

OREGON LAW CENTER

921 SW Washington, Suite 516
Portland, Or. 97205

MEMO

To: Members of the URLTA Drafting Committee
Co-Reporters Sheldon Kurtz and Alice Noble-Allgire

From: Sybil Hebb, Director of Policy Advocacy
Oregon Law Center
shebb@oregonlawcenter.org
503-936-8959

Re: Comments Regarding the Domestic Violence, Sexual Assault, and Stalking Provisions of the Draft Revised Uniform Residential Landlord and Tenant Act (for October 12-13, 2012 Drafting Committee Meeting)

Date: October 10, 2012

This memo is intended to provide comment for the URLTA drafting committee's consideration regarding the domestic violence, sexual assault, and stalking provisions in the revised URLTA draft. My comments are based on my experience as a legal aid attorney and policy advocate at the Oregon Law Center (OLC), which is a statewide provider of civil legal services.¹ Oregon has early lease termination, lock change, and other victim protections in our landlord-tenant statutes, developed and drafted in collaboration between landlord and tenant advocates. These statutes provide important safety protections for tenants, and I sincerely thank the committee members and the reporters for including these provisions in the revised URLTA, and for the excellent drafting work. I very much appreciate the opportunity to comment.

SECTION 102. DEFINITIONS:

(6) "Attesting third party" means a law enforcement official, a licensed health care professional, a victim's advocate, or a victim services provider who has had contact with the tenant or an immediate family member who has been the victim of domestic violence.

- **It would be helpful to include clergy members and licensed attorneys as qualifying attesting third parties.** The goal of the early lease termination provision is to remove obstacles to tenants who need to move in order to protect their safety. It is therefore important to ensure that the lease termination provisions are nimble enough to provide protection when it is needed. While it is reasonable to limit the definition of "attesting third party" to certain qualified professionals working with victims, the definition should not be so narrow as to create an unintentional barrier to those in need. In a time of crisis, it is very possible that a victim may reach out to an attorney or a clergy member for help,

¹ Thank you to Lisa Coleman of the National Law Center on Homelessness and Poverty for her consultation in the preparation of this memo. Any mistakes or errors are mine alone.

instead of consulting law enforcement, a health professional, or a victim advocate. It is important to note that victims in some cultures may be more likely to seek the help of a clergy member than of other professionals. Attorneys and clergy are both qualified professionals likely to work with victims, and ideally ought to be included in the model law. *Note: Oregon law (ORS 90.435(1)(b)) allows an attorney, in addition to a law enforcement official, health care professional, or victim services advocate or provider to be an attesting third party. Washington law (RCW 59.18.570) allows clergy members as attesting third parties.*

(8) “Domestic violence” means the infliction of physical injury, sexual assault, or the stalking of a tenant or an immediate family member by a perpetrator regardless of whether the perpetrator is related to the tenant or an immediate family member.

- **The definition of domestic violence ought to include threats of violence.** Often, acts of physical violence are preceded by threats of violence. The purpose of early lease termination for victims is to prevent future violence; the statute ought to provide protection to tenants who have been threatened. The housing protections in the Violence Against Women Act apply to victims of “actual or threatened domestic violence” and many if not most state restraining order statutes apply in cases of actual or threatened violence. *See VAWA 42 U.S.C. § 1437d (1)(5)(a) (incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as...); Or. Rev. Stat. § 107.705(1) (Definition includes attempt to cause bodily injury, and placing another in fear of imminent bodily injury); Wash. Rev. Code § 26.50.010(1) (definition includes the “infliction of fear of imminent harm”); Arizona Rev. Stat. § 36-3001 (definition includes “attempting to cause or causing bodily injury to a family or household member or placing a family or household member by threat of force in fear of imminent physical harm”); Michigan Comp. Laws § 400.1501(1)(d)(ii) (definition includes “placing a family or household member in fear of physical or mental harm.”)*
- **The term sexual assault ought to be defined as a distinct category, separate from domestic violence.** The term “domestic violence” is generally understood to apply to violence or the threat of violence (physical or sexual) between family members or dating/intimate partners. A victim who is sexually assaulted by a stranger or an acquaintance most likely will not self-identify as a victim of domestic violence, and therefore may not understand that the protections apply. Sexual assault should be defined separately as a stand-alone qualifying form of abuse in order to best accomplish the protection intended by the statute.

(13) “Immediate family member” means any of the following who resides in the dwelling unit with the tenant:

(A) an individual related to the tenant by blood, adoption, marriage, civil union, domestic partnership;

(B) a cohabitant having an intimate relationship with the tenant; and

(C) a foster child, stepchild, or ward of the tenant or of another individual named in subparagraphs (A) or (B) of this paragraph.

- **It may be worth specifying that the term immediate family member does not include a family member who is the perpetrator of the violence.** *See, for example, ORS 90.453(1)(a).*

SECTION 508. EARLY TERMINATION OF LEASE BY TENANT AS THE RESULT OF DOMESTIC VIOLENCE.

