

MINUTES OF COMMISSION MEETING

May 19, 2011

Present at the New Jersey Law Revision Commission meeting held at 153 Halsey Street, 7th Floor, Newark, New Jersey, were Chairman Vito A. Gagliardi, Jr., Commissioner Albert Burstein and Commissioner Andrew Bunn. Professor Ahmed I. Bulbulia of Seton Hall Law School attended on behalf of Commissioner Patrick Hobbs, and Professor Bernard Bell of Rutgers University School of Law attended on behalf of Commissioner John J. Farmer, Jr. Timothy J. Prol, Chief Legislative Aide to Senator Nicholas Scutari, attended on his behalf.

Also in attendance were: Lori Dibble, Manufactured Homeowners Association of New Jersey; Joan Fittz, Executive Director, New Jersey Manufactured Housing Association; Tracey Goldstein, Esq., Feinstein, Raiss Kelin & Booker, LLC; Lori Greenberg, Esq., Lori L. Greenberg & Associates; Elliot Harris, Esq, Feinstein, Raiss, Kelin & Booker, LLC; Nicholas J. Kikis, New Jersey Apartment Association; Richard Laiks, Esq., Heller & Laiks; Victor Monterrosu, Jr., HUD Tenants Coalition; Connie Pascale, Esq., Legal Services of New Jersey; Matt Shapiro, New Jersey Tenants Organization; Nancy Lu Viviano, Fountainhead Properties, LLC; Stuart Weiner, Esq., Community Health Law Project.

Laura Tharney introduced to the Commission two new legal interns, Keith Ronan and Benjamin Hochberg, and also bid a fond farewell to Richard Angelo, an intern who was moving on to a judicial clerkship.

Minutes

Minutes of the April 28th meeting were unanimously approved on motion of Professor Bulbulia, seconded by Commissioner Bunn.

Title 2A

Laura Tharney stated that since the release of the tentative report on this project last year, there had been developments that she wanted to bring to the attention of the Commission. A case citing the Licensed Alcohol Beverage Server Fair Liability Act was decided by the court after the tentative report was issued, but it did not require any revision to the language of the report. A case citing the Heart Balm provisions of the statute was also decided in 2010. The language of that case seemed to suggest that removing the old causes of action from the statute might help clarify that they are no longer valid. In the section of the report pertaining to the remedies for a person defrauded, the language of the comment was modified to clarify the comment and more accurately explain the reasons for the proposed change to the statutory language. Finally, the language pertaining to the arrest or detention of mentally incapacitated persons was eliminated from the report in its entirety since the relevant section of the statute was

repealed effective November 2010 as a part of the legislation removing certain pejorative terms from the body of statutes. Ms. Tharney asked for authorization to release the report in a final form and the Commission approved the release on motion by Commissioner Bulbulia, seconded by Commissioner Bunn.

URPTODA

Marna Brown requested release by the Commission of this report as a final report. No significant changes had been made since the Commission had last seen the report, other than to more fully state current New Jersey law and condense and clarify language. Chairman Gagliardi asked whether Staff had confirmed that as of the date of the report, the bill had been adopted only in North Dakota and introduced in five states. Ms. Brown said yes, and the Commission, upon motion of Commissioner Bunn, seconded by Professor Bulbulia, unanimously approved release of the report in final form.

N.J.S. 14A:5-28 – Books and Records

Richard Angelo explained that at the last Commission meeting, the Commission approved the preparation of a draft tentative report pertaining to this project. The draft tentative report includes most of the language of the second memorandum in its comments. The draft also provides supplemental information pertaining to the potential application of the statute to minutes of meetings of committees other than executive committees in response to the Commission’s request.

Chairman Gagliardi asked whether there was a reason that in the draft language prepared by Staff to incorporate the Court’s opinion, subsection 4, on p.3, referred to “proceedings” rather than “meetings” of shareholders, board, and executive committee. Mr. Angelo explained that the use of the term “proceedings” matches the language in subsection 1, the section the court used as a basis for its determination that access to minutes included access to the minutes of the board and executive committees. Chairman Gagliardi asked if Staff intended “proceedings” to mean something different than “meetings.” Mr. Angelo indicated that “proceedings” could be deemed to be broader in scope than “meetings”, but that Staff had simply incorporated the language used by the Court and did not intend another meaning. Commissioner Bunn said that if the statute is intended to encompass “meetings”, he is in favor of saying “meetings” in the statute so that there is no confusion.

