Improving Landlord-Tenant Relations in Kentucky Through the URLA

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Kentucky lawmakers should mandate statewide adoption of the Uniform Residential Landlord-Tenant Act of 1972 (hereafter URLTA), because such a move would benefit everyone involved in landlord-tenant relations, including landlords, tenants, and the lawyers and judges in the state that participate in litigation concerning these relations.

Kentucky has had a long and contentious history with the URLTA.[2]> URLTA is model legislation crafted by the National Conference of Commissioners on Uniform State Laws,[3] and the stated purposes of URTA include simplifying the laws governing the rights and obligations of landlords and tenants, as well as encouraging uniformity of these laws across state borders.[4] Kentucky adopted much of the language of URLTA in 1974, but poor legislative draftsmanship and the concomitant confusion concerning scope of the Act's authority led to subsequent revisions and patchwork "fixes" to the law.[5] The resulting legislative framework is unduly burdensome for those relying on its guidance.[6]

In 1974, Kentucky adopted KRS §§ 383.500 to 383.715.[7] These statutes repealed existing legislation governing landlord-tenant relations, and replaced those statutes with new legislation modelled closely on the language of URLTA. [8] Included in the Act was KRS §383.530, which stated that the newly adopted Act "applies to, regulates, and determines rights and obligations under a rental agreement wherever made, for a dwelling unit located in the state."[9] This language matched nearly identically the model

language in URLTA §1.201,[10] and applied the new law "uniformly across the state – in every city and every county."[11] Oddly, however, another section of the Act, KRS § 383.715, stated that the Act "shall apply to counties containing cities of the first class and urban-county governments,"[12] effectively limiting the applicability of the Act to Lexington and Louisville only.[13] KRS § 383.715 seemed to directly contradict the language in KRS § 383.530, which required statewide implementation, and in 1983, the Kentucky Supreme Court declared unconstitutional the statute limiting the scope of the Act.[14]

The high court's striking down of KRS § 383.715 led to two desirable results: 1) the confusion arising in the judicial system from the Act's two irreconcilable expressions of scope was resolved, and 2) under KRS § 383.530 the Act applied to all jurisdictions throughout the state, achieving a stated goal of URLTA to "make uniform the law with respect to the subject . . . among those states which enact it."[15] Unfortunately, the Kentucky legislature could not leave well enough alone, and in the 1984 regular session, they passed several amendments that restored the limited territorial application.[16] In order to clear the constitutional hurdle established in *Miles v. Shauntee*,[17] the legislature continued to mandate that Lexington and Louisville abide the Act, but gave all other cities, counties, and urban-county governments the right to "opt-in" to URLTA at their own discretion.[18]

Since the enactment of the "opt-in" provision in 1984, seventeen jurisdictions other than Lexington and Louisville have adopted URLTA, creating a patchwork of competing sets of applicable law from jurisdiction to jurisdiction.[19] Localities continue to consider and fiercely debate the wisdom of adopting the Act, with these debates on local adoption taking a prominent role in recent city commission races in the state, for example.[20] While there are many substantive differences between URLTA and Kentucky's common law (which governs non-URLTA jurisdictions), opponents of statewide adoption of URLTA often point specifically to the Act's warranty of habitability, arguing that statewide adoption would place undue financial liability on the state's rural landlords.[21]

A warranty of habitability is a requirement, imposed upon landlords, that "rented premises are and will remain habitable for the duration of the lease period."[22] In Kentucky jurisdictions not governed by URLTA, the doctrine of *caveat emptor* (or "buyer beware) holds on issues of habitability, as the Kentucky Court of Appeals has recently held that, absent legislation like URLTA, the state has no constitutionally grounded implied warranty of habitability.[23] The state finds itself in the minority in clinging to caveat emptor in tenant-landlord relations, as Kentucky and Arkansas are the only states that have not yet adopted a statewide warranty of habitability.[24] Not only would statewide adoption of URLTA simplify Kentucky's inconsistent landlord-tenant

law, but it would also bring the state closer in line with other states that have already dealt with the injustices of a caveat emptor approach.[25]

