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Model Residential Landlord-tenant Code -- Proposed Procedural Reforms

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MODEL RESIDENTIAL LANDLORD-TENANT CODE—PROPOSED PROCEDURAL REFORMS*

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In their introduction to the MODEL RESIDENTIAL LANDLORD-TENANT CODE, the draftsmen state that:

> The Code sets forth a complete summary proceeding for possession, not because it could profitably be adopted wholly by any significant number of states, but because this was determined to be the most convenient method of proposing a number of individual reforms.[1]

The purpose of this comment is to examine significant individual procedural sections of the proposed CODE and the desirability and possibility of adoption of these sections in Florida.

I. APPOINTED COUNSEL FOR TENANTS

The proposed CODE calls for the court to inform the tenant of his right to counsel in any proceeding by a landlord to recover possession of a dwelling unit and to appoint counsel when the tenant is unable to afford his own.[2] A tenant is deemed unable to afford private counsel when such an expenditure would work an undue hardship upon him or his

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1. MODEL RESIDENTIAL LANDLORD-TENANT CODE at 16 (Tent. Draft No. 1, (1969)) [hereinafter cited as Tent. Draft].

2. Tent. Draft § 3-101(1).

family.[3] Stating that an indigent should be protected by appointed counsel because his home is at issue, the CODE draftsmen call for state funding rather than free representation enforced by the legal profession.[4]

Constitutional issues aside, the passage of the vast appropriations necessary to furnish appointed counsel to indigent tenants is not to be anticipated on the state level, particularly in a state that is not politically dominated by its urban areas. Federal government appropriations would be more probable, so that a better view would be to include notice of right to counsel plus a referral to the local federally-funded legal aid society in the notice of petition. The court could later reiterate the notice of right to counsel and the referral.

II. SUMMARY PROCEEDING FOR POSSESSION

Florida Statutes provide the landlord with a summary proceeding for possession[5] when the tenant has either defaulted in payment of rent or held over after expiration of the term.[6] The statutory summary remedy is not, however, available for mere breach of the lease.[7] In the introduction to the proposed CODE, the framers observe that:

> Traditionally, the landlord was required to retain in his lease any rights he wished to have to re-enter on breach by the tenant of condition subsequent or the like. The proceeding set forth in this Code, however, allows possession to be regained in enumerated situations 'unless otherwise agreed.'[8]

A. *Grounds for Summary Proceeding*

The following constitute the grounds for removal through summary proceeding for possession under the proposed CODE: (1) holdover after expiration of the lease; (2) default in payment of rent; (3) breach of a lawful obligation of tenancy (use of demised premises for a purpose other than tenant's abode, failure to maintain reasonable cleanliness or improper use of physical facilities on the demised premises, and breach of other provisions aimed at reasonably protecting the premises for the landlord or subsequent tenants); (4) dismissal of an employee-tenant who was entitled to possession as compensation for his employment; (5) foreclosure where the possessor is a contract buyer; (6) a wrongful ousting of petitioner who is the lawful tenant; and, (7) the tenant's refusal to deliver "possession of a dwelling unit rendered partially or

3. Tent. Draft § 3-101(2).

4. Tent. Draft § 3-101, Commentary.

5. Wiesen v. Schatzberg, 157 Fla. 375, 26 So.2d 62 (1946); Jacques v. Wellington Corp., 133 Fla. 819, 183 So. 22 (1938).

6. FLA. STAT. §§ 83.05, 83.20 (1969).

7. In Lexington Arms, Inc. v. Henrich, 153 So.2d 31 (Fla. 2d Dist. 1963), the court held that breach of a lease provision prohibiting housing of children under age twelve on the demised premises was not cause for removal under Florida statutory proceedings.

