IN THE SUPREME COURT OF FLORIDA

IN RE: PETITION FOR APPROVAL<br>OF REVISION TO SIMPLIFIED<br>FORMS PURSUANT TO<br>RULE 10-2.1(A) OF THE RULES<br>REGULATING THE FLORIDA BAR<br>___________________________________/

Case No. 92,023

COMMENTS OF HOUSING WORKGROUP OF FLORIDA LEGAL SERVICES, INC. TO SECOND PROPOSED SIMPLIFIED LEASE FORM

The Housing Workgroup of Florida Legal Services, Inc. (hereafter "Housing Workgroup") in response to the notice published in the April 15 , 1999 issue of the Florida Bar *News* files these comments and states as follows:

INTRODUCTION

The Housing Workgroup is an organization of legal services and legal aid attorneys from throughout the state of Florida who specialize in landlord and tenant law. The Housing Workgroup attorneys represent several thousand qualified low income tenants in landlord and tenant cases in any given year. We provided comments to this Court in response to the December 15, 1997 publication in the Florida Bar *News*. Based on our comments, the Simplified Forms Committee of the Florida Bar "voted unanimously not to resist or oppose the suggestion that the Residential Lease for Single-

family homes and duplexes be removed from the forms." Minutes, January 22, 1998. After deleting the entire Simplified Lease Form for Residential Single Family Home and Duplex (hereafter "Lease") by court order of September 10, 1998, this Court subsequently directed the Florida Bar to submit a Lease that "comports with current law." This Court so ordered based on arguments presented by the Florida Bar and the Florida Association of Realtors that the completion of a lease by a nonlawyer constitutes the unauthorized practice of law. However, this Court has not yet ruled on this precise issue.

The Housing Workgroup believes that the proposed Lease serves no purpose in the conservation or economic use of judicial resources or in providing Florida residents access to the courts. The proposed Lease only serves one purpose: to provide a safe harbor to real estate personnel engaged in the completion of residential leases. The Housing Workgroup believes that the parties to a lease should be free to negotiate their own terms and should be free to agree to a variety of arrangements that suit their particular needs. No contractual terms should be dictated by the Court to the parties of a lease.

The Housing Workgroup was invited by the State Bar[1] to participate in the drafting of the proposed Lease. In response, the Housing Workgroup, reserving the right to later comment on all Lease provisions, provided the Florida Bar with proposals.

---

[1]The Housing Workgroup sincerely appreciates the opportunity to have worked with the Florida Bar and the Florida Association of Realtors.

However, not all proposed provisions were adopted by the Florida Bar. Therefore, for the reasons stated below, the Lease submitted to this Court by the Florida Bar fails to comport with current law.

COMMENTS ON PARAGRAPH 8: "NOTICES"

The Florida Residential Landlord and Tenant Act (hereafter "the Act") does not require notices to be sent by certified mail or return receipt. See Fla. Stat. §§ 83.56, 83.50, and 83.49(2)(a) (1997). In contrast, the proposed Lease language requires that mailed notices be sent by certified mail. Requiring that notices be mailed by certified mail places a substantial burden on both parties: certified mail costs more than regular mail, generally requires a visit to the post office during work hours, which may require the parties to take time off from work to do so, and often takes longer for delivery. Requiring mailed notices to be delivered by certified mail is a drastic departure from current law as to delivery of notices and places this Court in the position of changing statutory requirements.

Additionally, the wording of paragraph 8 indicates the parties must have a Landlord's Agent since it appears an agent must be designated and all notices "must" be sent to Landlord's Agent. In fact, paragraph 8 only provides for the listing of the Landlord's Agent's address and makes no reference to an address for the Landlord. It is not clear from this paragraph where tenants are to send notices when no Landlord's Agent is designated.

Finally, Fla. Stat. §83.50(1) (1997) allows the tenant to choose to have certain notices sent to "any other address" "if specified in writing by the tenant." The proposed Lease takes this statutory option away from the tenants by requiring that all notices be sent to the premises. It fails to comport with current law.

COMMENTS ON PARAGRAPH 13: "LEAD BASED PAINT"

The proposed Lease fails to meet the legal requirements for lead-based paint in that it paraphrases the language set forth at 42 U.S.C. 4852d(a)(3) (1995) which applies to a contract for purchase and sale of real property. However, the federal regulations at 40 C.F.R. 745.113(a) and (b) (1998) set forth the contract language requirements for purchase contracts and for leases, respectively. The proper language for a lease is set forth at 40 C.F.R. 745113(b)(1) (1998). Accordingly, lines 185 through 193 should be replaced with the following language:

> Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, landlords must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Tenants must also receive a federally approved pamphlet on lead poisoning prevention. 40 C.F.R. 745.113(b)(1) (1998).

Additionally, lines 211 through 215 apply only to contracts for purchase and not to leases. See 40 C.F.R. 745.110 (1998). As such, these lines should be deleted.

COMMENTS ON PARAGRAPH 15: "LANDLORD'S ACCESS TO THE PREMISES"

Paragraph 15, subsection "B," at line 245, states "(a)fter reasonable notice to Tenant at reasonable times for the purpose of repairing the Premises" the landlord or landlord's agent may enter the premises. The terms "reasonable notice" and "at reasonable time" require definition. Otherwise, the lease would create unnecessary litigation. The Act, at Fla. Stat.§83.53(2) (1997) defines "(r)easonable notice" as at least 12 hours prior to the entry, and it defines "at reasonable time" as between the hours of 7:30 a.m. and 8:00 p.m." The exclusion of the required language could be misconstrued by abusive landlords to the detriment of tenants.

