July 9, 2014

The Honorable Joan Zeldon
Uniform Residential Landlord and Tenant Act, Chair
c/o Uniform Law Commission
111 North Wabash Avenue, Ste. 1010
Chicago, IL 60602

**RE: National Apartment Association July 2014 Comments to Uniform Residential Landlord and Tenant Act**

Dear Chair Zeldon:

Thank you for allowing the National Apartment Association (NAA) to participate in the Uniform Law Commission's (ULC) update of the Uniform Residential Landlord and Tenant Act (URLTA). We appreciate the Drafting Committee's consideration of the apartment industry's expertise and concerns on this matter. Participation in this process has been invaluable for the rental housing industry.

On behalf of the 170 state and local affiliated associations and more than 64,000 members representing 7.3 million apartment homes throughout the United States and Canada, we would like to share some of our most significant concerns with the latest URLTA draft (the draft). For your reference, this is a follow up to the concerns raised in our letter to the ULC of November 8, 2013 entitled "National Apartment Association November 2013 Comments to the Revised Uniform Residential Landlord and Tenant Act."

Using the 1972 Act as a baseline, observers can easily see how each state's landlord-tenant law has evolved to independently address its individual needs, reflect its diverse rental housing stock and account for overlaying regulatory and municipal ordinances. All of these factors make it difficult to achieve the goal of nationwide uniformity and could result in unintended consequences. We have identified some of those below.

## I. Complexity of Draft Language

State laws cover a variety of topics. Of all of these, landlord and tenant law should be the most accessible and easiest to comprehend. Housing affects each and every person residing in a state from the general layperson who has questions about his or her responsibilities as a tenant to the novice landlord with one unit to rent.

This is a point on which all URLTA participants, the rental housing industry, tenants' rights advocates and the commissioners have agreed. Unfortunately, this singular goal has been lost in an effort to accommodate the concerns of many diverse states with vastly different rental housing stock and priorities. For example, the term "lease" is defined within the draft as agreements between a landlord and a tenant for a fixed term and a periodic tenancy. This definition is overly broad and could greatly expand a landlord's obligations in terms of the other sections in the draft, making them applicable to month-to-month leases. In addition to the complexity of the language, there are instances in the draft where the reader must jump between sections to understand what may, or may not, be applicable to his or her situation.

**Recommendation:** The rental housing industry would like to see readability take priority in the drafting of the URLTA revision, and we are happy to provide suggestions in this regard.

## II. Negative Impact to Rental Housing Affordability and Availability

Some of the updates being considered could negatively impact the affordability and availability of rental housing. Specifically, we are concerned with the proposed changes to **Article 12 – Security Deposits, Fees, and Unearned Rent**. The proposed language in this article suggests that the subcommittee considers security deposits and fees as additional costs that act as barriers-to-entry for tenants. The language is written to indicate that these costs could make it difficult for tenants to afford quality, rental housing; however, these items each have a specific purpose and serve to facilitate greater tenancy options.

In the current draft, the calculation of a security deposit in Article 12 includes prepaid rent; however, these two components serve two distinct purposes. A security deposit addresses the landlord's risk of damages to the property while prepaid rent addresses the landlord's risk of accepting a tenant with an unfavorable financial or rental history. Despite these different uses, they are being discussed as if they are one and the same – again, as a possible barrier-to-entry for tenants. Constraints on prepaid rent can have a negative effect on a landlord's willingness to assume the risk of renting to tenants who do not meet the property's screening criteria. Prepaid rent allows a landlord to mitigate for potential loss from a "riskier" candidate, who may, for example, have bad credit, and accept the application.

**Recommendation:** Remove prepaid rent from Section 1201's security deposit calculation.

## III. Inequity for Landlords and Neighboring Tenants

There are several instances where the proposed language limits the ability of the landlord to properly manage the property to the detriment of the neighboring residents. Specific articles of note are **Article 9 – Retaliation and Article 11 – Effect of Domestic Violence**.

