Senate Judicial Proceedings Committee

Workgroup Report on COVID-19 and Housing

Annapolis, Maryland
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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

July 22, 2020

The Honorable Bill Ferguson
President of the Senate
State House
Annapolis, Maryland 21401-1991

Dear President Ferguson:

A report recently issued by consulting firm Stout[1] estimates that over 40% of Maryland's rental households – approximately 292,000 households – are at risk of eviction for fear of being unable to pay rent. We expect the effects of COVID-19 on housing will wreak havoc on Marylanders' lives in the coming months as economic and anti-eviction safety nets provided by both the federal and State governments recede. July 25, 2020, has been looming on the horizon for many Marylanders, for on that date:

- the federal moratorium on evictions, late fees and penalties will be lifted (applicable to public housing and certain other federally backed housing);

- 670,000 Marylanders will cease receiving a $600 weekly supplemental unemployment benefit from the federal government; and

- the Maryland Judiciary's stay for residential evictions will be lifted. The Judiciary will begin processing warrants of restitution for failure to pay rent actions after July 25, 2020, and will begin to hear failure to pay rent cases in Phase IV, beginning August 31, 2020.

Over the past few months, a workgroup of the Senate Judicial Proceedings Committee has been meeting (virtually) with experts and housing professionals about the impact of the coronavirus on residential housing in Maryland. The attached report outlines the findings of the workgroup as well as a series of recommendations about how to address what we believe is an impending crisis. The list is not exhaustive but implementing these policy changes would mitigate,

[1] https://app.powerbi.com/view?r=eyJrIjoiNzRhYjg2NzAtMGE1MC00NmNjLTllOTMtYjM2NjFmOTA4ZjMyIiwidCI6Ijc5MGJmNjk2LTE3NDYtNGE4OS1hZjI0LTc4ZGE5Y2RhZGE2MSIsImMiOjN9

and perhaps even eliminate, material risks in health and safety to some of the most vulnerable among us at this unprecedented time in our State's history.

The workgroup heard from and took written testimony from a wide variety of stakeholders: landlords; tenants; banks and credit unions; tenant and landlord advocates; and members of the legal community who are involved in landlord-tenant issues. It is enormously significant that this diverse group of stakeholders came to consensus on two of our most important recommendations: (1) there should be a robust and transparent publicly supported rental assistance program; and (2) landlord-tenant litigants should have access to publicly funded legal services.

A majority of the workgroup also recommends that the Governor continue to maintain his Executive Orders on a moratorium on evictions and preventing the disconnection of essential utilities including gas, electricity, water and internet, and implement an order preventing the accumulation of late fees for failure to pay rent. We call on the Judiciary to create a legal services pilot program explore expanding its mediation services for landlord-tenant litigants. In addition, we are concerned about the long-lasting stain that an eviction judgment could have on a tenant's credit report and are asking the Judiciary for recommendations on how best to prevent this from contributing to a downward spiral for those who are struggling to pay rent because of COVID-19.

We are most grateful to the members of the workgroup: Senator Jeff Waldstreicher (Vice Chairman of the Senate Judicial Proceedings Committee), Senator Robert Cassilly, Senator Charles E. Sydnor III, and Senator Chris West, who were generous with their time and devoted much energy and thoughtful consideration to this report. Finally, thank you to Department of Legislative Services Policy Analyst, Heather M. Marchione, for her thoroughness, unflappability, and steady diligence in keeping us on task and on time.

Sincerely,

William C. Smith, Jr.
Chair, Judicial Proceedings Committee

Shelly Hettleman
Member, Judicial Proceedings Committee

WCS:SH/HMM/msr

General Assembly of Maryland
Senate Judicial Proceedings Committee
Workgroup on COVID-19 and Housing
Membership Roster

Shelly Hettleman, **Workgroup Leader**

Robert Cassilly

Charles E. Sydnor III

Jeff Waldstreicher

Chris West

Committee Staff

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Executive Summary

The Chairman of the Senate Judicial Proceedings Committee, William C. Smith, Jr., announced the creation of a workgroup to study the effects of Coronavirus Disease 2019 (COVID-19) on housing in Maryland. The Judicial Proceedings Report on COVID-19 and Housing is a product of the workgroup's efforts. The report contains 9 findings and 12 recommendations. The recommendations and findings are summarized below.

