OREGON LAW CENTER
522 SW 5th Avenue, Suite 812
Portland, OR 97204

November 3rd, 2014

The Honorable Joan Zeldon, Chair
Drafting Committee to Revise the Uniform Residential Landlord and Tenant Act
c/o Uniform Law Commission
111 N. Wabash Avenue, Ste. 1010
Chicago, IL 60602

Re: Comments Regarding the Domestic Violence, Sexual Assault, and Stalking Provisions of the October 17, 2014 Draft Revised Uniform Residential Landlord and Tenant Act

Dear Chair Zeldon, and members of the drafting committee:

I again thank you for your work and leadership in revising the draft of the Revised Uniform Residential Landlord and Tenant Act (URLTA), and for welcoming the participation of observers in the process.

I apologize that I am not able to attend this upcoming meeting in person, and appreciate the opportunity to provide written comments for the committee's consideration. As usual, my comments are confined to the domestic and sexual violence provisions of the draft. Given recent national events, the issue of safety for victims of domestic and sexual violence seems more pressing now than ever. The harsh reality is that victims often face great barriers in finding and maintaining safe housing for themselves and their children. These barriers make it more difficult for victims to escape abuse. The drafting of a revised URLTA provides an opportunity to offer states across the nation solutions that provide safety for victims and balance the needs of both landlords and tenants.

There have been many positive edits to the new draft since the last committee meeting, and I appreciate the work on this draft to-date. My comments on the revised draft are to address priority issues I feel are as yet unresolved, and to specifically answer the questions I saw raised on the issue list prepared for the committee discussion. Below are my comments:

Article 11, Section 1101 (early lease termination):

The draft provides that a landlord's duty in (a) to release a victim from the lease only applies to Tenants who have a "reasonable fear of a further act of domestic violence by continued residence in the dwelling unit" and who submit a notice complying with (b). Subsection (b) requires that the tenant state facts giving rise to the fear. A landlord trying to determine whether or not he or she is obliged to release a tenant from the lease pursuant to this Act must therefore necessarily make a determination of whether or not the Tenant has a reasonable fear of further violence, and whether there are facts stated in the notice describing this fear. There are two concerns about this section as it is presently drafted:

1) Landlords ought not to be in the position of having to assess whether or not a victim's fear is reasonable. Many landlords are not domestic or sexual violence experts, and do not receive training about how to make lethality assessments or how to determine reasonableness of fear. In addition, victims in their crisis may not do a good job describing the reasons for their fear, or they may be reluctant to provide full details to the landlord due to privacy, stigma, or fear of retaliation by the perpetrator. Asking landlords to make reasonableness determinations puts victims at risk of harm and landlords at risk of liability for making the wrong call. The better practice would be to allow victims relief so long as they have independent verification of recent abuse by a court order, conviction, or third party verification.

2) Some victims need and deserve access to early lease terminations even though there is no risk of further violence. There may be a risk of further **harm** by continued residence, if not of further **violence**. For example:

a. Our office had a client whose ex-partner came to her home and shot himself on the doorstep. The perpetrator in this instance was dead and clearly not a continued threat. However, imagine the trauma caused by witnessing such an event on the doorstep of a home. The damage to the victim and to any children living in the home would be immense, and recovery may be impossible while having to cross that threshold every day.

b. Consider the instance of a sexual assault that took place in the home. Even if the perpetrator were in jail at the time of victim's request and thus not a risk at that moment, the trauma caused to the victim in having to remain in the home at the scene of the crime would be immense.

Recommendation: Allow victims to qualify for early lease termination so long as they have independent verification of recent abuse by a court order, conviction, or third party verification. If the committee chooses to retain a "fear of further abuse by continued residence" requirement, I respectfully urge the committee to consider removing the word "reasonable" from Section 1101(a), and to allow the fear prong to be met by a fear of further **harm** (which could be psychological harm). See below:

> Section 1101. (a) Subject to subsection (e), if a victim of an act of domestic violence is a tenant or immediate family member and has a ~~*reasonable*~~ fear of ~~*a*~~ further **harm** ~~*act of domestic violence*~~ by continued residence in the dwelling unit, the tenant shall be released from the lease, without the necessity of the landlord's consent, by giving the landlord a notice that complies with subsection (b) and one of the following:…..

