

Standing Committee on the Delivery of Legal Services
Status Report Subcommittee
Office of Legal Services, Access & Fairness Programs

**THE STATUS OF LEGAL ASSISTANCE
FOR EVICTION ACTIONS IN CALIFORNIA**

**A REPORT TO THE STATE BAR OF CALIFORNIA
BOARD OF GOVERNORS**

February 2005

**Prepared by the Status Report Subcommittee of
The State Bar of California Standing Committee on the Delivery of Legal Services.**

**Subcommittee Members 2003-2004: Julia Arno (chair), David Ackerly, Bonnie Hough,
Kathleen Meehan and Hakhamanesh Mortezaie. Staff Liaison: Sharon Ngim**

**Approved by the State Bar of California Board of Governors
March 5, 2005**

TABLE OF CONTENTS

I.	Introduction.....	1-2
II.	Low Income Housing and Evictions in California.....	3-7
III.	Overview of the Law.....	8-10
IV.	Housing and Eviction Survey.....	11-13
V.	Findings and Recommendations.....	13-15
VI.	Table F.....	16-18
VII.	Attachment 1.....	19-20
VIII.	Attachment 2.....	21-24

I. Introduction

The State Bar Standing Committee on the Delivery of Legal Services (SCDLS) is a twenty (20) member committee appointed by the State Bar Board of Governors. One of the primary objectives of SCDLS is to identify, develop and support improvements in the delivery of legal services to low and middle-income individuals. Consistent with this objective, SCDLS formed a Status Report Subcommittee (hereafter referred to as the “subcommittee”). The charge of this subcommittee is to research areas of legal practice that have a primary impact on low or middle-income residents in California, provide information to the State Bar Board of Governors regarding the status of the legal services available in this area, and offer recommendations regarding the need for enhanced services.

In December 2002 the California Commission on Access to Justice (hereafter referred to as the “commission”) published a report on the status of legal services available to the poor in California.¹ The commission report revealed that California lags far behind many other states in its funding of legal services for the poor.² This commission report also indicated that 72% of the legal needs of the state’s poor residents were not being met.³

The commission report identified seven major areas where more legal help was needed for the poor in California. These areas are: 1) family law, 2) employment and income support legal issues, 3) housing law, 4) consumer law (including predatory lending and fraudulent business practices), 5) education-related legal issues (particularly with reference to parents with children who have special educational needs), 6) health-related legal issues (helping low-income residents resolve disputes with HMOs and insurers), and 7) juvenile law matters. In the area of housing law, the commission pointed out the need to help low-income tenants defend themselves against unlawful eviction actions.⁴ This subcommittee report will examine the current level of legal services available to low-income Californians for eviction actions.

To prepare this report the subcommittee compiled data from multiple sources to determine the state of both eviction practice and housing availability in California. Subcommittee members also conducted a survey of 210 legal organizations that serve low-income individuals in California to gauge the extent and breadth of services provided to low-income landlords and tenants in California.

¹ The Path to Equal Justice: A Five-Year Status Report on Access to Justice In California, published by the California Commission on Access to Justice (available at www.calbar.ca.gov).

² See The Path to Equal Justice: A Five-Year Status Report on Access to Justice In California (Summary Edition) at pg. 14.

³ *Id.* at pg. 5.

⁴ *Id.* at pg. 7.

Based on the survey data and housing research summarized within this report, the key subcommittee findings are:

- The level of affordable housing available for low-income tenants has significantly declined in California over the past five years.⁵
- Eviction laws vary widely throughout the United States. Many states have eviction laws that are more favorable to the tenant than the eviction process in California.
- 42.8% of the legal organizations surveyed reported an increase in the need for eviction legal services over the last two years.
- 17.8% of survey respondents listed tenant lack of income as the number one reason for the increase in eviction cases filed over the last two years.
- 25% of survey respondents reported that lack of attorney resources is a significant challenge faced by both low-income tenants and low-income landlords dealing with eviction proceedings in California.
- 17.8% of the survey respondents reported that lack of language access was a significant challenge in attempting to provide adequate legal services for both low-income tenants and low-income landlords in eviction actions.

⁵ California Institute for Policy Research, citing California's Housing Affordability Index, 2003. *See also*, Locked Out, 2004: California's Affordable Housing Crisis, California Budget Project, January 2004.

II. Low-Income Housing and Evictions in California

A. Lack of Affordable Housing

The number of affordable housing units available for low-income tenants has significantly declined in California over the past five years.⁶ This problem is compounded by the fact that during this same period, incomes for low-income tenants have also decreased (after adjusting for inflation).⁷ A recent study conducted by the National Low Income Housing Coalition found that in most urban areas within California, a worker earning minimum wage would have to work between 54 and 168 hours per week, just to realistically afford a one-bedroom apartment.⁸

Increased home prices have made it more and more difficult for low wage earners in California to provide more permanent housing for themselves and their families. According to an analysis of population survey data conducted by the California Budget Project, the percentage of younger California homeowners (age 31 to 40) dropped by 21.6% between 1979 and 2002 (and according to more recent housing affordability index information for California these numbers are still on the decline).⁹

In the wake of higher rental and home prices in California, the number of available public or “subsidized” housing units has also failed to keep pace with the housing need in urban communities within California.¹⁰ The overall lack of affordable or subsidized housing has forced many low-income residents of California into homelessness.¹¹ Although comprehensive data for the current level of homelessness in the entire state of California is hard to quantify, several regional areas have reported significant increases in the level of homelessness.¹² A recent study released by the Institute for the Study of Homelessness and Poverty reveals that on any given night, there can be as many as 80,000 homeless people in the Los Angeles County area alone. This study also reveals that, as many as 20% of these homeless are employed, yet are still unable to pay for their own housing.¹³ A 2002 report from the federal department of Housing and Urban Development (HUD) also indicates that, on any given night, approximately 12,000 people are homeless in the Alameda County area, and at least 40% of these homeless are families with children.¹⁴

⁶ California Institute for Policy Research, citing California’s Housing Affordability Index, 2003. *See also*, Locked Out, 2004: California’s Affordable Housing Crisis, California Budget Project, January 2004.

⁷ *Id.*

⁸ National Low Income Housing Coalition Report, 2004.

⁹ Locked Out, 2004: California’s Affordable Housing Crisis, California Budget Project, January 2004. *See also*, the California Housing Affordability Index as released by the California Association of Realtors in January 2004.

¹⁰ *Id.* at pg.23.

¹¹ Homelessness in Los Angeles: A Summary of Recent Research; Paul Tepper, Institute for the Study of Homelessness and Poverty, March 2004.

¹² U.S. Conference of Mayors, Hunger and Homelessness Survey: A Status Report on Hunger and Homelessness in America’s Cities, A 25 City Survey, December 2003.

¹³ Homelessness in Los Angeles: A Summary of Recent Research; Paul Tepper, Institute for the Study of Homelessness and Poverty, March 2004.

