

# ST. MARY'S UNIVERSITY SCHOOL OF LAW

PROPERTY II  
Spring Semester 1994

FINAL EXAMINATION  
Professor Douglas R. Haddock

## INSTRUCTIONS

1. There are six problems on the following three pages. You will have three hours in which to complete the examination. Times suggested for each problem total two hours and forty-five minutes.

2. All problems are based on a twelve-page document of Factual Information, comprised of four pages (eleven numbered paragraphs) of facts, a six-page Appendix A labeled "Restrictions," a two-page Appendix B labeled "Governing Law." A page of instructions accompanied the Factual Information. This document was distributed during the last two weeks of class, and is not included here. Additional information is included with some of the problems; that information pertains only to the problem in which it appears.

3. You are allowed to use any printed or written material you wish, including the text, your notes and your outlines. You are not allowed, of course, to get help from other persons during the examination; your responses to the examination problems must be your own work, composed and written during the examination period. Your answers will be graded according to how well you recognize and how thoroughly you analyze the issues raised by the problems, in light of assigned readings and class discussions.

4. St. Mary's University School of Law prohibits the disclosure of information that might aid a professor in identifying the author of an examination. Any attempt by a student to identify herself or himself in an examination is a violation of this policy and of the Code of Student Conduct.

5. When you have finished with the examination, no later than the end of the examination period, place the examination inside the bluebook and turn both in to the proctor. Before doing so, after reading the following oath, place your exam number in the designated space. If you are prevented by the oath from placing your exam number beneath the oath, notify the student proctor of your reason when you turn in the examination.

*I HAVE NEITHER GIVEN NOR RECEIVED UNAUTHORIZED AID IN TAKING THIS EXAMINATION, NOR HAVE I SEEN ANYONE ELSE DO SO.*

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EXAM NUMBER

# Property II Final Examination Problems

Spring Semester 1994

Professor Douglas R. Haddock

## **Problem #1** **(Suggested Time: 15 minutes)**

Assume that the State of South Illigan employs the doctrine of "reciprocal negative easement." Discuss the impact of this doctrine on the land purchased by Commercial Real, referred to in paragraph [3] of the Factual Information.

## **Problem #2** **(Suggested Time: 75 minutes)**

Big Country Enterprises, Inc. has now decided to focus its efforts on a few of its theme parks in other parts of the country. They want to rid themselves of their interest in Country Haven's Big Country (see paragraph [5]). Some local business people, led by Fred McBrush, would like to purchase the interest of Big Country Enterprises. They have consulted a law firm with which you are associated and you have been asked by senior members of the firm to prepare a memorandum responding to the following questions. Write the memorandum.

a. Does Big Country Enterprises, Inc. have a transferrable interest in the property? If so, and if they (McBrush, *et al.*) accept a transfer of that interest, what legal obligations will McBrush, *et al.*, and Denise and Dennis DeWitt have with respect to maintaining and repairing the improvements on the property?

b. If McBrush and his associates purchase the interest of Big Country Enterprises in Country Haven's Big Country, will they be entitled to utilize the roads in Country Haven and will they be required to contribute to the expense of maintenance and improvement of those roads?

c. What is the legal effect of the provision referred to in paragraph [8] of the Factual Information with regard to McBrush, *et al.*?

**Problem #3**  
**(Suggested Time: 20 minutes)**

Assume that Nancy Nichols, referred to in paragraph [10], just died of a heart attack. By the only pertinent provisions of her will, Nancy devised all of her real property to Nick Nance, and all property she had not otherwise disposed of to her daughter, Nora. Discuss the impact of Nancy's death on the ownership of Lot 6, Block 1, Unit I.

**Problem #4**  
**(Suggested Time: 30 minutes)**

In 1985, representatives of the Blue Lakes Country Club contacted Audrey Appleby. They explained to her that the developers had intended to reserve an easement in the west ten feet of lot 5, Block 1, Unit I, which was conveyed to her in 1982 (see paragraph [9]). The easement was to have been used as a path for golf carts and golfers, but due to an oversight, no easement was reserved. For consideration of \$1,000, Audrey granted to the Blue Lakes Country Club a "perpetual easement" over the west ten feet of her lot. The instrument granting the easement was signed and delivered on May 3, 1985, and was recorded on February 20, 1986. Discuss all issues relevant to whether Barry Bowman would now (1994) be able to exclude golfers and golf carts from the west ten feet of lot 5, Block 1, Unit I.

