



Bill Title: House Bill 1312, COVID-19 Eviction and Housing Relief Act of 2021

Committee: Judiciary

Date: February 17, 2021

Position: Unfavorable

This testimony is offered on behalf of the Maryland Multi-Housing Association (MMHA). MMHA is a professional trade association established in 1996, whose members consist of owners and managers of more than 210,000 rental housing homes in over 958 apartment communities. Our members house over 538,000 residents of the State of Maryland. MMHA also represents over 250 associate member companies who supply goods and services to the multi-housing industry.

Senate Bill 1312, designed to be “an emergency measure necessary to the immediate preservation of public health or safety”, creates a special non lapsing Maryland Rent Relief Fund through the State budget, administered by the Department of Housing and Community Development (DHCD) to provide local jurisdictions with grants to support local rent relief efforts, it also requires DHCD, the Judiciary, as well as Sheriffs and Constables around the State to, upon enactment, compile and report statewide eviction data on a monthly basis and provide that information, as well as particular types of notices to tenants, on their websites. The Bill proposes new changes to procedures for collection of delinquent residential and mobile home rents, as well as mortgages. The Bill is most impactful on Maryland’s Rental Housing Providers as it eviscerates Maryland’s well-established leasing, rent collection, and lease termination procedures, by drastically altering the rules established by this Legislature over the last 40 years to the detriment of both Housing Providers and the Tenants they serve.

MMHA OPPOSES this Bill because, although it may be a well-intentioned “Emergency Act”, the procedures it mandates and the alterations it makes to Maryland Landlord Tenant laws are cumbersome, duplicative of current law, potentially interfere with many well-established and trusted programs currently working in the eviction prevention space, ignores local laws governing current practices of housing providers and tenants, establishes potentially unconstitutional barriers to the courts for litigants and, simply put, the Bill is completely unworkable.

I. Background

Maryland’s Landlord -Tenant statute is found in Maryland Real Property Code Annotated, Section 8. The rules and procedures found in that Article were established through the recommendations of two Gubernatorial Landlord-Tenant Commissions composed of members of the Legislature, the Judiciary and stakeholder communities. Together those Commissions created a system of laws and procedures designed to balance and protect the interests of both Landlords and Tenants- i.e. providing safe and affordable rental housing to tenants with the expectation that



the landlord will receive timely compensation for having provided that service- which this Legislature has reviewed and approved of for over 40 years. This balance has stood the test of time, however, SB 1312, which is motivated by the recent unprecedented, yet temporary, circumstances presented by the Global Pandemic, proposes sweeping and significant changes to this carefully legislated statutory architecture, which, though it is written to be “temporary”, will have devastating and long-lasting negative impacts on rental housing providers and tenants alike. Details regarding the Bill’s issues are as follows:

II. HB 1312’s establishment, on pages 6-7, of a “Rent Relief Fund” which differentiates distribution of rent relief funds to aid tenants based upon the number of units a rental housing provider leases is at best unfair and at worst potentially discriminatory and carries significant long term risk to Maryland’s affordable housing stock.

The underpinning of this proposal erroneously implies that because multifamily housing providers manage properties with over 10 rental units, they are invulnerable to the harsh economic realities that all rental housing providers are experiencing during this unprecedented time. Nothing could be further from reality. MMHA members managing affordable units report that their delinquency rates have risen from 10% in June 2020 to a current rate of between 30-35%. Add to this that expenses are soaring because more tenants and their families remain at home, tenant employment remains unstable and rental assistance funds are stymied by bureaucratic red tape and the result is that these property owners and managers have lost and will continue to lose millions of dollars. This is unsustainable and will result in the loss of affordable housing units in this state making this Bill’s differentiation between winners and losers for Rental Assistance funds based upon number of units inexplicable.

III. There is no data at this time to support the Bill’s sweeping changes to Maryland Landlord Tenant law.

This Legislature has always taken a measured approach to the regulation of rental property, seeking input from all stakeholders-the Judiciary, the Sheriff’s and Constables offices, DHCD, local housing authorities and other local government representatives, rental housing providers and the trade groups representing them as well as tenants and the consumer and tenant advocacy groups that represent them- in order to fairly balance the needs of both landlords and tenants. The provisions of this Bill on pages 3-4 and 8-10 clearly indicate that this Legislature is utilizing this Bill to OBTAIN information that it DOES NOT have at this time, while simultaneously legislating changes to established law WITHOUT needed SUPPORTING DATA. To legislate massive changes under these circumstances, even on a temporary basis, without reliable data or any in depth vetting by the stakeholders who must live with them, risks doing irreparable harm to both rental housing providers and tenants alike.



For example see:

a. Eviction Notices- Pg. 4 -5. The new 48-hour notices to be provided in all jurisdictions by the Sherriff or Constable regarding the scheduling of evictions ignores and upends current local practices such as the decade long practice in Baltimore City requiring a minimum of 2 notices of an eviction date 2 weeks before the scheduled eviction.

b. Mandated Payment Plans-Pages 8, lines 26-29 and pg. 9 lines 12-13. This provision requires that DHCD, the Judiciary and “appropriate stakeholders” create a “sample fair and equitable payment plan for use in a Failure to Pay rent case (FTPR)”. This provision subverts the Judiciary’s role of an unbiased decision maker and makes it into an advocate for a particular outcome by having them design pre-existing “form” settlement agreements for Landlords and Tenants. Further it creates an unrealistic goal for DHCD since each settlement agreement made must reflect the unique situation of the Tenant and Landlord.