- **Finding 1: Maryland's rental assistance programs must be robust and transparent**. The workgroup finds that funding for eviction prevention assistance is essential to promote housing stability during this pandemic.

  - **Recommendation 1:** The workgroup recommends transparency and accountability in the distribution of rental assistance funds in order to ensure that the funds provide real relief to tenants affected by this pandemic.

- **Finding 2: Housing security is essential in Maryland's fight against COVID-19**. The workgroup finds that housing security is essential to treat, prevent, and reduce the spread of COVID-19.

  - **Recommendation 2:** The workgroup recommends that the Governor continue the protections in Executive Order Number 20-04-03-01 for the duration of Maryland's state of emergency and catastrophic health emergency.

- **Finding 3: Residential services are essential in Maryland's fight against COVID-19**. The workgroup finds that Executive Order Number 20-06-29-01 is necessary and reasonable to protect the health and safety of Marylanders during the duration of the state of emergency and catastrophic health emergency.

  - **Recommendation 3:** The workgroup recommends that the Governor continue the protections in Executive Order Number 20-06-29-01 and that the order remain in effect until the termination of the state of emergency and the proclamation of the catastrophic health emergency has been rescinded.

- **Finding 4: Late fees and penalties for failure to pay rent should be prohibited**. The workgroup finds that the imposition of late fees or penalties due to failure to pay rent on tenants already facing economic instability during the pandemic will further exacerbate the financial instability of tenants, thus jeopardizing the tenant's ability to maintain housing.

  - **Recommendation 4:** The workgroup recommends that the Governor issue an executive order making it explicit that a landlord may not impose late fees and/or penalties on tenants who are unable to pay rent due to COVID-19 loss of income.

- **Finding 5: The State should support the right to legal counsel in eviction cases**. The workgroup finds that the State should support the right to legal counsel in eviction cases, including failure to pay rent cases.

- **Recommendation 5:** The workgroup recommends that the Judiciary create a pilot program that will guarantee tenants and small landlords the right to publicly supported legal services.

- **Recommendation 6:** The workgroup recommends that, if the pilot program under Recommendation 5 is successful, the pilot program should be expanded to provide legal services to, at a minimum, all landlord-tenant cases.

- **Recommendation 7:** As an interim and supplementary measure, the workgroup recommends that a cadre of advocates should be recruited and trained to assist tenants with housing counseling, connect tenants with human services needs as requested, and help tenants navigate through the maze of legal proceedings.

- **Finding 6: The Judiciary should continue to take proactive steps to address the forthcoming increase in filings of failure to pay rent cases**. The workgroup finds that an onslaught of new failure to pay rent eviction filings will occur once the Judiciary's suspension order on failure to pay rent cases is lifted on August 31, 2020.

  - **Recommendation 8:** The workgroup recommends that the Judiciary expand its mediation services as a means of encouraging landlords and tenants to come to agreement on payment plans.

  - **Recommendation 9:** The workgroup recommends that the Judiciary explore the possibility of creating a special, perhaps temporary, housing court staffed by mediators and judges trained in the complexities of housing law that can adeptly address the enormous caseload that is expected.

- **Finding 7: Unrestricted availability of eviction cases on Case Search is detrimental to renters**. The workgroup finds that there must be a balance between recognizing the public interest in maintaining access to public records and protecting against unjust barriers to housing for those who have sustained substantial loss of income due to COVID-19.

  - **Recommendation 10:** The workgroup recommends that the Judiciary investigate and propose how best to limit public access to failure to pay rent cases if the tenant suffered a substantial loss of income due to job loss, reduction in compensated hours of work, closure of place of employment, or the need to miss work to care for a home-bound school-age child during the pandemic.