8. Tent. Draft at 16.

wholly unusable by fire or casualty" when "the landlord requires possession for the purpose of effecting repairs of the damage in accordance with plans which have been duly filed with any appropriate authorities."[9]

The seven grounds for removal provided in the proposed CODE unquestionably reflect conditions necessitating a summary remedy on behalf of a landlord or subsequent tenant. The "breach of lawful obligations" feature would benefit tenants by allowing deletions of obvious statements from leases, thus increasing the chance of understanding a written rental agreement, if in fact a written agreement exists, merely through diminution of the mass of written words. Summary remedy under the enumerated grounds would benefit the landlord or subsequent tenant by providing for quick remedial possession and subsequent action. Codification of the seven grounds in Florida would thus provide a necessary clarity and uniformity of procedure.[10]

The proposed CODE gives the summary remedy to the tenant who has been wrongfully ousted by the possessor and to the next tenant of the premises as well as to the landlord and owner.[11] The Florida summary remedy is available only to "the person entitled to the rent or the person owning the same [premises]."[12] But if the seven grounds for removal were adopted as proposed, the Florida Statute on forcible entry and unlawful detainer would allow the parties enumerated by the proposed CODE to initiate the summary procedure without adoption of the proposed CODE's section concerning who may maintain the proceeding.[13] In the case of an absentee landlord, such a situation could place a healthy responsibility on a subsequent tenant of a dwelling unit in a building managed by a sprawling rental agency, whose bureaucracy might result in a delay of initiation of proceedings or in lack of vigorous protection of the subsequent tenant's interests.[14]

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9. Tent. Draft § 3-202(7).

10. Such an innovation would still not eliminate basic housing problems based on social factors in blighted urban areas. Poverty, broken homes, oversized families, and other characteristics of inner-city society result in large numbers of tenants who have received, at best, nominal education in ordinary hygiene and in proper use of everyday household items. Such tenants, evicted, whether under terms of a lease or by summary statutory procedure, for their lack of education, still face a critical housing shortage and the probability of future evictions.

11. Tent. Draft § 3-203.

12. FLA. STAT. §§ 83.05, 83.20 (1969).

13. FLA. STAT. § 82.04 (1969).

> If any person enters or has entered in a peaceable manner into any lands or tenements when the entry is lawful and after the expiration of his right continues to hold them against the consent of the party entitled to possession, the party so entitled to possession is entitled to the summary procedure. . . .

See State *ex rel.* Rich v. Ward, 135 Fla. 885, 185 So. 846 (1939); State *ex rel.* West's Drug Stores v. Cornelius, 110 Fla. 299, 149 So. 332 (1933). Both cases stand for the proposition that the landlord's grantee may invoke the summary proceeding for unlawful detainer. Dicta in both cases support a subsequent tenant's right to initiate the summary remedy on the same basis.

14. A wrongfully ousted tenant would have his own summary remedy where the landlord fails to act so long as the landlord receives rent.

B. *Service of Process*

In a Florida action for removal of a tenant:

> If the defendant cannot be found in the county in which the action is pending and either he has no usual place of abode in the county or there is no person of his family above fifteen years of age at his usual place of abode in the county, the sheriff shall serve the summons by attaching it to some part of the premises involved in the proceedings.[15]

To this, the proposed CODE would add that within one day of service, additional copies of the notice should be sent by certified mail "to the dwelling unit and to any other address known to the person seeking possession as reasonably chosen to give actual notice to respondent. . . ."[16] This would seem to be an excellent additional safeguard for assuring reasonable notice.[17]

C. *The Complaint*

The Florida statutory complaint and the proposed CODE's basic petition call for a description of the premises and allegations of facts warranting removal.[18] Section 3-209 of the MODEL CODE, however, calls for more detailed pleading when summary removal is sought for breach of a lawful obligation of the tenancy.[19] In such a case, the petition must state the rule breached and the date and manner in which the rule was communicated to the tenant; allege facts constituting the breach and a continuance or recurrence of the breach following notice; state the purpose of the rule breached; and, if the rule breached is one benefiting other tenants only, allege that any three tenants favor the rule (or, if there are no more than three tenants, that all of them favor the rule).[20] Adop-

15. FLA. STAT. § 83.22 (1969). *Cf.* Over 30 Ass'n. v. Blatt, 118 So.2d 71 (Fla. 3d Dist. 1960) (distress for rent is a statutory summary proceeding in rem, and the distress writ may be executed by levy on the property if the defendant cannot be found for personal service or fails, in his answer, to state where he may be found); FLA. STAT. § 83.13 (1969).

16. Tent. Draft § 3-206(b).

17. Framers of the CODE point out that this provision would benefit the tenant who notifies his landlord of his whereabouts. For example, "[n]otice will not be received by a tenant who has just left for a two-week vacation, leaving no information with either the landlord or the post office." Tent. Draft § 3-206, Comment.

