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VIA EMAIL IN PDF FORMAT TO COMMENTS.MAILBOX@NJCOURTS.GOV

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments on Report of the Judiciary Special Committee on Landlord Tenant
Hughes Justice Complex; P.O. Box 037
Trenton, NJ 08625-0037

Dear Judge Grant:

I am General Counsel for Pro Capital Management II ("Pro Capital"), which acquires properties throughout the State of New Jersey when property owners, landlords, or banks decline to comply with the law and do their part to support their communities and pay their share of property taxes. Pro Capital's investments in New Jersey municipalities ensures the uninterrupted provision of critical services such as police and fire protection, and the education of our youths. In doing so, Pro Capital is one the largest remediators of blight in the State: its investments restore non-performing properties to tax rolls, and it eliminates hazardous and dangerous conditions on properties so that other local entrepreneurs can offer safe and economic housing to residents. In short, Pro Capital's passion is using private capital to solve public problems.

I am pleased to offer the following comments regarding the Report and Recommendations of the Judiciary Special Committee on Landlord Tenant (hereinafter "Report"). Pro Capital supports the Judiciary's effort to process landlord tenant cases efficiently and promote equity within the foreclosure and eviction process. Pro Capital sincerely appreciates the Judiciary's efforts to update its landlord-tenant procedures in the wake of the COVID-19 pandemic, and its commitment to additional resources to landlord-tenant matters. Additionally, Pro Capital commends the Judiciary's push to have certain documents submitted at or shortly after a matter is filed, such as case information statements, so that settlers, judges, and other court staff have adequate information available to timely and efficiently resolve cases. Our comments focus on leveling the playing field for both tenants and landlords, to ensure equal justice to all.

1. **Recommendation 2 should be amended to require the filing of a Tenant Case Information Statement, and provide a two-step process for the entry of default if a tenant does not file one.**

Recommendation 2 proposes the promulgation of a one-page Tenant Case Information Sheet (hereinafter “TCIS”), which tenants can file with the court if they so choose. While well-intentioned, this Recommendation should go further and require a tenant to file one. Recommendation 1 requires the filing of a Landlord Case Information Statement, and Recommendation 6 mandates a landlord’s submission of certain documents prior to a case management conference. In order to provide settlers, court staff, judges, as well as landlords some basic information about their situation, so that they can adequately prepare for conferences, a tenant should be required to file a TCIS. There is no filing fee to submit the TCIS, and thus, the only costs incurred by tenant would be if the tenant mailed the filing. The computer rooms at the courthouse, or computers at public libraries will provide a means by which tenants can submit the TCIS electronically in the event that they do not have Internet access in their homes.

In addition, Recommendation 2 should be amended to require the tenant to file the TCIS within ten days of service of the complaint and summons. If the tenant does not file the TCIS within ten days, they would receive a warning notice, stating that they must file the TCIS within 10 additional days, or default will be entered against them. After a total of 20 days, default would be entered against the tenant, and the landlord could subsequently apply for judgment for possession. The default would be without prejudice to the tenant vacating same upon the filing of a TCIS.

There are already multiple court rules which have a similar process for dismissal or default, as to the default procedure proposed in the prior paragraph:

- R. 5:5-2(a) requires the filing of a case information statement in certain family actions. R. 5:5-2(b) provides that a party’s pleading may be stricken if it fails to file the required case information statement.
- Similarly, parties in civil actions are subject to their pleadings being stricken if they fail to comply with the two-step process for failure to produce discovery. See R. 6:4-6, R. 4:23.
- R. 4:64-8 provides that when a foreclosure matter has been pending for twelve months without any required action taken, the Clerk of the Superior Court issues a written notice to the parties advising that the matter as to all defendants will be dismissed without prejudice 30 days following the notice. If, however an answer, motion for default, or motion for judgment under R. 4:64-8 is filed, the case will remain active.
- R. 1:13-7 provides for the issuance of warning notices, and the dismissal of civil actions, if certain documents are not filed with court within required time frames. Similarly, here we suggest that in order to level the playing field, tenants should be required to file the TCIS in a timely fashion, specifically within 10 days of being served. Thereafter, the land may apply for a judgment of possession.

The rationale for the default procedure proposed herein is to incentivize tenants to quickly produce straightforward, simple information critical to the timely resolution of their own matter. In addition, the proposed default procedure will quickly identify those tenants which have no interest in being heard. Simply put, some tenants will choose to ignore their landlord's entreaties and legal processes, and will opt to live free of charge at the expense of others as long as possible. As a case in point, since the start of pandemic, Pro Capital knocked on approximately 180 doors to approach occupants with information on rental assistance, or to offer cash assistance to locate more permanent housing. The response rate to this effort was less than 3%.

The default procedure proposed herein will assist the Judiciary in quickly identifying those matters which are most likely to be settled. The Judiciary should adopt this procedure to maximize the value of its settlors, judges, and other court staff.

State government prohibitions on evictions, while well-intentioned, have allowed thousands of residents to live free at the expense of others. These prohibitions have led to a decline in the supply of housing, and thus an increase in rents and in the purchase price of homes. The Judiciary should act swiftly to increase the available supply of housing.

2. Comments to Recommendation 13

Recommendation 13, and specifically Attachment G, Landlord Tenant Procedures, provides an excellent overview of the Report's proposed new manner of administering landlord tenant cases. Pro Capital suggests that this Recommendation be amended to provide that these Procedures be included along with the complaint and summons when a tenant is served. Additionally, settlors at case management conferences should be trained as to the various types of rental assistance programs available to the parties. Furthermore, the Judiciary should make representatives from these programs available in "break-out" rooms at the case management or settlement conferences.

3. Comments to Recommendations 14 and 15

Pro Capital suggests requiring a tenant to post 100% of the outstanding rent in order to assert a Marini defense. The 50% suggested in the Report could be as little as two weeks rent. A tenant could post this to delay a trial for several weeks, and hope that the Marini defense was successful enough so as to not pay any more rent. If a tenant's defense was unsuccessful, they still made a sound financial decision, by paying two weeks rent and avoiding eviction for several additional weeks before a trial could be scheduled.

In addition, most New Jersey municipalities have local ordinances which have registration and maintenance standards for residential rental properties. They also usually have municipal employees or officers to inspect these properties, and to issue violation notices or complaints to non-compliant landlords. Therefore, Pro Capital suggests that the Judiciary consider adopting a rebuttable presumption that if a tenant fails to produce a violation notice or complaint issued by a municipal housing employee or official as to a landlord's non-compliance with local ordinances, that the subject property is in fact habitable. If a tenant truly believed that a property was uninhabitable to the point that they were excused from having to pay the agreed-upon rent, then it

is not too much to ask that the tenant bring such matters to the attention of local officials who have the power to compel a landlord's compliance.

Thank you for the Judiciary's work in reviewing and reforming its approach to landlord-matters. In addition, thank you for permitting Pro Capital to submit these comments as the Supreme Court considers how to best proceed forward.

Respectfully submitted,

/s/ Matthew S. Maisel

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General Counsel
Pro Capital Management II