979.

CHAPTER 540

ACTIONS AGAINST TENANTS

Section 540:1

540:1 Tenancies, Nature of. – Every tenancy or occupancy shall be deemed to be at will, and the rent payable upon demand, unless a different contract is shown.

Source. RS 209:5. CS 222:5. GS 231:5. GL 250:5. PS 246:1. PL 357:1. RL 413:1.

Section 540:1-a

540:1-a Definitions. – In this chapter:

I. "Nonrestricted property" means all real property rented for nonresidential purposes and the following real property rented for residential purposes:

(a) Single-family houses, if the owner of such a house does not own more than 3 single-family houses at any one time.

(b) Rental units in an owner-occupied building containing a total of 4 dwelling units or fewer.

(c) [Repealed.]

(d) Single-family houses acquired by banks or other mortgagees through foreclosure.

II. "Restricted property" means all real property rented for residential purposes, except those properties listed in paragraph I.

III. "Rental unit" means a suite of one or more rooms located within a single building rented by the owner to one or more individuals living in common for nontransient residential purposes.

IV. The term "tenant" or "tenancy" shall not include occupants or occupancy in the following places and the provisions of this chapter shall not apply to:

(a) Rooms in rooming or boarding houses which are rented to transient guests for fewer than 90 consecutive days.

(b) Rooms in hotels, motels, inns, tourist homes and other dwellings rented for recreational or vacation use.

(c) Rooms in student dormitories, nursing homes, hospitals, convents, monasteries, asylums or group homes.

(d) A single-family home in which the occupant has no lease, which is the primary and usual residence of the owner.

(e) Residential real estate under RSA 540-B.

Source. 1985, 249:1. 2001, 277:1. 2006, 312:2, eff. Jan. 1, 2007.

Section 540:2

540:2 Termination of Tenancy. –

I. The lessor or owner of nonrestricted property may terminate any tenancy by giving to the tenant or occupant a notice in writing to quit the premises in accordance with RSA 540:3 and 5.

II. The lessor or owner of restricted property may terminate any tenancy by giving to the

tenant or occupant a notice in writing to quit the premises in accordance with RSA 540:3 and 5, but only for one of the following reasons:

- (a) Neglect or refusal to pay rent due and in arrears, upon demand.
- (b) Substantial damage to the premises by the tenant, members of his household, or guests.
- (c) Failure of the tenant to comply with a material term of the lease.
- (d) Behavior of the tenant or members of his family which adversely affects the health or safety of the other tenants or the landlord or his representatives, or failure of the tenant to accept suitable temporary relocation due to lead-based paint hazard abatement, as set forth in RSA 130-A:8-a, I.
- (e) Other good cause.
- (f) The dwelling unit contains a lead exposure-hazard which the owner will abate by:
 - (1) Methods other than interim controls or encapsulation;
 - (2) Any other method which can reasonably be expected to take more than 30 days to perform; or
 - (3) Removing the dwelling unit from the residential rental market.

III. If the grounds for eviction is other good cause as set forth in paragraph II(e) of this section, and such cause is based on the actions or inactions of the tenant, members of his family, or guests, the landlord shall, prior to the issuance of the eviction notice, provide the tenant with written notice stating that in the future such actions or inactions would constitute grounds for eviction. Such notice shall be served in accordance with RSA 540:5 or by certified mail.

IV. A tenant's refusal to agree to a change in the existing rental agreement calling for an increase in the amount of rent shall constitute good cause for eviction under paragraph II(e) of this section, provided that the landlord provided the tenant with written notice of the amount and effective date of the rent increase at least 30 days prior to the effective date of the increase.

V. "Other good cause" as set forth in paragraph II(e) of this section includes, but is not limited to, any legitimate business or economic reason and need not be based on the action or inaction of the tenant, members of his family, or guests.

VI. No tenancy shall be terminated for nonpayment of rent if:

- (a) The tenant was forced to take over the landlord's utility payments in order to prevent utility services, which the landlord agreed to provide, from being terminated;
- (b) The amount of rent which the tenant is in arrears does not exceed the amount paid by the tenant to maintain utility service to the tenant's premises; and
- (c) The tenant has receipts from the utility company or other proof of payment of the amount paid to maintain utility service.

Source. RS 209:1. CS 222:1. GS 231:1. GL 250:1. PS 246:2. PL 357:2. RL 413:2. RSA 540:2. 1985, 249:2. 1993, 325:5, 6. 1996, 139:2. 2006, 192:1, eff. Jan. 1, 2007.

Section 540:3

540:3 Eviction Notice. –

I. If a nonresidential tenant neglects or refuses to pay rent due and in arrears, upon demand, 7 days' notice shall be sufficient; if the rent is payable more frequently than once in 3 months, whether such rent is due or not, a notice equal to the rent period shall be sufficient, and 3 months' notice shall be sufficient in all cases.

II. For all residential tenancies, 30 days' notice shall be sufficient in all cases; provided,

however, that 7 days' notice shall be sufficient if the reason for the termination is as set forth in RSA 540:2, II(a), (b), or (d).

III. The eviction notice shall state with specificity the reason for the eviction.

IV. If the eviction notice is based on nonpayment of rent, the notice shall inform the tenant of his or her right, if any, to avoid the eviction by payment of the arrearages and liquidated damages in accordance with RSA 540:9.

V. For the purpose of interpreting or enforcing any lease or rental agreement for residential tenants in effect on July 1, 2006, a notice to quit shall be deemed an eviction notice under this section.