**Problem #5**  
**(Suggested Time: 5 minutes)**

Briefly discuss whether, as a result of the Restrictions contained in Appendix A of the Factual Information, Dennis and Denise breached any covenants of title when they delivered a warranty deed to Audrey Appleby in 1982 (see paragraph [9]).

**Problem #6**  
**(Suggested Time: 20 minutes)**

Uncle Ben (see paragraph [11]) has consulted you for legal advice. In response to a letter Ben wrote a month ago, a representative of Dennis and Denise has sent him a legal description of the fairway lot that was the subject of the 1988 deed to Ben and a map showing its location. Ben has contacted several builders and plans to contract with one of them in the near future to build his retirement home on the Country Haven lot. Before doing so, he wants to make sure "all the legal details are taken care of." He informs you that he has never received any documents concerning the property, other than the description and the map. He believes he has heard Dennis say that the deed is in a safety deposit box, but he has never seen it. Write a memorandum analyzing Ben's situation and evaluating how you might help him; discuss all legal issues you think ought to be addressed on his behalf.

## ST. MARY'S UNIVERSITY SCHOOL OF LAW

PROPERTY II  
Spring Semester 1994

FINAL EXAMINATION  
Professor Douglas R. Haddock

### INSTRUCTIONS

1. Some, if not all, of the problems on your Final Examination will refer to the following Factual Information, comprised of twelve pages, excluding this page of instructions but including Appendices A and B referred to in paragraph 2 of these instructions. Some additional facts and other information will be included with some of the problems. The Factual Information in the following pages gives you general background and numerous clues as to problems that might be presented in the Examination.

2. Included in the attached materials are facts presented in eleven numbered paragraphs (pages 1-4), "Appendix A - Restrictions" (pages 5-10), and "Appendix B - Governing Law" (pages 11-12).

3. Prior to taking the Examination, you are allowed to get assistance from any and all resources, including the problems and readings assigned during the semester, your notes, and your colleagues, in studying and reviewing the Factual Information. You are encouraged to study the Factual Information thoroughly, individually and, if you desire, in groups, and to analyze questions you anticipate from reviewing the course.

4. During the three-hour Examination period, you will be allowed to use any printed or written material you wish, including the text, your notes and your outlines. Undue reliance on the fact that this is an "open-book" examination, either before or during the Examination, will almost certainly hamper your performance. You are not allowed to get help from other persons during the Examination period and your responses to the problems must be your own work, composed and written during the three-hour Examination period.

Property II Final Examination  
Factual Information

Spring Semester 1994

Professor Douglas R. Haddock

[1] Dennis and Denise DeWitt are twins. When their father died in 1980, they received by devise a large tract of land that had been part of a ranch originally owned for many years by their father's family. The property is located in a scenic and picturesque valley fifteen miles from the outskirts of the rapidly developing city of Oz Falls in the State of South Illigan.

[2] For some years prior to 1980, Denise and Dennis had wandered through life aimlessly, without any apparent purpose or goal. For some reason, the death of their father had a profound effect on both of them and they have since been driven to make a success out of their lives. Blessed with the land and additional wealth received from their father's estate, and with the backing of several financial institutions, they embarked on an ambitious land development scheme. They employed land use consultants, lawyers, and other professionals to help them in their venture. Most of the land they received from their father's estate was incorporated into a comprehensive land use plan. They mapped out the development, submitted the plans to appropriate county authorities, and obtained subdivision approval and other necessary permits. After putting in streets and other improvements, including several parks and playgrounds, they began marketing the first phase of the development.

[3] The very first tract of land sold by Denise and Dennis was a forty-acre parcel that was sold to Commercial Real, a company that specializes in the development of commercial real estate. The deed to that parcel was delivered by Dennis and Denise to Commercial Real on March 30, 1981. The deed is a warranty deed purporting to convey fee simple in the forty acres, subject to "existing easements, covenants and restrictions of record." This parcel of land was valuable and Dennis and Denise used the profits from the sale to finance some of the early steps in the development of the project. Meanwhile, Commercial Real constructed several attractive buildings on the property and they have leased much of the space to various merchants and a few professional people over the past ten years.