18. FLA. STAT. § 83.21 (1969); Tent. Draft § 3-208.

19. *E.g.*, Tent. Draft § 2-311 calls for tenant's observance of the landlord's rules concerning use of the dwelling unit, appurtenances, and property containing the dwelling unit where the rules are: (1) made known to the tenant at the time of his agreement to occupy the unit; (2) subsequently made known to the tenant and do not substantially modify the agreement; or, (3) do substantially modify the agreement, but are consented to in writing by the tenant. The section provides that the rules apply only where they promote "the convenience, safety, or welfare of the tenants," preserve the property, or contribute to services or facilities common to all tenants. Such rules must also reasonably advise the tenant of means of compliance, and apply to all tenants in a fair manner.

Upon breach of such a rule, the landlord must give the tenant notice of the breach, allowing five days for correction. The landlord is then entitled to the summary proceeding only if the breach continues or recurs following the five day period. Tent. Draft § 2-312.

20. Tent. Draft § 3-209.

tion of Section 3-209 of the MODEL CODE would be a necessary adjunct to adoption of the seven proposed grounds for summary removal. However, the provision that calls for an allegation that other tenants favor a rule benefiting only tenants should be omitted.[21] Since the rules originate with the landlord, third party beneficiaries of the rule should not be allowed to frustrate the landlord's attempt to remedy a breach. Such a provision would give tenants an unnecessary bargaining power. For example, a situation could arise where a landlord is renting a five-unit building to four separate tenants, each of whom is angry at or seeking an undue benefit from the landlord. Assuming that one unit is vacant and for rent and that the rules state that the common recreation area, the most attractive feature to prospective tenants, is for the use of tenants and their guests exclusively, the four tenants could devise a collusive plan whereby one tenant refuses to allow the other three entrance to the recreation area. In this situation the landlord would be left without a statutory summary procedure for removal and a prospective tenant would be faced with the prospect of renting a unit and foregoing use of the recreation area or renting a unit and seeking injunctive relief. Absent a severe housing shortage, the potential tenant probably would not rent. The provision calling for the allegation that other tenants favor the rule is mere surplusage at best and, at worst, a club in the hands of the tenants to be used against the landlord or other tenants.

D. *Trial by Jury*

A Florida tenant has the right to trial by jury in eviction proceedings.[22] The proposed CODE makes it optional for each state to decide whether to bestow such a right,[23] and points out that a jury trial would be militated against by considerations of time since a *summary* proceeding is involved.[24] It has been observed that as tenants gain substantive rights, additional questions of fact would arise, perhaps flooding the courts with jury trials in eviction cases.[25] The right to trial by jury should be retained in Florida unless a flooding of the courts eventually results from more complex landlord-tenant litigation. As typified by the City of Miami, a substantial percentage of inner-city housing in Florida is controlled by a handful of large rental agencies. This would indicate repetitious court appearances by a limited number of petitioners. Facing a petitioner who is familiar to the court, a tenant-defendant might well demand a jury trial to counteract any subconscious prejudice the court might have in behalf of the petitioner. Whether fear of such prejudice is

21. *Id.* § 3-209(6).
22. State *ex rel.* Jennings v. Peacock, 126 Fla. 743, 171 So. 821 (1937).
23. Tent. Draft § 3-211.
24. *Id.*, Commentary.
25. Gibbons, *Residential Landlord-Tenant Law: A Survey of Modern Problems with Reference to the Proposed Model Code*, 21 HASTINGS L.J. 369, 374 (1970).

justified or not, ghetto dwellers should not complain of a prejudicial court if the right to a jury determination of factual issues is available.

E. *The Judgment*

Both existing Florida law and the MODEL CODE provide for awarding costs to the successful party in the summary possessory proceeding.[26] The proposed CODE, however, adds that "[i]f the proceeding is founded upon an allegation that a tenant has wrongfully failed to pay rent, costs shall be no more than [25] dollars."[27]

Substantive provisions of the proposed CODE enumerate circumstances where the tenant may *lawfully* withhold payment of rent because of the landlord's failure to perform his responsibilities.[28] Draftsmen of the proposed CODE suggest that wrongful withholding of rent by the tenant might frequently result from the tenant's misconception of the landlord's duty to repair.[29] Since one salient goal of the MODEL CODE is to encourage allocation of maintenance responsibilities between landlord and tenant according to their relative abilities and reasonable expectations,[30] the draftsmen justify the cost limitation for wrongful withholding of rent as a state subsidy[31] to encourage repairs, noting that "a tenant's mistake in pursuing his rights should not be severely punished."[32]

