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GOOD MORNING, LADIES AND GENTLEMEN. WELCOME TO THE FLORIDA SUPREME COURT. WE HAVE, CONSIDERATION, FIRST, ON THE CALENDAR, THE ISSUE RELATED TO REVISIONS TO SIMPLIFIED FORMS. MR. IS HE NOT TOUR I DON'T KNOW, ARE YOU -- MR. CENTURION, ARE YOU GOING TO BEGIN?

YES, SIR. GOOD MORNING. MAY IT PLEASE THE COURT. MY NAME IS RAFAEL CENTURION. I SERVE AS THE CHAIR OF THE SIMPLIFIED FORMS COMMITTEE OF THE FLORIDA BAR. I AM JOINED, THIS MORNING, BY MR. JOHN YANTUNIS, SEATED TO MY LEFT, THE VICE CHAIR OF THE COMMITTEE, AND ALSO MARY ELLEN BATEMAN AND MICHAEL YOKUM, WHO SERVE FOR THE BAR. THE SIMPLIFIED FORMS, THE LEASE FORM, WAS COMPLETED DURING A PROCESS OF SEVERAL MONTHS, WHICH CONSISTED OF SEVERAL MEETINGS AND CONFERENCE CALLS AMONG COMMITTEE MEMBERS. IN ADDITION, THE COMMITTEE INVITED PARTICIPATION IN THE PROCESS FROM THE FLORIDA ASSOCIATION OF REALTORS AND THE HOUSING WORK GROUP OF FLORIDA. THE REASON THOSE GROUPS WERE INVITED TO PARTICIPATE IN THE PROCESS IS BECAUSE THEY REPRESENT CONSTITUENTS WHO ARE MOST LIKELY TO BE AFFECTED BY THE ADOPTION AND REVISION OF THE LEASE FORM. DURING THE REVISION PROCESS, MANY ISSUES WERE CONSIDERED AND DEBATED AMONG COMMITTEE MEMBERS AND, ALSO, AMONG THE PARTICIPANTS FROM THE REALTOR GROUP AND THE HOUSING WORK GROUP. THE -- IT IS THE BELIEF OF THE COMMITTEE THAT THE LEASE FORM WHICH HAS BEEN SUBMITTED TO THE COURT COMPORTS WITH CURRENT LAW AND IS FAIR TO BOTH PARTIES TO A LEASING TRANSACTION. THE COMMENTS THAT WERE SUBMITTED BY THE HOUSING WORK GROUP AND THE FLORIDA ASSOCIATION OF REALTORS WERE CONSIDERED DURING THE PROCESS, AND IT WAS THE COMMITTEE'S BELIEF THAT THE LEASE, IN ITS FINAL FORM, IS A LEASE THAT COMPORTS WITH THE LANDLORD TEN APARTMENT LAW AND SHOULD BE ADOPTED BY THE COURT. THE -- BY THE LANDLORD TENANT LAW AND SHOULD BE ADOPTED BY THE COURT. THIS LEASE FORM --

WHAT -- LET ME GO BACK TO THE -- AS I UNDERSTAND THE PROCESS THAT WE HAVE BEEN THROUGH, REALLY, GOING BACK TO PRIOR TO SEPTEMBER OF 1998, IS THAT THE FIRST RECOMMENDATION THAT WE GOT FROM THE COMMITTEE WAS TO DELETE THE FORM. IS THAT CORRECT?

THAT'S CORRECT.

AND THEN WE DID THAT.

RIGHT.

THEN WHAT HAPPENED WAS THAT THERE WAS AN OBJECTION THAT WAS FILED ON REHEARING, HAVING TO DO, REALLY, WITH THE UNAUTHORIZED PRACTICE OF LAW.

YES.

IS THAT THE BASIC CONCERN?

YES. THE CONCERN WAS THAT, IF THIS FORM WERE DELETED, IT WOULD IMPACT ON THE ISSUES AMONG UNLICENSED PRACTICE OF LAW, BECAUSE THE FORM HAD BEEN EXISTENT SINCE 1992 AND BEING USED BY VARIOUS PEOPLE. IF THE FORM WERE TO HAVE BEEN DELETED, THEN THERE WOULD HAVE BEEN ISSUES OF THOSE INDIVIDUALS ENGAGING IN UNLICENSED PRACTICE OF LAW.

AND THAT STEMS FROM THE FACT THAT THERE IS SOME LANGUAGE OUT OF AN EARLIER CASE

FROM THIS COURT THAT IT WOULD BE UNAUTHORIZED PRACTICE OF LAW, IN THE FILLING OUT BY REALTORS, OF FORMS?

THAT'S CORRECT.

UNLESS THE FORMS ARE AUTHORIZED BY THE FLORIDA BAR.

THAT'S RIGHT.

NOW, THE PROBLEM THAT, AS I SEE THAT WE HAVE RUN INTO HERE, THOUGH, IS THAT NOW THE COMMITTEE HAS SUBMITTED A TEN TEN-PAGE FORM, AND ONE OF THE COMMENTS IS HOW CAN THIS BE A SIMPLIFIED FORM, ESPECIALLY SINCE IT HAS BEEN MET, ALSO, WITH -- DIDN'T THE COMMITTEE ACKNOWLEDGE THAT THERE ARE AT LEAST SOME JUSTICIABLE LEGAL ISSUES THAT HAVE BEEN RAISED AS TO SOME PROVISIONS OF THIS FORM.

YES. THERE WERE JUSTICIABLE ISSUES RAISED. MOST OF THEM WERE IN THE COMMITTEE'S PROCESS, AND IT IS THE BELIEF THAT THE FORM THAT WAS ADOPTED WAS REASONABLE AND DID ADDRESS THE LEGAL ISSUES.

