Appendix # 1 to MHCA and Parham Comments on Proposed Stipulation Rule

Katz E-mail Dated 2/25/07

With Extracts From Attachment Showing Objections to HB2361 Including Recommendation Proposed Stipulation Rule Be Adopted

HB 2361

Ellen Sue Katz <eskatz@qwest.net>

Sun 2/25/2007 11:35 AM

Inbox

To: michaelparham@msn.com <michaelparham@msn.com>;

1 attachments (92 KB)

Fact Sheet (REVISED II) on HB 2361 02.24.07.pdf;

Here are our comments to your informal revision to hb 2361. I apologize this took so long to get to you. I have sent this to Represenative Reagan as well.

Fact Sheet on Informal Revisions to HB 2361 (February 11, 2007, by Mike Parham)
Prepared by the
William E. Morris Institute for Justice
*** February 23, 2007**

There are two main kinds of evictions: Special detainers apply to residential landlord-tenant agreements. The statute is called the Arizona Residential Landlord and Tenant Act ("ARLTA"). Forcible entry and detainers ("FEDs") apply to a larger group of cases and include commercial leases. Because many provisions of the FED statute are incorporated into ARLTA, a change in the FED statute will create a change in ARLTA.

Arizona enacted ARLTA in 1973. The FED statute predates ARLTA by many decades. ARTLA strikes a balance between the rights of tenants and landlords. Eviction law is very important because approximately one-third of Arizonans are tenants. Eviction cases use expedited procedures and it is typical that if a landlord claims a tenant did not pay rent on the first of the month, the landlord could be in court by the 15th – 20th of the month. In addition, tenants facing eviction overwhelmingly lack both legal counsel and familiarity with the legal system.

While the informal revised draft of HB 2361 prepared by Mike Parham eliminated several provisions that restricted tenants' rights, the proposed revised legislation continues to restrict tenants' rights and protections in many ways.

The promotional material by the Arizona Multi-Housing Association mainly focuses on the provisions that are favorable to tenants (the complaint shall adequately advise the tenant of the facts of the case; specifies what the court should review prior to making a decision). These are requirements that substantially have been agreed to in the State Bar Task Force Rules Subcommittee that has met for the last 10 months and continues to meet and are more appropriate for the rule making process. As explained below, the drafter of this legislation used drafts from the rules subcommittee from last year. Those drafts have been superceded by better written, more organized and, in some places, modified rules.

* We only highlight below the major areas of the bill that restrict tenants' rights. If a provision was deleted in the informal draft WE HAVE NOT REFERRED TO IT IN THIS DOCUMENT. If any of the deleted provisions remain in the bill, our comments from the January 23, 2007, Fact Sheet remain.

Bill Provisions	What the Provision Does	Current Law/Practice	Why Legislation is not Needed
12-1178(D)(1)-(a)-(c)	Specifies what court should review prior to issuing default judgment.	There are no standards.	These requirements are more appropriate for rule making and are being addressed in the task force committee. Moreover, they should not be used to justify the onerous provisions in the bill. If substance is incorporated, rule 12(a) (1-4) and b (3) of the rules subcommittee should be used.
12-1178(D)(2) 12-1178(D)(2) cont'd.	Language on when defendant appears and admits allegations.	No provision.	These requirements are more appropriate for rule making and are being addressed in the task force committee. Moreover, they should not be used to justify the onerous provisions in the bill. If substance is incorporated, rule 12(a) (1-4) and b (3) of the rules subcommittee should be used.
* 12-1178(D)(3)	Language on stipulations.	No provision. *	These requirements are more appropriate for rule making and are being addressed in the task force committee. Moreover, they should not be used to justify the onerous provisions in the bill.

Bill Provisions	What the Provision Does	Current Law/Practice	Why Legislation is not Needed
			If substance is incorporated, rule 12(b)(4) of the rules subcommittee should be used. -Copy of this follows
12-1178(D)(4)	Specifies what court should review for a contested matter.	There are no standards.	These requirements are more appropriate for rule making and are being addressed in the task force committee. Moreover, they should not be used to justify the onerous provisions in the bill. If substance is incorporated, rules 12(a) (1-4) and b (3) and 12(c)(2) and (d) from rules subcommittee should be used.
12-1178(D)(5) and (6)	Explains relief that can be awarded.	No detailed provision.	These requirements are more appropriate for rule making and are being addressed in the task force committee. Moreover, they should not be used to justify the onerous provisions in the bill. If substance is incorporated, relevant parts of rule 12(c) of the rules subcommittee should be used.
12-1178(E)	Explains writ of possession procedures.	No provision.	These requirements are more appropriate for rule making and are

UNIFORM RULES OF PROCEDURE FOR EVICTIONS

* January 31, 2007 – Draft

Proposed by the Rules Committee of the Landlord Tenant Task Force
State Bar of Arizona

Table of Rules

1. Title and Scope of Rules
2. Construction of Rules
3. Definitions
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6. Service of Pleadings, Other Papers and Orders After Complaint
7. Answers
8. Counterclaims and Consolidation
9. Motions
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Rule 1. Title and Scope of Rules

These rules shall be known and cited as the Uniform Rules of Procedure for Evictions ("URPE"). These rules shall govern the procedure in the superior courts and justice courts involving forcible and special detainer actions, which are jointly referred to herein as "eviction actions." For purposes of these rules, there shall be only one form of action known as the "eviction action." The Arizona Rules of Civil Procedure shall not apply in eviction actions except as specifically incorporated by reference herein.

Rule 2. Construction of Rules

These rules shall be construed in accordance with statutory provisions related to forcible entry and detainer actions and special detainer actions. All eviction actions are statutory summary proceedings and the statutes establishing them govern their scope and procedure.

the court shall hear evidence establishing such a breach before ordering a writ of restitution within 24 hours or less.

C. Mailing Default Judgments. The plaintiff shall promptly mail or deliver a copy of the default judgment to the defendant.

12(b) 4. Stipulated Judgments. The court may accept a stipulated judgment, but only if the court determines that the conditions of Rule 12(a)(1-2) have been satisfied and the judgment form to which the defendant stipulated contains the following warning:

> **Read carefully! By signing below, you are consenting to the terms of a judgment against you. You may be evicted as a result of this judgment, the judgment may appear on your credit report, and you may NOT stay at the rental property, even if the amount of the judgment is paid in full, without your landlord's express consent.**

The amounts awarded in the judgment must be consistent with the amounts sought in the complaint, although the judgment may also include additional rent, late charges, fees and other amounts that have accrued since the filing of the complaint, if appropriate. Notwithstanding Rule 12(c)(2), if all parties or their attorneys personally appear before the Court and the addition is reasonable, the Court may award an amount for damages or categories of relief not specifically stated in the complaint and shall not enter a stipulated judgment that contains a waiver of post judgment motions or appeals.

c. **Relief Granted.**

1. Possession of the premises.

A. Except as provided in subsection (2) of this section, if the judgment is for the plaintiff, possession of the premises shall be awarded to the plaintiff. No writ of restitution shall be issued until five calendar days after the judgment is signed.

B. When an immediate termination has been obtained due to a breach of a residential lease agreement that qualifies as "material and irreparable" under the applicable statute, the judgment shall provide for the writ of restitution to issue between 12 and 24 hours after entry of judgment, or longer if the plaintiff so requests.

Comment

The term "material and irreparable" as used in this