Chairman Gagliardi said that he shared Commissioner Bunn’s concern as a result of his experience with the Open Public Meetings Act, explaining that there are formalities associated with meetings that may not occur with proceedings and that if the intention is not to broaden the statute beyond “meetings” he would not recommend doing so. Commissioner Burstein asked whether definitions appeared in this section of the statute. Mr. Angelo indicated that there are definitions in the statute, but that neither “meeting”

nor “proceeding” are defined. Ms. Tharney said that Staff will review the case law to determine if the term “proceeding” is used to refer to something other than a meeting. Chairman Gagliardi said that if there is a difference, the Commission should know what it is and he explained that in the absence of guidance to the contrary, his preference is to use the term “meeting” because it is an identifiable event with specific meaning in the context of a corporation.

Commissioner Burstein noted a typographical error on the first page of the draft tentative report in the 2nd paragraph, on the third 3rd line. A word was mistakenly left out of the sentence and Staff will correct the error.

Ms. Tharney asked whether the Commission wanted to consider the issue of expanding the statutory language to include committees other than the executive committee that are not expressly identified in the statute. Mr. Angelo had preliminarily researched this issue and had determined that the language of the Model Act appeared to include committees beyond the executive committee. Similarly, California’s law does not specify executive committees and it applies to any committee. Pennsylvania law is not clear and New York has same sort of language currently found in the New Jersey statute.

Ms. Tharney said that if the Commission wanted to expand the application of the law, there appeared to be some support for doing so. Commissioner Bunn said that he was not inclined to expand the language since doing so could put New Jersey at a competitive disadvantage. He said that the Legislature is free to consider this policy decision but the Commission should not push New Jersey beyond what the Legislature intends. Chairman Gagliardi said that doing so could create unintended mischief and probably does not serve the interests of the statute.

Commissioner Burstein asked Staff to look at the language of the law in other states. Commissioner Bunn asked whether the statute in issue applies only to corporations that are incorporated in New Jersey or to any corporation doing business in New Jersey. Mr. Angelo said it was the former, but that Staff will confirm this. Chairman Gagliardi directed Staff to conduct a 50-state survey to determine whether other states include a right of access to minutes of committees other than the executive committee.

Mr. Angelo noted that even if the access to minutes is limited to those of executive committees and not to other committees, if those other committees report back to the board, then a certain amount of information may be made available as a result of the review of the minutes of board meetings. Chairman Gagliardi agreed and indicated that if the full board was considering the information it was probably ready to take some action, but that within the other, unidentified committees, there may be notes or minutes that are not appropriate for public dissemination. If it turns out that California’s more expansive law is anomalous, knowing that may be of assistance to the Commission.

Judgment on Award

Mr. Angelo explained that this proposed project arose as a result of a case that addressed the extent to which a court may review orders of arbitration awards entered as judgments by the Superior Court pursuant to the Alternative Procedure for Dispute Resolution Act (APDRA), particularly, *N.J.S. 2A:23A-18(b)*. That subsection limits an appellate court's review of an arbitration award on which a judgment or decree is entered by the Superior Court, Law Division. In *Liberty Mutual*, the case in question, the court held that its review of underlying orders contributing to the entry of judgment—namely the lower court's denial of leave to file an amended complaint and dismissal of the action—was *not* barred by the APDRA. The appellate court's decision appears to conflict with the statutory limitation on review. Staff is bringing this to the Commission's attention to see if there is a need for revision to make the statute clearer.

Commissioner Bunn said that this statute is a peculiar one that provides an alternative to a court proceeding or arbitration. The procedure is limited by the imposition of a number of requirements and it is very infrequently used because doing so requires the consent of all parties. As a result, most people are not familiar with it, and it is not likely to be a significant issue. Chairman Gagliardi said that if the law is rarely used, and the case law addresses the issue adequately, then he does not believe there is a problem that the Commission needs to address. The Commission determined that nothing further need be done with the issue raised by the *Liberty Mutual* case.