[4] Dennis and Denise named their development "Country Haven." Much of the land in Country Haven is devoted to residential uses, but, as suggested in paragraph [3], there are some sections used for business and retail purposes. In addition to these land uses, two other features of Country Haven have attracted much attention. The DeWitts anticipated an increasing demand for leisure activities and took steps to make Country Haven a particularly attractive and somewhat unusual neighborhood in that respect. During the early stages of development, they built an excellent 18-hole championship golf course. Known as "Blue Lakes Country Club," the golf course was quickly recognized as one of the best in the state and it is a featured part of the community in all of the DeWitt's promotional literature.

[5] A newer development in Country Haven is "Big Country," a large and varied theme park featuring many activities, including various forms of entertainment, educational displays, amusement rides, restaurants, a waterpark, and laser and fireworks programs. Big Country is the featured

attraction of Unit III of the development. Denise and Dennis still own fee simple in the land on which Big Country is situated, but they have leased the property for 20 years to "Big Country Enterprises, Inc.," a corporation formed by a group that runs several large theme parks throughout the country. The park was constructed according to specifications provided by Big Country Enterprises, Inc. and they conduct the day-to-day operations of the park. The lease from Dennis and Denise to Big Country Enterprises, Inc. contains numerous detailed provisions. Assignment of the lease is permitted, but only with express, written approval of Dennis and Denise. Subleasing is "strictly prohibited." Easements for access to the park, over several private roads within Country Haven, are granted by the lease "to Big Country Enterprises, Inc., its agents, employees and customers." Big Country Enterprises, Inc., agrees in the lease "for itself, its heirs, successors and assigns, to contribute to the expense of maintenance and improvement of all roads in which an easement is granted to Big Country Enterprises, Inc. by this lease." The contribution of Big Country Enterprises, Inc. is further defined in the lease as 75% of costs necessary, "in the reasonable judgment of the lessors," for maintaining the roads in good condition.

[6] The residential neighborhoods that are a part of Country Haven were scheduled for completion in three phases. Each phase represents a different neighborhood within Country Haven, referred to as Unit I, Unit II, and Unit III. Units I and II are largely completed; that is to say, homes have been completed and are occupied on most of the lots within those neighborhoods. Unit III is still in an early stage of development and Denise and Dennis own many of the undeveloped lots in that area. Except for some multi-family apartment buildings built in Unit II, the residential property is devoted to single-family dwellings. The business and retail property, including the tract referred to in paragraph [3], is located in Units I and III.

[7] Before selling any of the residential property in Country Haven, Dennis and Denise, with the assistance of their lawyers, drafted and recorded a detailed set of restrictions pertinent to the neighborhoods within the development. Portions of this document, labeled "Appendix A - Restrictions," are attached to this Factual Information. The restrictions were recorded on May 10, 1982.

[8] In addition to the restrictions pertinent to all of Country Haven (see Appendix A), additional restrictions were recorded before the sale of any lots in Phase III. These restrictions included the following provision:

Owners of all lots within Phase III of the subdivision will be required to purchase season passes to "Big Country," a theme park located within the subdivision. The price of these passes may vary from time to time as set by the operators of Big Country. Residents of the subdivision will, however, receive a 25% discount on the price of all Big Country season passes.

[9] Some of the residential lots in Country Haven were purchased by building contractors and others were originally sold by Denise and Dennis directly to individuals who intended to have homes

built for themselves. The first residential lot sold, legally described as "lot 5, Block 1, Unit I, Country Haven," was transferred by warranty deed dated July 15, 1982 and recorded July 16, 1982. The purchaser was Audrey Appleby. The deed states that the title conveyed is "subject to all conditions, easements, covenants, and servitudes of record." By a quit claim deed dated January 10, 1986, Audrey Appleby conveyed her interest in lot 5, Block 1, Unit I, Country Haven, to Barry Bowman. That deed was not recorded, however, until May 5, 1992.

[10] Lot 6, Block 1, Unit I, was deeded by Dennis and Denise to Marvin Morris on September 26, 1983. The deed to Marvin also contained the provision that the title was "subject to all conditions, easements, covenants, and servitudes of record." Lot 6 is adjacent to lot 5, discussed in paragraph [9]. Marvin sold lot 6 "to Nancy Nichols and Nick Nance, wife and husband, as joint tenants and not as tenants in common," in December of 1990. Nancy Nichols recently contracted to sell lot 6 to Orrin Ogden. The contract provides that closing shall take place on or before June 20, 1994.

