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THE UNIFORM LEASE: A NECESSITY FOR EFFECTIVE REFORM

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INTRODUCTION

Today, two out of every three Americans live in urban areas. Within these areas, the landlord-tenant relationship is a core problem. Recently, the American Bar Foundation promulgated its *Model Residential Landlord-Tenant Code*.[1] The Code provides critically needed attention to many of the problem areas mentioned below. It is doubtful, however, that effective reform will occur unless the tenant is informed of both his rights and his remedies. This article suggests that a uniform lease which communicates to the tenant the advantages of statutory reform is necessary to achieve the goals of the Code.

THE NEED FOR REFORM

A brief survey of some of the ancient rules governing those who rent should be sufficient to point up the incredible failure of society to bring about necessary change. The following areas are only examples and do not purport to set forth the entire problem. Consider the following modern lease provision:

> The tenant has examined the premises and acknowledges that the tenant is satisfied with the present physical condition of the premises and that neither the owner nor owner's agent has made any representations or promises concerning the physical condition except those specifically set forth in the lease.

The question first presented: What is the origin of this provision? The common law rule relating to condition of the demised premises was a simple one. The tenant took the premises as he found them. The landlord was under no duty to either turn over the premises in good repair or maintain them in repair. The rationale was straightforward. If the tenant did not like the premises at hand, he did not have to rent them. If the tenant wished premises in good or different condition, then he should find other premises.[2]

The basic, and persisting, tenet governing the condition of the

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1. AMERICAN BAR FOUNDATION, MODEL RESIDENTIAL LANDLORD-TENANT CODE (Tent. Draft, 1969).

2. *See* 2 R. POWELL, REAL PROPERTY § 225 [2] (1967).

demised premises can be summed up in the well worn phrase: *caveat emptor*. The phrase, and the legal conclusions that surround it, is predicated on the assumption that a potential tenant could make a reasonable inspection of the premises and determine the existence of defects. If such were discovered and they materially affected the desirability of the property, the tenant could seek land elsewhere. It was assumed that the parties (landlord and tenant) were at equal bargaining strength.[3]

Applying this ancient rule to the present day, an example is in order. Patricia and Richard Kolojeski entered into a month to month tenancy with John Deisher, Inc. for an apartment.[4] On April 22, 1964, they, along with their infant daughter Madeline, moved in. On or about January 4, 1966, some twenty months after the occupancy began, Madeline (now two years old) consumed pieces of paint which had peeled from the living room woodwork. From this she sustained serious injuries which resulted in her death two days later. The paint was lead based which is toxic when consumed.

The child's mother, as administrator of the decedent's estate, and the mother and father in their own right, commenced a wrongful death action and survival action against the landlord. Plaintiff's alleged that the defendant was "negligent in failing to maintain the premises in proper living condition."[5] In reply, the Supreme Court of Pennsylvania quoting itself said: "(1) In the absence of any provision in the lease, a landlord is under no obligation to repair the leased premises, to see to it that they are fit for rental or to keep the premises in repair . . . (2) a tenant takes the premises as he finds them."[6]

The central thrust of the plaintiffs' complaint was that in two relevant ways the landlord was negligent, and his negligence was the proximate cause of the death. First, the landlord was negligent "in allowing the living room woodwork paint to deteriorate to the point where paint peeled and fell" and more importantly "in using lead base paint, which is poisonous if consumed."[7]

Aside from the facts in this case, the plaintiffs' theory was not completely unprecedented. For, while the general black letter principle stated that the tenant took the premises as he found them, a landlord was obligated to warn the tenant of the existence of latent defects—those which the tenant would not discover upon making a reasonable inspection

3. *See* Park v. Penn, 203 Ill. App. 188 (1916).
4. Kolojeski v. John Deisher, Inc., 429 Pa. 191, 239 A.2d 329 (1968).
5. *Id.* at 192, 239 A.2d at 330.
6. *Id.* This language originally appeared in *Lopez v. Gukenbach,* 391 Pa. 359, 137 A.2d 771 (1958).
7. 429 Pa. at 192; 239 A.2d at 330.

