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for

## UNIFORM REAL PROPERTY ACTS

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To: Uniform Law Commission  
Scope and Program Committee

Date: June 1, 2010

Re: Recommendation for Study Committee on Potential Revisions to  
Uniform Residential Landlord-Tenant Act (URLTA)

In its advisory role, the Joint Editorial Board for Uniform Real Property Acts ("Board") monitors the development of legal issues related to existing uniform laws. For the past several years, the Board has been studying several discrete issues arising under residential landlord-tenant law, but which the URLTA did not address. These issues include (a) characterization and handling of tenant security deposits and (b) rights and obligations of a tenant who is the victim of domestic violence.

*Characterization and Handling of Tenant Security Deposits.* While URLTA § 2.101 did require the landlord to return a security deposit, it failed to address a number of key issues, such as:

- What is the proper characterization of a tenant's security deposit (i.e., does the tenant continue to own the money with the landlord holding merely a security interest, do the funds constitute "trust" funds, or does the deposit constitute merely an interest-free loan to the landlord)?
- Must the landlord segregate tenant security deposits from the landlord's other funds (and can the parties contract out of a segregation requirement)?
- Must the landlord pay interest on tenant security deposits (and can the parties contract out of a requirement to pay interest)?
- Within how much time must landlord return a security deposit, and is the landlord's return obligation triggered by the expiration/termination of the lease or formal demand by the tenant?
- What obligation, if any, does the landlord's successor have to refund security deposits, and is this obligation dependent upon the successor's receipt of the security deposits?

As the attached memorandum describes, the fact that URLTA does not address these issues directly has produced inconsistent judicial opinions and has prompted a variety of nonuniform statutory provisions. Further, some of the judicial opinions (particularly about the appropriate characterization of a security deposit) raise questions about consistency with the treatment of deposits under other uniform laws, including UCC Article 9 and the Uniform Consumer Leasing Act. For these reasons, the Board recommends that the ULC appoint a Study Committee to consider amendments to URLTA § 2.101 addressing these questions (and the additional questions identified in the attached memorandum).

***Rights and Obligations of Tenant Victimized by Domestic Violence.*** The United States continues to experience a substantial problem with domestic violence. Between 1993 and 2002, approximately 1 in 10 incidents of violence occurred within families/households. During that same period, over 75% of non-fatal violent crimes committed against spouses and over 65% of crimes against the offender's child occurred at or near the victim's home or apartment. These crimes include assault, rape and sexual assault. Typically, we place a high value on the safety and security of our homes, yet these statistics show that victims of family or domestic violence cannot rely on their home as a safe haven.

Experts in the area of domestic violence suggest that one of the most important factors in escaping domestic violence is for the victim to get away (physical separation) from the offender and the violent situation. The ability to do so, however, has proven to be a problem for victims who are parties to a lease agreement. These victims may face steep early termination penalties or continued liability for unaccrued rent, simply for wanting to escape a dangerous situation. This is especially harmful for those victims who have little or no financial support. As a result, domestic violence victims may feel economically compelled to choose to stay with their abuser or in their current living situation, rather than face the economic hardship of leaving.

Another problem faced by tenant victims of domestic violence is that landlords sometimes use domestic disturbances as a basis to terminate a victim's lease. For example, where police are called to an apartment based upon a report of a domestic disturbance, landlords have used such incidents as a basis to terminate the lease based upon the tenant's alleged noncompliance with lease provisions that require the maintenance of quiet hours or that proscribe activity that disturbs the quiet enjoyment of other tenants. While landlords plainly have a legitimate interest in protecting the quiet enjoyment of other tenants, termination of a lease based solely upon a reported incident of domestic violence may have the undesirable effect of discouraging a victim of domestic abuse from contacting the police or seeking police protection, for fear of having her lease terminated.

Nothing in the URLTA addresses these issues, as public consciousness of the levels and consequences of domestic violence was much lower at the time the URLTA was drafted. To address these problems, however, fifteen jurisdictions (AZ, CA, CO, DE, DC, IN, MD, MN, NC,

ND, NJ, NY, OR, TX, WA) have recently enacted statutes that address the rights and obligations of tenant victims of domestic violence.<sup>1</sup> As explained in the background memorandum accompanying this proposal, these statutes allow a tenant who is a victim of domestic violence to terminate his or her lease without penalty and with no or limited liability for unaccrued rent. Some (but not all) of these statutes also address the ability of a landlord to terminate a lease based upon incidents of domestic violence. However, there are important variations in these statutes with regard to certain critical issues, such as:

- What type of domestic abuse is sufficient to trigger a termination right, what documentation of that abuse is required, and within what period following the abuse must the victim seek to terminate the lease?
- What amount of notice must the victim provide to the landlord to terminate her liability?
- What impact, if any, does the victim's notification have on the rights of possession and liability of other signatories to the lease, including (if applicable) the abuser?
- To what extent can the landlord hold the tenant victim responsible for rent that would have accrued but for the tenant's termination, and to what extent can the landlord apply a tenant's security deposit toward that obligation?