Assuming *arguendo* that Florida adopted substantive provisions allowing the tenant to lawfully withhold payment of rent because of the landlord's failure to perform his responsibilities, the corresponding procedural statute should expressly state that the ceiling on awarded court

26. FLA. STAT. § 83.251 (1969); Tent. Draft § 3-212(1).

27. Tent. Draft § 3-212(4).

28. *E.g.*, Tent. Draft §§ 2-203, 2-206. Where the landlord, for example, fails to keep the building in sanitary condition, or fails to repair faulty plumbing within two weeks after receiving notice from the tenant, the tenant may notify the landlord of his intention to have the condition remedied at the landlord's expense. He may then have the condition corrected in a workmanlike manner and deduct the expense from his rent to a maximum of fifty dollars, if he can show receipts indicating that the expenditure was reasonable and that he did not cause the condition complained of by his own carelessness.

29. Tent. Draft § 3-212, Commentary.

30. Tent. Draft at 11. Major premises for allocation of maintenance responsibility are stated in the introduction to the proposed CODE. The landlord is in a better position to bargain with repairmen, the tenant has difficulty obtaining access to areas under control of the landlord or of other tenants, and:

> The industrial revolution, aside from its purely economic effects, has influenced the landlord and tenant relationship significantly in two ways. First, the specialization required of workers on an assembly line means that the 'rugged individualist' of American rural folklore is no more. The farmer is perforce a jack of all trades, but the urban worker at virtually any level needs but a single skill. Secondly, the increasing complexity of even simple dwelling facilities requires greater sophistication to properly maintain them or repair them. Thus, while the farmer of old could legitimately be asked to assume responsibility for extensive repairs and maintenance of his dwelling, the urban dweller, often as a matter of law, cannot.
>
> The urban dweller cannot work on his own electrical system beyond replacing fuses and light bulbs; he cannot repair his own furnace; he can hardly work on his own plumbing. Specialists are needed for these functions.

Id. at 6.

31. *Id.* at 18.

32. Tent. Draft § 3-212, Comment.

costs applies only where the tenant paid for the repair relying on a reasonable belief that the substantive provision was applicable. The level of education attained by the tenant should be a circumstance to consider in assessing whether or not his belief was reasonable.

One fact, however, militates against adoption of the provision. Inner-city residences are in such a state of gross disrepair that it is questionable whether private enterprise could make existing buildings more than minimally habitable without incurring crippling losses or passing losses on to ghetto tenants by raising rents that already place intolerable financial burdens on slum dwellers. Since these tenants cannot afford to make their own costly repairs, it is foreseeable that wrongful withholding of rent due to disputes over repairs would be a frequently litigated issue. From the viewpoint of the poor tenant, the provision is fair, but, as in the case of appointed counsel for the indigent tenant, state appropriation in this area is unlikely.

The proposed CODE offers a more workable safeguard for the tenant who withholds rent in good faith. The tenant against whom judgment is rendered in such a good faith dispute can stay execution of judgment by paying all rent due plus costs within ten days of judgment.[33] This provision places no extra financial burden on the state. However, except for moving the tender of payment forward from ten days following judgment, existing Florida law could produce the same result under the court-made doctrine that equity will relieve against forfeiture of the demised premises upon nonpayment of rent where it is just and equitable to do so and where the tenant tenders the amount of rent due into court.[34]

III. APARTMENT BUILDING TENANTS' RECEIVERSHIP

Because of the grossly substandard condition of substantially all residential buildings in urban slum areas, such as the Central Miami Black District, rehabilitation costs may prohibit adequate repairs by the private landlord. As long as the current housing shortage lasts, even substandard units will be at a premium, and their owners can, and frequently do, operate at a profit while ignoring conditions requiring repair. As a result, it is not only uncommon to find a building in full compliance with local building codes, but it is a rarity to find a building that is heated and has hot water and sanitary toilet facilities in such an area. Framers of the MODEL CODE see a possible solution to some of these problems in the adoption of a tenant's receivership statute. Florida has no such statute.