of the premises.[8] There rested, under common law rules, no duty upon the landlord to cure such defects, but he did have an obligation to warn the tenant. Using this theory, one could argue that the landlord knew or reasonably should have known that lead base paint had been used in decorating the demised premises. One should know that this type of paint can be dangerous if consumed, and it appears that this risk could not have been discovered upon making a reasonable inspection. It would not be obvious to an average tenant. If this was the case, then the landlord's failure to warn should have resulted in his liability.

The Pennsylvania Supreme Court conceded that the action would be meritoriously founded if it could be established that the use of lead base paint "constituted the creation of a dangerous condition" of which the landlord had knowledge and of which the tenant had no notice.[9] Once isolating the issue to the propriety of using such paint, the court summarily dismissed the complaint, saying: "Although the situation is tragic, we cannot help but agree that the use of lead base paint in these circumstances cannot constitute actionable negligence."[10]

In order to insure minimum conditions for residential dwellings, the legislative bodies in many states and cities have enacted building codes. These enactments have for their apparent purpose the establishment of minimum standards for the maintenance of the building by their owners. Although the tenant is the primary person interested in the enforcement of the housing code, he is usually denied direct access to the courts to insure compliance. The usual parties involved in seeking compliance are the public officials who make decisions as to the existence of violations. The tenant is usually not a recipient of any compensation resulting from a building code violation. Instead, if the landlord is held to be in violation of the statute, he is given an opportunity to repair and a fine is imposed.[11]

An all too typical situation is illustrated by a recent New York decision.[12] A lease was executed by which the corporate tenant hired certain premises in New York City. The annual rental of $9,000 was payable in semi-monthly installments of $375 in advance. At some time during the running of the lease, the tenant notified the landlord of the

8. Most courts hold the landlord liable for failure to disclose latent defects of which he had actual or constructive knowledge. *See generally* 1 AMERICAN LAW OF PROPERTY 269 (Casner ed. 1952).

9. 429 Pa. at 193, 239 A.2d at 331.

10. *Id.*

11. Levine, *Warranty of Habitability*, 2 CONN. L. REV. 73 (1969).

12. Emigrant Industrial Sav. Bank v. One Hundred Eight West Forty Ninth St. Corp., 225 App. Div. 570, 8 N.Y.S.2d 354 (1938).

necessity of making certain repairs to the premises. The notice was ignored by the landlord. Thereafter, the tenant caused the repairs to be made at a cost of $365. After incurring this expense, the tenant tendered the sum of $10, representing the difference between the installment of rent due on January 15 and the cost of making the repairs. Even though the landlord agreed that the repair bill represented the fair and reasonable value of the work, he refused the $10 tender and demanded the full rental installment. The landlord brought suit for $375 and based his case on the simple common law principle that a landlord is not obligated to repair the demised premises in the absence of an express covenant.

The tenant claimed that the condition of the demised premises, prior to the repair in question, was in violation of the *Multiple Dwelling Law* of the state, the applicable provision of which reads as follows:

> REPAIRS. Every multiple dwelling and every part thereof shall be kept in good repair, and the roof shall be kept so as not to leak and all rain water shall be so drained and conveyed therefrom as to prevent its dripping to the ground or causing dampness in the walls, ceilings, yards or areas. The owner of such multiple dwelling shall be responsible for compliance with the provisions of this section; but the tenant also shall be liable for every violation of the provisions of this section if such violation is caused by his own wilful act or neligence of that of any member of his household or his guest.[13]

The tenant argued that the condition was not caused by the action of the tenant or his household or guests. Therefore, the landlord was under a legal duty, pursuant to the terms of this ordinance, to make the repairs. He should have, upon due notification, complied. Failing to comply, the tenant could make the repairs and either sue for the cost thereof or deduct the equivalent amount from his rent.

