

OREGON LAW CENTER

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Portland, OR 97204

February 17th, 2015

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 Provisions of the Draft Revised Uniform Residential Landlord and Tenant Act (February 20-21, 2015 version)

Dear Chair Zeldon and members of the drafting committee:

Thank you again for your work and leadership in revising the draft of the Revised Uniform Residential Landlord and Tenant Act (RURLTA), and for welcoming the participation of observers in the process. I apologize that I am not able to attend this meeting in person due to the Oregon legislative session schedule, and appreciate the opportunity to provide written comments for the committee's consideration.

We appreciate the work of the committee in adding protections for tenants who are victims of sexual assault, domestic and dating violence, and stalking. There are significant improvements in the February 2015 revised draft, and we appreciate the obvious care and consideration by the Chair, committee, and staff. We have the following remaining final areas of concerns as summarized below for the committee's consideration. In identifying these concerns, we are guided by the following:

1. The experiences of our clients who are victims;
2. Our work negotiating with landlords in the drafting and implementation of Oregon's legislation on these issues, (ORS 90.445 - .459, in effect since 2003 and 2007);
3. The principles underlying the housing provisions of the Violence Against Women Act;
4. The 2015 ABA House of Delegates Domestic Violence Resolution.

1. Article 11, Section 1101 (early lease termination): The draft still provides that whether or not a release is effective hinges on whether or not there is a reasonable fear of further violence.

a) The lack of clarity or guidance as to how and when a fear might be reasonable puts victims as well as landlords in an uncertain position. Is this a reasonable person standard, or a reasonable person in the victim's position standard? Landlords are not experts in assessing reasonableness of fear in domestic violence situations. If, as the committee has asserted, no judgment by the landlord is required, why use the word "reasonable"? We remain concerned about this language.

b) Why is fear of further *violence* required? In the aftermath of violent assault in or near the home, even if there is no actual risk of future violent acts by the perpetrator (for example, if the perpetrator is in jail, or deceased), victims suffer great psychological trauma. A victim of violent rape, for example, may be psychologically unsafe in the home where she was assaulted, even if the perpetrator is not physically able to commit further acts of violence against her. Under the

current draft, this person would not qualify for relief, which seems an unintended consequence.

Solution: The simplest solution would be to provide the availability of relief based on whether or not there has been abuse, as verified according to the Draft, within the requisite time period. If there has been verified abuse, the Draft ought to defer to the victim's own safety-planning and the victim's sense of whether it is necessary to move in order to protect him/herself and family from further physical or psychological harm. Alternatively, if the committee determines that it is necessary to require the victim to assert fear, the "reasonable" qualifier ought to be removed, and the type of fear ought to be broadened to encompass future suffering or harm due to the impact of domestic violence, and not limited to future acts of violence:

(a) Subject to subsection (e), if a victim of an act of domestic violence is a tenant or an immediate family member and has a reasonable fear of future physical or psychological harm related to a further act of domestic violence if the victim continues to reside in the dwelling unit, the tenant is released from the lease, without the necessity of the landlord's consent, if the tenant gives the landlord a notice that complies with subsection (b) and:

2. Article 11, Section 1107 (Termination of Perpetrator's Tenancy): We appreciate the goal behind this provision and agree that landlords need the authority to terminate the tenancy of a perpetrator who is causing danger or damage on the premises. However, the draft language is very broad, and triggers due process as well as safety concerns. This provision would better balance the legitimate needs of landlords as well as victims if it were narrowed to require some concrete nexus to a significant threat to other tenants before the remedy of immediate termination were allowed. This would be consistent with Oregon's 90.445 (2007)¹ as well as with Section 606 of Title VI of existing VAWA provisions. This language would still respect the landlord's needs but better protect victims from: a) potential false accusations by a perpetrator (a common tactic used by abusers that could result in eviction of the wrong person); and b) retaliation from a perpetrator who could assume the victim had reported him if it was not otherwise obvious that the landlord or other tenants had cause to know about the abuse.

Solution:

We agree that the standard should be a preponderance of the evidence, but propose a more concrete standard and a greater nexus to the housing and danger to other tenants, for example:

(a) If a landlord has a reasonable belief that a tenant has perpetrated a criminal act of domestic violence against another individual on the premises is a perpetrator, the landlord may terminate the interest of the perpetrator under the lease by giving the perpetrator notice in a record of the landlord's intent to terminate the interest immediately or on a later date specified in the notice. The notice shall specify the act of domestic violence for which the landlord is terminating the perpetrator's interest.

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

a) 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 not be a factor in a Landlord's adverse decision or action against the tenant. To allow this consideration is to endorse the concept that the victim is responsible or to blame for the violent acts of the perpetrator. The use of the "dominant purpose" standard in this subsection significantly reduces any protection provided to victims by the rest of the Act. We echo the concerns about this standard expressed in Mr. McDonough's letter of 2/17/15.

Solution: Delete the "dominant purpose" standard from subsection (b), and prohibit adverse action because a tenant is a victim.