¹⁴ U.S. Department of Housing and Urban Development, Office of Policy Development and Research, Evaluation of Continuums of Care for Homeless People: Final Report May 2002, p. 186.

B. Status Report on Eviction in California

The subcommittee analyzed existing demographic data and prepared a snapshot of eviction (Unlawful Detainer) practice in California to obtain a better understanding of the housing challenges facing tenants and landlords in California. Please note that the goal of this section was to paint a portrait of eviction practice, not to draw a cause and effect relationship between separate data sets.¹⁵

This section divides California into nine regions based on similar topography, growth, land uses, and demographics in an attempt to reduce discrepancies cause by inconsistent data collection methods. The nine regions in California examined in this section are: Bay Area,¹⁶ Central Coast,¹⁷ Far North,¹⁸ Inland Empire,¹⁹ Los Angeles County, Metro Sacramento,²⁰ San Joaquin Valley,²¹ Sierras,²² and South Coast.²³ An ideal division would separate certain cities from their surrounding metropolitan areas, such as Fresno—facing urban challenges in an agricultural basin—or Los Angeles—the largest jurisdiction with rent control, but many data sources are collected only by county and not by city.



¹⁵ Please note that data taken from California court records has not been independently verified, so it should be weighed accordingly.

¹⁶ Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma Counties

¹⁷ Monterey, San Benito, San Luis Obispo, Santa Barbara, Santa Cruz, and Ventura Counties

¹⁸ Butte, Colusa, Del Norte, Glenn, Humboldt, Lake, Lassen, Mendocino, Modoc, Nevada, Plumas, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, and Yuba Counties

¹⁹ Imperial, Riverside, and San Bernardino Counties

²⁰ El Dorado, Placer, Sacramento, and Yolo Counties

²¹ Fresno, Kern, Kings, Merced, San Joaquin, Stanislaus, and Tulare Counties

²² Alpine, Amador, Calaveras, Inyo, Madera, Mariposa, Mono, and Tuolumne Counties

²³ Orange and San Diego Counties

Using data from the courts, Table A shows the ratio of UD (Unlawful Detainer) filings to occupied rental units. Three regions, Inland Empire, Los Angeles County and San Joaquin Valley, are above the statewide ratio. Though Los Angeles County, with an aging housing stock, large poverty population, and rent control was expected to be high, the large ratio in the Inland Empire is surprising. This may be due, at least in part, to the increasing poverty population in the Inland Empire area over the 1990-2000 period (see Table D).

Table A: Ratio of Unlawful Detainers Filed to Occupied Rental Units

	Total Occupied Housing Units	Renter Occupied	Approximate Number of UDs Filed Annually	Ratio of UDs Filed per 100 Occupied Rental Units
California	11,502,870	4,956,536	192,591	3.89
Bay Area	2,466,019	1,042,061	23,815	2.29
Central Coast	700,855	271,139	4,786	1.77
Far North	429,456	153,832	4,987	3.24
Inland Empire	1,074,196	361,756	30,147	8.33
Los Angeles County	3,133,774	1,634,030	81,884	5.01
Metro Sacramento	665,298	257,582	2,021	0.78
San Joaquin Valley	996,985	400,379	18,343	4.58
Sierras	106,323	31,710	511	1.61
South Coast	1,929,964	804,047	26,097	3.25

Source: U.S. Bureau of Census, 2000 & California Administrative Office of the Courts

Table B breaks down the percentage of occupied units that are rented. The national average of occupied rental units is 33%. In the Bay Area renters occupy more than 42% of the units, and in Los Angeles County renters occupy more than 50% of the units. This information is a reasonable indicator that housing purchase prices in these areas are far beyond the means of many residents living in these areas.

Table B: Percentage of Occupied Units Which Are Renter Occupied

	Total Occupied Housing Units	Owner Occupied	Renter Occupied	Percentage of Total Units Renter Occupied
California	11,502,870	6,546,334	4,956,536	43.09%
Bay Area	2,466,019	1,423,958	1,042,061	42.26%
Central Coast	700,855	429,716	271,139	38.69%
Far North	429,456	275,624	153,832	35.82%
Inland Empire	1,074,196	712,440	361,756	33.68%
Los Angeles County	3,133,774	1,499,744	1,634,030	52.14%
Metro Sacramento	665,298	407,716	257,582	38.72%
San Joaquin Valley	996,985	596,606	400,379	40.16%
Sierras	106,323	74,613	31,710	29.82%
South Coast	1,929,964	1,125,917	804,047	41.66%

Source: U.S. Bureau of Census, 2000

Table C shows the Census Department vacancy rate for total housing units in California. A vacancy rate below 5% is considered a very tight housing market. As you can see from the below table, the Bay Area and Los Angeles County areas are well below the 5% vacancy rate. This low vacancy rate, coupled with a decreasing per capita income for low wage earners,²⁴ may increase the likelihood for higher eviction rates in these areas.

	Total Housing Units	Occupied Housing Units	Vacant Housing Units	Vacancy Rate
California	12,214,549	11,502,870	711,679	5.83%
Bay Area	2,552,402	2,466,019	86,383	3.38%
Central Coast	743,968	700,855	43,113	5.80%
Far North	488,006	429,456	58,550	12.00%
Inland Empire	1,229,934	1,074,196	155,738	12.66%
Los Angeles County	3,270,909	3,133,774	137,135	4.19%
Metro Sacramento	714,981	665,298	49,683	6.95%
San Joaquin Valley	1,066,873	996,985	69,888	6.55%
Sierras	137,843	106,323	31,520	22.87%
South Coast	2,009,633	1,929,964	79,669	3.96%

Source: U.S. Bureau of Census, 2000

Table D shows the growth of the population categorically eligible for free legal services, including the percentage of statewide increases, between 1990 and 2000. These figures reveal that the Inland Empire had an increase of people living in poverty of 49%, representing 6% of the statewide increase of poor people. Los Angeles County also logged a significant increase of 26%, representing almost 34% of the statewide increase.

	Population Below 125% of Poverty 1990	Population Below 125% of Poverty 2000	Actual Increase in Population	Percentage Change 1990-2000	Percentage of State Increase
California	4,953,347	6,338,846	1,385,499	+27.97%	
Bay Area	686,128	767,200	81,072	+11.82%	+5.85%
Central Coast	261,314	332,792	71,478	+27.35%	+5.16%
Far North	213,527	249,668	36,141	+16.93%	+2.61%
Inland Empire	461,839	689,594	227,755	+49.31%	+16.44%
Los Angeles County	1,764,882	2,235,042	470,160	+26.64%	+33.93%
Metro Sacramento	231,600	297,065	65,465	+28.27%	+4.73%
San Joaquin Valley	641,252	839,933	198,681	+30.98%	+14.34%
Sierras	42,911	60,388	17,477	+40.73%	+1.26%
South Coast	649,894	867,164	217,270	33.43%	+15.68%

Source: U.S. Bureau of Census, 1990 & 2000

²⁴ Please see table D re the increase in the poverty population in these areas. *See also*, a recent report published by the State University of New York (SUNY), “*Quality of Life in the Nations 100 Largest Cities and Their Suburbs.*” This report found that the percentage of the population living in poverty in Los Angeles County grew from 6.1% to 10.4% from 1990 to 2000.

