



MARYLAND LEGAL AID

Advancing
Human Rights and
Justice for All

January 17, 2023

The Honorable Luke H. Clippinger, Esq.
Chair, House Judiciary Committee
Taylor House Office Building, Rm. 101
6 Bladen Street, Annapolis, Md. 21401

RE: RE: TESTIMONY IN SUPPORT OF HOUSE BILL 36

Dear Chair Clippinger and Members of the Committee,

Thank you for the opportunity to testify in support House Bill 36. HB 36 will require landlords to demonstrate their compliance with applicable licensing requirements before seeking to evict or recover money from tenants on an expedited basis. HB is identical to last year's SB 563, which passed the House (90-45) and Senate (47-0) in 2022 but was vetoed by Governor Hogan. Maryland Legal Aid ("MLA") believes the bill should pass again this year – and this time be signed into law – on the fundamental ground that landlords should comply with the law before seeking the benefit of the law. MLA asks this committee to favorably report on HB 36 (the "Bill")

MLA is a private, non-profit law firm that provides free legal services to indigent Maryland residents. MLA assists individuals and families in every Maryland county with a wide array of civil legal issues, including protecting people from the epidemic of evictions across the state. This letter serves as notice that Lee Ogburn, Esq. will testify behalf of Maryland Legal Aid in support of HB 36 at Delegate Lehman's request.

MLA believes that the Bill is consistent with the long-standing principle of Maryland law that a contract is illegal and unenforceable in Maryland courts if made by an unlicensed person who is required to be licensed for the protection of the public. In this written testimony we refer to that principle as the *McDaniel* principle, after *McDaniel v. Baranowski*, 419 Md. 560 (2011), in which the Supreme Court of Maryland applied the principle under Real Property Article §8-401 (failure to pay rent) in the landlord/tenant context.

The Bill would extend the commonsense *McDaniel* principle to §8-402 (tenant holding over) and §8-402.1 (breach of lease) actions by requiring a

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landlord to be licensed before seeking to enforce its lease under those sections. After applying the principle to failure-to-pay-rent cases in *McDaniel*, the Supreme Court of Maryland declined in *Velicky v. CopyCat Building* (2021) to extend the principle to §8-402 tenant holding over cases on legal grounds that we believe do not bear on the compelling policy considerations that support the Bill.

The fundamental reason to extend the *McDaniel* principle to tenant holding over cases (§8-402) and to breach of lease cases (§8-402.1) is that unlicensed landlords now use those types of cases as an end run around the *McDaniel* prohibition against them suing in “rent court,” where §8-401 cases are heard. Instead of obtaining a license so that they can proceed in rent court, unlicensed landlords now evict tenants by bringing tenant holding over or breach of lease cases. As a consequence, the purpose of requiring a landlord to be licensed is defeated. Rather than bringing its rental property up to code so that it can obtain a license, the unlicensed landlord can continue in business, in violation of the licensure laws, by evicting tenants under §8-402 or §8-402.1 and then re-renting the unlicensed premises. The unfairness here is self-evident.

This is not a hypothetical problem. We see it repeatedly, the most well-known example being the unlicensed 58-unit CopyCat building in Baltimore City, where the landlord announced to tenants in writing that “We use Tenant Holding Over Court” as a way of avoiding the prohibition against proceeding in rent court. The landlord made good on that threat, leading to the ruling in the *Velicky* case that highlighted the need for this legislation.

The Bill is the product of compromise during the 2022 session that resulted in agreement with the Maryland Multi-Housing Association on the current form of the Bill.

The Bill is necessary to stop unlicensed landlords from operating in violation of the law rather than complying with the licensing requirements intended to protect the health and safety of its tenants. The Bill closes a loophole exploited by landlords to avoid the very purpose of the licensing requirements – to bring rental properties up to code. The Bill is necessary for the protection of the many low-income Marylanders who rent from such landlords.

For these reasons, MLA respectfully asks that the Committee give the Bill a favorable report.

Sincerely

/s/

Lee Ogburn, Esq.

Director of Appellate Advocacy

Maryland Legal Aid