[11] After some financial success with their venture, Denise and Dennis decided to do something nice for their uncle and two aunts. They had always been very close to these members of the family, and during a family reunion in 1988, Dennis and Denise announced to Uncle Ben, Aunt Bernice, and Aunt Bobbie that they had decided to give each of them one of the prime golf course lots in Unit II of Country Haven. At the time, these lots had market values ranging from \$55,000 to \$75,000. Uncle Ben was ecstatic when he heard the announcement from his nephew and niece. He was an avid golfer and planned to retire in 1995. Country Haven would, he thought, be an ideal place for him to build a retirement home when the time came. Bernice and Bobbie had no certain plans as to what they would do with their lots, but they too appreciated the generosity of Dennis and Denise. During the week after the family reunion, Denise and Dennis instructed their lawyer to draft deeds to the three lots they had picked out for their uncle and aunts. The deeds were drafted and placed in a safety deposit box.

Appendix A - Restrictions

DENNIS DEWITT AND DENISE DEWITT

TO THE PUBLIC:

RESTRICTIONS

COUNTRY HAVEN

STATE OF SOUTH ILLIGAN

COUNTY OF WILDER

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, Dennis and Denise DeWitt are the owners of the land and premises known as Country Haven, Units I, II, and III, Wilder County, State of South Illigan, described according to plat recorded in Volume 9507, pages 79-80, Wilder County Plat Records [all of the land devised to Dennis and Denise by their father], and said tract of land and premises being herein referred to as "the subdivision"; and

WHEREAS, Dennis and Denise DeWitt desire to subject such real property to the protective covenants, restrictions, reservations, and easements herein for the benefit of such property and the present and future owners thereof:

NOW, THEREFORE, it is hereby declared that all of the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the real property and shall be binding on all parties having any right, title, or interest in or to the above described property or any part thereof, and their heirs, successors, and assigns, and which easements, restrictions, covenants, and conditions shall inure to the benefit of each owner thereof, and in general, will insure the best use and most appropriate development of such subdivision:

## A. COVENANTS AND RESTRICTIONS

1. Each of the single-family residential lots in such subdivision shall hereafter be used only for the construction of one single family residence, including other appurtenant structures permitted under the terms hereof, with it being intended that no commercial use of any such lots shall be permitted and, specifically, that no sign shall be placed on any such lot indicating a commercial use thereof, and that such main dwelling units constructed on each lot shall contain at least the following number of square feet of main dwelling living area, exclusive of porches, garages, and breezeways:

(a) 2,600 square feet, single story or split-level, two-car garage attached:

(b) 2,800 square feet, single story with detached garage, or two-story. Any structure having any second story area shall be classified as "two-story."

2. (a) Plans for all dwelling units must be submitted to the Architectural Review Committee for approval before construction on any such units may begin, in accordance with the provisions contained in paragraph "B" below, entitled "Architectural Review Committee."

(b) All dwelling units hereafter constructed in such subdivision shall be constructed in a good and workmanlike manner with the use of new materials and in such a way as to present a neat and attractive appearance in the area thereof. The exterior walls of all main dwelling units so constructed on said property, exclusive of porches, garages, and breezeways appurtenant thereto, shall be constructed of at least 50% stone or brick, unless approved otherwise by the Architectural Review Committee and with it being specifically here provided that no houses or other structures shall be moved onto any lot in such subdivision, other than commercially constructed childrens' playhouses and storage buildings when approved by the Architectural Review Committee.

...

7. No trailer house or mobile home shall be permitted on any lot in such subdivision, with the exception that one vacation-type mobile home or other type of recreational vehicle may be parked at or near a main dwelling unit in such subdivision provided it is not used as living quarters, provided it is kept in a closed garage or other enclosed area approved by the Architectural Review Committee. It is prohibited to park a trailer house, mobile home, motor home, camper, any other type of recreational vehicle or boat on the streets in the subdivision or in front of any dwelling unit. It is also prohibited to park such vehicles or boats in such a manner as to be visible from the streets or golf course fairways. *All such recreational vehicles, mobile homes or boats must be kept in closed garages or other enclosed areas approved by the Architectural Review Committee.*

8. No fences shall be constructed within the 40 foot setback line of the back lot line of all fairway lots. All fencing shall be constructed of wood, stone, or brick, unless otherwise approved by the Architectural Review Committee. Only fences constructed of quality materials and good

workmanship will be allowed. ALL FENCES MUST BE APPROVED BY THE ARCHITECTURAL REVIEW COMMITTEE PRIOR TO CONSTRUCTION, BOTH AS TO QUALITY OF MATERIALS AND AS TO CONSTRUCTION, AS WELL AS THE LOCATION THEREOF.