Table E depicts an average of the UD cases filed and closed between 1999-2002 compared with the number of people eligible for free legal services during the same period. While the Inland Empire and Los Angeles counties are still significantly above the statewide average, this table shows the Bay Area at approximately the statewide average. This may be due to rent control in certain jurisdictions or rapidly rising rents at the end of the 1990s.

Table E: Ratio of UD Filings to Poverty Population

	Population Below 125% of Poverty 2000	Population Below 185% of Poverty 2000	Approximate Number of UDs filed Annually	UD Filings per 100 People Below 125% of Poverty	UD Filings per 100 People Below 185% of Poverty
California	6,338,846	10,128,631	192,591	3.04	1.90
Bay Area	762,200	1,259,126	23,815	3.12	1.89
Central Coast	332,792	553,921	4,786	1.44	0.86
Far North	249,668	395,796	4,987	2.00	1.26
Inland Empire	689,954	1,122,663	30,147	4.37	2.69
Los Angeles County	2,235,042	3,484,611	81,884	3.66	2.35
Metro Sacramento	297,065	475,011	2,021	0.68	0.43
San Joaquin Valley	839,933	1,285,890	18,343	2.18	1.43
Sierras	60,388	96,139	511	0.85	0.53
South Coast	867,164	1,455,474	26,097	3.01	1.79

Source: U.S. Bureau of Census, 2000 & California Administrative Office of the Courts 1999-2002

Overall, Los Angeles County, the Bay Area and the Inland Empire areas logged in the highest number of UD filings (according to available statistics). It is important to point out that these areas also reported the highest increases in the poverty population from 1990 to 2000. Although insufficient data is available at this time to make a causal correlation between these data sets, it stands to reason that the economic law of supply and demand is operating in these areas such that, an increase in the poverty population coupled with a decrease in availability of affordable housing will effectively mean that more low-income earners will continue to be squeezed out of the rental housing market in these areas and face possible eviction proceedings in the future.

III. Overview of the Law

A. Accommodations for Low-Income Housing in California

California has addressed the issue of low-income housing through a “General Plan” statute that requires each city and county government to create a long-range development plan.²⁵ This plan must contain seven distinct elements that relate to a city or county’s development in the areas of: land use, *housing*, safety, circulation, conservation, noise, and open space.²⁶ The housing component of this legislation was set up to compel local governments to plan for future housing needs, especially the growing need for low-income housing.²⁷ The intent of the legislature was to ensure the “[e]arly attainment of decent housing and a suitable living environment for every California family...[and to] facilitate the improvement and development of housing...[for] all economic segments of the community.”²⁸

However, enforcement of the General Plan statute is restrictive. Only a private citizen(s) has the power to enforce the statute.²⁹ Available remedies include: (1) court ordered compliance within 120 days; (2) suspension of a locality’s authority to change zoning regulations, or issue building permits; (3) court mandated approval of residential building proposals; and/or (4) court mandated approval of subdivision maps.

Many cities within California also use formal zoning ordinances to further limit the growth of low-income housing within their communities.³⁰ Historically, zoning has become a powerful tool used by local governments to *exclude* low-income families from particular areas.³¹ Exclusionary zoning programs can prevent the influx of low-income families into more affluent neighborhoods by: (1) requiring high minimum house size standards; (2) disallowing multi-family units such as apartment buildings; and (3) requiring very high minimum lot sizes for houses.³² All of these exclusionary zoning tactics effectively limit low-income tenants and/or homeowners from moving into the neighborhood.

B. Unlawful Detainer Proceedings in California

Data from the California Administrative Office of the Courts indicates that on average at least 192,591 UD actions were filed annually between the years 1999-2002.³³ Existing law may be a contributing factor in the large number of evictions filed in California. A comparative analysis of eviction law in California and other jurisdictions reveals varying levels of inequity between tenants’ and landlords’ rights. The summary chart attached (Attachment 2) provides a brief overview of eviction law throughout the United States. As

²⁵ See Cal. Gov. Code § 65300.

²⁶ § 65302 (emphasis added).

²⁷ § 65580

²⁸ *Id.*

²⁹ §§ 65583, 65587

³⁰ 272 U.S. 365 (1926)

³¹ Nadia I. El Mallakh, *Does The Costa-Hawkins Act Prohibit Local Inclusionary Zoning Programs?*, 89 CAL. L. REV. 1847, 1847 (2001).

³² *Id.*

³³ See Table E herein.

demonstrated on the attached chart, many states have eviction laws that are more favorable to the tenant and/or the landlord than the eviction process in California.

Before a landlord in California can evict a tenant for failure to pay rent, he or she must instigate a summary eviction proceeding known as Unlawful Detainer (UD).³⁴ Once the tenant fails to pay rent, the landlord must make a written demand for payment and then give the tenant three days to cure the breach (pay the rent).³⁵ If the tenant does not cure within this three-day period, the landlord can then seek relief from the court by initiating a UD proceeding.

The landlord initiates a UD action by filing a complaint alleging that the tenant is guilty of unlawful detainer. The complaint must:

- allege that the landlord is the rightful owner of the property,
- identify every person residing in the property,
- allege that a landlord-tenant relationship existed via an agreement,
- allege that the tenant breached the agreement (i.e. failure to pay rent), and
- state that the landlord made a formal demand for payment.³⁶

The tenant, upon receiving the summons and complaint, has five (5) days to make a motion, demurrer, or file an answer. If the tenant does not answer the complaint, or make a motion to quash the complaint, the landlord can immediately seek a default judgment.³⁷

Under California law, a tenant may raise a number of defenses to a UD lawsuit. Unfortunately, given the relatively short time allotted between the filing of an answer and the trial date, the whole process becomes a crash course in the legal system for many low-income renters. If the court rules against the tenant, the tenant can appeal the UD judgment. However, unless the tenant can convince the trial court to stay enforcement of the judgment, he or she will have to move from the rental before a decision is rendered on appeal.³⁸

³⁴ Rebecca Hall, *Berkeley Community Law Center, Eviction Prevention as Homelessness Prevention* (1991), in Randy G. Gerchick, *No Easy Way Out: Making the Summary Eviction Process a Fairer and More Efficient Alternative to Landlord Self-Help*, 41 UCLA L. Rev. 759, 812 n.197 (1994) (discussed case study in Berkeley, California that found at least 41% (170 of 410) of evictions were based on non-payment of rent. The study went on to note that nonpayment of rent was the reason for eviction in more than 70% of cases involving low-income tenants).