Source. RS 209:2. CS 222:2. GS 231:2. GL 250:2. PS 246:3. PL 357:3. 1939, 63:1. RL 413:3. RSA 540:3. 1979, 305:2. 1985, 249:3. 1988, 100:1. 2006, 192:3, eff. Jan. 1, 2007.

Section 540:4

540:4 Demand. – Such demand shall be sufficient if made upon the tenant or occupant at any time after the rent becomes due and prior to or simultaneously with the service of such eviction notice.

Source. 1915, 37:1. PL 357:4. RL 413:4. 1999, 6:1. 2006, 192:1, eff. Jan. 1, 2007.

Section 540:5

540:5 Service of Demand and Eviction Notice. –

I. Any notice of a demand for rent or an eviction notice may be served by any person and may be served upon the tenant personally or left at his or her last and usual place of abode. Proof of service must be shown by a true and attested copy of the notice accompanied by an affidavit of service, but the affidavit need not be sworn under oath. A notice of a demand for rent shall be sufficient if served upon the tenant at any time after the rent becomes due and prior to or simultaneously with the service of an eviction notice.

II. The district court shall provide forms for a demand for rent and eviction notice in the district court clerks' offices and on the New Hampshire judicial branch website. Although a landlord shall not be required to use the forms, a valid demand for rent or eviction notice shall include the same information as is requested and provided on such forms.

Source. 1915, 37:1. PL 357:5. RL 413:5. RSA 540:5. 1979, 305:3. 1999, 6:2. 2006, 192:2, eff. Jan. 1, 2007.

Section 540:6

540:6 Violation of Lease. – [Repealed 1985, 249:10, I, eff. Aug. 6, 1985.]

Section 540:7

540:7 Demand of Rent. – Where, to constitute a forfeiture for a violation of the condition of a written lease, a demand of rent is required such demand may be made as provided RSA 540:5.

Source. 1905, 57:1. PL 357:7. RL 413:7.

Section 540:8

540:8 Time of. – Such demand may be made when the rent is due or while it is in arrears, but the lessor shall not demand a greater sum than the whole rent in arrears when demand is made.

Source. 1905, 57:1. PL 357:8. RL 413:8.

Section 540:9

540:9 Payment After Notice. – No tenancy shall be terminated for nonpayment of rent, utility charges, or any other lawful charge contained in a lease or an oral or written rental agreement if the tenant, before the expiration of the notice, pays or tenders all arrearages plus \$15.00 as liquidated damages; provided, however, that a tenant may not defeat an eviction for nonpayment by use of this section more than 3 times within a 12-month period.

Source. 1905, 57:1. PL 357:9. RL 413:9. RSA 540:9. 1985, 249:4. 2000, 155:1, eff. Jan. 1, 2001.

Section 540:9-a

540:9-a Payment by Voucher and Application of Rents Paid by a Municipality. –

I. Any rental payment or partial rental payment tendered by the tenant in the form of a written promise to pay on behalf of the tenant by the state, a county or a municipality of this state, or a payment by any organization which disburses federal or state funds, and any application by a municipality of amounts owed to it by a landlord pursuant to RSA 165:4-a, shall constitute payment by the tenant of the amount represented in the voucher, and of any amount applied by a municipality to delinquent balances of the landlord; provided, that this section shall not be construed to obligate a landlord to accept partial rental payments or payments tendered after the expiration of the eviction notice.

II. In any eviction based on non-payment of rent, it shall be an affirmative defense that:

(a) The tenant tendered timely payment pursuant to paragraph I, and such payment was refused; or

(b) The tenant could have tendered timely payment pursuant to paragraph I had the landlord provided ordinary and reasonable verification of rental information requested by the agency.

Source. 1988, 100:2. 1992, 184:3. 2000, 48:1. 2006, 192:1, eff. Jan. 1, 2007. 2007, 153:1, eff. Aug. 17, 2007.

Section 540:10

540:10 Holding Over. – [Repealed 1985, 249:10, II, eff. Aug. 6, 1985.]

Section 540:11

540:11 Termination by Lessee. – A lessee may terminate his lease by notice in writing, in the same manner as the lessor, and the notice shall have the same effect for all purposes as a notice by the lessor to the lessee.

Source. RS 209:6. CS 222:6. GS 231:6. GL 250:6. PS 246:6. PL 357:11. RL 413:11.

Section 540:11-a

540:11-a Termination by Members of the Armed Services. –

I. A lessee may terminate his or her lease, or a tenant may terminate a rental agreement when the lessee or tenant is:

- (a) A member of the armed services reserve who is called to active duty.
- (b) A member of the national guard who is called to active duty.
- (c) A member of the armed services on active duty who is reassigned to a location out of the state.

II. The lessee or tenant shall give notice of termination within 7 days of receipt of notice of being called to active duty or being reassigned out of the state.

III. The lessee or tenant shall terminate the lease or rental agreement by a written notice in accordance with the Servicemembers Civil Relief Act, Public Law 108-189, Section 305.

Source. 2004, 135:1, eff. Jan. 1, 2005.

Section 540:12

540:12 Possessory Action. – The owner, lessor, or purchaser at a mortgage foreclosure sale of any tenement or real estate may recover possession thereof from a lessee, occupant, mortgagor, or other person in possession, holding it without right, after notice in writing to quit the same as herein prescribed.