Furthermore, Fla. Stat. §83.53(3) (1997), provides that "(t)he landlord shall not abuse the right of access nor use it to harass the tenant." The proposed Lease fails to comport with current law by excluding this important provision.

COMMENTS ON PARAGRAPH 16: "HOMEOWNER'S ASSOCIATION"

Paragraph 16 of the proposed Lease dictates terms to the parties instead of allowing them an opportunity to negotiate their own terms. First, it provides that any application fee required for approval by a homeowner's association is to be paid by the tenant and is nonrefundable. However, in some cases the parties may decide the application fee will be paid by the landlord or that the fee will be refundable. We suggest providing a check box for the parties to negotiate this arrangement. Second, this paragraph is inconsistent and misleading in that if the lease is contingent on the

association's approval, no lease exists upon failure of the contingency to occur and no lease need be terminated as no lease exists. The language as written may necessitate court litigation when such litigation can be avoided by clear and consistent language. Third, the lease should provide an option for the parties to decide whether the approval should be obtained by a date certain prior to commencement of the lease term. Fourth, Paragraph 16 fails to disclose the amount of the fee required by the association. There should be a blank space for the landlord to fill in and thereby provide the appropriate and timely disclosure of material information to a tenant prior to signing a lease. Finally, this paragraph places all of the burden of seeking and obtaining the association approval on the tenant and does not provide for the return of the funds paid if the contingency does not take place.

COMMENTS ON PARAGRAPH 17: "USE OF PREMISES"

The last sentence of this paragraph, at line 271, provides that "(t)enant agrees not to use, keep, or store on the Premises any dangerous, explosive, toxic material which would increase the probability of fire or which would increase the cost of insuring the Premises." It is virtually impossible for a tenant to avoid violating this overly broad lease provision. Many common household items, such as cleaning fluids, increase the probability of fire. For example, if the tenant must maintain the lawn pursuant to line 151, he or she may need to store gasoline for a lawn mower. If this provision must be included, it should specify exactly what materials a tenant may not keep on the Premises,

or provide a blank space for the parties to fill in, so the tenant will have advance notice of what is or is not a lease violation. With a blank space the parties are free to negotiate what should be listed here in their particular circumstances.

COMMENTS ON PARAGRAPH 19: "DEFAULTS AND REMEDIES"

The Act, at Fla. Stat. §83.54 (1997), provides that "any right or duty declared in this part is enforceable by civil action." The proposed Lease limits the legal remedies available to the parties to those circumstances which constitute a default of the lease and excludes all breaches of statutory duties. As such, the proposed Lease fails to comport with current law.

COMMENTS ON PARAGRAPH 20: "SUBORDINATION"

Whether or not a lease is subordinate to the lien of any mortgage encumbering the premises is a matter of law. The proposed Lease imposes unnecessary burdens on the tenant and takes away rights of the tenant and the ability of the parties to negotiate the terms of the lease.

COMMENTS ON PARAGRAPH 21: "LIENS"

Florida law at Chapter 713, Part I, establishes when and how construction liens attach as a matter of law. The proposed Lease is inconsistent and contrary to the legislative scheme by stating that "the lease does not allow any liens to attach to Landlord's interest." Said provision is contrary to Florida law.

COMMENTS ON PARAGRAPH 24: "TENANT'S TELEPHONE NUMBER"

Paragraph 24 is objectionable for the reason that a tenant's failure to provide a work phone number constitutes a breach of the lease which may result in eviction. Yet, many tenants are not allowed to receive phone calls at work, and receiving phone calls at work could cause employment problems for many tenants. Once again the proposed lease dictates and imposes terms on the parties regardless of their particular circumstances and how harmful the imposed terms can be. The proposed Lease fails to provide options and denies the parties the right to negotiate their own terms.

COMMENTS ON PARAGRAPH 26: "MISCELLANEOUS"

Paragraph 26, Subpart D, line 320, requires that to surrender the premises the tenant must do so in writing, signed by the landlord. This places a burden on the tenant that the Act does not require. It dictates terms to the parties. Some landlords may be willing to accept a surrender orally by receipt of the keys or some other method.

CONCLUSION

The Housing Workgroup requests that this Court not approve the Residential Lease for Single-family Home and Duplex. In the alternative, any lease approved by this Court should be revised so as to comport with current law.

Respectfully submitted,

____________________________________

ALICE M. VICKERS
Florida Bar #402631
HOUSING WORKGROUP OF FLORIDA
LEGAL SERVICES, INC.
2121 Delta Blvd.
Tallahassee, FL 32303
(850) 385-7900

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Comments of Housing Workgroup of Florida Legal Services, Inc. to Second Proposed Simplified Lease Form has been sent by U.S. Mail to John F. Harkness, Jr., Executive Director, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300; Rafael Centurion, Chair, Standing Committee on Simplified Forms, Dept. of Highway Safety, 2515 W. Flagler Street, Miami, Florida 33135-1422; Henry P. Trawick, Jr. Attorney at Law, 2033 Wood Street, Suite 218, Sarasota, Florida 34327; T. Rankin Terry, Jr., Attorney at Law, 2121 McGregor Blvd., Ft. Myers, Florida 33901-3411, Randy Schwartz, Vice President, Law & Policy and Marcia C. Tabak, Deputy Legal Counsel, Florida Association of Realtors, P.O. Box 725025, Orlando, Florida 32872-5052; Michael H. Krul, Esq., Ruden, McClosky, Smith, Schuster & Russell, P.A., P.O. Box 1900, Fort Lauderdale, Florida 33302 this ______ day of May, 1999.

____________________________________
Alice M. Vickers