Landlord Tenant

Marna Brown stated that the first issue on the first May 9th memorandum pertains to the flood zone notification statute. The Commission had directed Staff to obtain additional information regarding how flood zones are determined. Staff obtained information from Charles Jones, who services accounts by obtaining FEMA information, and from the DEP. Proposed 46A:4-7a. has not been changed. Subsection b has been clarified to provide a timeframe for when the landlord must notify the tenant. Ideally, it is either before the commencement of the new lease or the commencement of the renewal lease. However, if the lease or renewal has already commenced, than the timeframe for notification to the tenant is within 2 weeks of when the landlord learns of the determination. This seemed a reasonable timeframe to Staff.

Subsection c., dealing with a tenant's right to terminate, also has been changed from the last version. The trigger for termination is now receipt of notification *or* learning that notification should have been given. Subsection d was changed to provide a time-frame if there is a change in the flood zone. Last, Subsection e. which now just deals with the obligation to pay rent if the tenancy is terminated has been changed; in a commercial context, other obligations should be completed so the provision includes language to that effect.

Staff wants to make sure that the Commission agrees that only a special flood hazard area is what should trigger the notification. Staff handed out an additional sheet from FEMA setting forth the flood zone classifications. Staff used 3500 sq ft as the threshold for the size of leasehold should be subject to this provision (rather than a dollar amount of rental), but there is no magic to that number.

Commissioner Burstein asked whether the flood zone change always comes from FEMA. Ms. Brown said that it does because FEMA does the classification. Mr. Cannel noted that the information is usually obtained through private servicing companies, like Charles Jones. Commissioner Burstein also asked how the landlord is notified. Ms. Brown said that the landlord is not necessarily notified unless the landlord is financing a purchase of the property (or refinancing) or there is a transfer of the property to the landlord. The lender can also sign up for a service that will provide the information periodically. Commissioner Burstein wanted to know how frequently the flood zone designations are changed. Ms. Brown said they do not occur often but they occur; the DEP advised her that with advanced technology, and more accurate photography, the maps have become more accurate. Also, as new bridges are built, the flood plains change. In addition, in Monmouth County, for example, a levee was recently decertified which caused 5,000 additional properties to become in a flood zone.

Commissioner Bunn said that he did not see anything in the provision saying that the landlord does not have to notify if he has no knowledge. Ms. Brown said that it was assumed this was understood but Staff will make it clearer. Commissioner Bunn asked whether it gives a landlord a disincentive to tell a tenant when he learns of a flood zone if when the tenant finds out, the tenant can break the lease at that moment. Staff acknowledged this was a problem.

Tracy Goldstein mentioned that she had some concern that the issue could be raised inappropriately by a commercial tenant who have had leases already in place but were not notified. She asked whether this would apply retroactively. Commissioner Bunn stated that he did not believe that the legislative history Staff just read supported a termination mid-lease. He did not necessarily disagree with this change, but the comment should make it clear that this is a major change in current law. Ms. Goldstein noted that with the security deposit law, there was a provision that gave existing landlords a right to notify tenants within a certain time-frame. She suggested that the Commission could do something like that now. Give landlords a cure period. Commissioner Burstein noted, however, that in the security deposit act there are penalties to the landlord for not acting correctly. Here there were no such penalties. Ms. Goldstein said that the ability for the tenant to terminate could be seen as a penalty. Commissioner Burstein also questioned what a mortgagee would think of a tenant's right to terminate since the mortgagee lends based on the security of the rent roll. Mr. Cannel stated that the right to terminate probably should be prospective only. The other alternative would be to give a safe harbor and to say that every landlord would have an additional 30 days to

comply with triggering the remedies provided by the statute. The problem is that the responsibilities of the landlord are triggered by the landlord's knowledge and it is not clear that the FEMA information is easily accessible.

Commissioner Burstein asked whether the statute would be applicable only to the high risk areas noted on the chart from FEMA that accompanies Staff's memorandum. Ms. Brown said, yes, that the provision only would be applicable to properties in zones A or V. Commissioner Burstein also stated that the triggering event of when the landlord knows is most troubling. Commissioner Bunn asked whether the standard included whether the landlord should have known and Staff advised that it did not. Mr. Cannel explained, for example, that if a landlord had been holding the property for 10 years without any change in financing, he probably would not know if the property was in any flood area. Commissioner Bunn stated that if the tenant independently learns of the flood zone, the landlord does not get the escape clause. Commissioner Burstein stated that he was not ready to release this as part of the tentative report.