I THINK MY CONCERN IS THAT, WHETHER WE ARE, BY GOING TO THE ADOPTION OF THE FORM, WE DON'T REALLY, ARE NOT CREATING FOR THE PUBLIC, ADDITIONAL PROBLEMS THAT WE REALLY SHOULDN'T BE ENGAGED IN, IN THE FORM PROCESS, AND THAT RATHER THAN HOLDING SOMETHING OUT AS BEING AN APPROVED FORM, WHERE, NATURALLY, IF I WERE A CONSUMER, I WOULD THINK THAT MEANT THAT IT WAS ALL RIGHT, THAT THERE WEREN'T ANY ISSUES THAT I COULD BE INVOLVED IN, WHETHER I BE A LANDLORD OR A TENANT, AND WHY ISN'T IT BETTER, UNDER THOSE CIRCUMSTANCES, JUST NOT TO HAVE A FORM?

WELL, SINCE YOUR QUESTION RAISES THE ISSUES OF UNLICENSED PRACTICE OF LAW, I WOULD LIKE TO DEFER TO MR. YANCHUNAS, WHO IS PREPARED TO ADDRESS THOSE CONCERNS.

THANK YOU. ARE YOU GOING TO RETURN THAT PUNT? [LAUGHTER]

HOPEFULLY I WON'T FUMBLE IT. YOUR HONOR, I THINK THE POINT OF THE COMMITTEE WAS TO TRY TO COME UP WITH A FORM WHICH HAD ALREADY BEEN APPROVED BY THE COURT BUT WHICH WOULD REVISE IT TO MEET EXISTING CHANGES IN THE LAW, AND OBVIOUSLY THE COURT DOES NOTE THAT IT IS SOMEWHAT CUMBERSOME, BECAUSE IT ATTEMPTS TO ADDRESS A NUMBER OF DIFFERENT ISSUES WHICH COME UP IN THE PROCESS OF LEASING RESIDENTIAL REAL ESTATE. A CONCERN OF THE COMMITTEE AND ONE OF THE ISSUES THAT I WAS GOING TO ADDRESS, WHICH SAINT JOE RAISED IN ITS POSITION PAPER WAS THAT, FROM 1982 UP UNTIL THE PRESENT TIME, REAL ESTATE LICENSEES AND OTHERS WHO ARE NOT PART OF THE PROCESS HAVE BEEN USING THE FORM TO AID THE PUBLIC IN THE LEAST OF RESIDENTIAL PROPERTY, AND WE VIEW THAT AS THE AUTHORIZED -- IT IS THE UNLICENSED PRACTICE OF LAW BUT AUTHORIZED BY THIS COURT, SO NOT HAVING THAT FORM, GOING FORWARD, WOULD ALTER SEVEN YEARS OF PRACTICE IN THE MARKETPLACE.

WELL, BUT, IT IS NOT EXACTLY THE SAME FORM.

IT IS NOT THE SAME FORM.

RIGHT. AND SO --.

IT IS THE PRODUCT OF A LOT OF COOKS IN THE KITCHEN AND AN ATTEMPT TO JUST MEET A PANACEA OF PROVISIONS.

WHY IS IT LESS COMPLICATED JUST TO SIMPLY RECOGNIZE THAT WHAT IS GOING ON IN THE

MARKETPLACE IS THAT THERE ARE OTHER PROFESSIONALS OR REALTORS THAT ARE PARTICIPATING IN FILLING OUT FORMS, AND THAT THAT IS NOT THE UNAUTHORIZED PRACTICE OF LAW? I THINK IT WOULD BE THAT WE OUGHT TO, PROBABLY, SHOULD REQUIRE THERE TO BE SOME DISCLAIMER ON THE FORM, BUT WHY ISN'T THAT A LESS COMPLICATED AND LESS DANGEROUS WAY TO PROCEED FOR THE CONSUMER?

I WOULD, FIRST, POINT OUT THAT I THINK THE PROPER OPTION WOULD BE TO SIMPLY NOT HAVE ONE, BECAUSE TO SAY THAT IT IS NOT THE UNAUTHORIZED PRACTICE OF LAW FOR ANYONE NOT PARTY TO A TRANSACTION TO ENGAGE IN SOMETHING WHICH AFFECTS VERY IMPORTANT RIGHTS. IN FACT, THIS COURT HAS LONG RECOGNIZED, GOING BACK TO A NUMBER OF DIFFERENT CASES WHICH HAVE DISTINGUISHED CONVEYANCEING ACTIVITIES FROM NEGOTIATION OR PRELIMINARY, AND THE COURT HAS LONG MAINTAINED THAT BRIGHT LINE THAT THE CONVEYANCEING ASPECT, WHICH IS WHAT THE RESIDENTIAL LEASE INVOLVES, IS THE UNAUTHORIZED PRACTICE OF LAW. IT IS TRUE SHOULD -- IT IS TRUE THAT REAL ESTATE LICENSEES ARE SUBJECT TO REGULATION. THEY DO GO THROUGH CERTAIN REQUIREMENTS, BUT THE INTENT OF THE FORM WAS TO PROVIDE FOR PERSONS OTHER THAN JUST REAL ESTATE LICENSEES TO USE THAT FORM IN SITUATIONS WHERE THEY WEREN'T PARTIES TO TRANSACTIONS, SO IF THE COURT WERE TO SAY THAT REAL ESTATE LICENSEES CAN ENGAGE IN THAT ACTIVITY, BECAUSE FOR THEM IT IS NOT THE UNAUTHORIZED PRACTICE OF LAW, YOU HAVE GOT TO RECOGNIZE THAT THERE ARE OTHERS IN THE MARKETPLACE WHO WILL STILL BE THERE, TRYING TO PERFORM A SERVICE, SO EVEN IF THE COURT WERE TO SAY IT IS NOT THE UNAUTHORIZED PRACTICE OF LAW FOR THOSE OTHERS TO ENGAGE IN THE PRACTICE, AND IF THE COURT WERE TO SAY THAT, THEN THERE IS NO PROTECTION FOR THE CONSUMER PUBLIC, BECAUSE THOSE PEOPLE ARE NOT LICENSED. THEY DON'T GO THROUGH ANY KIND OF SCRUTINY BY ANY KIND OF REGULATORY BODY, AND THE EXISTENCE FOR PUBLIC DAMAGE CERTAINLY EXISTS, SO I THINK THE CONUNDRUM BEFORE THE COURT IS, IF IT WERE TO SAY IT IS NOT THE UNAUTHORIZED PRACTICE OF LAW, THEN IT IS AFFECTING NOT ONLY REAL ESTATE LICENSEES BUT OTHERS.