CODE draftsmen recommend vesting the tenant with an action for receivership, with or without municipal intervention or initiation,[35] both because "the municipality may not be performing with sufficient vigor

33. Tent. Draft § 3-216.

34. Masser v. London Operating Co., 106 Fla. 474, 145 So. 79 (1932); Rader v. Prather, 100 Fla. 591, 130 So. 15 (1930).

35. Tent. Draft § 3-302(3).

or efficiency" and because "the tenant has a special ability and interest in pressing for major repairs, which even the most vigilant public agency may be unable to match."[36]

A petition for receivership would lie where the tenant alleges continued existence, for five days after notice to the landlord, of lack of heat, running water, light, electricity, adequate sewage facilities, or lack of correction of any other condition on the demised premises dangerous to the life, health, or safety of the petitioner.[37] In the case of infestation by rodents or other vermin, a petition may be filed immediately upon notifying the landlord.[38] The receiver would be given the powers and duties, *inter alia*, of collecting and using all rents and profits of the property for the purposes of correcting the condition complained of, complying with local codes, paying expenses reasonably necessary to management and operation of the property (including taxes and assessments, insurance, and compensation for himself and his agents), compensating the tenants for damages arising from the condition complained of, and paying court costs, including attorney fees.[39] The proposed CODE would allow the court to authorize receivers' notes, which, upon recording of notice of the lien by the purchaser within sixty days of the purchase, would be superior to all prior assignments of rent and existing liens and encumbrances, except for taxes and assessments.[40] The CODE framers suggest that "state and local governments might imitate the federal government by guaranteeing receivers' notes."[41]

The receiver would be discharged when the condition alleged in the petition is corrected, the building complies with local structure codes, and costs of accomplishing the purposes of the receivership have been paid from rents, profits, or notes. Any surplus money is to be paid to the owner.[42] The receiver would also be discharged when the condition complained of is corrected, the building complies with local building codes, and the owner has paid in money spent by the receiver and not covered by rents, profits, or the notes.[43]

If the court determines that future profits from the property will

36. Tent. Draft at 87.

37. Tent. Draft § 3-301. Section 3-303 of the proposed CODE allows defenses where one of the following grounds is established: the condition complained of does not exist at the time of trial; the condition was caused by willful or negligent action by the tenant, a member of his household, or his guest, or the landlord could have corrected the condition if the petitioner had allowed him reasonable access to the premises. In addition, section 3-304 allows the court to determine whether, after judgment, "the owner or any mortgagee or lienor of record or other person having an interest in the property" may remedy the condition complained of. Of course, evidence of ability to remedy the condition, posting of security, and continued court jurisdiction are required, and receivership will commence upon the court's determination that correction of the condition is not proceeding with due diligence.

38. *Id.*

39. Tent. Draft § 3-306(1).

40. Tent. Draft § 3-306(2).

41. Tent. Draft at 88.

42. Tent. Draft § 3-307(1).

43. Tent. Draft § 3-307(2).

not cover costs of correcting the condition and meeting structure codes, it may discharge the receiver or order him to take appropriate action, including demolition of the building.[44] However, because of the housing shortage, CODE draftsmen were of the opinion that grants for repairs might be preferable to demolition, and they further suggest that governmental "rent subsidies might be used to insure that units upgraded by a receiver do not become too expensive for their former occupants."[45]

Again, economic factors based on the immense number of barely habitable inner-city units take the luster away from what might otherwise be an excellent portion of the proposed CODE. It is to be anticipated that the courts would be flooded with tenants' receivership actions. Difficulty is to be anticipated in recruiting an adequate number of qualified receivers, whose business sense must be geared to the problems of the ghetto. There is the strong probability that all too frequently, profits from the building would not meet costs of repair. To demolish residential buildings while today's housing shortage continues is senseless, even if the buildings are barely habitable. Yet a public outcry against state subsidies for repairs appears certain. Rural and suburban landlords might well object to the fact that slum landlords were having their buildings renovated, in anticipation of future profits, at state expense. Various racial and social prejudices, coupled with indifference toward or ignorance of ghetto housing problems, would contribute to public reaction against such subsidies.

Therefore, it is doubtful whether the tenants' receivership provisions of the CODE could be feasibly adopted without an accompanying program of subsidization, and passage of such a program on the state level is unlikely at a time when public reaction might well be hostile, even toward the massive federal appropriations that would be necessary to significantly lessen the problem of tenant disrepair caused by substandard inner-city housing.