Mr. Cannel asked what the Commission wished Staff to do on this issue. The Commission asked Staff to see what other states have done on this issue and also see if they can find additional legislative history or guidance in treatises as to what the Legislature actually intended. Ms. Goldstein stated that with regard to paragraph b., regarding renewal, as a practical matter, typically a landlord will send a notice to quit with a renewal addendum and under the current language of this provision, the landlord would have to send a separate letter individually stating that the property is in a flood zone. Ms. Brown noted that as in subsection a., which says that the notice can be included in the written lease, the language could be expanded to include the renewal lease as well.

Richard Laiks said that the last sentence of subsection c. pertaining to the termination date should state at the end of the sentence, "so long as the tenant delivers valid possession by that date." Lori Dibble expressed her concern that whether a property was in a flood zone was critical for an owner of a manufactured home to know because if the home site is in a V zone, there are different standards for foundations, etc. She advised that the landlord should be required to notify the tenant and it should not be optional. Ms. Brown clarified that the landlord must notify what the landlord knows but the landlord has no obligation to find out. Chairman Gagliardi stated that any other comments should be provided to Staff in advance of the next meeting so they could be incorporated into the draft. Commissioner Burstein noted that the problem raised is really a small one because the standard form residential contract has a flood zone paragraph and this is particularly true with mortgage financing. He stated that he would be surprised if that same kind of paragraph were not in a commercial contract as well.

Ms. Brown discussed the issue of security deposit replacement fees and language that had been added to that section to distinguish other types of ancillary fees, such as pet fees, etc. from security deposit replacement fees. Ms. Brown noted that in the second full

sentence of section 46A:13-16 a., she had replaced the word “required” with the word “collected” at the request of Legal Services. The Commission approved this change.

Ms. Brown next discussed the new ground for eviction appearing at 46A:15-5a. She explained that Staff tried to craft a compromise because although there are some kinds of conduct that may create an imminent serious danger and for which a notice to cease would make no difference, for other types of conduct that may cause a substantial danger, if the tenant had been given prior notice to cease, the tenant might have acted differently. An example appeared in the prior tentative report, where a tenant leaves the stove on to heat the home. Tenants may not realize that this conduct might get them evicted. They should be given a notice to cease prior to an eviction under this ground. In contrast, a tenant who is walking around the hallways with a loaded gun should not have to be told by the landlord that such conduct must cease before the landlord will attempt to evict the tenant on that basis. Staff tried to make a distinction between an imminent serious danger to the lives of other people and conduct that, if it does not cease, could cause serious danger to the health of other people or to property or the vicinity.

Commissioner Bunn stated that he was not sure the current language addressed the issue. Commissioner Burstein stated that in this case, we might benefit from releasing the language in a tentative report and then getting outside help because the Commission cannot envision all of the scenarios that might arise. Nick Kikis stated that he believed the original language before the change recently made is preferable. The Anti-Eviction Act is intended to protect from arbitrary or capricious evictions, not to protect tenants who create a danger to other tenants. He believes that Staff is going to excessive lengths here which are unnecessary and unwarranted and that it was hard to determine what constitutes a threat to life vs. health.

Connie Pascale stated that this section should be eliminated entirely. The law has existed for 40 years without a problem. The person heating an apartment by use of a stove without a notice to cease or a person hoarding or filling an apartment with boxes, inspectors come and take care of these problems. And for truly dangerous situations, the landlord can just call the police. Matt Shapiro stated that this is really all up to the landlord’s judgment, what constitutes a threat to life as opposed to a threat to health. The standard could be used to remove people who are not doing anything evictable, such as people in rent-controlled communities where the landlord simply wants to get the tenant out and if there is something they can conjure up that is detrimental to life, health or the vicinity, they will do so to free up the apartment. He also was not sure what was meant by the “vicinity of the rental premises.”

Mr. Laiks explained that there are serious problems that require this provision. He gave, as an example, a tenant who had a pipe bomb in an apartment. There was no basis on which to evict this tenant. The landlord had to send a notice to cease in this situation and still was not able to get the tenant evicted. Another tenant left a pie in an

oven for more than 4 hours and caused a fire. Another tenant sprayed bug spray in a gas oven. The list of dangerous activities by tenants goes on and on. He explained that under circumstances where the landlord has shown dangerous behavior by the tenant, the landlord should have a basis to evict.