The court's apparent first reaction was to reject the tenant's contention on the ground that "the purpose of this statute . . . is to protect those dwelling in tenements or visiting therein, who are unable to care for themselves."[14] Since this tenant acquired the premises, not to reside or possess himself, but to relet, the law should be inapplicable as relief. This might appear reasonable and cogent, leaving the door open for a different result should the tenant be a premises occupant. At the conclusion of its decision, however, the New York court closed that door.

13. Law of April 2, 1931, ch. 228, § 20, [1931] N.Y. Laws 593. For the current statute in amended form, see N.Y. MULT. DWELL. LAW § 78 (McKinney 1946).

14. 225 App. Div. at 575, 8 N.Y.S.2d at 359.

Quoting itself, and referring to a decision of the prior year, the court, in substance, said that such ordinances affect only the relationship between the landlord and the public authority. The ordinance does not concern itself with the legal relationship (in terms of rights and duties) between landlord and tenant. The opinion reads, in part:

> It is the landlord and not the tenant who must satisfy the Department that the work has been done properly. The statute providing, as it does, its own penalties, should not, as between landlord and tenant, be further extended in scope.[15]

This type of decision can, at least, be described as *curious*. If the statute was not designed for the protection of tenants—then for whom? And, if the enactment was for the benefit of tenants, why not allow them to enforce it through private suits?

A District of Columbia case, *Brown v. Southland Realty Co.*,[16] arrived at a more sensible conclusion. The court held that no rent was due under a written lease since the owner knew at the time of executing the lease that there were building code violations on the premises of such a nature as to render the dwelling unsafe and unsanitary. The court, however, did not act solely upon the basis of judicial reform of the laws of landlord-tenant. Rather, the court was armed with a statute:

> No person shall rent or offer to rent any habitation, or the furnishing thereof unless such habitation and its furnishings are in a clean, safe and sanitary condition, in repair and free from rodents or vermin.[17]

The judicial pronouncement was simple and straightforward. Since the lease was made in violation of the statute, it was void.

The current need for reform legislation is clear. A lease is both a conveyance and a contract. To the extent, therefore, that the tenant has bargaining power, the lease may contain legally enforceable obligations. In a simple illustration, a potential tenant who has $1,000 per month to expend on the renting of a residence can probably extract from his landlord certain concessions. To the extent to which these are included in the lease, and made part of a valid and enforceable contract, the tenant has recourse should the landlord fail to perform. Such a tenant probably has little difficulty in procuring an agreement that his landlord will maintain the premises.

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15. *Id.* at 576, 8 N.Y.S.2d at 360.
16. 237 A.2d 834 (D.C. Ct. App. 1968).
17. WASHINGTON, D.C. HOUSING REGULATIONS § 2304 (1955).

The problem is acute, however, when the tenant has little bargaining power. The low income tenant does not have leverage with his landlord. The law of supply and demand is such that a tenant, typically a resident in a large urban area, who has only $100 to expend can demand little from his landlord by way of bargain. Legislation such as that in force in the District of Columbia is needed.

The common law rule provides that covenants in a lease are independent of one another, and a breach by one party does not grant to the other a right to terminate the tenancy. Theoretically, if a landlord covenanted to maintain the premises in good repair and breached, the tenant's sole remedy was to proceed in a common law action for money damages. In the absence of any other lease provisions, the tenant could not consider the tenancy ended. This simple rule, however, also applies in reverse. In order to avoid this result, most landlords place a forfeiture clause in their lease.

> In case of the breach of any covenant in this lease, tenant's right to the possession of the demised premises thereupon shall terminate without notice or demand, and . . . if the owner so elects, but not otherwise, this lease shall thereupon terminate, and . . . tenant agrees to surrender possession of the demised premises immediately.