Source. RS 209:7. CS 222:7. GS 231:7. GL 250:7. PS 246:7. PL 357:12. 1939, 53:2. RL 413:12.

Section 540:13

540:13 Writ; Service; Discovery; Record; Default. –

I. A writ of summons may be issued, returnable before a district court, setting forth in substance that the plaintiff is entitled to the possession of the demanded premises, and that the defendant is in possession thereof without right, after notice in writing, to quit the same at a day named therein.

II. The writ shall be accompanied by a notice from the district court, printed in no smaller than 12-point type, informing the tenant that:

(a) If the tenant wishes to contest the eviction, he must file an appearance in the district court no later than the return day appearing on the writ.

(b) The tenant shall not be evicted unless the court so orders; however, such an order may be granted if the tenant does not file an appearance.

(c) At the time the tenant files his appearance, he may request that the court make a sound recording of the eviction hearing by checking an appropriate box on the appearance form.

(d) If the tenant wishes to appeal the district court's decision, he must:

(1) File a notice of intent to appeal with the district court within 7 days of the notice of the district's decision; and

(2) File a notice of appeal in the supreme court within 30 days of the notice of the district court's decision; and

(3) Pay all rent, as it comes due, between the date of the notice of intent to appeal the district court's decision and the final disposition of the appeal.

III. The writ of summons and the notice provided in paragraph II shall be returnable 7 days from the date of service of the writ by the sheriff. The writ of summons shall provide an opportunity for the landlord, at the landlord's option, to make a claim for an award of unpaid rent. If the landlord elects to make a claim for unpaid rent, the court shall consider any defense, claim, or counterclaim by the tenant which offsets or reduces the amount owed to the plaintiff. If the court finds that the landlord is entitled to possession on the ground of nonpayment of rent, it shall also award the landlord a money judgment. If the court determines that the amount owed by the landlord to the tenant, as a result of set-off or counterclaim exceeds or equals the amount of rent and other lawful charges owed by the tenant to the landlord, judgment in the possessory action shall be granted in favor of the tenant. If the court finds that the tenant's counterclaim exceeds the amount of the nonpayment, a money judgment shall issue in favor of the tenant. Any decision rendered by the court related to a money judgment, shall be limited to a maximum of \$1,500 and shall not preclude either party from making a subsequent claim in a court of competent jurisdiction to recover any additional amounts not covered by the \$1,500 judgment.

IV. Both parties shall have a right to engage in discovery prior to the hearing on the merits within such time frame as may be established for eviction actions by the Rules of the District Court.

V. If the tenant files an appearance, a hearing shall be scheduled to occur within 10 days after such filing, with allowance for additional time pursuant to paragraph IV, with notice of the hearing mailed to the parties no fewer than 6 days prior to the hearing. If the tenant fails to file an appearance or fails to appear at the hearing on the merits, the court shall mail a notice of default to the address set forth on the summons at least 3 days prior to the issuance of the writ of possession.

VI. In deciding any contested hearing, the court shall issue a written decision setting forth the basis for its decision.

VII. In the case of nonpayment of rent, while the possessory action is pending, the landlord may accept payment of the rental arrearage without creating a new tenancy, provided that the landlord informs the tenant in writing of the landlord's intention to proceed with the eviction in spite of the landlord's acceptance of the payment. The landlord may choose not to accept payment and to proceed with the eviction.

Source. RS 209:8, 9. CS 222:8, 9. GS 231:8. GL 250:8. PS 246:8. PL 357:13. RL 413:13. RSA 540:13. 1957, 244:23. 1992, 284:87. 1996, 155:1, 2. 1998, 25:1, 2, eff. Jan. 1, 1999.

Section 540:13-a

540:13-a Defense to Retaliation. – Except in cases in which the tenant owes the landlord the equivalent of one week's rent or more, it shall be a defense to any possessory action, as to residential property, that such possessory action was in retaliation for the tenant:

I. Reporting a violation or reporting in good faith what the tenant reasonably believes to be a violation of RSA 540-A or an unreasonable and substantial violation of a regulation or housing code to the landlord or any board, agency or authority having powers of inspection, regulation or enforcement as to the reasonable fitness of said residential property for health or safety;

II. Initiating an action in good faith pursuant to RSA 540-A or availing himself of the procedures of RSA 540:13-d; or

III. Meeting or gathering with other tenants for any lawful purpose.

Source. 1972, 26:1. 1979, 305:4, eff. Aug. 21, 1979.

Section 540:13-b

540:13-b Evidence of Intent to Retaliate. – Unless the court finds that the act of the tenant in making a report or complaint or in initiating an action or in organizing relative to alleged violations by a landlord was primarily intended to prevent any eviction, a rebuttable presumption that such possessory action was in retaliation of the tenant's action shall be created when any possessory action, increase in rent or any substantial alteration in the terms of the tenancy is instituted by a landlord within 6 months after:

I. The landlord received notice of any such alleged violation provided that:

(a) The tenant mailed, gave in hand to, or left at the abode of the landlord notice of the report or complaint of the alleged violation; or

(b) The landlord received notice of the complaint or report from the board, agency or authority; or

II. The landlord completed repairs or otherwise successfully remedied such violation; or

III. The landlord received notice that the tenant had initiated an action pursuant to RSA 540-A; or

IV. The discovery by the landlord of activity protected by RSA 540:13-a, III.

Source. 1972, 26:1. 1979, 305:4. 1985, 249:5, eff. Aug. 6, 1985.