9. No animals will be permitted on any lot in such subdivision except household pets, with it being specifically understood that no livestock of any type will be permitted on any part of said subdivision. Dogs maintained outside of a residence must be on a leash or under fence.

10. No firearms shall be discharged nor shall any hunting be done with any type of weapon within said subdivision.

11. No part or portion of such subdivision shall be used as a junk yard or as an area for the accumulation of scrap or used materials and no part of such subdivision shall be used for any purpose that is obnoxious or offensive to the owners of other lots in such subdivision, nor shall anything be done in such subdivision that becomes an annoyance or nuisance to the owners of other lots in said subdivision.

12. (a) Resubdivision, partition, partial conveyance, or ownership in divided or separate interests of any tract shall be permissible and lawful only if approved in writing by the Restriction Committee, sewer company and water company, as provided in paragraph (b) herein, and is otherwise in full compliance with and conformity to all provisions hereof.

(b) Plans for such resubdivision as described in Paragraph 13(a) must be submitted to the Restriction Committee, the sewer company and the water company for approval prior to resubdivision, partition or partial conveyance. Failure to submit plans for resubdivision for approval will render such resubdivision, partition, partial conveyance or ownership in divided or separate interests void and without effect.

13. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. No utility company, water district, political subdivision or other authorized entity using the easements herein referred to shall be liable for any damage done by them or their assigns, agents, employees or servants to property of the owner situated within such easement. Wherever utility easements are shown and the owner constructs a fence over said easement, the owner shall construct a gate over said easement to allow access by the authorized entity using said easements. ALL UTILITIES SHALL BE PLACED UNDERGROUND: NO POLES, OVERHEAD LINES, OVER-GROUND PIPES OR CONDUITS ARE ALLOWED.

...

17. No professional, business or commercial activity to which the general public is invited shall be conducted on any lot.

18. No flat roofs will be permitted unless specifically approved by the Architectural Review Committee. Exterior color schemes on fairway lots must be approved by the Architectural Review Committee.

22. Ham radio antennas, television antennas or earth satellite stations ("dish" antennas) or other similar high towers or antennas shall not be allowed on any lot without prior written approval of the Restriction Committee.

23. All purchasers of fairway lots are required to complete the construction of a main dwelling unit on said fairway lot within five years from the date of purchase of said lot. If at the expiration of five years from the date of said purchase said main dwelling unit has not been constructed, the grantors reserve the right to repurchase said lot at its original sales price.

#### B. ARCHITECTURAL REVIEW COMMITTEE

PRIOR TO THE CONSTRUCTION OF ANY SINGLE FAMILY DWELLING UNIT, DETACHED GARAGE, GUEST HOUSE, SHED, FENCES, BARN OR OTHER BUILDING IN SUCH SUBDIVISION, A COMPLETE SET OF PLANS AND SPECIFICATIONS MUST BE SUBMITTED FOR REVIEW AND APPROVAL OF THE ARCHITECTURAL REVIEW COMMITTEE. ALONG WITH THE SUBMISSION OF SUCH PLANS AND SPECIFICATIONS A FEE OF \$75.00 PAYABLE TO THE COUNTRY HAVEN HOMEOWNERS ASSOCIATION SHALL BE SUBMITTED TO COVER THE EXPENSES OF THE COMMITTEE IN REVIEWING THE PLAN AND MAKING REQUIRED INSPECTIONS BEFORE CONSTRUCTION IS STARTED. The plans and specifications must state the total living area available in each single family dwelling unit, exclusive of garages, porches and breezeways. In addition, for each of the aforesaid listed buildings, a plot plan must be submitted which shows all elevations, with the locations of each building with reference to front, side, and rear setback lines, and which shows all utility, drainage, and other easements affecting said lot.

#### C. RESTRICTION COMMITTEE

All architecture, plans and buildings in the subdivision shall comply with all applicable laws and building codes as well as with general and special restrictions herein, and any variances therefrom shall be subject to the approval of the Restriction Committee. The original Committee shall consist of five nominees of Denise and Dennis DeWitt.

