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May 5, 2015

The Honorable Lawrence J. Hogan, Jr.
Governor of Maryland
State House
100 State Circle
Annapolis, Maryland 21401

RE: House Bill 782/Senate Bill 408, "Real Property – Residential Leases – Interest on Security Deposits"

Dear Governor Hogan:

House Bill 782 and Senate Bill 408 are identical. While we approve these bill for legal sufficiency and constitutionality, we write to comment about a potential issue regarding retroactivity. House Bill 782 and Senate Bill 408 seek to resolve an ambiguity in current statutory law regarding when interest accrues on security deposits. The resolution of that ambiguity should not raise any constitutional concerns. Nevertheless, an argument could be made that House Bill 782 and Senate Bill 408 apply retroactively to leases that were not covered by legislation enacted last year, thus the bills impair vested rights of tenants holding those leases.

During the 2014 Session, the General Assembly amended sections 8-203 and 8A-1001 of the Real Property Article and established a new rate at which interest accrues on security deposits under residential leases through the enactment of Senate Bill 345 (Chapter 488) and House Bill 249 (Chapter 489). Chapters 488 and 489 provided that the legislation "shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any residential leases entered into before the effective date of this Act." Chapters 488 and 489 further provided that the effective date was January 1, 2015. Section 2 of House Bill 782 and Senate Bill 408 provides, "this Act shall apply to any interest accruing on a security deposit under a residential lease or mobile home park rental agreement on or after January 1, 2015." Because House Bill 782 and Senate Bill 408 apply only to interest that accrues under leases entered into after January 1, 2015 (which are the leases to which Chapters 488 and 489 apply), the bills in our view would not impair

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existing obligations of contract or interfere with vested rights. At the same time, there is a possible retroactive application of House Bill 782 and Senate Bill 408 that may lead to an argument that the bills interfere with vested rights.

The existing law has some ambiguities and conflicts that House Bill 782 and Senate Bill 408 would resolve. These include whether interest is for due for partial months and for deposits held less than 6 months. House Bill 782 and Senate Bill 408 make clear that interest is not due on any deposit held for less than six months or for partial months. It is possible, however, that there are tenants that either rented for less than 6 months or for a partial month after January 1, 2015. These tenants may have an argument that they have a vested right to interest under the existing law or their rental contract. *Dua v. Comcast Cable of Maryland*, 370 Md. 604 (2002). In the *Dua* case, the Court determined that legislation which retroactively changed the amount of late fees a cable company could charge consumers violated Article 24 of the Maryland Declaration of Rights and Article III, § 40 of the Maryland Constitution. The Court reiterated that no matter how rational the reason for doing so, "it is clear that retrospective statutes abrogating vested property rights (including contractual rights) violate the Maryland Constitution." *Id.* at 629. The counter-argument is that House Bill 782 and Senate Bill 408 simply clarified existing law that they were not entitled to interest. A review of the legislative history shows that the General Assembly intended to clarify the existing law, thus it is our view that applying House Bill 782 and Senate Bill 408 retroactively to all leases on or after January 1, 2015 does not retrospectively abrogate any vested rights.

Sincerely,



Brian E. Frosh
Attorney General

BEF/SB/kk

cc: The Honorable John C. Wobensmith
Joseph M. Getty
Karl Aro