Section 540:13-c

540:13-c Discretionary Stay Dependent on Payment of Rent. –

I. If the defendant defaults, or confesses judgment, or if on trial the court rules that the landlord has sustained his complaint, judgment shall be rendered that the landlord recover possession of the premises and costs. A writ of possession shall be issued, provided that, the court may order the tenant shall not be dispossessed until a date not later than 3 months from such default, confession of judgment, or ruling of the court, provided the court decides that under all the circumstances justice requires such stay, based on the reasonableness and good faith of the parties in their respective reports, complaints, demands, and evidence. In the event of any such stay of dispossession, the tenant shall pay the landlord weekly in advance the weekly former rent, or the proportional weekly part of the former rent if rent was payable less often than weekly, and on default of any such advance weekly payment a writ of possession shall be issued and the sheriff shall evict the tenant as soon as possible.

II. Nothing in this section shall be construed to prohibit the parties in a case of nonpayment of rent from agreeing that, in spite of judgment for the plaintiff, a writ of possession shall not be

issued, if the defendant makes payments in accordance with a schedule designated in the agreement. However, if such payments are not made when due, a writ of possession shall be issued upon request of the plaintiff.

Source. 1972, 26:1. 1988, 100:3. 1992, 284:88, eff. Jan. 1, 1993.

Section 540:13-d

540:13-d Defenses to Violations of Fitness. –

I. No action for possession based on nonpayment of rent shall be maintained in regard to any premises leased or rented for residential purposes, other than for vacation or recreation, if such premises are in substantial violation of the standards of fitness for health and safety set forth in RSA 48-A or in local codes, ordinances or bylaws established pursuant thereto, and such violation materially affects the habitability of said premises, provided that:

(a) The tenant proves by clear and convincing evidence that, while not in arrears in rent, he provided notice of the violation to the person to whom he customarily pays rent; and

(b) The landlord failed to correct the violations within 14 days of the receipt of such written notice or, in an emergency, as promptly as conditions require; and

(c) The violations were not caused by the tenant, a member of the tenant's family or other person on the premises with the tenant's consent; and

(d) Necessary repairs have not been prevented due to extreme weather conditions or due to the failure of the tenant to allow the landlord reasonable access to the premises.

II. If a defendant raises a defense provided in paragraph I of this section, the court may order the action continued for a reasonable time not to exceed one month to enable the plaintiff to remedy the violation. At the time such continuance is ordered, the court shall require the person claiming a defense under this section to pay into court any rent withheld or becoming due thereafter as it becomes due. Upon a finding by the court that the violation has been remedied within the continuance period, the court shall dismiss the possessory action and either award the withheld rent money to the plaintiff or apportion the rent paid into court by paying to the plaintiff the fair rental value of the premises while in the substantially defective condition and by awarding the remainder of said funds to the defendant as damages for plaintiff's breach of his warranty of habitability. If the violation has not been remedied within such period, the court shall enter judgment for the defendant and refund to the defendant all money deposited.

Source. 1979, 305:5. 1985, 249:6, 7, eff. Aug. 6, 1985.

Section 540:14

540:14 Judgment. –

I. If the defendant makes default, or if on trial it is considered by the court that the plaintiff has sustained its complaint, judgment shall be rendered that the plaintiff recover possession of the demanded premises and costs, and a writ of possession shall issue. In cases based on nonpayment of rent, the court shall state the actual amount of the tenant's current weekly rent or, if rent is not paid on a weekly basis, the equivalent weekly rent amount, which must be paid into the court if an appeal is taken pursuant to RSA 540:20 and 540:25. The judgment may be enforced, at the sole discretion of the plaintiff, either by directing the sheriff to serve the writ of

possession or by seeking judicial relief against the defendant for civil contempt. A writ of possession shall authorize the sheriff to remove the defendant from the premises.

II. Whenever the tenant successfully raises the defense of retaliation pursuant to RSA 540:13-a, damages of not more than 3 months' rent may be awarded to the tenant.

III. If the plaintiff makes a successful claim for unpaid rent as well as possession, or the defendant makes a successful counterclaim, the court shall issue a money judgment at the same time that it makes its ruling regarding possession of the premises.

Source. RS 209:10, 11. CS 222:10, 11. GS 231:9. GL 250:9. PS 246:9. PL 375:14. RL 413:14. RSA 540:14. 1957, 244:24. 1979, 305:6. 1991, 373:1. 1998, 25:3, 4, eff. Jan. 1, 1999.

Section 540:15

540:15 Neglect to Enter, etc. – If the plaintiff neglects to enter his action, or fails to support it, judgment shall be rendered for the defendant for his costs.

Source. RS 209:12. CS 222:12. GS 231:10. GL 250:10. PS 246:10. PL 357:15. RL 413:15.

Section 540:16

540:16 General Issue. – Under the general issue, the defendant shall not offer evidence which may bring the title to the demanded premises in question.

Source. RS 209:13. CS 222:13. GS 231:11. GL 250:11. PS 246:11. PL 357:16. RL 413:16.

Section 540:16-a

540:16-a Hearsay Exception. – In any possessory action based on allegations concerning the behavior of the defendant or his family or guests, records of complaints made by other tenants to the landlord or his agent concerning such behavior shall be competent evidence if:

I. The landlord or other qualified witness testifies to its identity and the mode of its preparation;

II. It was made at or near the time of the receipt of the complaint; and

III. In the opinion of the court, the sources of information, method and time of preparation, and proximity in time of the complaint to the alleged tenant behavior, were such as to justify its admission.