In substance, the clause stipulates that should the tenant breach one of his undertakings, the landlord may end the leasehold. Few tenants have the bargaining power to secure such a provision for their benefit. In treating these forfeiture clauses, the courts have, on the whole, been thoroughly consistent holding that regardless of the degree of breach the landlord may, if he so chooses, terminate.[18]

A recent Florida decision illustrates the harshness of the forfeiture clause for even a prosperous tenant. In *Augusta Corporation v. Strawn,*[19] a corporation leased vacant property from Edna Strawn and Iva Hillyer. Pursuant to the terms of the lease, the tenant constructed ninety-six apartment units on the demised premises. The cost—born exclusively by the tenant—was undertaken since the term of the lease was 99 years.

The lease provided, among other things, for a covenant of repair by the tenant. In order to assure compliance, the lease contained a provision to the effect that a breach of the covenant would work a forfeiture and permit the lessor to declare the tenancy terminated. While the lease term was still young, and a substantial time balance remained, internal

18. For an example of statutory reform, see AMERICAN BAR FOUNDATION, *supra* note 1, at 35-49.

19. 174 So. 2d 422 (Fla. 1965).

strife developed within the corporate structure of two 50% shareholders resulting in a period of conflict when no meaningful corporate decisions were reached.

The Florida court found that the premises had fallen into a state of disrepair and remained in that condition although the landlord had given notice requesting the tenant to act pursuant to his repair obligation. When no repairs were forthcoming, the landlord instituted a suit to cancel the lease. The request was granted. While the District Court of Appeals of Florida referred to the "harshness" of the rule—obviously, the forfeiture of ninety-six apartment units which had been newly constructed at tenant cost can be described as at least a harsh result—it was nonetheless granted.

One might argue that the corporate defendant in this case may have had bargaining power at the time he negotiated with his prospective landlord, and therefore the result was fair. The same doctrine, however, applies to low-income, residential dwellings where the tenant has no bargaining power. The need for statutory reform action is again substantiated.

Assume that a tenant enters into a lease of certain premises for a one year term at a stipulated monthly rental of $150. Before the end of the term, however, he wishes to move out because of changed circumstances. Naturally, he wishes to avoid his obligations under his current lease to pay monthly rent. If the landlord agrees to the termination of the obligation, the parties may work a surrender and thereafter the tenant is relieved. The problem, however, is more complicated when the landlord refuses, and the lease contains the following clause:

> The tenant shall neither sublet the premises or any part thereof nor assign this lease nor permit by any act of default of himself or any person any transfer of tenant's interest by operation of law, nor offer the premises or any part thereof for lease or sublease without, in each case, the written consent of the owner.

Suppose the tenant, unable to obtain the acquiescence of his landlord, decides to abandon the premises. The question becomes: can the tenant expect that his landlord will take positive action to find a replacement tenant? The common law answer was no. The black letter law states that even though the tenant abandons, the landlord may let the premises lie idle and collect the rent in full from the tenant.[20]

20. *See* 2 R. POWELL, REAL PROPERTY § 231[1] (1967).

In *Goldman v. Broyles*,[21] the tenant abandoned the demised premises prior to the expiration of his lease term. He sought release of his obligations, but the landlord refused. While the premises laid unoccupied, a third party approached the landlord making inquiry as to renting them. The landlord replied "that he had nothing to do with the renting of the premises and referred him to the . . . [tenant]."[22]

The landlord, thereafter, sued the tenant for the rent for the full balance of the lease term. The tenant argued that the court, in arriving at a verdict, should deduct that amount which the lessor, by use of ordinary diligence, could have received from the third party. The court replied:

> We hold . . . as a matter of law that where a tenant breaches the contract, the landlord is not obliged to endeavor to let the premises for the benefit of the tenant who refuses to continue in occupancy under the lease.[23]

The tenant, perhaps, should have found his own replacement tenant. A basic incident of the tenant's leasehold interest is the right to transfer, and this right can be exercised without securing the consent or approval of the landlord. Most leases, however, contain a provision which purports to restrict this right. Virtually every residential lease contains a clause to the effect that the tenant has no right to transfer his interest unless the landlord grants his written approval. The common law interpretation of this restriction holds that the landlord may arbitrarily refuse to give his consent to a proffered substitute tenant.[24]

On this basis, the tenant may find himself locked in to an unwanted tenancy even though he can find a suitable, substitute tenant. The result follows in most jurisdictions even though there is no reason to believe that the landlord would suffer at the hands of the proffered substitute.

