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February 26, 2021

To: The Honorable William C. Smith Jr.
Chair, Judicial Proceedings Committee

From: Kira Wilpone-Welborn
Consumer Protection Division

Re: Senate Bill 628 – Landlord and Tenant - Establishment of Rent Escrow Accounts - Time Limit (OPPOSE)

The Consumer Protection Division of the Office of the Attorney General (the "Division") opposes Senate Bill 628 sponsored by Senator Reilly. Senate Bill 628 amends Md. Code Ann., Real Prop. § 8-118 to provide that if rents are ordered to be to the court's registry in an escrow account of the clerk of the circuit court, the District court shall require the tenant to establish the account on the day the order is entered. This requirement will further exacerbate the "pay-to-play" concerns the Division has previously raised related to Maryland's rent escrow law, Md. Code Ann., Real Prop. § 8-211.

The Division receives myriad complaints from tenants against landlords each year and a significant number of those complaints relate to defects and other conditions affecting the habitability of residential rental dwelling units. If the Division is unable to mediate an amicable resolution between the tenant and landlord to remedy the defects, the Division often recommends that tenants seek a judicial remedy, such as filing a rent escrow action in the District Court.

Maryland's rent escrow law makes clear that "[i]t is the public policy of Maryland that meaningful sanctions be imposed upon those who allow dangerous conditions and defects to exist in leased premises, and that an effective mechanism be established for repairing these conditions and halting their creation." Md. Code Ann., Real Prop. §8-211(b). The purpose of Maryland's rent escrow law is to provide tenants with a mechanism for encouraging the repair of serious and dangerous defects which exist within or as part of any residential dwelling unit, or as part of the common areas of the complex of which the dwelling unit forms a part; the defects sought to be reached by Maryland's rent escrow law are those which present "a substantial and serious threat of danger to the life, health and safety of the occupants of the dwelling unit," Md. Code Ann., Real Prop. §8-211(a),

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and include, but are not limited to defects such as: lack of heat, light, electricity, or hot and cold running water; lack of adequate sewage disposal facilities; infestation of rodents in two or more dwelling units; the existence of structural defects that present a serious and substantial threat to the physical safety of the occupants; or the existence of any condition which presents a health or fire hazard to the dwelling unit. Md. Code Ann., Real Prop. §8-211(e).

For a tenant to obtain relief under Maryland's Rent Escrow law, a tenant must, among other prerequisites, pay into court the amount of rent required by the lease (including any past due rent) unless the amount is modified by the court. Often tenants have expended monies they had intended to use to make timely rental payments to instead remedy defects that landlords have failed to repair or remediate or to pay for alternative housing because a unit is uninhabitable. As a result, tenants may lack funds to pay all rents due on their accounts into escrow or otherwise need time to obtain the funds to establish the account. Under the statute as it is currently written courts have discretion to set an appropriate timeframe for a tenant to pay any rents into the registry of an account of the clerk of a circuit court thus enabling tenants to obtain the relief intended by the General Assembly in enacting the Maryland's rent escrow law. Senate Bill 628's requirement that a tenant establish an account on the day a court enters an order would serve only to further exacerbate the barrier to tenants obtaining relief through rent escrow actions.

For these reasons, the Consumer Protection Division recommends an unfavorable report from the Judicial Proceedings Committee on Senate Bill 628.

cc: The Honorable Edward R. Reilly
Members, Judicial Proceedings Committee