Source. 1985, 249:8, eff. Aug. 6, 1985.

Section 540:17

540:17 Plea of Title, Recognizance. – If the defendant shall plead a plea which may bring in question the title to the demanded premises he shall forthwith recognize to the plaintiff, with sufficient sureties, in such sum as the court shall order, to enter his action in the superior court for the county at the next return day, and to prosecute his action in said court, and to pay all rent

then due or which shall become due pending the action, and the damages and costs which may be awarded against him.

Source. RS 209:14. CS 222:14. GS 231:12. GL 250:12. PS 246:12. PL 357:17. RL 413:17. 1947, 121:15. RSA 540:17. 1957, 244:25, eff. Sept. 23, 1957.

Section 540:18

540:18 Effect of Plea, etc. – After the filing of such plea and the entry of such recognizance no further proceedings shall be had before the municipal court, but the action may be entered and prosecuted in the superior court in the same manner as if it were originally begun there.

Source. RS 209:16. CS 222:16. GS 231:14. GL 250:14. PS 246:14. PL 357:18. RL 413:18. RSA 540:18. 1957, 244:26, eff. Sept. 23, 1957.

Section 540:19

540:19 Neglect to Recognize. – If the defendant neglects or refuses to recognize, judgment shall be rendered against him in the same manner as if he had refused to make answer to the suit.

Source. RS 209:15. CS 222:15. GS 231:13. GL 250:13. PS 246:13. PL 357:19. RL 413:19.

Section 540:20

540:20 Appeal. – Any party to an action brought pursuant to this chapter shall, within 7 days of the date of the notice of judgment, file in the district court a notice of intent to appeal to the supreme court. Until the appeal is perfected by the filing of a notice of appeal in the supreme court, the district court shall retain exclusive jurisdiction of the case. After the filing of the notice of appeal in the supreme court, the district court shall retain jurisdiction of the matter for the purposes of collecting rent pending appeal. In all other respects, the judgment of the district court shall be final at the expiration of the appeal period.

Source. RS 209:17. CS 222:17. GS 231:15. GL 250:15. PS 246:15. PL 357:20. RL 413:20. RSA 540:20. 1957, 244:27. 1965, 327:3. 1992, 284:45. 1998, 25:5, eff. Jan. 1, 1999.

Section 540:21

540:21 Procedure on. – [Repealed 1995, 277:26, III, eff. Aug. 19, 1995.]

Section 540:22

540:22 Neglect to Enter Appeal. – If the appellant neglects to enter his appeal or to produce such copies the court, on complaint of the appellee, shall affirm the former judgment, with additional damages and costs.

Source. RS 209:21. CS 222:21. GS 231:19. GL 250:19. PS 246:19. PL 357:22. RL 413:22.

Section 540:23

540:23 Plaintiff's Damages. – If a defendant files a plea of title or appeals, and the plaintiff recovers judgment against the defendant, the court shall cause plaintiff's damages, exemplary or otherwise, including a just compensation for the use and detention of the property and for any injury thereto, to be assessed and may issue execution therefor, or the same may be recovered on the recognizance taken as before provided.

Source. GS 231:20. GL 250:20. PS 246:20. PL 357:23. RL 413:23. RSA 540:23. 1992, 284:46, eff. Jan 1, 1993.

Section 540:24

540:24 Recognizance, by Plaintiff. – The plaintiff, before his appeal is allowed, shall recognize to the defendant, with sufficient sureties, in such sum as the court may order, to enter and prosecute his appeal, and to pay such costs as may be awarded against him.

Source. RS 209:18. CS 222:18. GS 231:16. GL 250:16. PS 246:16. PL 357:24. RL 413:24. RSA 540:24. 1957, 244:28, eff. Sept. 23, 1957.

Section 540:25

540:25 Recognizance, by Defendant. –

I. If the possessory action was instituted on the basis of nonpayment of rent, and the defendant files a notice of intent to appeal, the defendant shall pay into court the current rent in an amount determined by the judgment of the court pursuant to RSA 540:14, I, weekly and in advance. Payment of rent for one week must be made at the time the defendant files notice of intent to appeal in the district court. Rent which had been payable on other than a weekly basis shall be paid to the court each week based on the equivalent weekly rent determined by the judgment issued by the court, pursuant to RSA 540:14, I. During the pendency of the appeal, rent is payable on a weekly basis and is due on the same day of the week on which the notice of intent to appeal was filed. If rent is not paid by the due date, the court shall immediately mail a notice of default to the tenant and issue a writ of possession to the landlord. If, however, the tenant pays the clerk the entire amount of rent due since the filing of the notice of intent to appeal prior to the service of the writ by the sheriff, the writ of possession shall be recalled and the appeal shall be reinstated. Unless the appeal is reinstated, the district court shall vacate the appeal and award the plaintiff the rent money that has been paid into court.

I-a. At any time during the pendency of the appeal, the landlord may file a motion to the district court for recovery of the rent money that has been paid into court pursuant to paragraph I. The court may grant such motion unless the tenant objects and the court rules that the landlord is not lawfully entitled to the full amount of rent. If the court rules that the landlord is not entitled to the full amount of the rent, it shall release such portion of the rent to which the court deems the landlord is lawfully entitled, if any, and make specific findings in support of its decision to deny or partially deny the landlord's motion. The rent money retained by the court shall be apportioned between the landlord and the tenant upon final disposition of the appeal.

