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POVERTY LAW PROJECT

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March 26, 2020

Chairman Michael Sirotkin and Committee Members

Regarding moratorium on evictions, foreclosures, writs of possession

Thank you for the opportunity to advocate for an across the board moratorium on evictions during this public health crisis. At the present time, everyone is affected by COVID-19.

The goal of Sec. 9 of the bill from House General is to stop all evictions during the emergency period. Eviction is where, through court process, a landlord calls on the authority of the state to involuntarily remove someone from their home. No one, for any reason, should be removed from their home by eviction during this public health crisis.

In State fiscal year 2019, in the usual course of business, there were about 1800 evictions, and 852 mortgage foreclosures filed in Vermont. That is about 150 evictions a month. In a public health crisis, there can be no business as usual.

The proposed legislation puts a pause on all evictions and foreclosures, while preserving landlord's right to file cases that can be pursued once the public health crisis is over. Rental assistance money, and increased services for tenants can help resolve many of those cases.

The bill aims to stop "service in hand" – currently required at several steps in court process. Service of court documents put the personnel of Sheriff and Constables at risk for spreading contagion.

Staying cases stays answer deadlines, meaning defendant tenants don't have to navigate closed court-house doors in order to preserve their right to a fair adjudication of the issues.

Please put evictions on pause until the public health crisis is past, because everyone needs to stay home and stay safe.

Thank you

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***** Language Based on Vermont Legal Aid Proposal *****

Sec. 9. LANDLORDS AND TENANTS; HOUSING LENDERS; TEMPORARY HOUSING-RELATED MORATORIA

(a) Definitions. As used in this section:

(1) “Emergency period” means the period beginning with the Governors declaration of a state of emergency on March 13, 2020 arising from COVID-13 and ending 60 days after the Governor terminates the state of emergency by declaration.

(2) “Foreclosure” means a foreclosure action brought under 12 V.S.A. chapter 172 against a dwelling house, as defined in 12 V.S.A. § 4931(2).

(b) Duties. This section does not:

(1) relieve a tenant of the obligation to pay rent pursuant to 9 V.S.A. § 4455; or

(2) relieve a borrower under a residential loan agreement of the obligation to make timely payments pursuant to the terms of the loan agreement.

(c) Pending foreclosure and ejection actions.

(1) Upon the effective date of this act all pending actions for ejection under 12 V.S.A. chapter 169, actions for foreclosure under 12 V.S.A. chapter 172, and outstanding orders in those actions are stayed until the end of the emergency period.

(2) A Court of this State, before which is any matter stayed pursuant to subdivision (1) of this subsection, shall issue any necessary orders and provide notice to the parties of the stay not later than five days after the effective date of this act.

(d) New foreclosure and ejection actions. During the emergency period:

(1) A landlord may commence an ejection action pursuant to 9 V.S.A. chapter 137 and 12 V.S.A. chapter 169, and a residential mortgage lender may commence a foreclosure action pursuant to 12 V.S.A. chapter 172, only by filing an action with the Civil Division of the Superior Court and not by service pursuant to V.R.C.P 3.

(2) The Court shall stay the action as of the date of filing until the end of the emergency period.

(e) Writs of possession not yet issued. During the emergency period a court shall not issue a writ of possession:

(1) in an ejection action:

(A) pursuant to 12 V.S.A. § 4853a(h) because a tenant failed to pay rent into court; or

(B) pursuant to 12 V.S.A. § 4854 if the court has entered judgment in favor of the plaintiff but did not issue a writ of possession with the judgment; or

(2) in a strict foreclosure action pursuant to 12 V.S.A. § 4941(e) because the property is not redeemed; or

(3) in an action for foreclosure by judicial sale pursuant to 12 V.S.A. § 4946(d) upon expiration of the period of redemption.

(f) Writs of possession already issued. During the emergency period, following a judgment in an ejection action or foreclosure action:

(1) If the defendant was served a writ of possession not more than 60 days prior to the effective date of this act:

(A) the defendant is not required to surrender possession until the end of the emergency period; and

(B) the sheriff or constable who served the writ shall provide written notice of the delay to the defendant.

(2) If a writ of possession was issued by the court but not yet served, the sheriff or constable shall not serve the writ and shall return it to the plaintiff.

(3) The courts and Vermont Legal Aid shall coordinate to ensure that defendants in ejectment actions receive notice of the delayed effective dates of writs issued by the court.

(g) **Resumption of rent escrow hearings.** For a period of 45 days after the emergency period ends, notwithstanding 12 V.S.A. § 4853a(d):

(1) if a court finds that a tenant is obligated to pay rent and has failed to do so, a court shall order full or partial payment into court of not more than one month's rent; and

(2) in setting the amount to be paid into court, the court may consider a tenant's inability pay due to circumstances arising in the emergency period.

(h) **Outreach; recommendations.** Not later than one week after the emergency period ends, representatives of the Vermont Judiciary, landlords, Vermont Legal Aid, and other relevant stakeholders shall report to the General Assembly and the Governor concerning:

(1) recommendations for how writs previously issued and existing orders to pay rent into court should be addressed, balancing the interests of all parties; and

(2) a plan for orderly adjudication of all stayed ejectment and foreclosure actions.

* * * Effective Dates * * *

Sec. 10. EFFECTIVE DATES

(a) This section and Secs. 1, 2, 3, 7, 8, and 9 shall take effect on passage.

(b) Secs. 4, 5, and 6 shall take effect on March 31, 2021.