- **Finding 8: The consumer reports of tenants who sustained loss of income and were unable to pay their rent due to COVID-19 should not be negatively impacted**. The workgroup finds that the consumer reports of tenants who sustained loss of income and were unable to pay their rent due to COVID-19 should not be negatively impacted.

- **Recommendation 11:** The workgroup recommends that the congressional delegations from Maryland explore federal legislation that would protect tenants from receiving negative consumer reports caused by the pandemic, including altering preemption under the Fair Credit Reporting Act to provide states more leeway to protect tenants from negative consumer reports.

- **Finding 9: The Department of Housing and Community Development (DHCD) must continue to closely monitor and respond to issues raised by Maryland homeowners**.

- **Recommendation 12:** The workgroup recommends that DHCD:

  - closely monitor mortgage issues;

  - extend forbearance protections made available to mortgages that are covered by the Coronavirus Aid, Relief, and Economic Security Act to those that are not;

  - require lenders to attest to having tried loss mitigation efforts as an alternative to foreclosure; and

  - enhance and publicize existing housing counseling programs to assist mortgage holders who will be at risk for default.

Senate Judicial Proceedings Committee Workgroup Report on COVID-19 and Housing

Introduction

On May 4, 2020, Senate Judicial Proceedings Committee Chairman William C. Smith, Jr. announced the creation of a workgroup to study the effects of Coronavirus Disease 2019 (COVID-19) on housing in Maryland. The announcement was made during a committee briefing on the impact of COVID-19 on residential property. The briefing included presentations from the Homeless Persons Representation Project, the Public Justice Center, the Maryland Bankers Association, the Apartment and Office Building Association (AOBA), and the Maryland Multi-Housing Association (MMHA). During the briefing, Chairman Smith stated that the goal of the workgroup was to produce recommendations, policies, and findings regarding the effects of COVID-19 on housing in Maryland. Chairman Smith appointed Senator Jeff Waldstreicher (Vice Chairman of the Senate Judicial Proceedings Committee), Senator Robert Cassilly, Senator Shelly Hettleman, Senator Charles E. Sydnor III, and Senator Chris West as members. Senator Hettleman was appointed to lead the workgroup. This report reflects findings and recommendations that received approval by at least a majority of the workgroup's members.

The workgroup met six times in virtual meetings from May 2020 through July 2020, during which the workgroup received briefings from stakeholders and engaged in extensive discussions, as described below.

- ***Meeting 1:*** Review of workgroup's charge and discussion of meeting agendas;
- ***Meeting 2:*** Briefings from the District Court of Maryland, the Department of Housing and Community Development (DHCD), the MD DC Credit Union Association, and the Consumer Law Center;
- ***Meeting 3:*** Discussion of proposed recommendations and potential issues;
- ***Meeting 4:*** Workgroup discussion (joined by Maryland Legal Aid); and
- ***Meetings 5 and 6:*** Discussion of proposed findings and recommendations.

Following its sixth meeting, the workgroup continued to communicate to refine its findings and recommendations. Throughout its efforts, the workgroup solicited input from a wide range of stakeholders, some of whom submitted written testimony or studies to the workgroup.

Background

Evictions and Foreclosures

The federal Coronavirus Aid, Relief and Economic Security (CARES) Act, signed into law March 27, 2020, imposes a 120-day moratorium (expires July 25, 2020) on the filing of summary actions to recover possession of tenant-occupied dwellings on or in covered property for nonpayment of rent (evictions). Covered property includes public housing, federally subsidized housing, and residential property that is subject to a federally backed mortgage. The Act prohibits the lessor (landlord) of a covered dwelling from forcing a tenant to vacate the dwelling prior to August 25, 2020, since the Act (1) requires the lessor of a covered dwelling to provide a tenant with at least 30 days' notice before the tenant must vacate the property and (2) prohibits a lessor from issuing a notice to vacate during the moratorium. During the 120-day moratorium, a lessor may not charge a tenant late fees, penalties, or other charges for late rental payments. The Act did not extend these protections to tenants who do not live in federally backed housing.

