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HB 134 - Landlord and Tenant - Residential Leases – Failure to Pay Rent Proceedings-Prohibition on Rent Increases and Sealing of Court Records

**Hearing before the House Environment and Transportation Committee,
Jan. 18, 2022**

Position: FAVORABLE WITH AMENDMENTS

The Public Justice Center (PJC) is a nonprofit public interest law firm that stands with tenants to protect and expand their rights to safe, habitable, affordable, and non-discriminatory housing and their rights to fair and equal treatment by Maryland’s landlord-tenant laws, courts, and agencies. We advocate to change the law regarding evictions and to demand the development of equitable and sustainable affordable housing. PJC strongly supports with the proposed amendments HB 134 as a critical measure to protect renters’ privacy, allow easier access to safe and stable housing, and promote racial justice. We believe the eviction records sealing achieves that goal.

HB 134 allows the sealing of eviction records in failure to pay rent cases (“FTPR”). There were nearly 670,000 of these cases filed across Maryland in FY 2019, and around 1 in 4 of them were dismissed, presumably because payment preceded the trial date of the action. For many tenants, FTPR actions are routinely filed and typically result *not* in actual eviction, but late payment made under the threat of eviction. Fewer than half of FTPR cases even result in warrant of restitution.

The routine filings nonetheless show up on tenants’ consumer and rental history. Vendors such as CoreLogic and AppFolio access physical and electronic court records to produce data points that they then sell as risk assessments. A tenant who successfully redeemed possession by payment is ultimately harmed by the record of the FTPR action when they are seeking new housing. **HB 134 proposes to reduce the loss of housing opportunities based on failure to pay rent records.** For cases that are dismissed or where judgment is entered in favor of the tenant, the bill proposes to seal the eviction record 60 days after final disposition.

For tenants whose landlord prevails in a failure to pay rent action, HB 134 provides for the sealing of the record if the tenant demonstrates that either: 1) the tenant exercised the right of redemption (“pay to stay”) and one year has passed since the judgment was entered; or 2) the interest of justice is served by sealing the record of the adverse judgment. **Having the opportunity to seal these records after one year will open the door to opportunities that were once closed to many tenants.**

The effort to legislate the sealing of eviction records is a growing movement nationwide. Since 2019, Massachusetts, Colorado, Nevada, and the District of Columbia have all proposed legislation to seal eviction records. These jurisdictions have recognized that sealing (as well as shielding) records is not only a matter of protecting tenants' rights, but also an issue of racial justice – particularly for Black women, who face disproportionate levels of eviction both locally and nationwide.¹

In a 2015 survey conducted by the Public Justice Center, ninety four percent (94%) of participant tenants who appeared for rent court in Baltimore City identified as African-American or Black, and eighty percent (80%) identified as women.² These numbers play out similarly with evictions in Baltimore City – a Black female-headed household is 296% more likely to be evicted there than a white male-headed household.³ As stated by Matthew Desmond in a 2014 report on the state of evictions in Milwaukee, “[p]oor black men are locked up while poor black women are locked out.”⁴

Sealing records are a powerful solution that work together to mitigate the harm of evictions and ensure that tenants are able to secure alternate housing and avoid homelessness.

Public Justice Center supports HB 134 with two critical amendments: 1) to remove language excluding subsidized tenants from the essential protections that HB 134 provides; and 2) to include within the bill a definition of sealing.

Amend HB 134 to Remove Language Excluding Subsidized Tenants

The bill, as currently written, would exclude tenants who reside in federally assisted housing from the opportunities presented by HB 134. This exclusion does not have a basis in federal law governing mandatory admission denials, which typically are based in a tenant's criminal background rather than a tenant's history of rental payments.⁴ While a federally assisted housing project *may* consider a tenant's prior rental payment history⁵, it has no obligation to do so.

In fact, the U.S. Interagency Council on Homelessness's 2013 guidance, “PHA Guide to Modifying Tenant Screening and Eligibility Policies and Procedures” (attached), describes that “[m]any PHAs are taking

¹ STOUT RISIUS ROSS, LLC, THE ECONOMIC IMPACT OF AN EVICTION RIGHT TO COUNSEL IN BALTIMORE CITY (2020), https://bmorerentersunited.org/wp-content/uploads/2020/05/Baltimore-RTC-Report_FINAL_5.8.2020.pdf; Matthew Desmond, “Poor Black Women Are Evicted at Alarming Rates, Setting Off a Chain of Hardship” (2014), https://www.macfound.org/media/files/hhm_-_poor_black_women_are_evicted_at_alarming_rates.pdf; ACLU, “Clearing the Record: How Eviction Sealing Laws Can Advance Housing Access for Women of Color,” <https://www.aclu.org/news/racial-justice/clearing-the-record-how-eviction-sealing-laws-can-advance-housing-access-for-women-of-color/>.