Communicating Reform to the Tenant

As the discussion and examples point out, reform in the area of landlord-tenant is clearly warranted. Pursuant to this urgent need, many have advanced meaningful measures. One of the most powerful, and probably the most far reaching, is the *Model Residential Landlord-Tenant Code*[25] prepared under the aegis of the American Bar Foundation. This

21. 141 S.W. 283 (Tex. Civ. App. 1911).
22. *Id.* at 285.
23. *Id.* at 286.
24. 2 R. Powell, Real Property § 246[1] (1967).
25. American Bar Foundation, Model Residential Landlord-Tenant Code (Tent. Draft, 1969).

measure suggests the enactment of a complete Code, touching upon almost every aspect of the relationship. The writer urges that while such reform movements are obviously well based, one ingredient is missing —the element of communication.[26]

An example centering on the question of communication involves the validity of exculpatory clauses, *i.e.,* a clause included in a lease exculpating the landlord for liability for personal injury or property damage. In Illinois, the legislature declared most exculpatory clauses to be void and in violation of public policy.[27] While this enactment became effective in 1959, many residential leases continued to contain such a provision.[28] Why would landlords continue to place in their leases a provison which is void? One might reason that landlords, upon proper advice of counsel, decided to continue to insert such provisions since the Illinois Supreme Court had not yet ruled on the constitutionality of the statute.[29] Another motivation, however, is evident. The inclusion of the proviso may persuade an injured tenant not to assert his rights because the lease is unambiguous and provides that no action shall lie.

State law should require the issuance of a written lease for every residential landlord-tenant relationship, and such leases should be required to conform to state standards. The first objective is obtained by the enactment of a provision which, in substance, reads as follows:

> STATUTE OF FRAUDS. Every existing landlord-tenant relationship, wherein the demised premises are intended for use by the tenant as a residence, shall, in conformity with this act, be evidenced by a written lease signed by both landlord and tenant.

The purpose of this enactment is manifold. The most basic goal to be accomplished is that the lease be a meaningful contract between the parties which discloses, as much as possible, the rights and obligations

26. Reform should have three aspects: 1) the laws in question must grant the tenant greater rights in order to compensate for his lack of bargaining power; 2) the reform should provide for tenant-oriented remedies for landlord breach; and 3) the new rights of the tenant must be effectively communicated to him in order to insure compliance.

Communication is especially important to educate tenants concerning their contractual rights. It has been asserted, therefore, that if the tenant is aware of his rights against his landlord, many of the tragic lockouts and evictions which presently occur in the inner city would be avoided. Interview with Donald J. Kerwin, Attorney for United Charities Legal Aid Bureau, Chicago, December 1, 1969.

27. Law of April 13, 1959, [1959] Ill. Laws 98.

28. Interview with Donald J. Kerwin, *supra* note 26.

29. In 1969 the Illinois Supreme Court invalidated the statute, *supra* note 27, and thereby made landlord-tenant exculpatory clauses void. Sweney Gasoline & Oil Co. v. Toledo, Peoria & Western R.R., 42 Ill. 2d 263, 247 N.E.2d 603 (1969).

of each. The lease, and the statute which requires it, should include the whole contract between the parties. The legal relationship should be contained therein. If such a statute were enacted, the tenant could better be informed of his rights and obligations and be confident that the lease represented the true state of his legal status.

