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S.B. 361 -- Removal of tenants' possessions after eviction

Judiciary Committee public hearing -- March 3, 2006
Testimony of Raphael L. Podolsky

Recommended Committee action: **REJECTION OF THE BILL**

I strongly urge you to reject this bill, which will leave tenants who fail to remove their possessions before eviction with literally nothing but the clothing on their backs. It will result in their near-total impoverishment. The bill deems such property as "abandoned," even if it is obvious that it is not; and it immediately gives it to the landlord, who can immediately discard it. It would be no substantial improvement to put the landlord in charge of storing the possessions, because the tenant would rarely get them back. The two most essential elements of a fair post-eviction system are (1) a reasonable period for redemption (which should not be less than the minimal 15-day period provided by existing law) and (2) a neutral party to hold the goods. This bill destroys both and in doing so completely eliminates the ability to redeem.

Under Connecticut law since at least 1895, when an eviction occurs, the tenant's property is removed by a marshal and stored by the town for 15 days. If not redeemed by the tenant, it is auctioned off. S.B. 361 says that, instead of moving the property to the town for storage, it will be left in the apartment, where the landlord can dispose of it at will. He does not have to give it back to the tenant. He does not have to store it. He does not have to notify entities (such as a lender) which have a security interest in it. Remarkably, the bill states that the landlord is "without any liability for such removal," no matter what he does. There are approximately 23,000 evictions per year in Connecticut. The best estimate from recent data is that 10% to 15% of them (i.e., about 2,500 cases per year) result in actual evictions. Actual survey data from the towns reveal that tenants, on average, redeem property in about 20% of the cases in which property is stored by the town. It is simply not true that all such property is "junk" or that "no one ever redeems."[1]

This bill affects every tenant and every type of rental housing in Connecticut. It affects senior housing. It affects public housing. It affects tenants in large apartment

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[1]In 1997, Deputy Sheriff John Johnston (who identified himself as a landlord), testified to the Judiciary Committee on a proposal similar to S.B. 361: "...in some cases the possessions are considerable. We did an eviction in East Hartford where the belongings were evaluated at over $100,000 and under these provisions a landlord could in effect steal those goods. We do have to remember there are bad landlords as well as there are bad tenants. They're in the minority same as with the tenants, but they are out there. There is a buffer zone that deputy sheriffs provide to the landlord. It keeps the landlords from having to go one on one with the tenants." In response to a legislator's question expressing skepticism that goods removed during a residential eviction ever have substantial value, Mr. Johnston replied: "I've had them in the thousands [of dollars] many times."

buildings and tenants in three-family houses. It affects mobile home parks, where it puts the homes of the residents at risk. The bill affects not only tenants who are behind in the rent but also tenants whose lease is not renewed without fault on their part. It affects every tenant who, for whatever reason, has not moved his or her property out prior to the marshal's executing on an eviction judgment.

The inclusion of notice in the court papers does nothing to solve these problems. Tenants who are able to remove their possessions will do so and will not risk the inevitable damage and loss that comes from a move-out by a marshal. When an actual eviction occurs, it is almost always because the tenant has no place to go or because the tenant – sometimes quite reasonably – does not understand that the eviction is about to occur. There are tenants with no car in which to move their property, no family to double up with, and no money to pay for storage. There are tenants with little literacy, especially in English, who do not understand the difference between an intermediate court paper and an execution notice. Homeless shelters have no space to store tenant furniture or any significant volume of possessions, but they often have staff to help tenants find a new place to live and get their property back from the city. Under S.B. 361, the property will already be gone. There are tenants who never receive notice of the eviction judgment or who are hospitalized or institutionalized when it arrives. There have even been instances in which the tenant pays back rent to the landlord and the landlord tells him to ignore the eviction papers. S.B. 361 repeals the safety valve that at least allows the tenant a reasonable period of time to reclaim property when an eviction occurs.

S.B. 361 also raises serious due process problems. It creates what amounts to an irrebuttable presumption of abandonment regarding property which obviously has not been abandoned. It takes property from the tenant and effectively gives it to the landlord. Unlike lien statutes (e.g., in regard to towed cars not picked up by their owners), which have been the subject of due process litigation, S.B. 361 lacks provision for storage, redemption, sale, and payment of any surplus to the tenant. It does not relate the value of goods seized to the amount, if any, owed to the landlord. It authorizes seizure of property subject to a security interest with no notice to the secured party. It immunizes the landlord from liability for his own misconduct. It appears to be an open invitation to litigation.

S.B. 361 radically and harshly changes the system for what happens to tenant property in the aftermath of an eviction. For centuries, an eviction has meant that the tenant loses possession of the dwelling unit. S.B. 361, in contrast, means that, in a significant number of cases, the tenant will lose not only the apartment but also nearly everything he or she owns. The existing system is reasonable, balanced, and effective; and it has served Connecticut well. I strongly urge you to reject this bill and to leave current law in place.