(b) Except as otherwise provided in subsection (c), a landlord may not take any of the actions in Section 901(b) or refuse or threaten to refuse to let a dwelling unit ~~when the landlord's dominant purpose for 13 engaging in the conduct is that:~~ because:

(1) the tenant or an immediate family member is or has been the victim of an act of domestic violence;

(2) an act of domestic violence against a tenant or an immediate family member resulted in a violation of the lease or this [act] by the tenant; or

(3) a complaint of activities relating to an act of domestic violence against the tenant or an immediate family member resulted in a law enforcement or a police or emergency response.

b) The exemption in subsection (c) allowing a landlord to terminate the tenancy of a victim of crime because of the actions of the perpetrator ought to be allowed only in egregious circumstances. The current draft reflects important improvements in this standard, which are appreciated. One vitally important element of this provision is the requirement in (a)(1)(A) that the victim have written notice from a landlord as to the potential consequences of inviting the perpetrator on the premises. However, the language in (c)(1)(B) allows the existence of a protection order as a substitute for notice from the landlord. This provision must be deleted. Including this provision is akin to holding a victim accountable for a violation of an order that applies to someone else, and is contrary to the provisions of Section 606 of Title VI of VAWA. In addition, there are practical problems because in many states, it is possible that the person seeking the protection order is not the victim (criminal courts sometimes impose these no contact orders automatically, sometimes parents or employers have the right to seek protection orders) and in these cases the victim may often not even know of the existence of the order. Even if the victim does know of the order, it may often be the case that inviting the perpetrator onto the premises is the only safe option for the victim, depending on the circumstances. For example, a perpetrator may demand access to personal property in the dwelling unit, which if denied could result in further violence, but if granted could be resolved quickly.

In addition, the victim of a crime ought not to risk housing stability because of the perpetrator's minimal damage to premises. This is contrary to the purpose of the act, which is to protect victims of crime from the ramifications of the actions of perpetrators. 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. The language in (c)(2)(B) should also be deleted.

Making these changes would be consistent with the standards set out in VAWA at 42 U.S.C. § 1437d(1)(6)(E); 42 U.S.C. § 1437f(o)(7)(D); 42 U.S.C. § 1437f(o)(20)(D)(iv), with ORS 90.449(3)ⁱⁱ and with the principles of the ABA resolution.

Summary:

This draft, with these changes, will offer remarkable opportunity for states across the nation to adopt solutions that provide safety for victims and balance the needs of both landlords and tenants. 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

ⁱ 90.445 Termination of tenant committing criminal act of physical violence. (1) If a tenant perpetrates a criminal act of physical violence related to domestic violence, sexual assault or stalking against a household member who is a tenant, after delivery of at least 24 hours' written notice specifying the act or omission constituting the cause and specifying the date and time of the termination, the landlord may:

(a) Terminate the rental agreement of the perpetrating tenant, but may not terminate the rental agreement of the other tenants; and

(b) If the perpetrator of the criminal act of physical violence related to domestic violence, sexual assault or stalking continues to occupy the premises after the termination date and time specified in the notice, seek a court order under ORS 105.128 to remove the perpetrator from the premises and terminate the perpetrator's tenancy without seeking a return of possession from the remaining tenants.

(2) A landlord that terminates the tenancy of a perpetrator under this section may not require the remaining tenants to pay additional rent or an additional deposit or fee due to exclusion of the perpetrator.

(3) The perpetrator is jointly liable with any other tenants of the dwelling unit for rent or damages to the premises incurred prior to the later of the date the perpetrator vacates the premises or the termination date specified in the notice.

(4) The landlord's burden of proof in a removal action sought under this section is by a preponderance of the evidence.

ⁱⁱ 90.449 Landlord discrimination against victim; exception; tenant defenses and remedies.

(1) A landlord may not terminate or fail to renew a tenancy, serve a notice to terminate a tenancy, bring or threaten to bring an action for possession, increase rent, decrease services or refuse to enter into a rental agreement:

(a) Because a tenant or applicant is, or has been, a victim of domestic violence, sexual assault or stalking.

(b) Because of a violation of the rental agreement or a provision of this chapter, if the violation consists of an incident of domestic violence, sexual assault or stalking committed against the tenant or applicant.

(c) Because of criminal activity relating to domestic violence, sexual assault or stalking in which the tenant or applicant is the victim, or of any police or emergency response related to domestic violence, sexual assault or stalking in which the tenant or applicant is the victim.

(2) A landlord may not impose different rules, conditions or standards or selectively enforce rules, conditions or standards against a tenant or applicant on the basis that the tenant or applicant is or has been a victim of domestic violence, sexual assault or stalking.

(3) Notwithstanding subsections (1) and (2) of this section, a landlord may terminate the tenancy of a victim of domestic violence, sexual assault or stalking if the landlord has previously given the tenant a written warning regarding the conduct of the perpetrator relating to domestic violence, sexual assault or stalking and:

(a) The tenant permits or consents to the perpetrator's presence on the premises and the perpetrator is an actual and imminent threat to the safety of persons on the premises other than the victim; or

(b) The perpetrator is an unauthorized occupant and the tenant permits or consents to the perpetrator living in the dwelling unit without the permission of the landlord.

(4) If a landlord violates this section:

(a) A tenant or applicant may recover up to two months' periodic rent or twice the actual damages sustained by the tenant or applicant, whichever is greater;

(b) The tenant has a defense to an action for possession by the landlord; and

(c) The applicant may obtain injunctive relief to gain possession of the dwelling unit.

(5) Notwithstanding ORS 105.137 (4), if a tenant asserts a successful defense under subsection (4) of this section to an action for possession, the tenant is not entitled to prevailing party fees, attorney fees or costs and disbursements if the landlord:

(a) Did not know, and did not have reasonable cause to know, at the time of commencing the action that a violation or incident on which the action was based was related to domestic violence, sexual assault or stalking; and

(b) Promptly dismissed tenants other than the perpetrator from the action upon becoming aware that the violation or incident on which the action was based was related to domestic violence, sexual assault or stalking.