² PUBLIC JUSTICE CENTER, JUSTICE DIVERTED: HOW RENTERS ARE PROCESSED IN THE BALTIMORE CITY RENT COURT (2015); <https://abell.org/sites/default/files/files/cd-justicediverted216.pdf>

³ STOUT RISIUS ROSS, LLC, THE ECONOMIC IMPACT OF AN EVICTION RIGHT TO COUNSEL IN BALTIMORE CITY (2020), https://bmorerentersunited.org/wp-content/uploads/2020/05/Baltimore-RTC-Report_FINAL_5.8.2020.pdf ⁴ Matthew Desmond, “Poor Black Women Are Evicted at Alarming Rates, Setting Off a Chain of Hardship” (2014), https://www.macfound.org/media/files/hhm_-_poor_black_women_are_evicted_at_alarming_rates.pdf

⁴ See 24 CFR §982.553, 24 CFR §960.204.

⁵ 24 CFR §960.203.

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steps to modify policies and procedures in order to reduce or remove these barriers. **Federal law gives substantial flexibility to PHAs and housing providers to adopt local policies regarding criminal backgrounds and other screening criteria.** There is no federal requirement on PHAs to review eviction records in the screening of prospective tenants for federally assisted housing. Indeed, such reviews of records place even more significant barriers on families attempting to enter or remain in federally subsidized programs, who are already qualified for these programs based on their status as families with extremely low income.

Tenants in federally assisted housing have certain requirements around recertification of their income on an annual basis or as their household income changes, which informs the amount of their monthly rental portion. Many tenants in federally assisted housing have struggled to complete these annual recertifications during the COVID-19 pandemic due to closures of state agencies and inaccessibility of on-site property management offices to complete recertification processes. As a result, tenants who may have lost employment or other income during the pandemic may face delays of weeks or even months before their monthly rental portion is adjusted to reflect their current household income. This leaves those renters struggling to catch up on back rent for months where they were unemployed or otherwise faced income loss. HB 134 should support federally subsidized tenants just as it does unsubsidized tenants in sealing their records.

Amend HB 134 to Provide a Definition of Sealing

HB 134, as currently written, does not provide a definition of records sealing. This change is simple to implement by incorporating and modifying a similar definition provided in HB 697 from the 2021 session.⁶ which is as follows:

“COURT RECORD” MEANS AN OFFICIAL RECORD OF A COURT ABOUT A PROCEEDING THAT THE CLERK OF A COURT OR OTHER COURT PERSONNEL KEEPS.

“COURT RECORD” INCLUDES:

- 1. AN INDEX, A DOCKET ENTRY, A PETITION, A MEMORANDUM, A TRANSCRIPTION OF PROCEEDINGS, AN ELECTRONIC RECORDING, AN ORDER, AND A JUDGMENT; AND*
- 2. ANY ELECTRONIC INFORMATION ABOUT A PROCEEDING ON THE WEBSITE MAINTAINED BY THE MARYLAND JUDICIARY.*

“SEALING” MEANS TO REMOVE INFORMATION FROM PUBLIC INSPECTION IN ACCORDANCE WITH THIS SECTION. ‘SEAL’ INCLUDES:

- 1. WITH RESPECT TO A RECORD KEPT IN A COURTHOUSE, TO REMOVE THE RECORD TO A SEPARATE SECURE AREA TO WHICH PERSONS WHO DO NOT HAVE A LEGITIMATE REASON FOR ACCESS ARE DENIED ACCESS; AND*
- 2. WITH RESPECT TO ELECTRONIC INFORMATION ABOUT A PROCEEDING ON THE WEBSITE MAINTAINED BY THE MARYLAND JUDICIARY, TO COMPLETELY REMOVE ALL INFORMATION CONCERNING THE PROCEEDING FROM THE PUBLIC WEBSITE, INCLUDING THE*

⁶ See proposed language in Attachment A.

NAMES OF THE PARTIES, CASE NUMBERS, AND ANY REFERENCE TO THE PROCEEDING OR ANY REFERENCE TO THE REMOVAL OF THE PROCEEDING FROM THE PUBLIC WEBSITE.

With these amendments, HB 134 would take essential steps to protect renters' privacy, allow easier access to safe and stable housing, and promote racial justice.

Public Justice Center is a member of the Renters United Maryland coalition and asks that the Committee **issue a FAVORABLE WITH AMENDMENT report on HB134**. If you have any questions, please contact Charisse Lue, Luec@publicjustice.org (410) 625-9409 Ext. 245.

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