c. Eviction Moratorium -Pg. 10, lines 9- 18. This provision bans all evictions and as such invades the province of the Judicial Branch by countermanding the Court of Appeals Orders regarding the closure and reopening of the courts during the pandemic. This Section of this Bill attempts to prevent the Court from hearing even emergency Breach of Lease and Tenant Holding Over cases, as well as Wrongful Detainer cases now and to continue to do so if the Court begins to hear such cases again, until April 30, 2022. This is a blatant interference with the Judicial branch of Government. This puts renters and their housing providers at risk since the moratorium will prevent the eviction of dangerous tenants, those whose leases have ended, and persons who have no legal right to possess rental property for at least another year.

d. Restoration of Evicted Tenant-Pg.10, lines 19-21. This provision newly requires landlords to restore an evicted tenant to the unit from which they were evicted. It presumes that all evictions are unlawful, which is not the case. If this provision were passed and a tenant is or has been evicted under what is now the lawful Court of Appeals Order, returning the tenant to that unit will endanger tenants and housing providers alike. Moreover, this provision ignores the fact that if an eviction is unlawfully performed the tenant has civil legal remedies that they can pursue for monetary compensation.

e. Just Cause Eviction-Pg. 10, lines 25 -31through Pg. 11, lines 1-31. Aside from being unworkable, this provision is likely to be an unconstitutional incursion into the province of the Maryland Judiciary and is duplicative of and destructive to current Maryland law. This section of the Bill curtails housing providers from ending a lease at the end of its term unless they can demonstrate “just cause”, thereby leaving housing providers and tenants in a virtually endless contract. By doing so the Bill annihilates the current Tenant Holding Over statute-RP Section 8-402 which outlines the judicial remedy where a tenant retains possession after having been duly notified by the housing provider that their lease term has ended. Moreover, since this provision extends until April 30, 2022, it again tramples on the independence of the Judiciary by attempting to abrogate their determination regarding reopening of the courts for hearing such cases.



f. COVID Affirmative Defense-Pages 11, lines 32 through pages 12 and 13. This provision duplicates Judicial orders already in effect that state that a COVID related issue is an affirmative defense in Current Landlord -Tenant cases, but again invades the independence of the Judiciary by mandating that “a court may not give any judgment for possession, or repossession or warrant of restitution” in any case where this affirmative defense is raised and further that this Legislative mandate will remain in place beyond any declared end of the pandemic emergency which may be made prior to April 30, 2022.

g. Barring Landlord Access to Court by creating a monetary threshold in Summary Ejectment actions -Page 13 lines 11-34 through Page 18, line 23 and permanent Codification of the Threshold- Pg. 18, Lines 32 through pg. 20, Line 13. By stating that a housing provider cannot file a FTPR case for any amount of unpaid rent less than \$600 these provisions drastically alter Maryland’s FTPR statute obliterating the balance that this Legislature has thoughtfully maintained for over 40 years without any explanation or input from stakeholders. The codification of this threshold making it permanent as of May 11, 2022 sets the stage for dangerous ramifications to the relationships of both housing providers and their tenants. Setting an amount that cannot be collected by through the orderly, balanced and expeditious FTPR process means that Landlords will have nothing but bad choices for recouping their unpaid rent. They will have to either file a civil collection action to collect this threshold which will become a permanent part of a tenant’s credit report or wait to file for multiple month’s rent putting the tenant’s right to redeem out of reach. Neither of these choices helps either the housing provider or the tenant and in fact opens the door for frustrated landlords to re-engage in “self-help” eviction, something this Legislature designed the Summary Ejectment statute to prevent.

h. Requiring that a Lead Inspection Certificate be attached to an FTPR case is not practical in Maryland’s larger jurisdictions which do not yet have MDEC electronic filing in rent court. It will hinder processing by court clerks, open the possibility of lost documents and thwart the first class mailing of these cases under the law since Sheriff ‘s and Constable’s offices have limited mailing machine capacities.

i. Mandating that Housing Providers send billing notices requesting that the tenant seek rental assistance, utilize a third party to produce a payment plan between the provider and their tenant, send these and other notices and post them to tenant doors and make “good faith attempts to cure the unpaid rent by securing an application for rental assistance FOR THE TENANT is duplicative of current efforts these housing providers have been making since March 2020 to assist their tenants in getting rental assistance. It slows down the only process which a provider can legally use to recoup unpaid rent which for the last year has been out of reach for these housing providers and continues to force them to face mounting delinquencies without recourse until April, 30, 2022. Moreover, mandating that the Courts to provide an additional statement for a Landlord to sign regarding the above efforts as well as mandating that any FTPR judgments made from the date the Court resumes hearing these cases until April 30, 2022 is another incursion of the Legislature into the realm of the Courts.



j. Rent Control and Ban on Late Fees-Pg.18, lines24-28- This provision which extends until April 30, 2022 is duplicative of local laws enacted by several municipalities and counties in Maryland. This will cause confusion for both housing providers and their tenants. It is also unduly punitive to housing providers whose essential businesses are threatened by the simultaneous hardships of skyrocketing expenses and rent delinquencies.

In short, most of the provisions of HB 1312 are not only unworkable but more importantly destroy the balance that this Legislature has sought to strike between the interests of Maryland's Rental Housing Providers and Tenants.

For these reasons, MMHA respectfully request an unfavorable report on House Bill 1312.

Aaron J. Greenfield, MMHA Director of Government Affairs, 410.446.1992