II. If the possessory action was instituted for a reason other than nonpayment of rent, the

defendant shall pay into court or to the plaintiff, as the court directs, all rents becoming due from the date the notice of intent to appeal is filed with the district court. In any case in which the duty to pay rent or a portion thereof is in dispute, the defendant shall be required to pay such portion of the rents becoming due after the notice of intent is filed into court, as the court may direct, which amounts shall be held by the court in escrow until a final decision is rendered. After such decision has been rendered, the escrowed rent money and any accrued interest thereon shall be apportioned between plaintiff and defendant on the basis of a finding of rent actually due. For the purpose of this section, "rent" shall mean the amount of money called for by the lease or rental agreement at the time the action for possession was instituted.

Source. RS 209:19. CS 222:19. GS 231:17. GL 250:17. PS 246:17. PL 357:25. RL 413:25. RSA 540:25. 1957, 244:29. 1973, 352:1. 1992, 284:47. 1998, 25:6. 2001, 123:1, 2, eff. Jan. 1, 2001.

Section 540:26

540:26 Other Remedies. – Nothing in this chapter shall be construed to prevent a landlord from pursuing his legal remedy at common law.

Source. RS 209:22. CS 222:22. GS 231:21. GL 250:21. PS 246:21. PL 357:26. RL 413:26.

Section 540:27

540:27 Landlord's Grantee. – Whenever the estate occupied by a tenant at will or sufferance is conveyed by the landlord his grantee shall have the rights and remedies which the grantor would have had, under the provisions of this chapter, if the estate had not been conveyed.

Source. 1865, 4084:1. GS 231:22. GL 250:22. PS 246:22. PL 357:27. RL 413:27.

Section 540:28

540:28 Lease Provisions. – No lease or rental agreement, oral or written, shall contain any provision by which a tenant waives any of his rights under this chapter, and any such waiver shall be null and void.

Source. 1985, 244:9, eff. Aug. 6, 1985.

Section 540:29

540:29 Conflict of Laws. – Any provisions of federal law relating to rental units owned, operated or subsidized by the federal government which are inconsistent with or contrary to the provisions of this chapter shall supersede the provisions of this chapter. Where not inconsistent, the provisions of federal law shall apply in conjunction with the provisions of this chapter.

Source. 1985, 244:9, eff. Aug. 6, 1985.

TITLE LV
PROCEEDINGS IN SPECIAL CASES

CHAPTER 540-A
PROHIBITED PRACTICES AND SECURITY DEPOSITS

Prohibited Practices

Section 540-A:1

540-A:1 Definitions. – As used in this subdivision:

I. "Landlord" means an owner, lessor or agent thereof who rents or leases residential premises including manufactured housing or space in a manufactured housing park to another person.

II. "Tenant" means a person to whom a landlord rents or leases residential premises, including manufactured housing or a space in a manufactured housing park.

III. "Premises" means the part of the landlord's property to which the tenant is entitled exclusive access for living or storage as a result of the rental or lease agreement.

Source. 1979, 305:1. 1985, 100:3, eff. July 9, 1985.

Section 540-A:2

540-A:2 General Prohibition. – No landlord shall willfully violate a tenant's right to quiet enjoyment of his tenancy or attempt to circumvent lawful procedures for eviction pursuant to RSA 540. No tenant shall willfully damage the property of the landlord or prevent completion of necessary repairs or willfully deny tenants their right to quiet enjoyment of their tenancies.

Source. 1979, 305:1, eff. Aug. 21, 1979.

Section 540-A:3

540-A:3 Certain Specific Acts Prohibited. –

I. No landlord shall willfully cause, directly or indirectly, the interruption or termination of any utility service being supplied to the tenant including, but not limited to water, heat, light, electricity, gas, telephone, sewerage, elevator or refrigeration, whether or not the utility service is under the control of the landlord, except for such temporary interruption as may be necessary while actual repairs are in process or during temporary emergencies.

II. No landlord shall willfully seize, hold, or otherwise directly or indirectly deny a tenant access to and possession of such tenant's rented or leased premises, other than through proper judicial process.

III. No landlord shall willfully seize, hold, or otherwise directly or indirectly deny a tenant access to and possession of such tenant's property, other than by proper judicial process.

IV. No landlord shall willfully enter into the premises of the tenant without prior consent, other than to make emergency repairs.

V. No tenant shall willfully refuse the landlord access to the premises to make necessary repairs, or to perform other reasonable and lawful functions commonly associated with the ownership of rental property, at a reasonable time after notice which is adequate under the circumstances.

VI. No tenant shall willfully damage the property of the landlord.

VII. Other than residential real estate under RSA 540-B, a landlord shall maintain and exercise reasonable care in the storage of the personal property of a tenant who has vacated the premises, either voluntarily or by eviction, for a period of 28 days after the date upon which such tenant has vacated. During this period, the tenant shall be allowed to recover personal property without payment of rent or storage fees. After the 28-day limit has expired, such personal property may be disposed of by the landlord without notice to the tenant.

Source. 1979, 305:1. 1991, 373:2, eff. Jan. 1, 1992. 1998, 25:8. 2001, 277:2. 2003, 271:1, eff. Jan. 1, 2004.

Section 540-A:4

540-A:4 Remedies. –

I. All district courts shall have concurrent jurisdiction with the superior court to enforce the provisions of RSA 540-A:2 and RSA 540-A:3.