DID I HEAR YOU SAY YOUR FIRST CHOICE WAS NOT TO HAVE THE FORMAT ALL?

NO -- THE FORM, AT ALL?

NO, YOUR HONOR. OUR FIRST CHOICE, AS THE COMMITTEE, IS TO HAVE THE FORM. IT IS THE PRODUCT OF A LOT OF DIFFERENT PEOPLE COMING UP WITH A LOT OF VARIOUS IDEAS TO COME UP WITH VARIOUS PROBLEMS THAT ARISE IN THE RESIDENTIAL LEASE SITUATIONS, SO OUR REQUEST WOULD BE FOR THE COURT TO APPROVE THE FORM.

REALIZING THAT I HAVE PROBABLY HIT ON THIS, BUT COULD YOU ARTICULATE, BRIEFLY, WHY IT WOULD BE A BETTER SITUATION FOR US TO HAVE THAT FORM AND TO PUT OUR STAMP OF APPROVAL ON IT, AS OPPOSED TO JUST LEAVING THE MARKET SITUATION -- OBVIOUSLY THERE ARE LOTS OF FORMS AVAILABLE OUT THERE COMMERCIALY. THERE ARE LOTS OF FORMS IN USE, AND, OF COURSE, WITH THE USE OF THOSE FORMS, REALLY, THERE IS A CONSUMER BEWARE THAT GOES ALONG WITH THAT, AND THAT IS FINE. THAT IS, YOU KNOW, PART OF -- SO I AM SOMEWHAT CONCERNED THAT, HAVING THE FORM OUT THERE, WITH OUR STAMP OF APPROVAL, IS LESS DESIRABLE THAN JUST LEAVING THE MARKET SYSTEM WITH A CONSUMER BEWARE ASPECT TO IT.

WELL, ALREADY THE SITUATION EXISTS THAT ANYONE CAN USE A PREPRINTED FORM IN A NUMBER OF DIFFERENT CONTEXTS, INCLUDING THE LEASE OF RESIDENTIAL PROPERTY. THE RESTRICTIONS BY THIS COURT, IN ITS PREVIOUS CASES, ARE WHAT THAT PERSON CAN DO, WHEN IT IS NOT A PARTY, TO ASSIST THE INDIVIDUALS INVOLVED IN CONSUMMATING THE TRANSACTION. IN FACT, IF NOT A SUPREME COURT-APPROVED FORM, THE ONLY THING A PERSON CAN DO IS ACT AS A TYPIST THE, AND -- AS A TYPIST, AND IN THE REAL ESTATE LEASE SITUATION, I THINK THAT A PARTY NEEDS TO DO MORE. IF THE COURT WERE TO LEAVE THE BUYING PUBLIC OR THE CONSUMERS TO SIMPLY CAVEAT EMPTOR SITUATION, WHERE THE COURT NEEDS TO

RECOGNIZE AND ENSURE THAT INDIVIDUALS GIVING LEGAL ADVICE OR PERFORMING SERVICES WHICH AFFECT IMPORTANT LEGAL RIGHTS IS THE PRACTICE OF LAW AND SHOULD BE PRESERVED FOR LAWYERS. OTHER THAN AS AUTHORIZED. AND THE PURPOSE OF THE FORM, HERE, IS THAT A NUMBER OF PERSONS HAVE GOT INTO PRODUCING A PRODUCT, WHICH WE BELIEVE COVERS A MYRIAD OF SITUATIONS. THEY DON'T HAVE TO USE THAT FORM, BUT IF THEY USE THE FORM, THEN A REAL ESTATE LICENSE' OR ANOTHER PERSON CAN ENGAGE IN LIMITED COMMUNICATIONS DESIGNED TO ASSIST IN FILLING OUT THE FORM, BUT THEY CAN GO AND USE ANOTHER PREPRINTED FORM. IT IS JUST A QUESTION OF WHAT TYPE OF SERVICE THAT OTHER PERSON OR REAL ESTATE LICENSE' CAN ENGAGE IN, SO WE THINK IT PROVIDES A MOD CONSUME OF PROTECTION -- A MOD I CONSUME OF PRO -- A MODICUM OF PROTECTION FOR THE CONSUMER, BUT IN OTHER SITUATIONS WHERE ANOTHER PERSON CAN GO OUT AND USE A PREPRINTED FORM.

IS THAT WHAT THIS IS ABOUT IS THE COURT BECOMING INVOLVED IN PROVIDING OR ATTEMPTING TO PROVIDE PROTECTION FOR CONSUMERS, AS OPPOSED TO AN ACCESS TO COURTS ISSUE?

WELL, I THINK IT IS AN ACCESS TO THE COURT SYSTEM. I THINK THAT THE WHOLE FOUNDATION FOR SIMPLIFIED FORMS, ALLOW PERSONS --

BUT IN THIS SITUATION, WITH A RESIDENTIAL LEASE UNDER A YEAR, WE HAVE JUST -- WE SHOULD JUST BE FOCUSING ON WHETHER THIS IS AN APPROPRIATE WAY TO PROTECT THE PUBLIC IN THIS PARTICULAR INDUSTRY?