One of the simplest methods of assuring that better housing is obtained is to grant the tenant more enforceable rights and inform him that he has those rights. It is a common occurrence today that a tenant does not know his rights and how to assert them.[30] Since the object of the proposal is to enhance the bargaining power of the tenant with a view toward guaranteeing minimum standards, it is urged that the landlord face a meaningful sanction should violation occur. A sample provision to put "teeth" into the Statute of Frauds follows:

> VIOLATION. Should there be, in violation of this act, no written lease evidencing an existing landlord-tenant relationship, then:
>
> 1) The relationship shall be enforced as established by parol;
>
> 2) The relationship shall in no event have duration of more than one year;
>
> 3) The landlord shall, under these circumstances, be deemed to have undertaken the following and be liable as set forth:
>
> (i) A warranty of habitability and fitness of the premises for the use intended by the tenant;
>
> (ii) A covenant to repair and maintain the premises consistent with habitability and fitness, except as to deterioration in condition occurring as a result of the acts of the tenant, a member of his household, or his guests;
>
> (iii) Should the landlord breach either warranty or covenant, he can be found liable for consequential damages where injuries are proximate result thereof;
>
> (iv) For such time which, in violation of this act, the premises remain in a condition inconsistent with the foregoing, one-half of the rent shall abate, and this abatement shall not preclude or bar the tenant from seeking any other remedy;[31]

30. Interview with Donald J. Kerwin, *supra* note 26.

31. For a similar proposal, *see* Murphy, *A Proposal For Reshaping The Urban Lease Agreement*, 57 GEO. L.J. 464 (1969).

(v) Should there be breach of the aforementioned warranty or covenant, the tenant, if he so elects, may at any time while the premises' condition remain in noncompliance elect to terminate the tenancy; further, such termination will be effective as of the date the tenant notifies the landlord in writing of such election and the tenant physically abandons the premises, or upon the date of the happening of the later of the two.

Should violation of the Statute of Frauds occur, the tenancy should be enforced as established by parol. Without a specific enactment to this effect, a court, facing the creation of a landlord-tenant relationship in violation of the act, might hold it to be completely void. Once arriving at this conclusion, the tenant would be easily evicted.

As to the duration of the tenancy, it is felt that there should be some limitation. The rationale of every Statute of Frauds, while tempered by varying policy considerations, is that legal obilgations of considerable length ought to be in writing. Therefore, an arbitrary one year time limit is imposed. It is envisioned that, should the parol tenancy be proved to be greater than one year, the court would nonetheless enforce it, but its duration would be limited to one year.

Because condition of the premises represents the most critical problem in low-income housing, the sanction for violation of the Statute of Frauds should be focused in this area. Where a landlord fails to issue a written lease, then the enactment would impose upon him the obligation of turning over the premises in a virtually defect free condition. This is, admittedly, a severe requirement. It tends, however, to enhance building conditions, and it should be sufficient to encourage landlords to comply with the mandate of a written lease. The obligation imposed upon the lessor would be similar to the instances where one rents furnished premises for a short term.[32] The obligation upon such a tenant is to supply premises which are free from both latent and patent defects.

For breach of this obligation, the tenant would have several choices of action open to him. First, it is contemplated that the tenant could sue the landlord for the cost of making the repairs necessary to bring the condition into compliance with the act. Secondly, the tenant could recover consequential damages if, as a proximate result of the landlord's breach, injuries occurred. Thirdly, the tenant could continue the tenancy but be liable only for one-half of his assumed rental obligation so long as the state of the premises remained in violation of the act, or he could terminate his lease obligation. The wording of subsection (v) is intended

32. *See generally* 1 AMERICAN LAW OF PROPERTY 263 (Casner ed. 1952).

to grant to the lessee the right to avoid his future lease obligations at any time while the condition of the demised premises remains in nonconformity with the act. Special emphasis should be laid upon the *at any time* factor. It is envisioned that the tenant would not be required to exercise this election immediately upon deterioration of the premises' condition but would retain the election right so long as the landlord failed to act appropriately. This is intended to grant to the lessee, when faced with breach, time to find substitute accommodations.[33]

