

From: Nicole Upano
Sent: Wednesday, October 01, 2014 6:04 PM
To: 'Zeldon, Joan'
Cc: Fred Tayco; Greg Brown
Subject: NAA Comments on Readability

Dear Joan—

Thank you again for allowing NAA to participate in the drafting process of the Revised Uniform Residential Landlord and Tenant Act (RURLTA). Per your request, please find the comments our members have made regarding readability. As drafting the latest iteration is currently a work in progress, our comments are limited to the version of the draft in hand—the 2014 Annual Meeting Draft. Please see below.

Definitions Generally

Though we appreciate the time that the drafting committee has spent in crafting the definitions in Section 102, we find the definitions of “dwelling unit”, “landlord”, “lease” and “tenant” to be overly complex. The additional language in the definitions creates unnecessary length and does not provide clarity to the reader as intended. The updated terms have unintended consequences as the terms are applied to different sections of the draft.

By contrast, the definitions in the 1972 Act are more concise than the RURLTA iterations and reflect what many states have adopted in their own landlord and tenant acts. Even *slight* changes in the terms would have broader implications for the draft as it is applied to current landlord and tenant acts. See the attached side-by-side comparison. We ask that the committee to apply the above terms as defined in the 1972 Act to the RURLTA, or in the alternative, we suggest that you consider the terms as defined by other states in the attached chart.

The Definition of Lease

RURLTA uses the term “lease” instead of “rental agreement” as defined in the 1972 Act to refer to the contract between the parties. The term “rental agreement” should be used in the revised draft as the term “lease” could be confusing to the reader. The revised definition says “when used as a noun,” exemplifying the complexity of the new language. If the term was clear, the statement would be unnecessary.

Term	1972 Act Definition - § 1.301	2014 Annual Meeting Draft - §102
Lease	(11) "rental agreement" means all agreements, written or oral, and valid rules and regulations adopted under Section 3.102 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises;	(20) “Lease,” when used as a noun, means a contract between a landlord and tenant in which the landlord rents to the tenant a dwelling unit for a tenancy for a fixed term or a periodic tenancy.

The updated term "lease" also affects its applicability in sections of the draft. Section 102 (20) of the RURLTA defines "lease" as a contract that can be either a fixed term or a periodic tenancy. Defining this term to include both a fixed term and a periodic tenancy has implications as it is applied in the sections of the draft below.

Section 305 (c) provides that "after commencement of a lease" a landlord may only modify a rule that "substantially modifies the tenant's bargain" if the tenant consents to the modification in a record signed by the tenant. Arguably, an increase in rent during a periodic tenancy (an agreement that does not specify duration of tenancy, such as a month-to-month) would substantially modify the bargain and thus require the tenant to consent to the rent increase in writing. This does not seem to be good policy. The landlord should be able to give notice of a rent increase during a periodic tenancy and the tenant either accepts the notice by remaining as a tenant and paying the increased rental amount or gives notice on his/her intent to vacate.

Section 702 (a) provides that a landlord may terminate the "lease" if the tenant refuses to allow access to the dwelling unit. A landlord should be able to terminate a periodic tenancy for such refusal but not if the tenancy is a fixed term tenancy. In the case of a fixed term tenancy, the landlord should be required to give a notice to comply or vacate rather than a termination notice.

Sections 802 (b) and (c) exacerbate the problem and confusion by stating that if a tenant remains in possession "after expiration of a tenancy for a fixed term **or termination of the lease.**" The language should be "after expiration of a tenancy for a fixed term **or termination of a periodic tenancy.**"

The RURLTA should define and use the term "rental agreement" instead of "lease" to refer to the contract between the parties. If not, then Sections 305 and 702 referred to above should specify whether the intent is to refer to both a fixed term and a periodic tenancy, or just one of them.

Thank you again for allowing NAA to participate in the drafting process of the Revised Uniform Residential Landlord and Tenant Act (RURLTA). Please let me know if you have any follow up questions. We look forward to continuing the conversation at the drafting committee's fall and spring meetings.

Thanks,
Nicole