

To: New Jersey Law Revision Commission
From: Jayne Johnson
Re: Comments proposing draft language in response to *Cashin v. Bello*
Date: September 6, 2016

Staff presented, at the July NJLRC Meeting, the legislative history concerning the Anti-Eviction Act (“the Act”), particularly the “owner-occupied premises” exceptions under N.J.S. 2A:18-61.1(*l*). The Supreme Court, in *Cashin v. Bello*, considered whether a converted garage constitutes a building under the Act. Under N.J.S. 2A:18-61.1(*l*)(3), the “owner of a building of three residential units or less” is permitted to remove a tenant, if the owner intends to personally occupy one of the units. The Court held that the plain language meaning of the term “building” is a freestanding physical structure and, as a consequence, the tenant of the converted garage may be removed under subsection (*l*)(3).

Subsection N.J.S.A. 2A:18-61.1(*l*) reads, in part, as follows:

No lessee or tenant or the assigns, under-tenants or legal representatives of such lessee or tenant may be removed by the Superior Court from any house, building, mobile home or land in a mobile home park or tenement leased for residential purposes, other than (1) owner-occupied premises with not more than two rental units or a hotel, motel or other guest house or part thereof rented to a transient guest or seasonal tenant; (2) a dwelling unit which is held in trust on behalf of a member of the immediate family of the person or persons establishing the trust, provided that the member of the immediate family on whose behalf the trust is established permanently occupies the unit; and (3) a dwelling unit which is permanently occupied by a member of the immediate family of the owner of that unit, provided, however, that exception (2) or (3) shall apply only in cases in which the member of the immediate family has a developmental disability, except upon establishment of one of the following grounds as good cause:

* * *

l. (3) The owner of a building of three residential units or less seeks to personally occupy a unit, or has contracted to sell the residential unit to a buyer who wishes to personally occupy it and the contract for sale calls for the unit to be vacant at the time of closing.¹

¹ N.J. STAT. ANN. 24:18-61.1(*l*) to (*l*)(3) (West 2016).

Staff received comments and suggested draft language from the Hon. Mahlon Fast, J.S.C., Ret., who has considerable experience in this area of law. Judge Fast provided insightful comments and contributions to the 2012 NJLRC Final Report proposing revisions to the laws governing landlords and tenants. A3693 is based on the NJLRC Final Report and is pending in the current legislative session.

Judge Fast, when addressing the *Cashin v. Bello* decision, observed that he “cannot fault the Court for basing its decision upon the difference in words used by the Legislature, but [sic] would have preferred a decision based on an over-all concept of the Legislative scheme.” He acknowledged that the approach of the NJLRC to consider statutory revisions to subsection (l)(3) reflects a comprehensive response to the issues raised in the *Cashin* decision.

Judge Fast proposed revising the statute to address the issue of what constitutes a building under subsection (l)(3), by identifying the structure as a “block and lot assessed as a single parcel of land.” Judge Fast proposed the following revisions to N.J.S. 2A:18-61.1(l)(3):

(A) The owner of a **block and lot assessed as a single parcel of land** containing **no more than** three residential units seeks to personally occupy **one or more of those residential units**, or has contracted to sell **one or more of those residential units** to a buyer who wishes to personally occupy it, **or them**, and the contract for sale calls for the unit, **or units**, to be vacant at the time of closing, **upon, or after, termination of the lease.**

Judge Fast noted that the proposed language “one or more residential units” is “based on the right of a landlord, after moving in, to evict either of the other two dwellings, pursuant to [N.J.S.] 2A:18-53a.” He added that it also recognizes the two-months’ notice requirement of the Notice to Quit, and the language “ ‘upon, or after, termination of the lease’ makes clear that this ground cannot be used until the lease may be terminated, i.e., on a two-month notice (even for a month-to-month tenant, or at the termination of a lease for a stated period.)”²

Judge Fast proposed, in the alternative, the following language:

² Judge Fast noted that if the owner lives in one of the two or three units, the applicable section would be N.J.S. 2A:18-53a., instead of N.J.S. 2A:18-61.1(l)(3).

- (B) The owner of a block and lot assessed as a single parcel of land containing no more than three residential units, **after service of a notice terminating the tenancy or tenancies pursuant to N.J.S. 2A:16-61.2f**, seeks to personally occupy one or more of those residential units, or has contracted to sell one or more of those residential units to a buyer who wishes to personally occupy it, or them, and the contract for sale calls for the unit, or units, to be vacant at the time of closing.

Staff has also been in contact with Legal Services of New Jersey (LSNJ), which consistently provides valuable insight and input to NJLRC projects, including the Final Report concerning landlord-tenant law that is the basis of A3693. LSNJ graciously reviewed the NJLRC project arising from the *Cashin v. Bello* decision. The LSNJ suggested incorporating the language highlighted in bold to proposal (A):

- (C) The owner of a block and lot assessed as a single parcel of land containing no more than three residential units who seeks to personally occupy one or more of those residential units, or has contracted to sell one or more of those residential units to a buyer who wishes to personally occupy it, or them, and the contract for sale calls for the unit, or units, to be vacant at the time of closing, upon, or after, termination of the lease. **Every tenant subject to eviction must receive a notice pursuant to N.J.S.A. 2A:18-61.2(f).**

Staff seeks to determine whether it is the pleasure of the Commission to incorporate one of the suggested approaches into a Draft Tentative Report for public comment.