

Uniform Law Commission

Study Commission on the Use of Tenant Information in Rental Decisions

MEMORANDUM

To: Members, Study Committee

From: Commissioner Brian K. Flowers

Date: May 14, 2021

Re: Study Committee on Use of Tenant Information in Rental Decisions

Welcome. On February 2, 2021, the ULC Executive Committee approved a resolution recommending the formation of a Study Commission on the Use of Tenant Information in Rental Decisions. This proposal was originally submitted to the Scope and Program Committee at its October 2020 meeting. I have attached that proposal. At that time, Scope approved the following resolution:

RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a Study Committee on Use of Tenant Information in Rental Decisions be formed to study the need for and feasibility of a uniform or model act on the subject.

After this resolution was approved, Scope further recommended that the proposal be referred to the Joint Editorial Board for Uniform Real Property Acts, with the request that the JEB report directly to the Executive Committee as to advisability of a study committee on this topic. The JEB submitted a brief letter supporting the appointment of a study committee on this subject. Thereafter, the resolution was considered by the Executive Committee at its February 2021 midyear meeting, and approved on February 2, 2021.

When presented to Scope, the proposal summarized that landlords are generally free to utilize any information about prospective tenants that can be located. Frequently, such information is provided to the landlord on a "tenant screening report," which may use some information provided to the publishers of the report by the court system, i.e., the names of defendants in cases filed relating to particular premises, without further information. Prospective tenants can be denied rental housing even when inaccurate or erroneous information is found on tenant screening reports.

In my appointment as Chair, I find the Executive Committee's mandate to be broad, and that we have room to discuss related issues that we can later present to the Scope/Executive Committee as we look toward a decision on whether a drafting committee should be formed.

As a study committee we are provided the following guidance in coming to a recommendation:¹

- 1) Whether there a need for an act on the subject.
- 2) Whether there is a reasonable probability that an act, when approved, either will be accepted and enacted into law by a substantial number of states or, if not, will promote uniformity indirectly.
- 3) Whether the subject of the act will produce significant benefits to the public through improvements in the law.
- 4) Whether the act will maintain the integrity of well-balanced and well-settled law in areas traditionally governed by the states.

The ULC also develops model acts if uniformity is a desirable objective, although not a principal objective; the act may promote uniformity and minimize diversity, even though a significant number of states do not enact the act in its entirety; or the purposes of the act can be substantially achieved even though it is not adopted in its entirety by every state.

In general, and based upon past experience, the ULC should avoid consideration of subjects that are entirely novel and with regard to which neither legislative nor administrative experience is available; or controversial because of disparities in social, economic, or political policies or philosophies among the states.

We have engaged a reporter for our study committee, Professor Esme Caramello. Professor Caramello is the Faculty Director, Harvard Legal Aid Bureau Clinical Professor of Law. You will find more information about Professor Caramello at <https://hls.harvard.edu/faculty/directory/10132/Caramello>

Professor Caramello and I have given some thought to the subject matter of this study committee. The topics raised in the proposal that we think are relevant to the committee's work include:

1. What types of "tenant information" would a uniform law address (e.g., criminal records, eviction records, other housing court records)? What types of information *should* prospective landlords have access to and use in making rental decisions, and what information should be restricted?
2. Would the law regulate the dissemination of information by courts, tenant screening bureaus, prior landlords, and others, or would it regulate the use of tenant information by prospective landlords, or both?
3. If the law will include automatic or discretionary sealing or expungement of court records, how will it balance the important values of public access to information about court operations, on the one hand, and free, fair, and equal access to housing on the other? How might differences in state constitutional treatment of civil court records impact the shape of a uniform law?
4. If the law will regulate tenant screening reports, how should it complement the Federal Fair Credit Reporting Act, 15 U.S.C. § 1681, without being preempted by that law?
5. If the law will impose restrictions on prospective landlords' use of freely available tenant information, how will it overcome the significant challenges in detecting and remedying unlawful conduct?

¹ See, ULC, New Project Criteria, <https://www.uniformlaws.org/projects/overview/newprojectcriteria>

We have begun to conduct research and outreach to identify stakeholders. We are looking to hold the first meeting in June. The front office will poll members as to their availability for that meeting.

Professor Caramello will prepare an outline for each of our potential Zoom committee calls. At the initial meeting, we will try to ensure that we have agreement on the scope of our work and identify additional participants.

I look forward to meeting all of you on Zoom.

Attachments:

October 20, 2020 Proposal from Commissioner Sandra Stern and Allen Joslyn