Stuart Weiner introduced himself as someone who works with people with disabilities. His office has handled hundreds of landlord tenant cases per year and he has clients who have problems with hoarding, which is a recognized mental health issue. If the problem gets to an extreme, the town will act very quickly to post a sign and declare the premises uninhabitable. He has been to court to try to see that people get help and assistance if they need it to clean up the place. The notice to cease enables the tenant to go to his office and get help to address the issue and the concerns of the landlord and neighbors without rendering the individual immediately homeless.

Victor Monterosa explained that the destructive behavior is normally addressed in the lease. He does not see a reason to change this. Tenants holding a single box of files have been accused of hoarding. Marisol Cordero stated that her concern is that this change will have a disparate impact on extremely poor tenants and the disabled who need an exception from a general rule to address their particular needs.

Chairman Gagliardi asked whether the basis for the eviction stated in this new provision is already covered in the leases. Mr. Laiks explained that leases have rules and regulations that are the basis for eviction and in some situations the behavior of one tenant is very dangerous and threatening to the other tenants. The disabled are protected by law and they also have to be held to the same safety standards as other tenants and not given a free pass to cause risks to other tenants. Chairman Gagliardi asked whether hoarding is addressed in residential leases. Mr. Laiks said it is not. Chairman Gagliardi asked whether there is language generally that covers posing a danger to other tenants or if there is a fire hazard, for example; what exists currently that would enable the landlord to take action. Mr. Laiks replied that landlords can only terminate a tenancy for a statutory basis and not by lease. Ms. Goldstein advised that she had drafted leases for the New Jersey Apartment Association and that leases generally speak about tenants' duties, for example, keeping the apartment clean and in sanitary condition, not creating a fire hazard, etc. They generally do not have a specific provision regarding hoarding.

Mr. Weiner stated that he agrees with Mr. Pascale that this provision is not necessary because the legal grounds are there already. This provision would eliminate the notice to cease and an opportunity to cure. It has not been his experience that municipal inspectors are overly lenient in cases of tenants creating a dangerous condition. He urges the Commission not to adopt this section at all.

Elliot Harris commented that while focusing on hoarding, the speakers have glossed over the "imminent" aspect of the conduct. If there is a lease provision and a

notice to cease is required, the landlord has to give the tenant a reasonable opportunity to cure, whether it be 10 days or two weeks or more. The effective date of the notice to quit is 30 days from the end of the calendar month. At that time the landlord can terminate but by the time the landlord gets on the court calendar, it could be another two, three or four months. Hoarding may not have the same immediate consequences as some other situations such as the pipe bomb. If a tenant assaults a landlord, a three-day notice to quit is provided in the statute, but if the tenant assaults a neighbor, the landlord cannot pursue such a quick remedy. Lori Greenberg, who represents manufactured home community owners, also stated that she has seen situations in which tenants light open fires near a state forest, or where a tenant siphons hundreds of gallons of fuel oil. These are not situations in which a notice to quit is appropriate. Immediate action is critical.

Commissioner Bunn said he is troubled by the ambiguity of the language in the new provision, and he thinks it is not workable. A landlord cannot be expected to distinguish between threats to life and threats to health. Most of the scenarios are probably addressable through a notice to cease mechanism. The pipe bomb example, however, is troubling. If a tenant has threatened another tenant, you cannot simply tell the tenant not to do it again.

Commissioner Bunn asked whether calling the police in a truly imminent danger situation actually works. Mr. Laiks said it did not. The tenant gets out on bail and waits a year for a trial and the landlord is stuck with him. Mr. Kikis said what about the tenant who stores gasoline or kerosene in the apartment and the landlord did not think to craft any lease provisions that would then be a ground for eviction if the tenant breaches the rules and regulations or provisions of the lease. Judge Pressler had carefully drafted the earlier version of this provision; she understood that the matter would go before a judge of the Superior Court and if the person is creating an imminent danger, the tenant should be able to be removed. The obligation to rent to one tenant does not eliminate the obligation to protect other tenants.