³⁵ Under Code Civ. Proc. §§ 1161, 1162, the landlord must comply the requirements of the notice provision, which include making three (3) good faith attempts to serve the tenant personally. If the landlord cannot serve personally, the landlord must then post the notice on the tenants door (or at a conspicuous place on the property) and mail (via first class) the notice to the tenant. The landlord must also comply with the codes requirements of the form of the notice, such as including the address and telephone number of where the tenant can pay rent, hours to pay rent, etc.

³⁶ This is far from a complete list of what must be set forth in the complaint. It must be noted, that the landlord must comply with the requirements of the complaint, or face a demurrer by the tenant.

³⁷ Code Civ. Proc. § 1169.

³⁸ *Unlawful Detainer Equal Access Project Training*, *supra* note 14, at 1.14.

Once judgment against the tenant is final, the court will issue a writ of possession to the landlord.³⁹ If the tenant does not move out after the writ is issued, the landlord can work with local law enforcement to have the writ enforced. The sheriff can serve the writ on the tenant.⁴⁰ Once the tenant receives the writ, he or she has five (5) days to vacate the premise. At the end of the fifth day, and if the tenant does not vacate, the sheriff has the authority to physically remove the tenant from the premises.⁴¹

In general, East Coast⁴² states appear to be more favorable to tenants and afford tenants more rights in eviction actions. One of the main areas of difference in statewide eviction proceedings is the amount of time given to the tenant to quit or pay rent. In California, once the three-day notice expires a landlord can proceed to evict the tenant. The long-held rule in California is that a tenant cannot cure non-payment once the three-day notice expires. The courts in California have held that allowing a tenant to cure for non-payment before trial would be inconsistent with legislative intent and the policy behind the summary proceedings.⁴³ In contrast to California, many other states provide the tenant with more time to cure the failure to pay rent. For example, Arizona and Washington allow the tenant to cure up until the time of final judgment.

Many of the tenants facing eviction proceedings in California are low-income earners⁴⁴ and may not even be able to show up at the initial hearing because they are unable to take time off from work (which can also result in a reduction in income) and/or are unable to pay for added expenses incident to their attendance at the hearing, such as childcare. Although insufficient data is available in California to determine the percentage of low-income earners who actually show up at an eviction hearing, data is available from a recent court watch study conducted in Chicago.⁴⁵ This study found that only 56% of the tenants facing eviction appeared in court, either in person or through a representative. These findings are troubling given that the tenants' presence in court may affect the length of stay (time given tenants before they must move out) they are granted.⁴⁶ According to the Chicago study, most of the tenants who were present at the initial hearing did not have legal counsel.⁴⁷ This data appears consistent with reports from service providers in California.

³⁹ Code Civ. Proc. § 715.010.

⁴⁰ Code Civ. Proc. § 715.020.

⁴¹ Code Civ. Proc. § 715.020(c).

⁴² For example, see Attachment 1 which indicates that Connecticut, Delaware, District of Columbia, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Rhode Island, South Carolina and Vermont all have legal provisions that are more favorable to the tenant than in California.

⁴³ See *O.L. Rousell, supra*, note 61.

⁴⁴ See *Locked Out 2004: California's Affordable Housing Crisis, California Budget Project*, p.2-10, www.cbp.org. See also, Table E herein.

⁴⁵ *2003 Report from Kent Law School on Chicago's Eviction Court*, see the internet summary of this report at www.selfhelpsupport.org.

⁴⁶ The study also found that when the tenant was present in court, the average stay granted was 14.5 days but when the tenant was absent the average stay granted was only 8.4 days.

⁴⁷ Of 763 cases observed in the Chicago study, 95% of the tenants present for the hearing did not have legal representation. Excerpted from the *2003 Report from Kent Law School on Chicago's Eviction Court*.

IV. Housing and Eviction Survey

The subcommittee recently conducted a survey of legal service providers to determine the nature and scope of assistance available to low-income landlords and tenants in California. The housing and eviction survey, (hereafter referred to as the “survey”) provided herewith as Attachment 1, was circulated to low-income legal service providers, legal self-help centers, and community dispute resolution programs throughout California. Responses to the survey reveal that current access to the legal system for low-income tenants is limited.

Based on the survey responses gathered by the subcommittee, the majority of tenants in eviction proceedings are probably low-income earners that often may not have legal representation at the eviction hearing.⁴⁸ In addition, many tenant defendants in UD proceedings may not appear at all, and/or are not sufficiently knowledgeable about the law or the process to mount an effective defense to a UD action. Without greater access to legal representation, or to education and training for pro per tenants, it appears likely that low-income tenants will continue to remain at a disadvantage in UD proceedings. The survey also revealed that assistance to low-income landlords by legal services and self-help programs is seriously limited, and is not provided on the same scale as the (albeit limited) services made available to low-income tenants.

It is vital to note that the survey responses provide only a snapshot of the organizations that responded to our survey, and do not constitute a representative sampling. However, the subcommittee believes that the survey results are a valuable tool in demonstrating some of the needs for legal and educational services in UD matters, and the extent to which those needs are presently being met.

The subcommittee sent out a total of 210 surveys: 120 to IOLTA programs, 10 to self-help centers, 79 to community based dispute resolution programs, and 1 to an other non-IOLTA program. The survey is comprised of eight questions designed to ascertain whether, and in what ways, these organizations provide legal services in connection with UD proceedings. Generally, the survey sought information about the following:

- the legal services provided to both landlords and tenants (Questions 1-4),
- whether the number of UD cases are increasing or decreasing (Question 5),
- the challenges in handling UD cases for both landlords and tenants (Question 6),
- the level of outreach conducted regarding UD cases (Question 7); and
- other housing related issues handled by these legal organizations (Question 8).

A charted summary of the data received is represented on Table F (page 15).

⁴⁸ 2003 Report from Kent Law School on Chicago's Eviction Court, see the Internet summary at www.selfhelpsupport.org. See also, R.G. Gerchick, *No Way Out: Making the Summary Eviction Process a Fairer and More Efficient Alternative to Landlord Self-Help*, 41 UCLA L. Rev. 759, 812 n. 197 (1994). See also *Locked Out 2004: California's Affordable Housing Crisis*, California Budget Project, p.2-10, www.cbp.org.

To date, of the 210 total surveys sent, 56 (26.6%) of the organizations responded. Specifically, of the 120 surveys sent to IOLTA programs, 28 (23.3%) responded; of the 10 sent to self-help centers, 5 (50%) responded; of the 79 sent to programs funded by the Dispute Resolution Program Act (“DRPA”), 22 (28%) responded, and the single survey sent to the other non-IOLTA program responded to all of the survey questions. Responses were received from all State Bar districts (1-9), with the most responses from District 3 (Alameda, Contra Costa, San Mateo and Santa Clara Counties) and District 7 (Los Angeles County). Of the 56 respondents, a total of 44 organizations provided some direct services to landlords or tenants in UD actions, 10 do not provide any direct services, and 2 organizations declined to state the level and scope of services provided.