Article 11, Section 1105 (Lock changes):

Thank you for the good work that went into this section since the last draft. However, subsection (c), which addresses lock changes when the perpetrator is a co-tenant, ought to apply to ex parte orders. When a landlord has a copy of a valid court order currently in effect that requires the perpetrator to vacate the dwelling unit, the landlord has no obligation to allow the perpetrator into the unit and in fact risks liability by doing so. In order for a victim tenant to qualify for a lock change against a co-tenant, a valid ex parte order ought to be sufficient. The lock change would be consistent with the current terms of the court order, and in many cases, a lock change may be the only way to effectively implement or enforce an existing protection order. Note that a higher standard should be necessary to permanently terminate the lease interest of a perpetrator (see below).

Recommendation: Delete the exception for ex parte orders in subsection (c).

Article 11, Section 1107 (Termination of Perpetrator's Tenancy):

While my interest is in protecting victims, I echo the due process concerns that were identified as raised on the Floor in Seattle (**issue #19** on list of issues prepared for the November Drafting Meeting). It seems inappropriate to allow a landlord to summarily and permanently terminate a perpetrator's tenancy so easily. An alleged perpetrator ought to have notice prior to eviction, and the opportunity to challenge that eviction. Where there is evidence of the perpetrator's commission of a crime of physical violence creating a threat to others, it seems appropriate to provide a very expedited and short notice period, with the opportunity for the accused to challenge the notice. This process is probably also important to victims, who may sometimes be falsely accused, as in cases of competing orders of protection.

Recommendation: In subsection (a), provide 24 hours' notice prior to eviction in the event of evidence of a crime of physical violence.

Article 11, Section 1108 (Limitation on Landlord's Conduct with respect to Victims of an Act of Domestic Violence):

1) Subsection (b) of this section prohibits a landlord's discriminatory actions if the landlord's "*dominant purpose*" is to discriminate against a victim. The fact that a tenant is or has been a victim should be any factor in a Landlord's adverse decision or action. The use of the "dominant purpose" standard in this subsection significantly reduces any protection provided to victims by the rest of the section. The word "dominant" should be deleted.

2) The exemption in subsection (d) allowing a landlord to hold a victim of crime accountable for the actions of a perpetrator of violence against her ought to be allowed only in egregious circumstances. This question was raised in issues #20 and #21 on the list of issues prepared for the November Drafting Meeting. An adverse action of this sort against a victim ought to be allowed only if, after a warning, the victim tenant allows a perpetrator as an unauthorized occupant, or when the perpetrator is invited by the tenant and is an *actual and imminent threat* to the landlord, landlord's agent, or other tenants if the victim's lease is not terminated. This would be consistent with the standard set out in VAWA at 42 U.S.C. § 1437d(l)(6)(E); 42 U.S.C. § 1437f(o)(7)(D); 42 U.S.C. § 1437f(o)(20)(D)(iv).

A broader exemption than is allowed in VAWA would put victims in untenable situations in which their housing stability would be at risk because of the actions of a perpetrator. For example, a victim may have children with a perpetrator, and be required to allow access to the children at the home. If an invited perpetrator attending a birthday party, for example, refuses to leave after the party and disturbs the peace or causes property damage, it is against public policy to allow a resulting eviction of the victim and the children. Only if the perpetrator was an imminent threat to the safety of other people on the premises is the countervailing public policy sufficient to limit the victim's protections.

Recommendation: Delete the word "dominant" from subsection (b), and remove the brackets from the term "actual and imminent" in subsection 2(A). The new suggested 2(B) should be deleted, and the alternate (2) should be deleted.

Thank you for the commitment and attention of the committee and the drafters towards the goals of protecting survivors, respecting the reasonable needs of landlords, and ensuring safety for all. I very much appreciate the opportunity to comment.

Sincerely,

Sybil Hebb,
Oregon Law Center