Chairman Gagliardi asked the Commission whether there should be any provision at all. Professor Bell said that initially he had been convinced that we needed to have some language. Now, he is worried that this will be interpreted too broadly. If we could craft language in a way to limit the application, it is a good idea. But we have been through this two or three times and he is beginning to think that we cannot craft something that solves the problem that we are trying to address. Commissioner Bunn stated that we are not there yet. We do not have a reason to suspect that a good person will not correct his or her behavior when notified to do so. He is concerned about those engaging in deliberate bad behavior.

Mr. Prohl asked whether you could tie the cause to evict to someone breaking a certain set of laws of a certain severity. Commissioner Bunn asked whether you would have to wait for a conviction before being able to evict. Mr. Cannel said that the

Commission could base eviction on charges as it is with drug issues. A provision with a notice to cease, could handle 90% of the problems, but with the very serious issues, like a pipe bomb, it is a different situation. It may be useful to have something in the statute because a landlord cannot think of all of the relevant dangerous things and put provisions into leases.

Commissioner Burstein asked whether it would be useful to put a standard of proof in, requiring clear and convincing evidence. Ms. Brown reminded the Commission that this had been considered and rejected by the Commission at an earlier meeting on January 21, 2010. Professor Bell recalled that he had been part of that and that the clear and convincing standard only works if there is a problem with the facts, but it does not deal with how serious the issue is. If someone uses something combustible to clean a stove, there may be a presumption that the alleged conduct does not meet the standards and the landlord has to overcome the presumption that the issue is not imminent and serious. Mr. Harris stated that the existing anti-eviction statutes, section p., says that a person found by a preponderance of evidence involving an assault against a landlord or landlord's family can be evicted on a three-day notice to quit. This is a parallel provision to allow quick action when the victim is another tenant. This closes a gaping hole in the statute. It is not a question of behavior but who the action is committed against.

Ms. Brown explained that the Commission added a provision regarding aggravated assault against one or more tenants to address scenarios of concern to landlords and tenants. Mr. Pascale said that the criminal provisions are where there are intentional acts. For other cases, a notice to cease is appropriate. A tenant who left a pie in the oven may have gotten a phone call and may have just forgotten the pie was there and should not be penalized. Mr. Laiks spoke about another issue, stalking. He is having a problem and tenants are being released from leases because they are being stalked by other tenants. Mr. Shapiro stated that there is more than one agency that deals with extreme threats – there are the police, the health departments, the fire departments, the safety inspectors – all can come in to deal with serious situations like pipe bombs, fuel dumping, etc. These situations can and have been dealt with. He is also concerned with tenants threatening other tenants because he himself has been threatened.

Chairman Gagliardi thanked everyone for their insightful comments which the Commission will benefit from and which Staff will consider when addressing this issue for the next meeting. He suggested that the Commission should draft language that will not be abused but will give comfort to the tenants and landlords that there is certain conduct that will subject the tenant to immediate removal. He asked Staff to give the Commission several options for the next meeting.

On the issue of campgrounds and mobile homes, Ms. Brown noted that she and Mr. Cannel met with representatives of the New Jersey Manufactured Housing Association last week, some of whom were present at this meeting. They had raised an

issue in an earlier submission as to whether people that pay to use campgrounds should be considered tenants. Staff reviewed the Campground Facilities Act and determined that this act provided a mechanism for evicting campground users separate from the landlord tenant laws. Thus, Staff recommended that the definition of residential premises in the new Title should not include campgrounds as defined by the Campground Facilities Act.

The other issue is mobile home parks. Staff was advised by NJMHA that the definition of mobile home parks should have a broader reflection of current law so the language has been changed to define things more clearly. Matt Shapiro said that this sounds reasonable, but most of the people in a particular campground are living in an area year round with the owner's knowledge and thus are tenants subject to the anti-eviction act and other eviction laws. Mr. Cannel stated that if they are living there year round and the landlord is aware, then he agreed that they are tenants and where they are living are not "campgrounds" as defined under the Campgrounds Facilities Act. Mr. Cannel and Ms. Brown explained that whether a place is called a campground or not is not the issue. The statute will define a campground based on its use. Mr. Shapiro stated that it is difficult for those that use this campground year round to convince judges that this should be a landlord tenant issue.