IV. LIMITATIONS ON OTHER PROCEEDINGS

A. *Action for Waste*

In *Stephenson v. National Bank*,[46] defendant-tenant had begun making partitions inside and openings in the exterior walls to convert the building on the demised premises into an arcade for business rentals. The trial court found that the landlord had consented to the interior renovation, but not to exterior changes. In affirming an injunction of exterior alterations only, the Florida Supreme Court defined the Florida position on ameliorative waste: that any alteration on demised premises by a tenant constitutes actionable waste, though such alteration would benefit the owner of the reversion.

44. Tent. Draft § 3-307(3).
45. Tent. Draft at 88.
46. 92 Fla. 347, 109 So. 424 (1926).

The proposed CODE provides the elements of a defense to an action for damages or a suit to enjoin ameliorative waste.[47] One of the CODE's major purposes "is to encourage improvement by a well-meaning tenant, while at the same time protecting the legitimate interests of the landlord."[48] For a successful defense under the CODE, the tenant must establish that he gave the landlord reasonable advance notice of the alteration, that the alteration is one which a prudent owner in fee simple would reasonably make or that the market value of the reversion will not thereby be reduced, and, in the case of a suit for an injunction, that the tenant will post security as directed by the court to protect the petitioner against failure to complete or pay for the alteration.[49] The CODE would still allow the landlord to seek damages, possession, or an injunction for breach of a written rental agreement where the agreement forbids all work.[50]

The proposed CODE impliedly makes permissible an improvement without the landlord's consent, absent an agreement to the contrary. While it may be argued that such a feature is justified so long as the value of the reversion is not diminished, it may also be argued that the holder of the reversionary interest should not be compelled to make the most valuable or logical use of the property after the tenant's term has ended.[51] The landlord should be allowed damages where he can prove that he had no prior notice of the improvement, that the improvement was not necessary to maintain standard living conditions, that the improvement was inconsistent with a use he intended for the property after the end of the term, and that he will incur expense in eliminating the improvement to make such a prospective use of the premises.

Adoption of this section of the proposed CODE would add nothing to intelligent application of the Florida law concerning *injunctive* relief as detailed in *Stephenson*.[52]

B. *Landlord Liens: Distress for Rent*

The proposed CODE provides that "[n]o lien on behalf of the landlord in the tenant's chattels shall be enforceable unless perfected before the effective date of this Act."[53] Florida law provides the landlord with a lien for rent upon all "property of the lessee or his sublessee or assigns, usually kept on the premises,"[54] "except beds, bed clothes and wearing

47. Tent. Draft § 3-401.

48. *Id.*, Commentary.

49. Tent. Draft § 3-401(1), (2).

50. Tent. Draft § 3-401(3).

51. For example, a tenant may make a valuable alteration that would be made by a prudent owner in fee simple, but the holder of the reversionary interest might later incur expense in removing the improvement to use the property according to his own desires, though the property would be less valuable without the improvement.

52. Should a Florida court find that the landlord consented to part or all of the proposed improvements, it could still order posting of security by the tenant as injunctive relief where necessary.

53. Tent. Draft § 3-403(1).

54. FLA. STAT. § 83.08 (1969).

apparel."[55] The landlord's lien is superior to any lien attaching to such property after the property is brought onto the demised premises.[56]

The landlord's lien for rent may be a valuable, though infrequently used, basis for remedy where middle or upper class tenants are involved, though a clever tenant may evade such a lien by taking furniture in the name of a third person.[57] But in the inner city, where most tenant-owned furniture is either bought on credit or has little or no resale value, the landlord's lien, when used, constitutes a mere oppression of the lower class tenant, leaving him without furniture at a time when he may well be unable to afford even the squalor of the worst furnished units available.[58]

Florida would do well to consider adopting the proposed CODE's provision abolishing the landlord's lien for rent.

C. *Confession of Judgment*

Confession of judgment provisions are null and void under both Florida law and the proposed CODE.[59] The cognovit note is a particularly harsh and unfair measure when used to take away one's home, especially the home of a tenant with the poor bargaining power of the inner-city resident.