I THINK IT PROVIDES TWO THINGS. I THINK IT DOES PROVIDE ACCESS, IN THAT IT ALLOWS INDIVIDUALS WHO DON'T NECESSARILY WANT TO USE ANYONE TO ASSIST THEM IN RENTING THEIR OWN PROPERTY, TO TURN TO A FORM THAT HAS BEEN APPROVED BY THE COURT. WE ARE NOT PROVIDING THE ABILITY OF A REAL ESTATE LICENSE' OR ANOTHER TO ENTER INTO THE TRANSACTION. THE PURPOSE OF IT BEGINS THAT A PERSON WHO WANTS TO RENT REAL ESTATE, ONE WAY OR ANOTHER, CAN USE THAT FORM.

SO WE ARE CERTIFYING THAT EVERYTHING IN THIS FORM IS LEGALLY CORRECT, AND THAT IF SOMEBODY FILLS OUT THIS FORM AND THEREAFTER THERE IS A LAWSUIT, THAT THEY BASICALLY HAVE THE STAMP OF APPROVAL OF THE COURT THAT THIS WAS, IN ALL,S, LEGALLY -- IN ALL RESPECTS, LEGALLY CORRECT? THAT IS WHAT WE ARE DOING?

I THINK THE COURT DOES THAT, IN A NUMBER OF SITUATIONS INVOLVING ALL TYPES OF FORMS. I SEE THAT I AM IN MY REBUTTAL PERIOD, AND I WANTED TO SAVE SOME, SO I WOULD YIELD THE PODIUM AT THIS TIME.

THANK YOU.

GOOD MORNING. MAY IT PLEASE THE COURT. I AM MARCIA TA BACK, THE -- TABAK, THE LEGAL COUNSEL FOR THE FLORIDA ASSOCIATION OF REALTORS. IT IS COMPOSED OF APPROXIMATELY 65,000 REAL ESTATE ASSOCIATES AND IS THE LARGEST PROFESSIONAL ORGANIZATION IN THE STATE. I AM HERE, TODAY, TO TELL YOU THAT WE WANT THIS LEASE FORM, AND THE REASON THAT WE BELIEVE THE LEASE IS A GRANTING FOR THE STATE, ESSENTIALLY, IS THAT IT DOES BENEFIT CONSUMERS. IT BENEFITS OWNERS WHO WANT TO TAKE SOME INCOME FROM INVESTMENT PROPERTY, AND IT BENEFITS TENANTS WHO ARE LOOKING TO SECURE A PLACE TO LIVE. WE BELIEVE THE BENEFITS ARE SIMPLY THAT THE FORM FACILITATES LEASING IN FLORIDA. IT IS AVAILABLE. IT IS VENT. IT COMPORTS -- IT IS CONVENIENT. IT COMPORTS WITH LAW. IT KEEPS THE COSTS DOWN AND KEEPS HOUSING SOMEWHAT AFFORDABLE IN FLORIDA, AND IT EXPEDITES THE LEASING PROCESS. LET ME TELL YOU A LITTLE BIT ABOUT HOW LEASING WORKS. ESSENTIALLY AN OWNER OF A PIECE OF PROPERTY WILL DECIDE THEY WANT TO LEASE, AND THEY WILL EITHER PUT UP A SIGN IN FRONT OF THEIR PROPERTY, THEY WILL ADVERTISE IT IN THE NEWSPAPER, OR THEY WILL HIRE A BROKER TO HANDLE THE TRANSACTION FOR THEM, AND WE HAVE GOT A LOT OF PEOPLE THAT ARE ACTUALLY ABSENTEE OWNERS IN FLORIDA, SO THERE ARE

A LOT OF PEOPLE HIRING BROKERS, AND ESSENTIALLY WHAT WILL HAPPEN IS THAT A TENANT WILL COME BY. THEY WILL VIEW THE PROPERTY. AND IF IT IS SUITABLE, IN TERMS OF SIZE AND PRICE, THE TENANT ESSENTIALLY IS READY TO ENTER INTO A LEASE AT THAT POINT, BECAUSE LEASING IS THE TYPE OF ACTIVITY THAT IS SHORT-TERM. SOMEONE DOESN'T LOOK FOR A PROPERTY, LIKE, THREE MONTHS IN ADVANCE. THEY LOOK FOR A PIECE OF PROPERTY WHEN THEY ARE READY TO LEASE, SO HAVING THAT FORM AVAILABLE REALLY HELPS PREVENT DELAYS IN GETTING A TENANT RIGHT INTO A PROPERTY WHEN THEY ARE READY TO GO IN. WE WERE LOOKING THROUGH SOME STUDIES THAT WERE CONDUCTED BY THE UNIVERSITY OF FLORIDA, AND ACTUALLY THE REAL ESTATE RESEARCH CENTER CONDUCTED A PROJECT, IN 1997, REGARDING THE STATUS OF HOUSEING IN FLORIDA. AND THAT REAL ESTATE RESEARCH CENTER PREDICTED THAT THERE WILL BE 1.9 MILLION RENTALS, YEAR-LONG RENTALS, IN FLORIDA, IN THE YEAR 2000, SO WE ARE LOOKING AT A REALLY LARGE BUSINESS, AND WE BELIEVE THAT, HAVING THIS LEASE, WILL REALLY FACILITATE OWNERS, TENANTS, AND, CERTAINLY, IT WILL HELP THE BROKERS, AND WE REALLY WOULD LIKE TO SEE THE LEASE APPROVED.

THANK YOU.

WHAT HAPPENS, NOW, IF THE LEASE IS FOR MORE THAN A YEAR? WHAT DOES THE BROKER DO?

WELL, WITH REGARD TO THE LEASE FORM THAT WAS APPROVED BY THIS PARTICULAR COURT AND THE FORM THAT OUR MEMBERS ARE USING, THE -- OUR BROKERS ARE THE NO ASSISTING WITH FILLING OUT LEASES THAT EXTEND LONGER THAN A YEAR. THE LEASE IS ONLY FOR PARED OF A YEAR.