Questions 2, 3 and 7 of the survey inquired as to the level and variety of UD services provided by the responding organizations. Please see Table F for a breakdown of the services provided to low-income tenants and landlords. This breakdown reveals that the major service area reported was telephone advice in UD matters. Thirty-two respondents reported offering telephone legal advice to tenants in UD actions, while only 15 provided UD telephone advice to landlords.

Questions 4 and 5 asked for information about the number of UD cases handled yearly by each agency, requesting statistics UD complied over the past two years. The responses to these questions were incomplete.⁴⁹ However, of the 55 responding organizations, 23 reported experiencing an increase in their UD cases over the past two years, 7 experienced decreases, and 9 of the respondents reported no change. Narrative responses explain various reasons for an increase in UD cases including tenant’s lack of income, more evictions by landlords, high rents combined with low vacancy rates, as well as improved outreach. Explanations for a decrease in UD cases by some respondents include the lack of organizational staffing and resources, changes in the 60-day notice law,⁵⁰ new service providers in respondent’s area and, (by one report) fewer evictions by landlords.

Question 8 asked survey respondents to identify other services they provide that related to housing. Please see Table F (page 14) for a summary chart depicting the level and scope of related services provided.

A small number of respondents indicated in their narrative responses that they provide other services which affect housing in areas such as domestic violence, repairs, immigrant housing, land use, security deposits, Rent Board petitions, bankruptcy and neighborhood disputes. However, other responding organizations may handle some matters such as these but did not consider them directly related to UD proceedings or the housing issues itemized in the survey and, on that basis, may not have included them in their responses.

⁴⁹ For the year 2002, at least 18,732-19,034 tenant cases were handled, 326 landlord cases were handled, and an additional 3,644 cases were handled (with no distinction between whether the case were for either landlords or tenants). For 2003, at least 19,469-19,799 UD cases were handled, with inadequate data provided to determine the exact tenant/landlord case ratio.

⁵⁰ Effective January 1, 2003 a landlord in California has to give the tenant 60-days notice of the intent to terminate a periodic rental agreement (for example, a month-to-month agreement) when the tenant has lived in the rental unit for a year or more. *See* California Civil Code §1946 (as amended).

Question 7 of the survey asked organizations to identify some of the challenges faced in handling UD tenant cases. The challenges faced included: client language barriers (10), lack of good cause to defend against an eviction (8), lack of financial or attorney resources (14), and the short timeline allotted for UD cases in California (7). Respondents also identified problems with the elderly and mentally disabled in understanding their situation and/or their legal rights in connection with the eviction proceedings.

There is also some evidence to indicate that greater attorney resources are needed to support legal assistance for low-income landlords in California as well. Traditionally, legal services and self-help programs in the UD housing area have provided assistance primarily to low-income tenants. However, in more recent years, self-help centers at the courts and at least one IOLTA program, the Alameda County Bar Association's Volunteer Legal Services Corporation (VLSC), assist low-income landlords with eviction proceedings. Many of these low-income clients are elderly women of color who had rented out a room in their homes to help make ends meet. As the housing affordability index in California continues to decline,⁵¹ the burden on programs like the VLSC landlord clinic will likely be exacerbated.

V. Findings and Recommendations

Based on the survey data and housing research summarized within this report, the subcommittee findings are:

- The level of affordable housing available for low-income tenants has significantly declined in California over the past five years.⁵²
- Eviction laws vary widely throughout the United States. Many states have eviction laws that are more favorable to the tenant than the eviction process in California.
- 42.8% of the legal organizations surveyed reported an increase in the need for eviction services over the last two years.
- 17.8% of survey respondents listed tenant lack of income as the number one reason for the increase in UD cases filed over the last two years.
- 25% of survey respondents reported that lack of attorney resources is a significant challenge faced by both low-income tenants and low-income landlords dealing with eviction proceedings in California.
- 17.8% of the survey respondents reported that lack of language access was a significant challenge in attempting to provide adequate legal services for both low-income tenants and low-income landlords in eviction actions.

⁵¹ As evidenced by the 2004 report from the California Association of Realtors, for more information see the website reference at www.car.org.

⁵² California Institute for Policy Research, citing California's Housing Affordability Index, 2003. *See also*, Locked Out, 2004: California's Affordable Housing Crisis, California Budget Project, January 2004.

Based on the results of the subcommittee survey, review of relevant laws, reports and other data, and in light of the rising housing costs in California, SCDLS recommends that the State Bar of California encourage and support:

- Increased private bar participation in both funding and direct pro bono legal assistance for low-income landlords and tenants in the area of eviction practice.
- Efforts to provide more UD services for persons who do not speak English.⁵³
- Expanded UD services for the elderly or persons with mental disabilities to pursue their legal rights in landlord/tenant matters.
- Provision of services to low-income landlords, as well as tenants.
- Enhanced data collection within the Courts regarding UD actions so that impediments to access to justice for low-income landlords and tenants in California can be better identified.

SCDLS will coordinate with staff to implement the recommendations above in the following ways:

1) Distribute the report in hard copy and electronically (and posted on the State Bar's website) to key stakeholders involved in low-income housing issues and the delivery of legal services to low-income tenants and landlords, including, but not limited to,