D. *The Tenant as Attorney-General*

The proposed CODE provides that any person found guilty of a misdemeanor enumerated in the Act "shall be punished by a fine of not more than [two hundred] dollars."[60] Inclusion of a confession of judgment clause in a written agreement is such a misdemeanor,[61] as is retention of a security deposit by a landlord who has transferred his interest in the property.[62] Framers of the CODE suggest that other misdemeanors may be created in individual jurisdictions to help insure that a written rental agreement neither abridges the tenant's rights nor misleads him.[63]

55. FLA. STAT. § 83.09 (1969).

56. FLA. STAT. § 83.08(2) (1969).

57. *See* Matthews v. McCain, 125 Fla. 840, 170 So. 323 (1936), wherein the court held that a distress warrant cannot lawfully be levied on third persons, though their property is normally kept on the demised premises.

58. As typified by the Central Miami Black District, it is not uncommon to find an inadequate number of beds in an overcrowded apartment in the inner city, so that one or more members of the household sleep on couches or chairs. The Florida statutory exemption of beds from the landlord's lien would be insufficient even as minimal protection for such a tenant.

59. FLA. STAT. § 55.05 (1969); Tent. Draft § 3-404.

60. Tent. Draft § 3-501.

61. Tent. Draft § 3-404(2). This provision is designed to further insure that the tenant is not subjected to concession of a legal right through fear that he cannot prevail in court due to a confession of judgment clause. Tent. Draft at 19.

62. Tent. Draft § 2-401(5). It is pointed out in the introduction to the CODE that "retention of a security deposit without cause is akin to theft, and is therefore appropriately condemned as a crime," and that while the tenant has a civil action for recovery of an unjustly held security deposit, the small amount at issue generally precludes bringing such a civil action. Tent. Draft at 19.

63. Tent. Draft at 20.

Upon successful prosecution of a landlord for one of the enumerated misdemeanors, the clerk of the court would award half of the fine collected to the tenant whose complaint or information led to the prosecution.[64] CODE draftsmen reason that the tenant should be made a private attorney-general, "to pursue, for the benefit of himself and society, the state's remedies against a landlord who defaults in a social obligation." The tenant, who is most directly affected by the landlord's social obligations, is seen by the draftsmen as the party most interested in enforcing such obligations.[65]

The concept of the tenant as a private attorney-general might well help to equalize landlord-tenant bargaining power in Florida as well as to give the poorer tenant a much-needed sense of dignity and importance.

V. CONCLUSION

The desirability and possibility of adoption of many of the proposed CODE's procedural provisions depend largely on the gathering of certain crucial empirical data. The need for reasonably complete objective data is most clearly seen in the case of the proposed tenants' receivership provision. Before adoption of such a measure, an accurate feasibility study should be made of the central cores of all the major Florida cities, identifying the numbers of residential rental buildings that could and could not be renovated to meet CODE enforcement standards from rents and profits and the approximate amount of state funds needed to supplement rents and profits in order to bring all structurally sound units up to CODE enforcement standards. Such a study should not be made an incidental task of the various local structural code enforcement agencies because of the length of time involved and the age and state of deterioration of many of the inner-city buildings. A five or ten year study would be hopelessly outdated by the time of its completion. The study should be rapidly completed by expert appraisers and planners, whose entire efforts could be concentrated upon completion of the study.

To significantly aid in the solution of the complex problems of inner-city housing, adoption of any residential landlord-tenant statute must be seen in context with all federal and local and all public and private programs aimed at the eradication of slums.[66] Therefore, the study proposed herein must take into consideration, for example, such matters as existing federal-local Neighborhood Development Programs, plans for Public Housing, and the reasonableness and degree of enforcement of local building codes. Clear communication between and cooperation among all federal, state, and local agencies involved in slum eradication are prerequi-

64. Tent. Draft § 3-502.

65. Tent. Draft § 3-502, Commentary.

66. For example, if a given amount of federal funds is allocated to Dade County, Florida, to rehabilitate rental units to meet standard housing requirements, a corresponding amount should be deducted from the state's estimate of the amount of the state subsidy necessary for the same purpose.

sites to both a successful study and a sensible adoption or rejection of any proposed innovation containing a vast potential social impact, such as the proposed CODE's tenants' receivership provision.

If communication, cooperation, study, and resulting laws and positive action are delayed, there will be less chance of solving inner-city problems. Florida's urban population continues to increase, buildings deteriorate with time, and the inner-city dweller has five senses, which are barraged daily with concrete evidence that the problems around him are getting worse.