SO YOU HAVE AN ATTORNEY BECOME INVOLVED?

I THINK, PROBABLY, MORE OFTEN THAN NOT, YOU ARE NOT LOOKING FOR A LONG-TERM LEASE, BUT IF IT IS LONGER THAN A YEAR, WE ARE RECOMMENDING TO OUR CLIENTS, THE BROKERS, THAT THEY REFER IT TO A LAWYER.

BEFORE 1992, WHEN THERE WAS NO SUPREME COURT APPROVED FORM, WHAT WERE THE BROKERS DOING?

I CAN'T EXACTLY TELL YOU.

IN OTHER WORDS WEREN'T THERE FORMS OUT THERE THAT THEY WERE USING IN ANY EVENT?

THE QUANDRY THAT WAS FACING THE MEMBERSHIP, IN GENERAL, WAS THAT THERE WAS NEVER A SPECIFIC AUTHORITY FROM THIS COURT, DETERMINING THAT A REAL ESTATE LICENSE' COULD FILL IN A LEASE FORM.

AGAIN, SO, IT IS REALLY THE UNDERLYING ISSUE IS ABOUT WHETHER OR NOT BROKERS, WHEN THEY FILL OUT LEASE FORMS, ARE ENGAGED IN THE UNAUTHORIZED PRACTICE OF LAW. I MEAN, IS THAT, FROM YOUR, FROM THE POINT OF VIEW OF YOUR MEMBERSHIP, BECAUSE YOU HAVE GOT A SOPHISTICATED MEMBER THAT WOULD PROBABLY KNOW MORE THAN A GENERAL LAWYER ABOUT WHAT THEY WANT IN A LEASE OR NOT. IS IT AS MUCH HAVING A PARTICULAR FORM THE SUPREME COURT SAYS IS OKAY OR, BECAUSE WE SAY IT IS OKAY, IT MEANS THAT YOU ARE NOT ENGAGED IN THE UNAUTHORIZED PRACTICE OF LAW?

I THINK IT IS ESSENTIALLY BOTH. I MEAN THERE -- THE STATUTE 4775.01, WHICH COMMITTEE FINES THE LICENSED ACTIVITIES OF A REAL ESTATE PERSON AND SALES BROKER, INCLUDES THE LEASING OF PROPERTY, AND IF YOU LOOK TO THE KEYES CASE, YOU WOULD LOOK AT LANGUAGE THIS COURT ANNOUNCED, REGARDING ACTIVITIES, AGAIN, OF A REAL ESTATE BROKER, AND THAT CASE WAS ABOUT DRAFTING A SALES CONTRACT, SO IT REALLY DIDN'T GET INTO FILLING THE BLANKS OF A LEASE. WHEN THIS COURT LOOKED AT THIS ISSUE IN 1992, THE COURT SPECIFICALLY

SAID WE ARE NOT EXPRESSING AN OPINION, AT THIS POINT IN TIME, WHETHER IT IS OR IS NOT THE UNAUTHORIZED PRACTICE OF LAW FOR AN UNLICENSED PERSON TO FILL IN THE BLANKS OF THE LEASE, BUT THE QUESTION THAT BEGS FOR MY CLIENTS, IN PARTICULAR, IS A LITTLE MORE RESTRICTIVE, IS WHETHER THE 475.01, WHICH SAYS THAT REAL ESTATE LICENSEES CAN LEASE PROPERTY, WHETHER THAT INCLUDES FILLING IN THE BLANKS OF THE LEASES.

I ASSUME THAT YOUR REALTORS ARE RELYING UPON THE FACT THAT THIS LEASE THAT, IF IT WERE ADOPTED, WOULD NOT HAVE LEGAL ISSUES WITHIN IT. AS TO WHETHER THE PROVISIONS WERE ENFORCEABLE OR NOT ENFORCEABLE.

I AGREE WITH THAT. IT IS A FILL-IN-THE-BLANK PART -- IT IS A FILL IN THE BLANK PART, WHERE YOU INCLUDE THE ADDRESS OF THE PROPERTY AND THE RENTAL PRICE AND TERM. IT IS ONE OF THE THINGS THAT WE FILL IN THE INFORMATION. THEY ARE NOT DRAFTING THE FORM. THEY ARE NOT CREATING THE LINGO-.

YOU SEE A PROBLEM IN THE PROVISION OF THE LEASE AND A COUPLE OF OTHER PROBLEMS.

WE ENHANCED THE FORM.

DID YOU SUBMIT THOSE TO THE COMMITTEE?

WE TALKED TO THE COMMITTEE ABOUT IT.

AND THEY DIDN'T THINK THERE WAS A PROBLEM?

ESSENTIALLY WE TRIED TO AGREE ON EVERYTHING, AND THE POINTS THAT WE COULDN'T AGREE ON, WE TOOK A VOTE, ONE WAY OR THE OTHER, AND THERE WERE SEVERAL POINTS THAT WE MADE THAT WE WERE NOT PERSUASIVE ON GETTING THE COMMITTEE TO GO OUR WAY, AND WE THOUGHT THEY WERE WORTH BRINGING UP.

IS THERE A DANGER OUT THERE, WITH REFERENCE TO THE USE OF A FORM LIKE THIS, THAT THE PARTIES THAT DEAL THROUGH THE BROKER OR USE THIS FORM WILL NOT BE IN THE NEUTRAL POSITION, AS TWO PARTIES ORDINARILY ARE, OF NEGOTIATING AT ARM'S LENGTH, BUT THEY MAY BE IN THE POSITION WHERE, FOR INSTANCE, A BROKER TELLS THEM, WELL, THIS IS THE WAY THAT IT IS IN FLORIDA, THAT THE LANDLORD HAS THESE RESPONSIBILITIES, AND THE LESSEE HAS THESE RESPONSIBILITIES, AND THAT IS WHAT THIS FORM IS, IS IT STATES OUT THE WAY THAT IT IS IN FLORIDA AND, NO, YOU CAN'T CHANGE THAT. AS I SAY, AS OPPOSED TO THE PARTIES FREELY NEGOTIATING A CONTRACT IN THE ORDINARY SITUATION. IS THERE A DANGER ABOUT THAT?

