

WISH LIST

As if Mayor Wu's proposal to reinstitute rent control in the City of Boston weren't bad enough, landlords were greeted on January 25 with the Biden administration's "Blueprint for a Renters Bill of Rights", part of a nationwide campaign to "support the development of policies and practices that promote fairness for Americans living in rental housing." It should be emphasized as the outset that the Blueprint itself does not create any legal rights and can't be enforced by any party in a court of law. Nonetheless, various federal agencies have been summoned into action and we've been given a frightful vision of what life would be like if the President's wish list is fulfilled.

The Blueprint complains that there is no comprehensive set of federal laws governing rental housing from coast to coast, leaving tenants to navigate a patchwork of state and local laws while many are exploited by housing providers. This conveniently overlooks the fact that the federal government's role when it comes to regulating business is constitutionally limited to interstate commerce, like airplanes which fly from one state to another. Rental housing is, for the most part, a local enterprise which has historically been regulated locally by state legislatures and agencies entrusted with the welfare of their own citizens. What's good for Kansas City, Missouri may not be good for Kansas City, Kansas.

That said, the Blueprint establishes five basic principles, each with its own action plan. The first is that renters should have access to housing that is safe, decent and affordable, costing no more than 30% of their household income. In this connection, tenants should face "minimal barriers when applying for housing" -- no more burdensome application and documentation requirements -- while rent increases should be reasonable, transparent and fair. This goal is to be achieved not only by increasing government subsidies but also by having the Federal Trade Commission identify and eradicate "acts and practices that unfairly prevent consumers from obtaining and retaining housing." Keep in mind, as one court decision has explained, that the mission of the FTC is essentially to enforce principles of fair dealing which the conscience of the community may progressively develop. It's hard to imagine a less restrained model of regulatory authority.

The Blueprint's second principle is that renters should have a "clear and fair lease that has defined rental terms, rights and responsibilities" expressed in "simple and clear" provisions explained to tenants through a "plain-language briefing." Bemoaned was the fact that lease forms often include invalid clauses which unwary tenants are duped into thinking are legally enforceable. Extolled as model forms were the standard lease agreements prescribed by the U.S. Department of Housing and Urban Development for projects which it financially assists and by the Department of Defense for its privatized housing program. It's unclear what the White House plans to do in order to make its vision a reality in the private sector.

Principle three is that renters should be protected from unlawful discrimination and exclusion. In particular, fair housing laws should be expanded to prohibit barring rental applicants on account of their source of income. Tenants ought to know why their applications have been rejected and techniques used by credit reporting agencies should be scrutinized, particularly to protect minorities who are at greatest risk of erroneous information. The federal Consumer Financial Protection Bureau will explore ways to rein in the background screening

industry and insist that reasonable procedures be followed in order to ensure that all data is accurate. Meanwhile, HUD is to release new guidance as to the use of tenant screening methods which may violate the fair housing laws.

The fourth principle proclaims that tenants should be free to organize without interference or retaliation by landlords or property managers. Collective action was applauded as a vital tool allowing renters to advance their common interests. This particular goal has already been enshrined in Massachusetts law, which prohibits reprisals against tenants for organizing or joining a tenants' union or similar organization.

Last but not least, the Blueprint proclaims that tenants should not be evicted without just cause and need to receive adequate advance notice whenever a lease is not being renewed. Institutionally, there ought to be alternatives to the eviction process such as mediation and arbitration. Tenants should have the right to an attorney in each eviction case and all eviction records should be sealed, i.e., barred from public view, unless and until a judge decides in the landlord's favor for reasons other than the tenant's default. The names of minors involved in eviction cases would remain sealed forever. All tenants would be protected against unfair, deceptive or abusive attempts to collect rent and other money owed to a landlord. For now, realization of these goals will focus primarily on subsidized housing developments, for example by making permanent a rule that owners of project-based rental assistance properties provide no less than 30 days' advance notice of lease termination for nonpayment of rent. Additionally, HUD is to award \$20 million in grants to non-profit and governmental entities which supply legal assistance to low-income tenants at risk of eviction.

It should be noted that both the National Apartment Association and the National Association of Realtors are taking action which promotes certain aspects of the Blueprint such as helping tenants to build good credit and affirmatively advertising to prospective residents that rental assistance vouchers will be accepted. Embracing rent control, just cause evictions and other components of the plan is understandably more problematic. Landlords have every reason to strenuously resist the federalization of an industry which is challenging enough already.