

STEVE YEAGER
ASSEMBLYMAN
District No. 9

SPEAKER PRO TEMPORE

DISTRICT OFFICE:

10120 West Flamingo Road, Suite 4162
Las Vegas, Nevada 89147-8392
Office: (702) 281-5938
Twitter: @SteveYeagerNV



LEGISLATIVE BUILDING:

401 South Carson Street
Carson City, Nevada 89701-4747
Office: (775) 684-8549
Fax No.: (775) 684-8533
Email: Steve.Yeager@asm.state.nv.us
www.leg.state.nv.us

State of Nevada Assembly

May 24, 2021

Proposed Conceptual Amendment for Assembly Bill 486

- 1) **Effective Date:** The bill should be effective upon passage and approval. Governor Sisolak's eviction protections are lifting June 1st, and these protections are needed to ensure a careful and measured lifting of the moratorium. A July 1 effective date is too late to protect the most vulnerable in our community.
- 2) Add the following to Definitions:
 - a. Dwelling unit should be defined by NRS 40.215.
 - b. Landlord should also include the meaning ascribed to it in NRS 118B.014.
 - c. Tenant should also include the meaning ascribed to it in NRS 118B.0185.
 - d. Rental Agreement should include NRS 118B.019, 118B.040, 118B.045, and 118B.050.
 - e. Rental Assistance should include available funds through federal, state, or local government funds, and/or administering nonprofit agencies.
- 3) The affirmative defense in section 2 and the mediation referrals in section 4 should apply: **In a summary eviction proceeding pursuant to 40.253, formal unlawful detainer civil actions pursuant to NRS 40.2512 and NRS 118B.200(1)(a), and in a summary eviction proceeding pursuant to 40.254 where the tenant has defaulted in the payment of rent, excluding nuisance violations pursuant to 40.2514(4) or 40.255.**
 - a. *[This means that it will apply to all nonpayment evictions, both summary and formal unlawful detainer civil actions. It also applies to all summary evictions where the tenant is in default in rent, excluding nuisance violations or sale of property. It does not apply to formal unlawful detainer civil actions for reasons other than nonpayment of rent, commercial evictions, or removal of squatters.]*
- 4) **Expand Section 2** to include the further clarification that if the contemplated affirmative defense is raised at any point, the Court shall stay the case. While it is implied that the landlord has the ability to challenge the stay, the language should include that the landlord can file a motion to place on calendar if the landlord has evidence that no application was submitted, that an application was denied, or the landlord has verified with the agency that the tenant is not pursuing the application. Upon reviewing the evidence, the Court may set a hearing to evaluate the case, refer the case to mediation, or maintain the stay until such time as the rental assistance application has been resolved.

- a. The stay will end at such time as the pending application for rental assistance is terminated by the rental assistance agency for lack of pursuit to complete the application process by the tenant. The Court shall dismiss the proceedings once the rental assistance is provided to the landlord to satisfy the tenant's arrears, rather than upon the granting of approval. This closes the gap between granting and funding.
- b. "Pending Application" should include a tenant who the court determines has applied or registered for rental assistance in good faith. The intent is to include those actively pursuing rental assistance, and not to exclude anyone who may be having technical difficulty with the process.

5) Amend existing Section 2 as follows:

Notwithstanding any other provision of law:

- 1. In a proceeding for eviction pursuant to NRS 40.215 to 40.425, inclusive, where the tenant has defaulted in the payment of rent, the tenant may claim as an affirmative defense that:
 - (a) The tenant has a pending application for rental assistance; or
 - (b) The landlord has refused to **participate in the rental assistance application process or** accept rental assistance on behalf of the tenant.
- 2. If the affirmative defense described in paragraph (a) of subsection 1 is asserted by the tenant, the court shall stay the proceedings for eviction until such time as the pending application for rental assistance is granted or denied. If the application for rental assistance is granted, the court shall dismiss the proceedings for eviction.
- 3. If the affirmative defense described in paragraph (b) of subsection 1 is asserted by the tenant:
 - (a) The court shall ~~dismiss the proceedings against the tenant~~ **deny the eviction** if the tenant proves the validity of the claim; and
 - (b) ~~The tenant may file a claim of wrongful eviction against the landlord.~~ **The Court may award damages to the tenant. In determining the amount of damages, the Court shall consider the degree of harm to the tenant caused by the landlord's refusal.**

[This amendment will help clarify this section, as there is no wrongful eviction to pursue if an eviction has not occurred. Additionally, it allows the court to evaluate the claims of the landlord and tenant at the eviction hearing rather than require the tenant to pursue a separate cause of action.]

6) Amend section 3(3) as follows:

- 3. If the ~~justice~~ court finds that the landlord accepted rental assistance on behalf of the tenant and proceeded to evict the tenant ~~for nonpayment of rent despite receiving rental assistance to cure the default or~~ **for any reason that existed or arose during the period of default for which the landlord has been paid rental assistance:**
 - (a) The justice court may:
 - (1) Impose a civil penalty:
 - (I) If the claim was filed by the governmental entity administering the program for rental assistance, in an amount equal to the amount of rental assistance obtained by the landlord; or

(II) If the claim was filed by the tenant, in an amount equal to 25 percent of the amount described in sub-subparagraph (I); and

(2) Order the landlord to pay costs and attorney's fees of the tenant or governmental entity, as applicable.

(b) The landlord may not file any claim against the tenant for any delinquent amount of rent paid with the rental assistance.

“Proceeds to evict” means issuing or continuing to pursue an eviction notice for any other reason that existed or arose during the period of default in which the landlord has been paid rental assistance.

[This change will help add judicial discretion to allow a Court to look at all cases where the rental assistance was accepted and the eviction was pursued to see if it was in violation of the intent of the agreement.]

7) Conforming change needed: Add an amendment to NRS 40.253(6) as follows:

6. Upon the filing by the tenant of the affidavit permitted in subsection 3, regardless of the information contained in the affidavit, and the filing by the landlord of the affidavit permitted by subsection 5, the justice court or the district court shall hold a hearing, after service of notice of the hearing upon the parties, to determine the truthfulness and sufficiency of any affidavit or notice provided for in this section. If the court determines that there is no legal defense as to the alleged unlawful detainer and the tenant is guilty of an unlawful detainer, the court may issue a summary order for removal of the tenant or an order providing for the nonadmittance of the tenant. **Except as otherwise provided in Section 2, if** ~~if~~ the court determines that there is a legal defense as to the alleged unlawful detainer, the court shall refuse to grant either party any relief, and, except as otherwise provided in this subsection, shall require that any further proceedings be conducted pursuant to NRS 40.290 to 40.420, inclusive. The issuance of a summary order for removal of the tenant does not preclude an action by the tenant for any damages or other relief to which the tenant may be entitled. If the alleged unlawful detainer was based upon subsection 5 of NRS 40.2514, the refusal by the court to grant relief does not preclude the landlord thereafter from pursuing an action for unlawful detainer in accordance with NRS 40.251.

8) The \$5 million allocation specified in Section 7 of the bill to initially fund the program that is enumerated in Section 6 of the bill needs to be amended to clarify where precisely the funds are coming from, as the intent is to use unrestricted funds so that money could be deployed directly to landlords where appropriate.