The federal government also provided two key protections for federally backed mortgages. First, the CARES Act and guidance from federal agencies prohibit lenders and servicers from beginning judicial or nonjudicial foreclosures against homeowners or from finalizing foreclosure judgments or sales. This protection began on March 18, 2020, and, at the time of this report, extends through August 31, 2020. Second, a homeowner who experiences financial hardship due to the pandemic has a right to request and obtain an initial forbearance for up to 180 days and an extension for up to 180 additional days (for a maximum forbearance of 360 days). These protections only apply to homeowners with federally backed mortgages or mortgages backed by a Government Sponsored Enterprise (*e.g.*, Fannie Mae or Freddie Mac).

The State has also taken steps to protect Marylanders from evictions and foreclosures caused by the pandemic. On March 5, 2020, the Governor declared a state of emergency and catastrophic health emergency. The Governor has renewed the proclamation several times during the ongoing pandemic. At the time of this report, the current renewal of the declaration of state of emergency and catastrophic health emergency was given July 1, 2020. Pursuant to State law, unless the proclamation is renewed, it expires 30 days from the date it was issued (July 31, 2020). On April 3, 2020, the Governor issued Executive Order Number 20-04-03-01, which amends and restates an order previously issued on March 16, 2020. In part, the executive order suspends the initiation of residential foreclosures until the state of emergency is terminated and the catastrophic health emergency is rescinded. The executive order also prohibits courts from ordering the eviction of a residential tenant, if the tenant can demonstrate to the court that the tenant suffered a substantial loss of income resulting from COVID-19 or the related proclamation of a state of emergency and catastrophic health emergency. The executive order lists that the cause of loss of income may include, without limitation, job loss, reduction in compensated hours of work, closure of place of employment, or the need to miss work to care for a home-bound school-age child. Payments, including rental payments and mortgage payments, are not excused under the order. At the time of this report, the moratorium on court-ordered evictions also remains in effect until the state of emergency is terminated and the catastrophic health emergency is rescinded.

The Judicial Branch has also taken steps to protect the health and safety of Marylanders by imposing an administrative moratorium on evictions and foreclosures. On March 25, 2020, the Chief Judge of the Court of Appeals issued an administrative order that provides that foreclosures of residential property, foreclosures of the right to redeem residential property sold in a tax sale, residential evictions, and executions on residential real property under levy or lien are stayed, and new or pending types of these actions will be accepted but will not proceed while the administrative order remains in effect.

On May 22, 2020, the Chief Judge of the Court of Appeals issued several administrative orders regarding the gradual reopening of the courts. The Amended Administrative Order on the Progressive Resumption of Full Function of Judiciary Operations, issued June 3, 2020, outlines how courts across the State will gradually return to full operations through a five-phase approach. The relevant part, Phase III, beginning July 20, 2020, includes (1) rent escrow actions, provided local inspection practices are capable of being conducted; (2) tenant holding over actions and any associated warrants of restitution; (3) any breach of lease action and any associated warrants of restitution; (4) any wrongful detainer actions and any associated warrants of restitution; and (5) processing of warrants of restitution for failure to pay rent actions to begin after July 25, 2020. The administrative order also specifies that Phase IV, beginning August 31, 2020, includes failure to pay rent cases.

Consumer Reports

A consumer report, or a credit report, contains key financial information about a consumer, including credit history, bill repayment history, and the status of the consumer's credit accounts. A consumer report includes detailed information about how often a consumer makes payments on time, how much credit is available to the consumer, and whether debt or bill collectors are collecting on money owed by the consumer. A lender uses information contained in the consumer report to determine whether to extend credit to a consumer and, if so, what interest rate to charge.