In 1974, Kentucky adopted a version of URLTA, with the stated intent of making "uniform the law with respect to the subject of KRS 383.505 to 383.715 [Kentucky's URLTA statutes] among those states which enact it."[26] Instead of making the state's laws uniform with other states that have adopted the Act, the legislature, through a series of half-measures, have made *less* uniform the law with respect to landlord-tenant relations *within* the state. The statutes governing landlord-tenant relations were repealed in 1974 with the adoption of URLTA, and then URLTA's territorial scope was substantially limited in 1984, leading to a reversion to common law for jurisdictions not opting to adopt URLTA. Not only does this situation make it difficult for tenants to know their rights. Landlords who own properties in multiple jurisdictions may find that differing sets of laws apply to their properties. Likewise, lawyers and judges are forced to apply differing standards to landlord-tenant disputes, depending upon the location of the property in question. It is high time for Kentucky to bite the bullet and adopt URLTA statewide. Everyone involved will benefit from such a move.

[1] J.D./M.P.A. expected May 2019.
[2] *See* Cara L. Stewart and Ryan C. Smither, *Breaking Down Barriers to Justice: Surveying the Practical Application of Kentucky's Landlord-Tenant Laws and Calling for Basic Reform*, 39 N. Ky. L. Rev. 23, 25–30 (2012).
[3] Christopher Wm. Sullivan, *Forgotten Lessons from the Common Law, The Uniform Residential Landlord and Tenant Act, and the Holdover Tenant*, 84 Wash. U. L. Rev. 1287, 1288 (2006).
[4] Uniform Residential Landlord and Tenant Act § 1.102(b)(1), (3), at 3 (Nat'l Conf. Commissioners on Uniform St. L. 1972).
[5] Stewart & Smither, *supra* note 2.
[6] *Id.* at 23–5.
[7] Uniform Residential Landlord and Tenant Act, 383 KRS §§ 500–715 (1974) (amended 1984).
[8] *Id.*
[9] George Wm. III Moss, The Kentucky Uniform Residential Landlord and Tenant Act: Tenants' New Lease on Life, 14 J. Fam. L. 597, 599 (1975).
[10] Uniform Residential Landlord and Tenant Act, *supra* note 4, § 1.201, at 5.
[11] Stewart & Smither, *supra* note 2, at 26.
[12] Moss, *supra* note 9, at 599-600.
[13] Stewart & Smither, *supra* note 2, at 26.
[14] See Miles v. Shauntee, 664 S.W.2d 512, 517 (1983).
[15] Uniform Residential Landlord and Tenant Act, *supra* note 4, § 1.201, at 5.

[16] KRS § 383.530 (West 1984).

[17] Miles, *supra* note 14.

[18] § 383.530.

[19] Legal Aid Network of Kentucky, *Reading Your Lease* (August 2009), http://kyjustice.org/node/707

[20] *See* Wes Swietek, *Tenant-Landlord Act in Spotlight Again*, Bowling Green Daily News, (Oct. 1, 2016), http://www.bgdailynews.com/news/tenant-landlord-act-in-spotlight-again/article_c1eef942-ec5e-5081-8762-7930a0b9c2d7.html

[21] *See* Stewart & Smither, *supra* note 2, at 36–42.

[22] Michael A. Brower, *The "Backlash" of Implied Warranty of Habitability: Theory vs. Analysis*, 60 DePaul L. Rev. 849, 849 n. 1 (2011).

[23] *See* Wildcat Prop. Mgmt., LLC v. Franzen, 2015 WL 4148288 (Ky. Ct. App. 2015).

[24] *See* Stewart & Smither, *supra* note 2, at 38.

[25] *See* Krista L. Noonan and Frederick M. Preator, *Implied Warranty of Habitability: It Is Time to Bury the Beast Known as Caveat Emptor*, 33 Land & Water L. Rev. 329, 333– 34 (1998).

[26] KRS § 383.505 (West 1984).

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