I AM NOT AWARE THAT THOSE KINDS OF ISSUES HAVE ARISEN. A LOT OF THE FORM ACTUALLY CONTAINS OPTIONS, WHERE YOU CAN HAVE PETS OR YOU CAN'T HAVE PETS FORM YOU EITHER CHECK OFF IT IS ASSIGNABLE OR IT IS NOT ASSIGNABLE. THAT KIND OF THING. ONE THING ABOUT A LEASING TRANSACTION, FRANKLY, IS, WHEN YOU HAVE A TENANT WHO WANTS PROPERTY, THEY INHERENTLY ARE NOT IN AN EQUAL BARGAINING POSITION, NECESSARILY, WITH THE LANDLORD, BECAUSE THE LANDLORD HAS THE PROPERTY THAT THE TENANT WANTS TO RENT, AND IF THE TENANT IS NOT WILLING TO PAY THE RENT AND TAKE IT FOR THAT CERTAIN TERM, YOU ARE NOT GOING TO HAVE THE LEASE TRANSACTION, SO I FEEL THAT WE DON'T HAVE THE DANGER YOU ARE CONCERNED WITH, BECAUSE IT IS REALLY A FAIR DOCUMENT, AND IF YOU CAN'T AGREE ON THOSE BASICS THAT THE LANDLORD IS GOING TO DICTATE, YOU ARE NOT GOING TO HAVE A LEASE ANYWAY. I THANK YOU FOR YOUR TIME.

THANK YOU VERY MUCH. MS. TABAK.

GOOD MORNING. MAY IT PLEASE THE COURT. MY NAME IS MITCHELL RITCHIE. I AM AN ATTORNEY WITH JACKSONVILLE LEGAL AID IN JACKSONVILLE, FLORIDA. I HAVE THE PRIVILEGE OF SERVING

AS THE CHAIRMAN OF THE FLORIDA LEGAL SERVICES HOUSING WORK GROUP. THIS ORGANIZATION IS COMPOSED OF LEGAL AID ATTORNEYS FROM THROUGHOUT THE STATE OF FLORIDA AND COLLECTIVELY WE REPRESENT THOUSANDS OF LOW-INCOME TENANTS ANNUALLY. MY REMARKS, TODAY, ARE MADE ON BEHALF OF THAT ORGANIZATION. THE HOUSING WORK GROUP IS GRATEFUL FOR THE OPPORTUNITY THAT WAS EXTENDED TO CONTRIBUTE TO THE FORMATION OF THE PROPOSED LEASE FORM UNDER CONSIDERS TODAY. -- UNDER CONSIDERATION TODAY. HOWEVER, THE WORK GROUP MUST NOW REGISTER ITS OPPOSITION TO THE FORM LEASE FOR THE FOLLOWING REASONS. THE LEASE DOES NOT COMPLY WITH CURRENT LAW. THE LEASE CONTAINS UNNECESSARY TERMS AND POLICY J.U.S. -- JUDGMENTS, AND THE LEASE REFLECTS A MISUSE OF THE SIMPLIFIED FORM PROCESS. LISTENING TO YOUR QUESTIONS, YOUR HONORS, I, TOO, SHARE YOUR CONCERNS ABOUT THE ACCURACY OF THE STATEMENTS OF LAW CONTAINED IN THE LEAST, AND OUR COMMENTS ENUMERATE -- AREAS IN THE FORM LEASE. I WOULD LIKE FOR THE COURT TO CONSIDER THE POLICY THAT IS REFLECTED IN THE LEAST. I THINK A DISINTERESTED READER WOULD ASK WHY THE COURT IS BEING ASKED TO IMPOSE NONESSENTIAL TERMS ON PRIVATE LANDLORD AND TENANTS. WHAT INTEREST DOES THE COURT HAVE IN THESE MATTERS OF LANDLORD AND TENANT LAW THAT THE LEGISLATURE HASN'T ALREADY REVIEWED? WHY IS THE COURT BEING ASKED TO STEP FORWARD WITH A LEGISLATURE -- WHEN THE LEGISLATURE, UNDER CHAPTER 83, HAS NOT DONE SO? WHERE DOES THE COURT GET ITS AUTHORITY TO APPROVE PROVISIONS FOR LATE FEES? THAT IS NOT CONTAINED IN CHAPTER 83. FOR UTILITIES. THAT IS NOT CONTAINED IN CHAPTER 83. FOR ASSIGNMENT OF LEASES, ALSO, NOT IN CHAPTER 83. FOR RENEWAL AND EXTENSION OF LEASES. NOWHERE IN CHAPTER 83. WELL, OF COURSE, THE ANSWER AND THE OVERRIDING POLICY BEHIND THIS LEASE IS CURRENT INDUSTRY PRACTICE. WHAT YOU WILL GET FROM READING THIS LEASE, YOUR HONORS, IS THAT CURRENT INDUSTRY PRACTICE WAS FOLLOWED, AND WHEN IT CAME IN CONFLICT WITH CURRENT LAW, ALMOST INEVITABLY INDUSTRY PRACTICE WAS IMPLEMENTED.

COULD YOU GIVE US A SPECIFIC CONCRETE EXAMPLE?

YOUR HONORS, UNDER THE -- AGAIN, UNDER THE LATE FEE PROVISION, THAT IS NOWHERE IN CHAPTER 83.