The CARES Act calls for creditors to adjust how they report accounts that have been modified in order to protect consumers against being reported as delinquent if they utilize the accommodations available under the Act. The law requires creditors to report any account that has a payment accommodation applied to it as current to the credit bureaus – as long as the account was current when the accommodation was made. For example, if a loan was current at the time an individual made an agreement with their creditor to modify the repayment, the creditor must report to credit bureaus that the individual is current on their loan. If a loan was delinquent at the time that an individual made an agreement with their creditor to modify the repayment, the creditor must report to credit bureaus that the individual is delinquent until the individual brings the account back into good standing. Once the individual brings the account current, the creditor must report the account as current to credit bureaus. The CARES Act requires creditors to follow these guidelines for all agreements made between January 31, 2020, through either July 25, 2020 (120 days after March 27, 2020, when the law was enacted), or 120 days from the date the COVID-19 national emergency is declared over.

Rental Assistance

While counties have taken the initiative to directly address the housing crisis by providing rental assistance, requests for aid have surpassed funding. For example, in June 2020, Baltimore County created a COVID-19 Eviction Prevention Program. The county allocated $1 million to Phase 1 of the program, which was projected to provide rental assistance to approximately 300 households. During the four-day application acceptance window for Phase I, Baltimore County received approximately 1,500 requests, which the county equated to $6 million in requested rental relief. Similarly, Prince George's County was forced to temporarily close its Temporary, Emergency Rental Assistance Program due to an overwhelming response.

On June 26, 2020, the Governor announced that that the Executive Branch will dedicate $30 million in CARES Act funds for eviction prevention support to local governments ($20 million) and the Assisted Housing Relief Program ($10 million). As a result of increased demand for local rental assistance programs, DHCD intends to deploy $20 million in expected federal Community Development Block Grant (CDBG) program funding across all 24 jurisdictions in Maryland to help address eviction prevention needs at the local level though the Maryland Eviction Prevention Partnership. Rental assistance funds will be awarded by DHCD to local jurisdictions. Each jurisdiction will administer the funds to local residents. On July 20, 2020, DHCD distributed $2.3 million to eight counties in the first round of funding of the Maryland Eviction Prevention Partnership. The remaining $10 million will fund the Assisted Housing Relief Program, which is intended to help bring rental delinquencies current for State-financed rental units and provide real relief for the tenants affected by the COVID-19 pandemic through direct payments to the eligible property management company. Once a payment for back rent from the Assisted Housing Relief Program is received by a landlord, tenants will have their rental debt eliminated and no longer face the threat of eviction. The program will include rental units in multi-family projects financed by DHCD's Community Development Administration using State funds or federal resources, such as the Low-Income Housing Tax Credit program, where the unit rent is controlled. Applications for the Assisted Housing Relief Program will be accepted from July 23, 2020, through July 31, 2020. DHCD advises that awards will be distributed on or around August 15, 2020.

Residential Services

Executive Order Number 20-06-29-01, issued June 29, 2020, which amends and restates an order initially issued on March 16, 2020, prohibits the termination of residential services and late fees. The order prohibits a residential service provider from billing or collecting on an account that served a dwelling unit or residence any fee or charge for a late or otherwise untimely payment. The order defines a residential service company as a company that provides services including electric, gas, sewage disposal, telegraph, telephone, water, cable television, internet service, or any combination of such services. At the time of this report, these protections remain in effect until August 1, 2020.

Disparate Impact of COVID-19

COVID-19 race and ethnicity demographic data broken down by zip code, released by the Maryland Department of Health, shows that the pandemic has had a disproportionate impact on African American and Hispanic Marylanders. As of July 21, 2020, of the 79,545 confirmed COVID-19 cases in Maryland, 29.4% are African American and 40.7% of the deaths are African American, despite the fact that African Americans make up only 31.1% of the State's population. Similarly, despite only comprising 10.6% of the State's population, Hispanic Marylanders make up 25.8% of positive COVID-19 cases and 11.6% of deaths.

The racial disparity of the effects of COVID-19 indicates that communities with larger minority populations may be harder hit by the upcoming wave of evictions. A preliminary report by The Eviction Study analyzed a sample of Baltimore City eviction data from fiscal 2019 (July 1, 2018, through June 30, 2019). According to data cited by the study, female-headed households represent 62% of renting households in Baltimore City and Black households represent 66% of renting households in Baltimore City. The study estimates that 46% more female-headed households were removed from their homes as compared to male-headed households, a ratio of approximately three women for every two men. The number of Black eviction removals is three times the number of white evictions (4,775 Black evictions vs. 1,614 white evictions). Additionally, the number of Black female-headed household removals is 3.9 times the number of white male-headed evictions (2,996 vs. 775), and the number of evictions for Black male-headed households is 2.3 times the number of evictions for white male-headed households (1,806 vs. 775).