Ms. Dibble stated that she had a problem with how the Commission is handling the definition of "mobile homes" because she believed that all references to the term "mobile home park" should be removed. This is outdated language that is not used. The Mobile Home Protection Act defines these communities more inclusively. Chairman Gagliardi asked about the meaning of the language "Private Residential Leasehold Communities". Ms. Dibble explained that the homes are not mobile and it is not a park. Mr. Cannel said that Staff can change the nomenclature in the report. Ms. Dibble stated that there is a mix of places people call trailer parks. There are several different kinds of housings structures. Newer manufactured homes that are put together in pieces and then trailers that were meant to be pulled behind a vehicle.

Chairman Gagliardi asked about the difference between a prefabrication and mobile home. Joan Fittz, Executive Director of the NJMHA, explained that in the industry, the type of housing is distinguished using different terminology. Thus, homes built prior to 1976, were built before the HUD code was established; they were built turn-key, not panelized, set on sites. But after 1976, when the code was established, they are completed as constructed in the factory. The homes are set on sites per the Uniform Construction Code and sited according to safety recommendations. These are the two types of manufactured housing that her group is most familiar with. There are also camp model homes, which are much smaller, and generally used seasonally.

Commissioner Bunn asked whether manufactured homes are rented or placed on rented lots. Ms. Fittz explained that most mobile or manufactured homes in New Jersey

are landleased homes, the owner owns the home and leases the site. He recommended changing the terminology to “manufactured housing community” from “mobile home park.” Ms. Greenberg stated that they call it manufactured housing, covering anything manufactured but not tents. But tents are not supposed to be there anyway.

Commissioner Burstein asked about the characteristic relationship between a land owner and a person who wants to place a manufactured home on a site. Ms. Greenberg said there are manufactured homes placed on land the homeowner owns. Then, the homes lose their manufactured quality, and are assessed as real estate. They are no longer vehicles. But homes in a manufactured housing community are still motor vehicles, assessed as personal property and the community is taxed as real property. Commissioner Burstein asked whether there is a land owner assessment in these communities. Ms. Greenberg said that the community is taxed for value of the community, not the manufactured homes. If the tax does not cover the costs of the community, the town may also charge a fee called a municipal service fee to each individual resident as a passthrough.

Ms. Brown asked the Commission whether it wishes to replace the term “mobile home park” with “manufactured housing community”. Commissioner Burstein asked whether it is characteristic of manufactured homes that they are as attached to land as are other dwellings. Ms. Greenberg stated that some of them move, but generally they are sold in place and stay in place. Mr. Shapiro added that the owners of these homes are tenants subject to eviction, so they can be forced to move, whether they move the home or not. Ms. Dibble stated that there is a separate law that protects homeowners in mobile home tenancies, but there is very little protection against eviction and they are being evicted from homes that they own; that complication is not addressed in the current law. Chairman Gagliardi stated that the concept of being evicted from a home you own is enough related that the Commission should certainly see a copy of this law with the next round of materials. Ms. Brown said that she would provide it to the Commission for the next meeting.

The final landlord tenant issue for discussion is the public housing issue. Mr. Cannel explained that the federal regulations supersede state law and require certain provisions in leases. He believed that the language Ms. Brown originally drafted addresses the issue because it applies only where federal law and federal regulations require. Whatever the federal law is, the language is flexible enough to adopt it. Mr. Pascale stated that this provision should be stricken entirely. The section, citing to the Oakwood case, is designed to allow evictions without a notice to cease. This was drafted in the 1990s, and the sponsor limited it to public housing only, and it was not expanded to federally assisted housing. The one case dealt with whether innocent tenants could be evicted. There is no justification for incorporating it here and it is not justified by the case cited. e also explained that the Rucker case involved a challenge by tenants against the federal government in a case dealing with eviction for drug use under subsection p. of the

anti eviction act. The case had nothing to do with notice, the court left that issue to be dealt with by state courts.

Commissioner Bunn asked whether the Oakwood case has been followed. Mr. Cannel said that Oakwood deals with project housing, and not voucher based housing. The case does deal with innocent tenants and it assumes that the federal provision was required in project-based Section 8 housing. The current statute is more limited in its applicability to public housing. If the federal regulations apply to public housing, they supersede state law. They require a one strike and you are out provision. A notice to cease is deceptive because the federal law says a landlord has to have discretion to evict regardless of whether the person ceases or not.