While it is important that all residential landlord-tenant relationships be evidenced by a lease, it is likewise necessary that this lease be a realistic exposé of the legal status between the parties. A goal would be to set forth each relevant provision in the most simple and comprehendable language. In order to accomplish this objective, the following samples of lease provisions should be made part of the proposed act:

> CONTENTS. Every lease, required by this act, shall contain the following provision; further no rights or obligations between landlord and tenant, subject to this act, shall be enforced except as set forth in writing; further, no agreement inconsistent with the following provisions shall be enforceable; to wit:
>
> (1) The landlord shall at all times during the tenancy:
>
> (i) Comply with all applicable provisions of any state or local statute, code, regulation, or ordinance governing the maintenance, construction, use or appearance of the premises and the property of which it is a part;
>
> (ii) Keep all areas of his building, grounds, facilities, and appurtenances in a clean and sanitary condition;
>
> (iii) Make all repairs and arrangements necessary to put and keep the premises and the appurtenances thereto in as good a condition as they were, or ought by law or agreement to have been, at the commencement of the tenancy;
>
> (iv) Maintain all electrical, plumbing and other facilities supplied by him in good working order;
>
> (v) Provide and maintain appropriate receptacles and conveniences for the removal of ashes, rubbish, and garbage, and arrange for the removal of such waste, and

33. The purpose is to avoid the restrictions imposed by the doctrine of constructive eviction. *Id.* at 283.

(vi) Supply water and hot water as reasonably required by the tenant and supply adequate heat between October 1 and May 1.[34]

(2) Should either landlord or tenant breach any of his lease obligations, the non-breaching party, if he so elects, may terminate the tenancy, and such non-breaching party shall, upon such election, be relieved of all future obligations under this lease.

(3) At the termination of the lease, the tenant shall yield up immediate possession to the owner and deliver all keys to the owner or owner's agent at the place where the rent is payable; however, should the tenant fail to surrender possession as required, the landlord shall not enter the demised premises for purposes of eviction without the written permission of the tenant.

(4) The tenant shall neither sublet the premises or any part thereof nor assign this lease nor permit by any act of default of himself or any person any transfer of tenant's interest by operation of law, nor offer the premises or any part thereof for lease or sublease without, in each case, the written consent of the owner or owner's agent, and such consent shall not unreasonably be withheld.

This proposed statutory requirement sets forth certain lease provisions which must be included in every lease required by the proposed Statute of Frauds. Further, it is suggested that these essential ingredients should not be subject to modification by the parties. If an opposite tact were taken, landlords would place deviation provisions in each lease, and a low-income tenant would be forced to agree. It should be noted that bargaining has not, however, been totally eliminated. As to matters not required by the Act, the parties are free to bargain, and such agreed upon elements would be enforced so long as they are in writing.

CONCLUSION

Obviously, these are only four examples of how the reforms urged by the *Model Residential Landlord-Tenant Code* should be incorporated into a mandatory, uniform lease. Even from the four sample provisions, it can be seen that more than one lease form (*i.e.*, statutory lease form)

34. AMERICAN BAR FOUNDATION, MODEL RESIDENTIAL LANDLORD-TENANT CODE 41 (Tent. Draft, 1969).

would be necessary. For example, clause (1) above requires landlord to supply water and heat. Where the demised premises consist of a single family residence, this insertion may be inappropriate. Therefore, a mandatory lease form for multi-unit buildings and another for single unit premises would be required.

The thrust of this proposal is that communication of rights and obligations is essential in the area of residential housing. This element can be satisfied, in good measure, by requiring the issuance of leases for all such tenancies and compelling compliance with a uniform lease form. Needless to say, this proposal would not obviate the necessity for a Model Code but should be viewed as a supplement to the much needed enactment.