II. Any tenant or landlord may seek relief from a violation of RSA 540-A:2 or RSA 540-A:3 by filing a petition in the district or county where the rental premises are located.

III. No filing fee shall be charged for a petition under paragraph II, and the plaintiff may proceed without legal counsel. Either a peace officer or the sheriff's department shall serve process under this section and the cost of such service shall be billed as directed by the court pursuant to paragraph X. Any proceeding under this subdivision shall not preclude any other available civil or criminal remedy.

IV. The clerks of the district courts shall supply forms for petitions for relief under this subdivision designed to facilitate proceedings.

V. The findings of facts shall be final but questions of law may be transferred to the supreme court in the same manner as from the superior court.

VI. The court shall hold a hearing within 30 days of the filing of a petition under paragraph II or within 10 days of service of process upon the defendant, whichever occurs later.

VII. Upon a showing of a violation of RSA 540-A:2 or RSA 540-A:3, I, II, or III, the court shall grant such relief as is necessary to protect the rights of the parties. Such relief may include:

(a) An order prohibiting the defendant from continuing the activity or activities which violate RSA 540-A:2 or RSA 540-A:3; and

(b) An award of damages to the plaintiff for the violations of RSA 540-A, breach of warranty of habitability, breach of the covenant of quiet enjoyment or any other claim arising out of the facts alleged in the plaintiff's petition.

VIII. Upon the showing of an immediate threat of irreparable harm, the court may issue such temporary orders as it deems necessary to protect the parties with or without actual notice to the defendant. If temporary orders are made ex parte, the party against whom such relief is issued may file a written request with the clerk of the court and request a hearing on such request. Such hearing shall be held no later than 5 days after the request is received by the clerk. Such hearings may constitute the final hearing described in paragraph VI.

IX. (a) Any landlord or tenant who violates RSA 540-A:2 or any provision of RSA 540-A:3 shall be subject to the civil remedies set forth in RSA 358-A:10, including costs and reasonable attorney's fees incurred in the proceedings. Each day that a violation continues shall constitute a separate violation.

(b) The provisions of subparagraph (a) shall not apply to petitions brought in good faith by a landlord or a tenant to determine whether a request for entry under RSA 540-A:3, V is reasonable and lawful.

X. If an action initiated under RSA 540-A:3 is found to be frivolous or brought solely for harassment, the plaintiff shall pay to the defendant the costs of said action including reasonable attorney's fees. If such frivolous action was brought by the tenant, he shall not be entitled to the protection of paragraph XI of this section.

XI. No action for possession may be maintained by the landlord against a tenant who proves a violation of RSA 540-A:3 except for nonpayment of rent, violation of a substantial obligation of the rental agreement or lease, or violation of this subdivision within 6 months of an action instituted under this subdivision by a tenant; nor shall the landlord take any other action in reprisal.

Source. 1979, 305:1. 1985, 100:4, 5. 1990, 218:1. 2003, 271:2, eff. Jan. 1, 2004.

Security Deposits

Section 540-A:5

540-A:5 Definitions. – As used in this subdivision:

I. "Landlord" means a person and his or its employees, officers or agents who rents or leases to another person a rental unit, including space in a manufactured housing park as regulated by RSA 205-A and in manufactured housing, for other than vacation or recreational purposes. A person who rents or leases a single-family residence and owns no other rental property or who rents or leases rental units in an owner-occupied building of 5 units or less shall not be considered a "landlord" for the purposes of this subdivision, except for any individual unit in such building which is occupied by a person or persons 60 years of age or older.

II. "Security deposit" means all funds in excess of the monthly rent which are transferred from the tenant to the landlord for any purpose.

III. "Tenant" means any person who rents or leases residential premises owned by another, including space in a manufactured housing park regulated by RSA 205-A and in manufactured housing, for other than vacation or recreational purposes.

IV. "Rental unit" means each separate part of any residential premises which has full facilities for habitation, including contiguous living, sleeping, kitchen and bathroom facilities, which is held out for rental by the landlord.

Source. 1985, 100:6, eff. July 9, 1985.

Section 540-A:6

540-A:6 Procedure. –

I. (a) A landlord shall not demand or receive any security deposit in an amount or value in excess of one month's rent or \$100, whichever is greater.

(b) Except as provided in subparagraph (c), upon receiving a deposit from a tenant, a landlord shall forthwith deliver to the tenant a signed receipt stating the amount of the deposit and specifying the place where the deposit or bond for the deposit pursuant to RSA 540-A:6, II(c) will be held, and shall notify the tenant that any conditions in the rental unit in need of repair or correction should be noted on the receipt or given to the landlord in writing within 5 days of occupancy.

(c) No receipt shall be required when the tenant furnishes a security deposit in the form of a personal check, a bank check, or a check issued by a government or nonprofit agency on behalf of the tenant. Regardless of whether or not a receipt is required, the landlord shall provide written notice to the tenant that a written list of conditions in the rental unit in need of repair or correction, if any, should be given to the landlord within 5 days of occupancy.

II. (a) Security deposits held by a landlord continue to be the money of the tenant and shall be held in trust by the person with whom such deposit is made and shall not be mingled with the personal moneys or become an asset of the landlord until the provisions of RSA 540-A:7 are complied with, but may be disposed of as provided in RSA 540-A:6, III.

(b) A landlord may mingle all security deposits held by him in a single account held in trust for the tenant at any bank, savings and loan association or credit union organized under the laws of this state in satisfaction of the requirements of RSA 540-A:6, II(a).