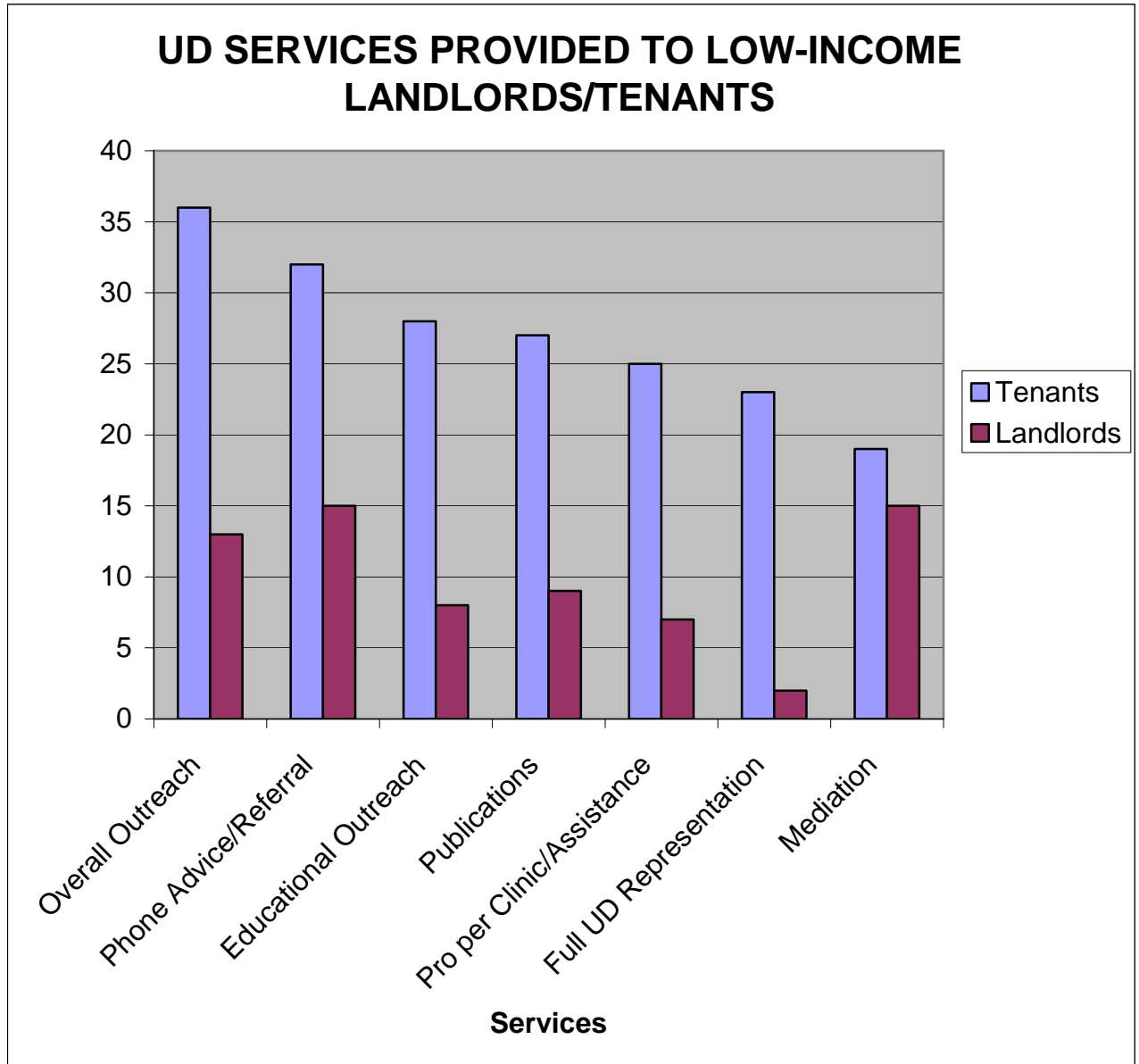
- Legal services programs
- Pro bono programs
- Legal services support centers
- Statewide Housing Law Task Force
- State Bar certified lawyer referral services
- Self-help court based centers
- Local, specialty, minority and women's bar associations
- Law schools
- Affordable housing and homeless coalitions/advocacy groups
- Non-profit organizations serving the elderly, disabled and immigrant populations
- Courts
- Legislators
- Funders
- Community based mediation programs

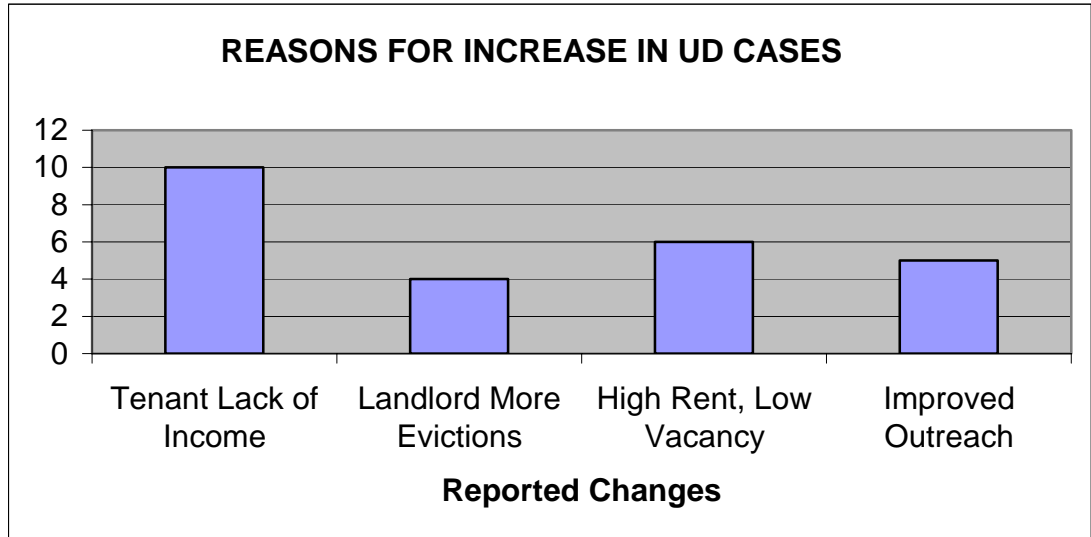
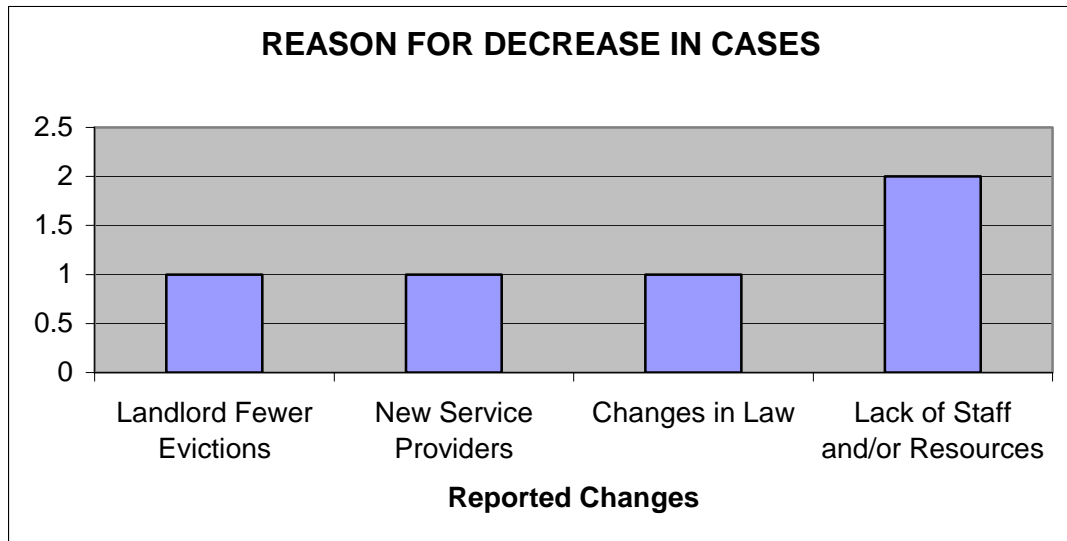
2) Convene stakeholder forums or focus groups to obtain direct input on the report findings and recommendations, and to include stakeholders in the follow up implementation of the recommendations.

