



July 9, 2015

The Honorable Joan Zeldon
Chair of Drafting Committee to Revise the Uniform Residential Landlord and Tenant Act
c/o Uniform Law Commission
111 N. Wabash Avenue, Suite 1010
Chicago, IL 60602

RE: National Apartment Association – Concerns and Position of Opposition to Proposed Draft of Uniform Residential Landlord and Tenant Act Update

Dear Chair Zeldon:

On behalf of the 170 state and local affiliates and more than 68,000 members representing approximately 7.80 million apartment homes throughout the United States, the National Apartment Association (NAA) would like to thank you and the drafting committee for allowing the rental housing industry to provide comment on the Revised Uniform Residential Landlord and Tenant Act (“RURLTA” or “the Act”). Although we appreciate inclusion in this process and applaud the Uniform Law Commission’s (“ULC” or “the Commission”) efforts, NAA cannot support the RURLTA for the reasons described below. We ask ULC commissioners to consider the following in anticipation of the RURLTA’s final reading on July 11, 2015 and the ULC’s vote by state on July 15, 2015.

NAA’s Position: While NAA and its affiliates cannot support the proposed draft of the Revised Uniform Residential Landlord and Tenant Act in its entirety, it appreciates the thoughtful dialogue between the commissioners and participants throughout the drafting process. A number of policies adopted in the proposed draft of the Act improve upon the existing language of the 1972 Act and may serve as a good starting point for states in updating their landlord and tenant laws.

Sections 1002 and 1003 dealing with removal of deceased tenant’s personal property and Article 11 dealing with the effect of domestic violence, dating violence, stalking, or sexual assault are examples of improvements in the RURLTA made by the ULC. We appreciate the work of the committee on these matters and go into further detail below.

NAA’s ultimate decision on the draft was not arrived at lightly. In addition to working with the URLTA drafting committee for the past several years, NAA solicited input from its network of affiliates nationwide; consulting a diverse group of policy and legal experts active within the rental housing industry, as well as property managers and operators with practical expertise in the field. The NAA working group came to a consensus on some issues—reflected in NAA’s previous comments and recommendations to the Commission. However in the course of these deliberations, it became clear that each state’s landlord-tenant law has

evolved independently to address each state's individual needs, reflect its diverse housing stock and account for the overlaying regulatory framework that governs the rental housing industry.

In addition to its effect on the breadth of landlord and tenant laws, the proposed draft could be costly and/or difficult for small owner-operators. To facilitate dialogue in the drafting process the drafting committee had to assume a certain level of uniformity within the rental housing industry—a baseline to consider policy questions irrespective of size or sophistication of the property. However, this assumption does not reflect the broad spectrum of rental property owners who are as varied as their residents. With members ranging from small rental property owners with a single rental unit to large multinational companies, NAA is sensitive to these differences and strongly concerned that some of the policies in the Act could have a disproportionately adverse effect on small, independent rental property owners.

Some of the industry's concerns regarding the draft and its possible impacts are as follows:

GENERAL CONCERNS

Complexity of Draft Language

Over the course of the update, the Act has doubled in size. Along with the addition of policies and supporting language, there are considerable cross references between articles that can confuse the most seasoned readers. In addition, definitions from the original Act that have been sufficient in their current form, such as landlord, tenant and rental agreement (now "lease") have been expanded and made more complex. This runs contrary to the basic belief stated by many commissioners and with which NAA agrees: **landlord tenant law, as compared to other state laws, should be the most accessible and easiest to comprehend.** As rental housing affects such a large number of people residing in a state, the laws governing it should be accessible to both the general layperson who has questions about his or her responsibilities as a tenant and the novice landlord with one unit to rent.

Negative Impact to Housing Affordability and Availability

While it is not the primary concern of the drafting committee, housing affordability and availability is a crucial issue for NAA and its affiliates. Rental housing affordability and availability is a function of supply. Onerous regulations can raise the cost of providing housing and negatively impact the market's ability to produce adequate supply. NAA is concerned that the proposed draft could result in unintended consequences that will raise the cost of operating rental housing and in turn, impact housing affordability.

SPECIFIC CONCERNS

NAA is concerned that the proposed draft does not go far enough in balancing the roles and responsibilities required of landlords and tenants. Specifically, we would like to point out the following concerns:

Article 7: Access to Dwelling Unit

Article 7 allows a landlord to access a tenant's unit for reasonable purposes with the tenant's consent. The rental housing industry is happy to see that the draft allows landlords to perform routine scheduled maintenance in the tenant's unit without unnecessary or duplicative notice requirements. Also, the draft provides reasonable notice requirements for the landlord to enter a tenant's unit in an emergency without the tenant's consent.

