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FILED
SEP 17 2020
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

September 16, 2020

Supreme Court of Nevada
201 South Carson St.
Carson City, NV 89701

Dear Supreme Court Justices, ADKT 567

On behalf of the more than 18,000 members of the Nevada REALTORS®, we are pleased to have the opportunity to offer the perspective of our members on the statewide Landlord Tenant Mediation Program. The REALTORS® advocate on behalf of both landlords and tenants, as both parties constitute the clientele of our REALTOR® members. From the beginning of the pandemic, we have been supportive of, and invested in the efforts lead by the Governor and Attorney General on the Eviction Moratorium Directives and Lease Addendum Form. We are invested in the work being done by Chief Justice Pickering and Justice Hardesty on behalf of the Access to Justice Commission.

As we testified during the Special Session, The Nevada REALTORS® agreed to remain neutral on the landlord tenant mediation bill provided that the language was explicitly limited to evictions based on the **nonpayment of rent** and *not* other types of evictions. Today, we are providing testimony for ADKT 0567 in support of ***Exhibit B***.

Before we get into the details of why we support ***Exhibit B***, we think it is important to include a few instances where our landlords, most of whom are mom and pop landlords have struggled like many others during this time:

1. We have an owner who was deployed overseas as part of active duty military, who became a landlord overnight due to deployment that is struggling to pay their mortgage and isn't in a position to sell.

2. We have an 85-year-old widow that has relied on the modest rental income to survive, cries every time the phone rings hoping the water cooler or AC hasn't gone out in the rental, because she can't afford the repairs and she cannot afford to sell and pay the taxes.

3. We have a disabled elderly owner that had to move back into a property that she owns. Her tenant would not vacate after COVID, although she had been given a (30) day notice before the pandemic began. Her tenant then stopped paying rent also. The owner was forced to make different accommodations for several months while the tenant lived in her home rent free with no recourse. Now the tenant has vacated and likely will never be held accountable.

4. We have a fourplex owner who has non- paying tenants and can now no longer afford his mortgage. He is not getting any assistance, to our knowledge, from his mortgage company and now is being forced to sell the building to avoid entering into default.

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While this Landlord may seem like an "investor", he used this property as a main source of income and should not be viewed any less than a mom and pop owner who cannot pay their bills to survive due to these circumstances. He has also still been responsible for taxes, insurance and repairs during this time.

Without a doubt, we believe that by sending the **proper** cases to mediation, the result will be that more tenants stay in their homes and landlords get paid arrearages so they can afford to pay their mortgages. We believe that ***Exhibit B*** is the *only* comprehensive option considered here today that provides a balanced approach that is both fair and equitable to landlords and tenants alike. We have highlighted the importance of a few key section included in the framework of Exhibit B for your review below:

**Section D**

Tenants should have the opportunity to request mediation in their answer and explain why it would be beneficial, and what efforts they have undertaken including discussions they have had with landlord that were unsuccessful as well as what rental assistance programs they have applied to. We believe it is crucial that the tenant's attest in their affidavit to their requisite hardship and how they are unable to fulfill their rental obligations resulting from the COVID-19 pandemic. It would not be fair and equitable to allow tenants to simply check a box requesting mediation without asserting that steps have been taken to remedy arrearages or steps they have taken for rental assistance.

**Section F**

By sending the proper cases to mediation, there will be a meeting of the minds in which both parties agree upon a proper solution, therefore keeping cases out of the court system and tenants in their homes. As we are well aware, the 10 million dollars allocated will go fast, so it is imperative that the cases get scheduled directly for a hearing in the instances where tenants have already negotiated and entered into a repayment plan in good faith, have requested mediation with the same landlord within the preceding 15 months or applied for rental assistance. If the parties have already negotiated in good faith and tenant has breached or the tenant is abusing the process month after month to delay the inevitable; they shouldn't have endless opportunities to apply for a mediation program in order to stall the process or kick the can down the road. There simply isn't enough time or resources for all cases to go to mediation.

**Section Q and R**

If we were to consider the fact that the Court has the inherent authority to adopt the proposed mediation rule, at a minimum, we would urge the Court to include an expiration of the rule as Exhibit B, Sections (q) and (r) contemplate. The mediation program should terminate as soon as the COVID-19 emergency expires. We are concerned that Exhibit A does not include a sunset date of the mediation rule. This omission defies the Court's inherent powers, which "cease when the court's ability to carry out its constitutional duty to ensure the administration of justice no longer is in jeopardy." *Halverson*, Nev. 123 at 263.[1] When the pandemic is over, the rule should

[1] *Halverson v. Hardcastle*, 123 Nev. 245, 260 (2007)

sunset as the Court's potential administrative of justice is no longer in jeopardy. As contemplated in Section (r), if a justice court determines an ongoing need for a summary eviction mediation program, the Chief Judge may petition this body for approval. This accomplishes the goals that were testified to during special session; the program is stood up for the purpose of alleviating the burden on the Court to handle the number of evictions and connect tenants with resources available during the pandemic.

***Exhibit C***

While we are in support of the language in Exhibit C, this notice requirement shall not go into effect for at least 60 (sixty) days allowing landlords to have proper notice of what needs to be included in a notice. Without this notice, many notices will be defective therefore burdensome on the Court to deny the notice just to have it served again. There are many mom and pop landlords that do not use the forms provided and rather rely on forms they have used for some time. 60 (sixty) days is a proper amount of time for a new rule to go into effect.

Our Association is committed to strongly encouraging our members — property managers, landlords and tenants to support mediation programs through the Nevada courts to help resolve potential disputes between landlords and tenants regarding the nonpayment of rent.

Thank you for the opportunity to offer the perspective of Nevada REALTORS®. Should you have any questions, or need additional information, please feel free to contact our chief lobbyist, Rocky Finseth of Carrara Nevada (702-785-8026) or our CEO, Teresa McKee (775-219-4983).

Sincerely,

*Tiffany Banks*

Tiffany Banks
General Counsel, Nevada REALTORS®