The Board believes that the recent enactment of these statutes (and pending introductions in other states) reflects a growing appreciation of the nature of the serious economic and personal safety problems faced by tenant victims of domestic violence. At the same time, variation in the existing statutes raises important questions about the threshold showing a tenant should have to make to establish such a termination right and how that right should properly be balanced against a landlord's legitimate expectation of being able to collect the rental stream contracted for in its existing leases. As a result, the Board recommends that the ULC also appoint a Study Committee to consider amendments to URLTA addressing this issue. The accompanying background memorandum identifies specific questions that could be addressed in such amendments.

***Other Scope Issues.*** This letter and the accompanying memorandum focus only upon the two specific issues discussed above. However, if a Study Committee is appointed, that Committee might seek input from potential stakeholders/observers regarding whether other amendments to existing URLTA provisions might also be justified.

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<sup>1</sup>Six additional jurisdictions (Hawaii, Michigan, Ohio, Rhode Island, Tennessee, and Utah) have introduced bills in the 2010 legislative session. The attached memorandum does not directly address the content of these bills, instead focusing only upon already-enacted legislation, but the bills are similar in most respects to the existing statutes.

***Criteria for Uniform Acts.*** The Board believes that this proposal satisfies the ULC's criteria for uniform acts as reflected in its January 13, 2001 Statement of Policy Establishing Criteria and Procedures for Designation and Consideration of Acts.

As the accompanying memorandum demonstrates, there is an "obvious reason" for an Act. Amendments to URLTA § 2.101 to clarify the identified issues regarding the characterization and handling of security deposits will provide "a practical step toward uniformity of state law or at least minimizing its diversity." Amendments clarifying the rights and obligations of tenant victims of domestic violence will likewise promote uniformity of state law with respect to a matter of significant social concern.

As the original enactment of URLTA demonstrates, issues relating to residential landlord-tenant law are appropriate for state legislation. Amendment of the URLTA to address these specific issues would be consistent with the Conference's objective of promoting uniformity among the states "where uniformity is desirable and practicable." Further, the relatively widespread adoption of the URLTA (adopted in whole or in part in 21 states) suggests that there is a "reasonable probability" that amendments would be "accepted and enacted into law by a substantial number of jurisdictions."

Finally, amendments to the URLTA would "avoid significant disadvantages likely to arise from diversity of state law." These disadvantages not only include the present inconsistent treatment of otherwise similarly situated residential tenants in different states, but also the inconsistency between judicial characterizations of security deposits and the characterization of security deposits contained in other uniform acts such as the Uniform Commercial Code and the Uniform Consumer Leasing Act.

***Potential Stakeholders/Observers.*** As is typical for all real-estate related uniform laws, the ULC should invite the ABA Section on Real Property, Trust and Estate Law to identify an Adviser. Because the proposal addresses issues relating to domestic violence, the ULC should also solicit an adviser from the ABA Section on Family Law and its Domestic Violence Committee.

Further consultation with the ULC legislative staff will presumably identify additional persons of interest. Certainly, participants should include national trade groups representing owners, operators, or managers of residential and multi-family housing. Some of these include:

National Association of Residential Property Managers (NARPM)  
John Parker (Chair, Governmental Affairs Committee)  
638 Independence Parkway, Suite 100  
Chesapeake, VA 23320  
253-581-5199

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National Apartment Association (NAA)  
Gregory Brown (Vice President of Government Affairs)  
4300 Wilson Blvd., Suite 400  
Arlington, VA 22203  
703-797-0615

Institute of Real Estate Management  
Charles Achilles (Vice President, Legislation and Research)  
430 N. Michigan Ave.  
Chicago, IL 60611  
800-837-0706 ext. 6020

National Multi Housing Council  
Jim Arbury (Senior Vice President of Governmental Affairs)  
1850 M Street, N.W., #540  
Washington, DC 20036  
202-974-2321

National Affordable Housing Managements Association  
Lauren Eardensohn (Manager, Governmental Affairs)  
400 N. Columbus St., Suite 203  
Alexandria, VA 22314  
(703) 683-8630

Potential stakeholders representing tenant interests should include, at a minimum, representatives of AARP and NCLC. Additional advocacy groups might include:

John Romanin, Director of Legislative Initiatives  
American Tenants Association  
6726 E. Monterey Way, Suite C  
Scottsdale, AZ 85251

Consumer Federation of America  
1620 Eye Street, NW  
Suite 200  
Washington, DC 20006

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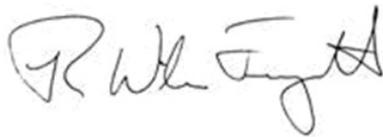
Participants with insight on domestic violence issues might include:

National Coalition Against Domestic Violence  
Terri Harper (Public Policy Manager)  
Pat Reuss (Policy Advisor)  
1100 H Street, NW  
Washington, DC 20005  
202-745-1211 ext. 143

National Center on Domestic and Sexual Violence  
Deborah D. Tucker (Executive Director)  
4612 Shoal Creek Boulevard  
Austin, Texas 78756  
512-407-9020

National Network to End Domestic Violence  
Monica McLaughlin (Housing and Program Specialist)  
2001 S Street NW, Suite 400  
Washington, DC 20009  
202-543-5566

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Wilson Freyermuth". The signature is written in a cursive style with a large initial "R" and a long, sweeping underline.

R. Wilson Freyermuth  
Executive Director, JEBURPA