BUT THAT IS NOT A CONFLICT. YOU SAID THAT THERE ARE PROVISIONS THAT ARE IN CONFLICT WITH THE LAW.

THAT'S CORRECT. WE HAVE ALREADY TALKED A LITTLE BIT ABOUT THE LEAD PAINT PROVISION. THAT IS IN DIRECT CONFLICT WITH EXISTING LAW.

AREN'T THESE THE KINDS OF ITEMS THAT TENANTS AND LANDLORDS WOULD HAVE SOME INTEREST IN KNOWING WHAT THEIR RIGHTS AND LIABILITIES WOULD BE?

YES, YOUR HONOR, THEY WOULD. HOWEVER, THEY SHOULD, ALSO, HAVE THE OPPORTUNITY TO NEGOTIATE THOSE RIGHTS AND RESPONSIBILITIES. I DON'T BELIEVE THAT THEY SHOULD BE DICTATED BY THE COURT, BEYOND WHAT IS ALREADY OUT THERE, UNDER CHAPTER 83.

BUT FOR THE MOST PART, MOST OF THESE ITEMS IN THIS LEASE REQUIRE TO MAKE A CHOICE, ONE WAY OR THE OTHER, SO WHY ISN'T THAT A GOOD THING FOR THE PARTIES INVOLVED?

WELL, I WOULD RESPECTFULLY DISAGREE, ESPECIALLY ON THE ISSUES OF ASSIGNMENTS OF LEASES AND ACCESS TO PREMISES, AND THE USE OF THE PREMISES. THOSE RENEWAL AND EXTENSION OF LEASES, THOSE DO NOT GIVE THE TENANT A CHOICE, ON THOSE MATTERS. HOWEVER, ON THE OTHERS, YOU ARE RIGHT, YOUR HONOR. I AM HAPPY TO SAY THAT THERE IS SOME CHOICE STILL PRESERVED IN THE LEAST.

SO YOUR ASSOCIATION WOULD RATHER HAVE TENANTS NOT HAVE ANY KIND OF LEASE AT ALL? OR JUST BE ABLE TO NEGOTIATE AND USE OTHER NONSTANDARD LEASES?

THAT'S CORRECT, YOUR HONOR. WE DO NOT -- WE OPPOSE THE LEASE, AND WE WOULD RATHER HAVE THE MARKET DETERMINE WHAT LEASES ARE USED. IF THIS LEASE IS APPROVED AND THE QUESTION IS ALREADY COME UP, IF THIS LEASE IS APPROVED, IT WOULD BE VERY DIFFICULT, AS THE AT THE AUNT'S ATTORNEY, TO ATTACK ANY PROVISION IN THAT LEASE. IT WOULD HAVE TO COME BACK UP HERE, I SUPPOSE, IN ORDER FOR THE COURT TO REVIEW A SUPREME COURT APPROVED PROVISION OF THE LEASE. WE HAVE RAISED QUESTIONS ABOUT THE VALIDITY OF SOME OF THOSE PROVISIONS.

WHAT ARE THE ALTERNATIVES FOR SOME OF THE PEOPLE THAT YOU REPRESENT, TO GO TO A REAL ESTATE AGENT AND, FOR THE PURPOSE OF LEASING AN APARTMENT, UNDER YOUR THEORY AND, HAVING NO FORM, WOULD THESE PEOPLE HAVE TO -- WHAT WOULD THEY DO? WHAT IF THE LANDLORD IS NOT GOING TO LEASE IT, WITHOUT A WRITTEN LEASE?

WELL, YOUR HONOR, I WOULD SAY ABOUT 40 TO 50% OF MY CLIENTS DO NOT HAVE WRITTEN LEASES. THEY ARE ORAL TENANTS. BUT AS FAR AS THE ALTERNATIVES, I WOULD JUST SAY THAT THERE ARE ENOUGH FORMS THAT I BELIEVE ARE SUPERIOR TO THE FORM THAT IS UNDER CONSIDERATION THAT WOULD PROVIDE MORE PROTECTIONS.

AND ARE THEY PROHIBITED, UNDER UNAUTHORIZED PRACTICE OF THE LAW?

WELL, YOUR HONOR, THAT IS THE QUESTION. I THINK IT IS REALLY BEHIND ALL OF THIS, AND OUR HOUSING WORK GROUP DOES NOT TAKE A POSITION ON WHETHER IT IS THE UNAUTHORIZED PRACTICE OF LAW. WE ARE CONCERNED, MORE, WITH THE CONTENT OF THE LEASE THAN WITH WHO EXECUTES THE LEASE. UNDER THE COURT'S 1992 DECISION, YOU AUTHORIZED NONATTORNEYS TO FILE PAPERS, NONATTORNEY PROPERTY MANAGERS TO FILE PAPERS ON BEHALF OF LANDLORDS, SO WE HAVE ADAPTED OUR PRACTICE TO INCLUDE THAT, AND I BELIEVE WE COULD ADAPT OUR PRACTICE, IF YOU PERMIT NONATTORNEY REALTORS TO FILL IN THE BLANKS OF LEASES.

WHY WOULDN'T YOUR CONSTITUENTS BE EVEN WORSE SHAPE, IF WE DON'T APPROVE THIS FORM, IN THE SENSE THAT, UNDER THE NORMAL ASSUMPTION, THAT LANDLORDS WOULD BE LOOKING OUT FOR THEMSELVES IN LEASES AND WOULD BE THE LOGICAL PARTIES, OF COURSE, TO DRAFT A LEASE, AND THAT THE LEASES WOULD BE FAR MORE ONE-SIDED, IF IT WAS THE LANDLORD THAT WAS INVOLVED IN DRAFTING THE LEASE, SINCE, IN A SENSE, THEY ARE ALREADY IN THAT ECONOMIC POSITION, A SUPERIOR ECONOMIC POSITION. WHY WOULDN'T YOUR CLIENTS BE FAR WORSE OFF? CLEARLY OTHER LANDLORDS WOULDN'T BE GIVING MANY CHOICES TO YOUR CLIENTS, AND YOUR CLIENTS, ECONOMICALLY, WOULDN'T BE IN MUCH OF A POSITION TO CHALLENGE, SINCE, CLEARLY, THEIR NEED, AT THE TIME, IS TO HAVE HOUSING.