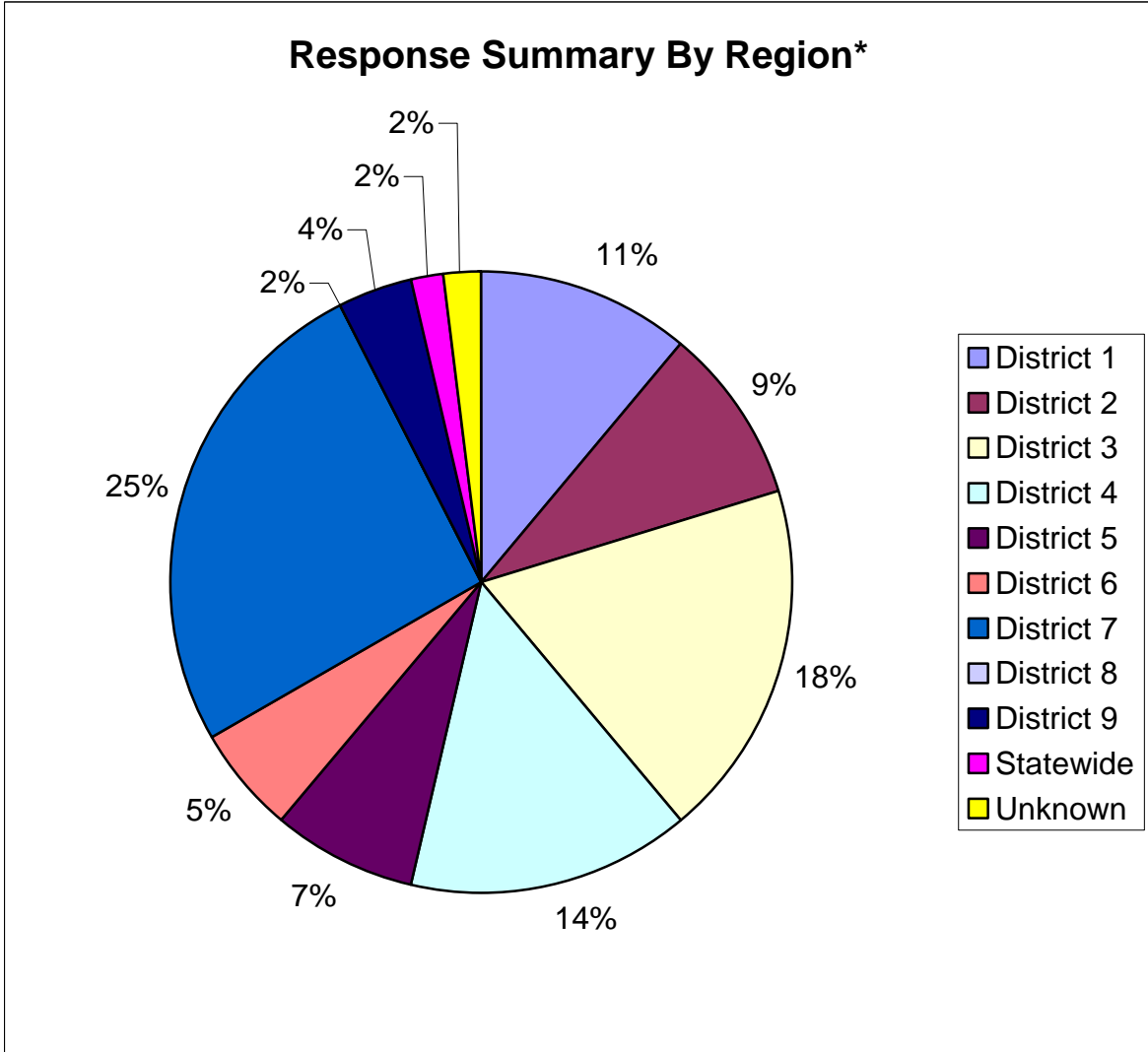
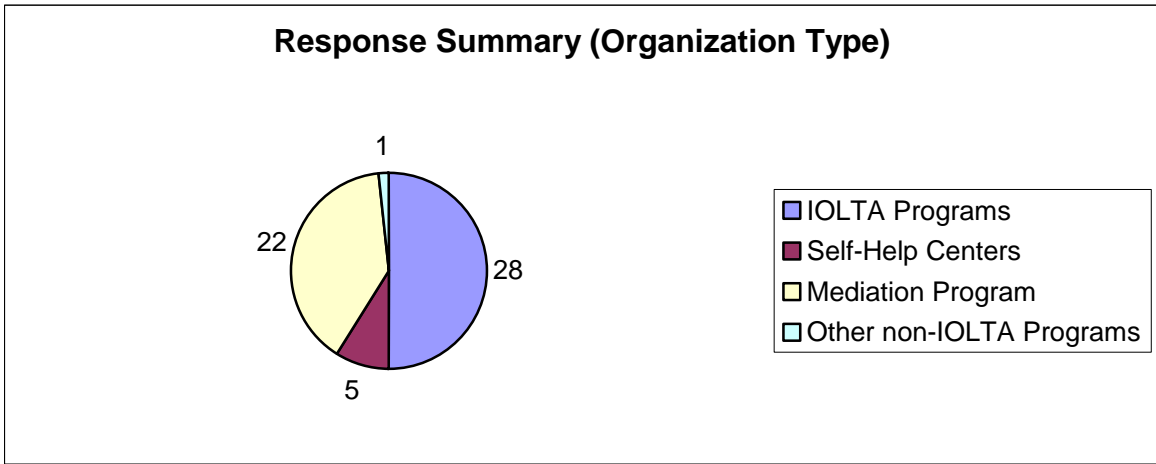
⁵³ The Commission on the Access to Justice is currently working on a policy paper regarding language access barriers. The subcommittee would refer the Board of Governors to this paper for more detailed recommendations for improvements in this area.

- 3) Highlight and share with the stakeholders listed above information on successful direct legal services and self-help models in California that provide effective UD services to low-income tenants and landlords.
- 4) Participate in training events and conferences where information from the report is relevant and useful. Please note that the report will be referenced and highlighted during one and possibly two housing sessions at the upcoming State Bar 2005 Spring Summit: Pathways to Justice, June 2-4, 2005 in San Francisco.
- 5) Identify other opportunities as appropriate.

VI. TABLE F







* See the regional chart divided by District on page 3

VII. ATTACHMENT 1

HOUSING AND EVICTION SURVEY

Name of organization: _____

Person completing survey: _____

1) Does your organization represent, advise or educate landlords and/or tenants in Unlawful Detainer (UD) actions?

Yes (please continue to next question)

No (proceed to question #9)

2) Please indicate the services provided by your organization by checking the applicable service area listed below:

Full UD representation for tenants

Full UD representation for landlords

Pro per clinic and/or assistance for UD tenants

Pro per clinic and/or assistance for landlords

Telephone advice and referral for UD tenants

Telephone advice and referral for landlords

Educational Outreach for UD tenants

Publications for UD tenants

Educational Outreach for landlords

Publications for landlords

3) Please briefly describe the scope of UD services provided by your organization (please include the type of services provided and to whom services are provided. If you have any brochures or reports that describe your UD services please include this data with your returned survey).