(c) A bond written by a company located in New Hampshire and posted with the clerk of the city or town in which the residential premises are located in an amount equivalent to the total value of a security deposit held by the landlord on property in that city or town shall exempt the landlord from the provisions of RSA 540-A:6, II(a) and (b).

III. (a) Any landlord who holds a security deposit shall turn the security deposit over at the time of delivery of the deed or instrument of assignment, or within 5 days thereafter, or within 5 days after a receiver has been qualified, to one of the following:

- (1) his grantee upon conveying the premises in which the rental unit is located;
- (2) his assignee upon assigning his lease to the rental unit;
- (3) the receiver in a foreclosure action or other lien of record affecting the property in which the rental unit is located, upon the judicial appointment and qualification of the receiver; or
- (4) the purchaser at a foreclosure sale or other lien of record, if a receiver has not been qualified, upon the conveyance to another person by the referee of the property in which the rental unit is located.

(b) The landlord shall notify the tenant by registered or certified mail of such turning over, including the name and address of the grantee, assignee, purchaser, or receiver who then holds the security deposit.

(c) Any landlord who turns over to his grantee, his assignee, a purchaser at a foreclosure sale, or the receiver in a foreclosure action the amount of such security deposit with interest due, if any, is thereby relieved of liability to the tenant for repayment of the deposit. The transferee of the security deposit is then responsible for the return of the security deposit to the tenant or licensee, unless, before the expiration of the term of the tenant's lease or licensee's agreement, he transfers the security deposit to another, pursuant to RSA 540-A:6, III(a) and gives the requisite notice pursuant to RSA 540-A:6, III(b). A receiver shall hold the security subject to its disposition as provided in an order of the court to be made and entered in the foreclosure action.

(d) RSA 540-A:6, III(c) shall not apply if there is an inconsistent agreement between the landlord and tenant or licensee.

IV. (a) A landlord who holds a security deposit for a period of one year or longer shall pay to the tenant interest on the deposit at a rate equal to the interest rate paid on regular savings accounts in the New

Hampshire bank, savings and loan association, or credit union in which it is deposited, commencing from the date the landlord receives the deposit or from September 13, 1977, whichever is later. If a landlord mingles security deposits in a single account under RSA 540-A:6, II(b), the landlord shall pay the actual interest earned on such account proportionately to each tenant.

(b) Upon request, a landlord shall provide to the tenant the name of any bank, savings and loan association, or credit union where his security deposit is on deposit, the account number, the amount on deposit, and the interest rate on the deposit and shall allow the tenant to examine his security deposit records.

(c) Notwithstanding RSA 540-A:7, I, a tenant may request the interest accrued on a security deposit every 3 years, 30 days before the expiration of that year's tenancy. The landlord shall comply with the request within 15 days of the expiration of that year's tenancy.

Source. 1985, 100:6. 1988, 167:1. 1992, 184:4. 2006, 296:1, eff. July 1, 2006.

Section 540-A:7

540-A:7 Return of Security Deposit. –

I. Except as provided in RSA 540-A:6, IV(c), a landlord shall return a security deposit to a tenant and pay the interest due, if any, within 30 days from the termination of the tenancy. If there are any damages to the premises, excluding reasonable wear and tear, the landlord may deduct the costs of repair from the security deposit. The landlord shall provide the tenant with a written, itemized list of any damages for which the landlord claims the tenant is liable, which shall indicate with particularity the nature of any repair necessary to correct any damage and satisfactory evidence that repair necessary to correct these damages has been or will be completed. Satisfactory evidence may include, but not be limited to, receipts for purchased repair materials and labor estimates, bills or invoices indicating the actual or estimated cost thereof.

II. If the tenant is required under the lease agreement to pay all or part of any increase in real estate taxes levied against the property and becoming due and payable during the term of the lease, or if there is unpaid rent due, or if there are other lawful charges due under the lease which remain unpaid, the landlord may deduct such share of real estate taxes or unpaid rent or unpaid charges from the amount of the security deposit. The landlord shall provide the tenant with a written, itemized list of any claim for unpaid rent or share of real estate taxes or unpaid charges for which the landlord claims the tenant is liable, which shall indicate with particularity the period for which the claim is being made.

Source. 1985, 100:6. 1988, 167:2. 2006, 296:2, eff. July 1, 2006.

Section 540-A:8

540-A:8 Remedies. –

I. (a) Any landlord who does not comply with RSA 540-A:6, I, II or III shall be deemed to have violated RSA 358-A:2.

(b) Any landlord who does not comply with RSA 540-A:6, IV or RSA 540-A:7 shall be liable to the tenant in damages in an amount equal to twice the sum of the amount of the security deposit plus any interest due under this subdivision, less any payments made and any charges owing for damages, unpaid

rent, or share of real estate taxes as specified in RSA 540-A:7.

II. Notwithstanding RSA 540-A:6, 540-A:7, and 540-A:8, I, a landlord shall not be liable nor forfeit any rights if his failure to comply with said sections and paragraph is due to the failure of the tenant to notify the landlord of his new address upon termination of the tenancy. Any deposits plus interest due on the deposit that remain unclaimed after 6 months from the termination of the tenancy shall become the property of the landlord, free and clear of any claim of the tenant, absent fraud.

III. Any provision in any lease or rental agreement by which the tenant is purported to waive any of his rights under this subdivision, except as provided in RSA 540-A:6, III(d), shall be void.

Source. 1985, 100:6, eff. July 9, 1985.