With that said, the remedies for abuse of access are a point of contention for NAA. The draft allows the tenant to terminate his or her lease immediately if a landlord makes one perceived unlawful entry into the tenant's unit. This language could allow for abuse by tenants.

Article 9: Retaliation

Article 9 prohibits a landlord from retaliating against a tenant and defines the remedies available to the tenant as a result of the landlord's retaliatory conduct. NAA has reservations about this section of the draft. While tenants should be protected from unjust retaliatory practices, in reality unsubstantiated claims of retaliation can be abused by tenants to lengthen eviction proceedings and allow tenants to remain in the unit (for months, in some jurisdictions) without having to pay rent. Also, the draft provides a lengthy grace period in which a tenant can claim retaliation against a landlord despite being in legitimate violation of the lease. Section 903 includes a presumption that if the tenant engaged in the conduct described in Section 901(a) within six months of the landlord's perceived retaliatory actions, then the landlord's actions are presumed to be retaliatory. Such laws are burdensome to landlords, particularly small, independent owners, who cannot shoulder the missed rental income that may result and possible significant legal fees.

Article 10

Section 1001: Disposition of Tenant Personal Property on Premises

Section 1001 delineates procedures for landlords in disposing of a tenant's abandoned property. NAA applauds the drafting committee for removing a previous section that would have created additional moving and storage requirements for landlords who are recovering possession of a dwelling unit from a tenant. This section would have been unnecessary and burdensome to landlords who must abide by state eviction or unlawful detainer laws in this type of situation. Instead, the current draft provides a safe harbor from liability for landlords who follow the section's requirements.

NAA remains concerned that Section 1001 may/will adversely impact small, independent owners. The draft allows landlords to recover costs from the tenant for taking inventory, moving, storing and disposing of a tenant's abandoned property but landlords must assume the cost up front. The draft also requires a landlord to give a tenant an opportunity to retrieve the tenant's property within two weeks of abandoning it. In many cases, it may not be practical for the rental property owner to remove the property and store it for this length

of time, thereby delaying the property owner's ability to find a new tenant and resulting in additional lost income.

Sections 1002 and 1003: Removal of Deceased Tenant's Personal Property by Tenant Representative and Disposition of Deceased Tenant's Personal Property Absent a Tenant Representative

Sections 1002 and 1003 provide a good framework for policymakers wishing to address the handling of a decedent's personal property. It is a difficult issue faced by landlords, particularly when the tenant dies without any next of kin and leaves a significant amount of items in the unit. NAA is supportive of the concepts in this section but would suggest different time periods for notice, storage and disposal depending on applicable state laws.

Article 11: Effect of Domestic Violence, Dating Violence, Stalking, or Sexual Assault

Article 11 gives housing protections to victims of domestic violence and other sex-related offenses, including the flexibility to terminate a lease without liability prior to the end of its term. The rental housing industry compliments the ULC on its work in this area. NAA is supportive of the concepts purported in the Act as they provide a level of certainty on how to manage matters as sensitive as domestic violence. The proposed RURLTA allows a landlord to evict a victim of domestic violence only under a specific set of circumstances. NAA hopes this language is maintained in its current form as the Commission moves into the final phases of the drafting process. We appreciate the ULC for including this limited exception and recognizing that a landlord must protect not only the victim but also the apartment community, its employees and other residents.

Article 12: Security Deposits, Fees, and Unearned Rent

The ULC made substantial changes to the RURLTA's section on security deposits in comparison to the original 1972 Act. The proposed Act provides that a landlord may assess a security deposit, including prepaid rent, for a tenant in an amount no more than two times periodic rent. While NAA recognizes that many states have set a security deposit standard, NAA supports the setting of security, prepaid rent and fee limitations commensurate with an evaluation of the possible risk associated with a particular applicant.

NAA remains concerned that the proposed amount may have an unintended effect of decreasing the affordability and availability of housing for certain prospective tenants. NAA hopes that the ULC will maintain the flexibility of a minimum of two-months' rent calculation but also asks commissioners to consider exempting prepaid rent from the calculation because in some circumstances, a landlord may accept an applicant for housing who would not normally qualify financially for a unit. If a tenant with bad credit is able to prepay a certain amount of rent in advance, a landlord is more likely to take on the possible liability.

As mentioned previously, the sum total of concerns expressed above do not allow NAA to support the revised URLTA in its entirety. The model legislation proposed would affect

existing state landlord and tenant laws differently and could have the undesired effect of negatively impacting tenants and landlords through a host of unintended consequences.

Again, thank you for the opportunity to participate in this meaningful process and voice the industry's concerns. The industry will continue to serve as a resource for this 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,

A handwritten signature in black ink, appearing to read "Doug Culkin". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Douglas S. Culkin
President and CEO
National Apartment Association