YES.

SO WHY WOULDN'T YOUR CLIENTS BE IN FAR WORSE SHAPE THAN IF WE HAD THE FLORIDA BAR, AT LEAST, TRYING TO DO ITS VERY BEST TO HAVE A SOMEWHAT NEUTRAL LEASE THAT WOULD HAVE THESE, YOU KNOW, THE MANY OPTIONS IN IT OR WHATEVER, AND OVER TIME, YOU KNOW, IS GOING TO BE AN ONE-WAY ONE TIME AND ONE WAY, ANOTHER TIME.

WELL, WELL, AGAIN, YOUR HONOR, AGAIN, I DON'T BELIEVE THE LEASE DRAFTED BY THIS COURT IS GOING TO CONTAIN ALL OF THE SITUATION THAT IS MY CLIENTS FACE.

BUT WHY WOULDN'T YOUR CLIENTS BE --

I DON'T BELIEVE THEY WOULD. IF YOU PUT A DIFFERENT LEASE OUT THERE, THEY WOULD ABSOLUTELY BE IN BETTER SHAPE.



YOU ARE NOT TALKING ABOUT THE LEASE. YOU ARE TALKING ABOUT A DIFFERENT FORM. YOU ARE TALKING ABOUT THEY WOULD BE IN BETTER SHAPE. WE ARE TALKING ABOUT THE ISSUE, NOW, WHETHER THEY WOULD HAVE IT OR NOT. IN OTHER WORDS WOULD YOUR CLIENTS BE IN BETTER SHAPE WITH THERE BEING A STANDARD FORM OR WITHOUT THEIR THERE BEING A STANDARD FORM?

IF IT IS A STANDARD FORM THAT COMPORTS WITH THE LAW, YES, YOUR HONOR.

THANK YOU. YOU HAVE A MINUTE OR TWO OF REBUTTAL FORM.

THANK YOU. VERY -- OF REBUTTAL.

THANK YOU. WITH REFERENCE TO THE LEAD PAINT ARGUMENT THAT WAS MADE IN THE COMMENTS, THE COMMITTEE DOES CONCEDE THAT THE LEAD PAINT DISCLOSURE IN THE FORM WAS OUTDATED. THAT WAS SOMETHING THAT WAS NOT BROUGHT UP DURING THE REVISION PROCESS, SO THE LEAD PAINT DISCLOSURE IS SOMETHING THAT SHOULD BE AMENDED.

COULD I ASK YOU THIS QUESTION, AGAIN, THAT IS TROUBLING TO ME. ARE THERE MORE PROVISIONS IN THIS LEASE THAN, SAY, BEYOND THAT, THAT IT IS REQUIRED TO MEET CHAPTER 83 CONCERNS? ARE THERE OTHER PROVISIONS IN THERE, OTHER THAN ARE REQUIRED BY LAW?

THERE WERE SOME THAT WERE MENTIONED BY MR. RITCHIE. THE REASONS THOSE WERE INCLUDED WAS THAT, FOR PURPDZ OF CLARITY AND THE PARTY'S UNDERSTANDING, WE FEEL THAT THEY SHOULD BE IN THERE, SO EACH SIDE UNDERSTAND EXACTLY WHAT IS REQUIRED OF THEM. AS MR. RITCHIE STATED, MANY TEN APARTMENTS HAVE ORAL LEASES, AND THAT JUST -- MANY TENANTS HAVE ORAL LEASES, AND THAT JUST LEADS TO UNCERTAINTY, REGARDING WHAT WAS TOLD TO THEM.

SO YOUR POSITION THAT, IF WE APPROVE THIS LEASE, THEN NO TENANT CAN RAISE AN OBJECTION TO A PROVISION IN A LEASE THAT THEY SIGN AND THERE AFTER SAY -- AND THEREAFTER SAY THAT THIS WAS ILLEGAL OR ANYTHING ELSE. THAT -- THOSE DEFENSES ARE OUT OF THE DOOR, BECAUSE WE HAVE SAID EVERYTHING IN THIS LEASE IS LEGALLY CORRECT.

THAT'S RIGHT. DEPENDING ON WHAT -- UNLESS THERE IS SOMETHING ELSE, SOME CASE LAW --

SEE, WE DON'T DO. THAT WHEN WE DO OTHER JURY INSTRUCTIONS, WE SAY THESE ARE JURY INSTRUCTIONS. WE ARE NOT PASSING ON WHETHER THIS IS THE CORRECT STATEMENT OF THE LAW, SO MY CONCERN IS THAT WE ARE DOING IT IN THIS AREA THAT LOOKS LIKE WE HAVE GOT TEN PAGES, SO WE NOW HAVE TO GO BACK IN THERE AND MAKE SURE THAT WE ARE 100% SURE THAT THIS MEETS ALL THE REQUIREMENTS OF THE CURRENT CASE LAW AND LEGISLATIVE LAW OUT THERE.

WE FEEL THAT IT DOES. WE ATTEMPTED TO TRACK THE STATUTE, WHEREVER POSSIBLE, IN THE LEAST, AND THE PARTIES ARE ALWAYS FREE TO NEGOTIATE OTHER PROVISIONS THAT THEY FEEL ARE NECESSARY. FOR ANOTHER BRIEF REBUTTAL ON THE UPL ISSUE, I WOULD LIKE TO TURN IT OVER TO --

I AM SORRY, BUT THE TIME HAS EXPIRED. THANK YOU VERY MUCH.