4) Please provide statistics regarding the number of landlord cases your organization handled and/or the number of tenant cases your organization handled over the past two years (please report each year separately if possible).

5) Has your organization seen an increase or decrease in UD cases handled over the past two years?

6) Can you explain any increase/decrease in the number of UD cases handled?

7) What are some of the challenges your organization faces in handling UD cases for tenants? For landlords? (E.g. language access, good cause/lack of good cause, etc.)

8) Does your organization conduct outreach to tenants re UD cases? Landlords? (Please provide copies of informational flyers/outreach materials.)

9) What other cases/issues does your organization handle that affect housing? (E.g., habitability/blight, slum housing, predatory lending and/or other homeowner issues etc.)

10) Would you like to be part of the peer review committee to review this UD report?

Yes

No

Thank you for completing this survey. Please return the survey by fax to Sharon Ngim at 415-538-2552 or by email to sharon.ngim@calbar.ca.gov

**LANDLORD / TENANT LAW
FAILURE TO PAY RENT ANALYSIS
JULY 2003**

VIII. ATTACHMENT 2

STATE	STATUTE	COMPARISON TO CALIFORNIA LAW*			FAVORABLE TO LANDLORD / TENANT	CURE ALLOWED AFTER NOTICE
		FAVOR TENANT	SAME	FAVOR LANDLORD		
1. Alabama	AL ST § 35-9-6 (1975)			X	X	
2. Alaska	AK ST § 34.03.220 (1975)	X			X	
3. Arizona	A.R.S § 33-1368 (2000)	X			X	X
4. Arkansas	AR ST § 18-16-101 (1987) AR ST § 18-60-304 (1987)			X X	X X	
5. California	CA CIV. PRO. § 1161 (1982)				X	
6. Colorado	C.R.S. § 13-40-104 (1997)		X		X	
7. Connecticut	CT GEN ST § 47a-15a (1994)	X			X	
8. Delaware	25 DEL. C. § 5502 (1975)	X			X	
9. District of Columbia	DC ST § 42-3505.01 (2001)	X			X	
10. Florida	FL ST § 83.05 (2003)		X		X	
11. Georgia	GA ST § 44-7-52 (2003)	X			X	X
12. Hawaii	HI ST § 521-68 (2002)	X			X	
13. Idaho	ID ST § 6-303 (1975)		X		X	
14. Illinois	735 ILCS § 5/9-209 (1992)	X			X	

**LANDLORD / TENANT LAW
FAILURE TO PAY RENT ANALYSIS
JULY 2003**

VIII. ATTACHMENT 2

STATE	STATUTE	COMPARISON TO CALIFORNIA LAW*			FAVORABLE TO LANDLORD / TENANT	CURE ALLOWED AFTER NOTICE
		FAVOR TENANT	SAME	FAVOR LANDLORD		
15. Indiana	IN ST § 32-31-1-6 (2002)	X			X	
16. Iowa	IA ST § 562A.27 (1992)		X		X	
17. Kansas	KS ST § 58-2507 (1994)	X			X	
18. Kentucky	KY ST § 383.660 (2003)	X			X	
19. Louisiana	LA C.C. ART. 4701 (1998)	X			X	
20. Maine	14 M.R.S.A. § 6002 (2003)	X			X	X
21. Maryland	MD REAL PROP § 8-401 (2002)	X			X	X
22. Massachusetts	M.G.L.A. 186 § 11 (1991)	X			X	X
23. Michigan	MI ST 554.134 (2003)	X			X	
24. Minnesota	MN ST § 504B.291 (2002) MN ST § 504B.135 (2002)	X X			X X	X X
25. Mississippi	MS ST § 89-7-27 (2003)		X		X	
26. Missouri	MO ST 535.020 (2000) MO ST 535.120 (2000)	X X			X X	X X
27. Montana	MT ST 70-24-422 (2000)		X		X	
28. Nebraska	NE ST § 76-1431 (2002)		X		X	

**LANDLORD / TENANT LAW
FAILURE TO PAY RENT ANALYSIS
JULY 2003**

VIII. ATTACHMENT 2

STATE	STATUTE	COMPARISON TO CALIFORNIA LAW*			FAVORABLE TO LANDLORD / TENANT	CURE ALLOWED AFTER NOTICE
		FAVOR TENANT	SAME	FAVOR LANDLORD		
29. Nevada	N.R.S. 40.253 (2002)	X			X	
30. New Hampshire	NH ST §540.3 (2002)	X			X	
31. New Jersey	NJ ST 2A:18-61.1 (2000)	X			X	X
32. New Mexico	NM ST § 47-10-6 (1978)		X		X	
33. New York	NYC RENT & EVICT § 2204.1 (2001) NY RP ACT & PRO §751 (1979)	X	X		X	X
34. North Carolina	NC ST § 42-3 (2001)	X			X	X
35. North Dakota	ND ST 33-06-01 (1999)		X		X	
36. Ohio	OH ST § 1923.04 (2002)		X		X	
37. Oklahoma	41 OKL. ST. ANN. §§ 6, 7, 131 (1999)	X			X	
38. Oregon	O.R.S. § 90.400 (2001)	X			X	
39. Pennsylvania	68 P.S. §§ 250.501, 250.503 (2003)	X			X	X
40. Rhode Island	RI ST § 34-18-35 (2002)	X			X	X
41. South Carolina	SC ST § 27-40-710 (2002)	X			X	

**LANDLORD / TENANT LAW
FAILURE TO PAY RENT ANALYSIS
JULY 2003**

VIII. ATTACHMENT 2

STATE	STATUTE	COMPARISON TO CALIFORNIA LAW*			FAVORABLE TO LANDLORD / TENANT	CURE ALLOWED AFTER NOTICE
		FAVOR TENANT	SAME	FAVOR LANDLORD		
42. South Dakota	SD ST § 21-16-2 (1968)		X		X	
43. Tennessee	T.C.A. § 66-7-109 (2002)	X			X	
44. Texas	V.T.C.A., Property Code § 94.206 (2003)	X			X	
45. Utah	UT ST § 78-36-3 (2002)		X		X	
46. Virginia	VA ST § 55-225 (2002)	X			X	
47. Vermont	9 V.S.A. § 4467 (2002)	X			X	
48. Washington	WA ST § 7.28.250 (1992)	X			X	X
49. West Virginia	WV ST § 37-6-6 (1999)			X	X	
50. Wisconsin	WI ST § 704.17 (2001)	X			X	X
51. Wyoming	WY ST § 1-21-1002 (1977)	X			X	X

*Indicates that the state law is either more or less favorable to the landlord or tenant than in California.