**Article 9** prohibits a landlord from retaliation against a tenant and defines the remedies available to the tenant as a result of the landlord's retaliatory conduct. The apartment industry has serious concerns about this section. While retaliation laws protect tenants from being unfairly evicted for asserting certain rights, if not carefully written these same retaliation laws may hinder a landlord from terminating the lease of tenants for legitimate reasons. This may add months onto the eviction process – potentially harming neighboring residents. If a landlord attempts to terminate the lease of a tenant who is violating his or her lease by engaging in dangerous, criminal behavior, an allegation of retaliation could restrict a landlord's ability to remove that problem tenant.

Section 901(b)(4) would make the act of not renewing a lease, during a certain period, retaliatory conduct by the landlord on its face. Unless both parties agree to a renewal of the lease, a landlord should be allowed to rely on the agreed upon expiration of a lease, and not have a non-renewal be grounds for retaliation.

**Recommendations:**

- Remove subsection (b)(4). Unless both parties agree to a renewal of the lease, a landlord should be able to rely on the natural expiration of a lease to terminate tenancy.
- For the sake of parity, we ask the ULC to add language that addresses a tenant's retaliatory conduct similar to Texas state law. Texas allows the landlord to recover possession of the dwelling unit and entitles the landlord to a civil penalty, costs and attorneys' fees:

> (a) If a tenant files or prosecutes a suit for retaliatory action based on a complaint asserted under Section 92.331(a)(3), and the government building or housing inspector or utility company representative visits the premises and determines in writing that a violation of a building or housing code does not exist or that a utility problem does not exist, there is a rebuttable presumption that the tenant acted in bad faith.

> (b) If a tenant files or prosecutes a suit under this subchapter in bad faith, the landlord may recover possession of the dwelling unit and may recover from the tenant a civil penalty of one month's rent plus $500, court costs and reasonable attorneys' fees. If the tenant's rent payment to the landlord is subsidized in whole or in part by a governmental entity, the civil penalty granted under this section shall reflect the fair market rent of the dwelling plus $500. See Tex. Prop. Code § 92.334.

**Article 11** is intended to give housing protections to victims of domestic violence. The rental housing industry recognizes the extenuating circumstances that may necessitate special consideration for victims of abuse and their responsibilities and obligations under a lease agreement. The industry is supportive of the concept in the Act that provides a level of certainty of how to manage matters as sensitive as domestic violence; however, we are concerned that the proposed language in this article goes too far.

Section 1108 of Article 11 essentially makes domestic violence victims a protected class. It prohibits a landlord from taking certain actions, including refusing to rent to or terminating the lease of a tenant, because of his or her status as a domestic violence victim. Subsection (b) allows landlords a limited safe harbor whereby a landlord may terminate a tenant's lease with notice despite his or her status as a domestic violence victim if certain conditions apply. The landlord must "demonstrate that an actual or imminent threat could occur to… [other individuals on the premises] if the lease is not terminated."

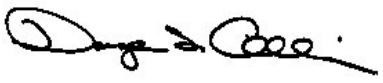
In a previous iteration of this section, the safe harbor applied if the perpetrator damaged the premises or otherwise disturbed the use and enjoyment of the premises by other tenants. We urge the ULC to consider including these provisions in subsection (d)(2) of the draft.

Section 1108 in its current form also impedes a landlord's ability to protect his or her property, employees and other tenants who are at risk and remain vulnerable to a perpetrator's actions. For example, if a victim of domestic violence invited the perpetrator back onto the property and during a domestic dispute the perpetrator caused thousands of dollars worth of damages to the property, the owner could not terminate the lease of the tenant. Similarly, if a victim of domestic violence allowed the perpetrator to occupy the unit without the landlord's consent, resulting in multiple police calls and disturbances, the neighboring tenants would have no recourse as these situations do not rise to the level of "an actual or imminent threat."

**Recommendation:** Reconsider language from the Draft for the March 2014 Drafting Committee Meeting. Add the following to the safe harbor language of Section 1108: "if the perpetrator damaged the premises or otherwise disturbed the use and enjoyment of the premises by other tenants."

Again, thank you for the opportunity to voice the rental housing industry's concerns on the update of the URLTA. The industry looks forward to continuing its role as a resource for the URLTA drafting committee and the ULC as a whole. If you have any questions, please contact Fred Tayco, Director of State and Local Government Affairs, at fred@naahq.org or (703) 797-0623.

Sincerely,



Douglas S. Culkin
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National Apartment Association