Findings and Recommendations

Finding 1: Maryland's rental assistance programs must be robust and transparent. Thousands of Marylanders are in the midst of economic distress due to the pandemic. This economic distress is demonstrated by a substantial increase in unemployment insurance claims, a more than 400% increase statewide in Supplemental Nutrition Assistance Program applications, an increased demand for food distribution services, and an application rate for rental assistance programs that far surpasses availability in counties that have offered such programs. Just prior to the pandemic's arrival, Maryland's unemployment rate was 3.0% in December 2019. In May 2020, Maryland's statewide unemployment rate was 9.7%. By comparison, Maryland's peak rate of unemployment during the Great Recession was 7.6% in calendar 2010. (All rates listed reflect non-seasonally adjusted data.)

Housing data indicates that pandemic-induced economic distress negatively impacts the ability of Marylanders to stay current on housing payments. MMHA surveyed its members in the Baltimore market and found that rent collections decreased by approximately 9% in May 2020 compared to May 2019. MMHA also reports that delinquency rates in June 2020 jumped to 31.68%. AOBA of Metropolitan Washington indicates that its members are experiencing rent delinquency rates between 20% and 25% in their Maryland portfolios. Additionally, Baltimore City DHCD indicates that landlords saw an 18% delinquency rate for April's rent and a 22% delinquency rate for May's rent. Normally, delinquency rates are in the 9% to 10% range. Zego, a property management company that processes millions of rent checks every month, reports that the number of tenants putting rent on a credit card increased by 30% from March to April and by another 20% from April to May. The Community Development Network of Maryland, which is comprised of nearly 200 organizations, sampled its members and found that delinquencies in their portfolios of senior and family buildings are up to 10% and 24%, respectively. Collectively, this data indicates that a substantial number of Marylanders are unable to make required rental payments due to income loss related to COVID-19.

At the time of this report, the safety nets created at the federal and State level that allowed Marylanders to remain housed are beginning to recede. Federal unemployment insurance supplements guaranteed by the CARES Act are due to expire July 25, 2020. The loss of federal assistance at the end of July comes at a time when many Marylanders have lost their jobs due to the pandemic and are suffering substantial losses in income. Additionally, the courts have begun a phased-in reopening. At the time of this report, the administrative moratorium remains in effect, but failure to pay rent cases are scheduled to resume on August 31, 2020.

In the midst of the pandemic's economic turmoil, tenants are still responsible for their rent payments, making them subject to eviction once the administrative order moratorium is lifted and the District Court begins to hear failure to pay rent cases again. The workgroup also recognizes that landlords have a continued fiscal responsibility to their lenders. Landlord-tenant case data collected by the District Court show that there has been a significant decrease in the number of failure to pay rent cases filed with the District Court while the administrative order moratorium has been in effect. For example, from February 2020 to May 2020, which are the most recent month that the District Court was fully operational and the most recent month with available data, there was a 93.16%, 93.03%, and 78.71% decrease in the number of cases filed in Baltimore City, Prince George's County, and Montgomery County, respectively. Advocates and local governments warn that once the District Court reopens and begins to hear failure to pay rent cases on August 31, 2020, there will be a flood of failure to pay rent cases filed. While no Marylander is immune to the effects of the pandemic, the racial disparity of infection, compounded by the pre-pandemic gender and racial disparity in evictions in the State, place populations already vulnerable to eviction at an even greater risk of eviction.

The workgroup is hopeful that thoughtful and immediate action at the State and local levels can alleviate the upcoming predicted wave of evictions. On June 26, 2020, the Governor announced $30 million in funding to prevent evictions and help Marylanders affected by the COVID-19 pandemic. The workgroup finds that funding for eviction prevention assistance is essential to promote housing stability during this pandemic.