The Restriction Committee retains the right in furtherance of a uniform plan for the development of Country Haven as a high-class residential subdivision, but subject to the limitations hereinafter recited, to execute amendments to, including granting variances from and on the aforesaid restrictive covenants and use limitations, provided they, in the exercise of their best

judgment and discretion, are of the opinion that any such amendments or variances would be in furtherance of the uniform plan for the development of such subdivision. [Additional provisions concerning selection of the members of the Restriction Committee and their powers are omitted.]

#### D. COUNTRY HAVEN HOMEOWNERS ASSOCIATION

All residential lot owners shall become and continue to be members of the Country Haven Homeowners Association and agree to comply with its governing articles, the purposes of which are to provide various services and facilities for the use and benefit of the property owners, and all lot owners agree to accept such membership and to perform and be bound by the obligations, terms, and conditions of membership in such Homeowners Association in accordance with its duly provided charter, by-laws and resolutions. [The "governing articles" of the Homeowners Association provide that the Association will maintain various common facilities within the subdivision, including streets, street lights, bicycle paths, parks, and playgrounds. For these services, owners of each lot must pay \$75 per year.]

#### E. DURATION AND AMENDMENT

The covenants, conditions, and restrictions of this declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Restriction Committee or the owner of any lots subject to the restrictions in this declaration, and their respective legal representatives, heirs, successors, and assigns. It is further expressly understood that the undersigned [Dennis and Denise], the Restriction Committee, or any one or more of the owners of the properties in said subdivision shall have the right to enforce the restrictive covenants and use limitations herein provided for on said subdivision by injunction in order to prevent a breach thereof or to enforce the observance thereof, which remedy however, shall not be exclusive and the undersigned, the Restriction Committee or any other person or persons owning property in said subdivision injured by virtue of the breach of the restrictions and use limitations herein provided for on said subdivision shall accordingly have their remedy for the damages suffered by them as a result of any breach, and in connection therewith it is understood that in the event of a breach of these restrictions and use limitations by the owner of any lot or lots in said subdivision it will be conclusively presumed that the other owners of lots in said subdivision have been injured thereby. It is further expressly understood that the undersigned shall continue to have the right to enforce such restrictive covenants and use limitations after all property has been sold by them but shall have no obligation to do so. [The document goes on to state that the restrictions shall be effective until September 1, 2020, and will then be automatically extended for successive periods of ten years, unless by a vote of three-fourths of the owners of lots the restrictions are terminated.]

## Appendix B - Governing Law

For purposes of the examination, you are to assume that the "general American common law" of property is in force, subject to the following statutes which are part of the Property Code of the State of South Illigan and to any additional information presented with the examination problems..

### § 5. Instrument of Conveyance

A conveyance of an estate of inheritance, a freehold, or an estate for more than three years, in land and tenements, must be in writing and must be subscribed and delivered by the conveyor or by the conveyor's agent authorized in writing.

### § 13. Validity of Unrecorded Instrument

(a) A conveyance of real property or an interest in real property or a mortgage or deed of trust is void as to a creditor or to a subsequent purchaser without notice unless the instrument has been filed for record as required by law.

(b) The unrecorded instrument is binding on a party to the instrument, on the party's heirs, and on a subsequent purchaser who does not pay a valuable consideration or who has notice of the instrument.

### § 14. Effect of Recorded Instrument

An instrument that is properly recorded in the proper county is notice to all persons of the existence of the instrument.

§ 92. Landlord's Duty to Repair or Remedy

(a) A landlord who leases residential premises shall make a diligent effort to repair or remedy a condition if:

- (1) the tenant specifies the condition in a notice to the person to whom or to the place where rent is normally paid;
- (2) the tenant is not delinquent in the payment of rent at the time notice is given; and
- (3) the condition materially affects the physical health or safety of an ordinary tenant.

(b) The landlord does not have a duty to repair or remedy a condition caused during the term of the lease, including a renewal or extension, by the tenant, a member of the tenant's family, or a guest of the tenant, unless the condition was caused by normal wear and tear.

(c) The tenant's notice under Subsection (a) must be in writing only if the tenant's lease is in writing and requires written notice.

§ 97. Effect on Other Rights

The duties of a landlord and the remedies of a tenant under this subchapter are in lieu of existing common law and other statutory law warranties and duties of landlords for maintenance, repair, security, habitability, and nonretaliation, and remedies of tenants for a violation of those warranties and duties.