Subsection (a) (Qualifying Tenant):

- **The 90 day time limit for eligibility should be tolled while a perpetrator is in jail or living more than a minimum distance away from the victim.** It is appropriate to establish some time period within which the tenant was a victim in order to qualify for early lease termination. However, there are some circumstances in which the time period ought to be tolled. After an incident of abuse, a victim may be safe during the time a perpetrator is incarcerated pending trial or post-conviction. Or, a victim may flee after abuse and establish safety through distance. In each of these circumstances, the safety exists because of outside limits on the perpetrator's behavior. The safety may be destroyed upon release of the perpetrator or if the perpetrator discovers the victim's new location. In this circumstance, the threat of violence may spring up anew, even though the last incident was more than 90 days old. Tolling the time period for circumstances in which the perpetrator was incarcerated or living more than a minimum number of miles away would address this situation and better protect victims in need. *See ORS 90.453(2)(c)(B).*

Subsection (c)

- **This section ought to specify that a qualifying tenant who terminates a lease early ought not to be liable for rent or damages accruing after the termination date.** This subsection applies to circumstances in which there are multiple tenants subject to the lease. The language specifies that a qualifying tenant may be released from the lease, while other tenants remain subject to the lease. A qualifying tenant who is released from the lease should specifically not be liable for rent or damages accruing after the termination date. If this protection is not specified, many tenants who are victims will not be able to take the financial risk of seeking early termination. Such a barrier would be counter-productive for all parties.

Subsection (d)

- **The confidentiality provisions of (d) (3) are vital to accomplishing victim protection and ought not to be subject to broad exceptions.** Victims taking steps to identify and escape abuse incur great risk of perpetrator retaliation as well as shame and embarrassment. Confidentiality of information in this circumstance is important for both physical and psychological safety. The exemptions in (d)(3)(B) and (C) are too broad and would discourage tenants from seeking the protection of the statute. They should be narrowed as suggested below. The remaining exception detailed in 3(D) is a sufficient and flexible exemption to allow disclosure when necessary after taking victim safety ramifications into account.
 - **The exemption in (B) should be limited to information required in an action between the parties.** The landlord may have a legitimate need to disclose information provided by a tenant in a court action between the parties, but allowing disclosure of any information relevant to any kind of action is too broad an exception, and would allow disclosure of the victim's private information in a case perhaps only tangentially related to the landlord/tenant relationship. Such a broad disclosure would benefit neither landlords nor tenants.

- **The exemption in (C) should be deleted, and replaced with a specification that attesting third party statements do not waive any privilege that might apply to victim communications.** In most states, the victim’s communications with an attesting third party are protected by a statutory privilege. It is not in the interests of landlords or of victims to have this statute result in a blanket waiver of that privilege. Such a waiver would likely subject landlords to unwanted subpoenas and could result in safety ramifications for victims. Ideally, (C) should specify that any third party attestation does not waive the confidential or privileged nature of a communication between a victim and the attesting third party. Many states have provided this protection: *See RCW59.18.575; ORS 90.453(7).*

Subsection (e)

- **Expedited termination of a perpetrator’s tenancy ought not to be contingent on a victim’s use of the early termination statute.** It is reasonable for a landlord to want to evict a tenant who has perpetrated violence on another tenant, and reasonable to provide a short notice period prior to termination in egregious circumstances. However, a landlord may want to evict a perpetrator who has committed a violent act regardless of whether a victim tenant has sought early lease termination. The expedited termination provisions ought to apply whenever the perpetrator has engaged in criminal acts of physical violence and poses a threat to the physical safety of the landlord or other remaining tenants. *See 42 U.S.C. §1437(d)(1)(6)(B); ORS 90.445(1).*

Subsection (f)

- **The sanction proposed for false verification is unnecessarily punitive.** The attestation statement is made under penalty of perjury, which may be prosecuted. In addition, a landlord may sue a tenant for lost rent in any case in which the landlord believes the attestation to be false. The sanction ought not to be so punitive as to discourage use for fear that a court might find the victim had knowledge of facts that did not meet the statutory definition of domestic violence, sexual assault, or stalking. Three months’ rent or threefold damages is a far greater sanction than in most other areas of the model law. Damages provided for violations of this section of the Act ought to be consistent with other damages provisions.

Subsection (h)

- **(C) of this subsection should indicate that the most recent act of domestic violence, sexual assault, or stalking must be within 90 days of the date of the notice to the landlord.**
- **(D) of this subsection should indicate that the proposed date of termination of the lease must be at least 14 days from the date of the notice.**

SECTION 509. CHANGE OF LOCKS AS A RESULT OF DOMESTIC VIOLENCE.

Subsection (a)

- **Eligibility for lock change should extend to any qualifying tenant, regardless of whether the tenant chooses to do an early termination.** As drafted, this subsection allows lock change protection only for those tenants who do not choose to leave their units via early termination. However, if a safety risk is great enough, a tenant may need a

lock change for protection during the 2 week notice period, or during the time it takes to get packed and moved. Since the lock change is something the tenant would have to pay for, and since the tenant is required to provide the landlord with a new key, extending this right to all tenants who are victims would not unduly burden landlords.

- **If a lock change is necessary, a three-day window within which a landlord may provide the change may be too long.** Ideally, the act should provide a way for tenants to change the locks more promptly in pressing circumstances.

ADDITIONAL ITEMS:

- **Discrimination: The model act ought to prohibit discrimination against applicants or tenants who are victims or whose family members are victims.** The discrimination protections ought to apply to admissions, denials, terms, and conditions of rental housing. Additionally, tenants ought to have specific protection against discrimination for seeking or calling for police or medical protection. Such protections are in keeping with public policy and would be consistent with the protections applicable in public and section 8 housing under the Violence Against Women Act. *See for example, 42 U.S.C §1437d(c)(3);ORS 90.449.*
- **Landlord violation:The model act ought to specify how to manage circumstances in which landlords violate the provisions of the act.**
 - **Affirmative defense:** If a landlord violates the provisions of the act, a tenant ought to have an affirmative defense in an action for possession. *See for example, ORS 90.449(4)(b).*
 - **Penalty:** The act should specify that a tenant has the right to damages and injunctive relief against a landlord who violates the provisions of the act. *See for example, ORS 90.449(4)(a),(c).*