Mr. Pascale said that there is no federal preemption in this case. Commissioner Bunn asked whether if Mr. Pascale is right, this section would never apply and Mr. Cannel said that this is correct. Mr. Cannel said that he believes Mr. Pascale would agree that this provision applies to public housing but Mr. Pascale said no. Mr. Cannel said that there are three classes of housing at issue here. There is a disagreement over the application to one kind, voucher based assistance – some say it is federally assisted, others say that it is not; there is no case that makes it clear.

Commissioner Bunn stated that if the state law is preempted, then what happens to the notice to cease. Commissioner Burstein stated that the notice to cease is procedural. Mr. Cannel said that Mr. Pascale says that the procedure is required even if the ceasing will not prevent the eviction. Commissioner Bunn stated that the tenant will then feel repose in that if the tenant only ceases, he or she will be fine. And then the tenant is evicted regardless. Mr. Cannel stated that we are creating a procedure that is deceptive. We could delete the provision entirely and leave it to federal law. Mr. Shapiro states that adding the words “or in any federally assisted housing” would instruct a judge that the law applies where housing is in any way assisted by the federal government and he does not think that is the law now, and since it is not clear, it should not be inserted.

Chairman Gagliardi asked whether there was anyone who did not object to adding the phrase. Ms. Goldstein said she did not object. She advised that there is a problem relying upon existing law because in existing law, project based section 8 housing is not under the control of the housing authority or the redevelopment agency. It is only under the control of HUD. She had submitted a memo outlining the law and there is a definition in the federal regulations stating what is considered federally assisted housing; there are properties other than those owned or managed by a housing authority and are required to use a HUD lease, including language that the public housing leases include. There was opposition by Legal Services to her eviction actions. She has two recent decisions that include groups of housing that have a HUD lease and are federally funded. She will send them to Staff.

Mr. Laiks agreed with Ms. Goldstein. Many of the project 8 housing buildings are referred to the New Jersey mortgage companies because HUD services the building. Mr. Pascale explained that there are huge differences between the Rucker and Oakwood cases– this provision was drafted specifically for public housing; if you read the handbook that governs federally assisted housing, it creates a maximum rights regime. This means that the regime that creates the most tenant rights applies. There is no intention by the federal government to preempt. Rucker said the issue of eviction would be left to state law; this provision creates an additional right that is not created by state law and is not created by any decision.

Chairman Gagliardi asked whether Staff still maintains its recommendation and Mr. Cannel said yes. The Commission responded separately. Professor Bell said that the provision should not be added to the statute. Commissioner Bunn asked whether all section 8 housing has HUD leases. Mr. Cannel responded that all of project based housing does. Commissioner Burstein said that he was not comfortable with the provision. Mr. Cannel noted that the term procedural right is included in the regulations. Commissioner Bunn stated that if you go to a state proceeding to enforce the lease, you would have the protections of state law, so he favored including the language. Commissioner Bulbulia said that he was uncomfortable with the provision and that he would like to look at the regulations. Mr. Prohl said that from his experience with the medical marijuana law and dealing with state and federal issues, the state is not required to enforce federal law in all cases. If the regulations suggest that state law preempts, that gives state law broader sway.

Commissioner Bunn said that perhaps the Commission needed a legal memorandum. Professor Bell said that his inclination is not to change the law here. If there is a dispute about what the law is, the Commission should not change the statute. Mr. Prohl asked whether a substantive change in the law was needed to accomplish the ultimate outcome. There are two aspects of drug laws – lease provision and the other section which deal with preponderance of the evidence. Thus, the protection is expanded to project-based housing and this provision does not eliminate the requirement. No notice to cease is required now for drug use.

Chairman Gagliardi stated that regardless of the wisdom of the policy, we are better served by adding words rather than leaving them out. He invited anyone from the audience who wished to do so to submit something within a week so Staff can review and synthesize the information before the June meeting.

General Repealer

Chairman Gagliardi said that given the diverse nature of the items included in the general repealer project, it would be carried to the next meeting to allow time for Commission consideration. Mr. Cannel said that he may submit a new memorandum

before the next meeting, removing from the project the all of the Title 44 provisions including those about which Mr. Pascale had expressed concerns.

Chairman Gagliardi said that a Title 18A items should also be removed from the project. He explained that the identified provision pertain to situations in which a child who is not vaccinated cannot be excluded from school generally, but may be excluded in the event of an outbreak of a disease against which they are not vaccinated.

Miscellaneous

The next meeting is scheduled for June 16, 2011.