> **Recommendation 1:** The workgroup recommends transparency and accountability in the distribution of rental assistance funds in order to ensure that the funds provide real relief to tenants affected by this pandemic.
>
> The workgroup supports the Governor's announcement to provide $30 million in funding to eviction prevention assistance programs and feels that this funding is a necessary step to avoid mass evictions in Maryland. The workgroup notes that it found broad support for a rental assistance program among a wide range of stakeholders, including tenants' rights advocates and organizations representing the interests of landlords. The workgroup is in favor of the Governor's announcement; however, the workgroup is concerned that the funding is insufficient to meet the need for rent relief and that there is insufficient detail currently available on future distribution and accounting of the funds. In a letter dated April 30, 2020, the ACLU of Maryland, Homeless Persons Representation Project, and the Public Justice Center urged the Governor to dedicate, at a minimum, $153,651,000 for rental assistance. The workgroup also notes that, as discussed previously, several counties with rental assistance programs have seen the ability to provide rental assistance outstripped by demand. The workgroup recognizes that the pandemic has placed many demands on the State's budget but urges the Governor to work with local governments to assess funding needs for rental assistance programs, to explore all possible funding sources, and to responsibly fund rental assistance.

Finding 2: Housing security is essential in Maryland's fight against COVID-19. COVID-19 is a severe respiratory disease, resulting in illness or death, caused by the person-to-person spread of the novel coronavirus, and is capable of causing extensive loss of life or serious disability. The spread of COVID-19 has resulted in loss of work and loss of income for many Marylanders, which has impacted their ability to pay for rental housing or to repay mortgages, potentially resulting in loss of housing due to eviction or foreclosure. To treat, prevent, or reduce the spread of COVID-19 caused by the transmission of the novel coronavirus, it is necessary and reasonable to require or encourage individuals to remain in isolation or quarantine at their homes. Housing security remains vital in Maryland's fight against COVID-19. At the time of this report, positive COVID-19 cases are once again on the rise in Maryland. July 14, 2020, marked the first time since early June that the State has reported more than 700 cases. The Governor has urged Marylanders to remain vigilant in following COVID-19 safety measures. Therefore, the workgroup finds that housing security is essential to treat, prevent, and reduce the spread of COVID-19.

> **Recommendation 2:** The workgroup recommends that the Executive Order on Evictions and Mortgages, Number 20-04-03-01, remain in effect for the duration of Maryland's state of emergency and catastrophic health emergency.
>
> Some members of the workgroup (Senator Cassilly and Senator West) disagreed with Finding 2 and Recommendation 2, citing a fundamental disagreement with the philosophical basis for the finding and recommendation. The opposition supports the Governor's decision to enact Executive Order Number 20-04-03-01 and will continue to support the order while certain COVID-19 statistical data remains high. However, once the COVID-19 statistical data indicates that the health crisis has eased, the opposition recommends that the moratorium under Executive Order Number 20-04-03-01 be lifted, even if the state of emergency and catastrophic health emergency proclamation remains in effect. The opposition is fully supportive of additional public resources to assist tenants and landlords but, in the absence of the Governor providing those resources, opposes the possibility that during this state of emergency, landlords would be unable to evict tenants who are unable to pay rent. They are troubled that financial difficulties endured by Maryland tenants due to COVID-19 would be transferred to and borne by certain private business organizations.

Finding 3: Residential services are essential in Maryland's fight against COVID-19. The spread of COVID-19 has resulted in loss of income and the loss of work for many Marylanders, which has impacted their ability to pay for residential services. Executive Order Number 20-06-29-01 prohibits the termination of residential services and late fees. The covered services under the order include electric, gas, sewage disposal, telegraph, telephone, water, cable television, and internet service. These services are necessary for public health, education, welfare, and safety. The workgroup agrees with the Governor's decision to reissue the protections under Executive Order Number 20-06-29-01, after he had rescinded these protections when he issued Executive Order Number 20-05-29-02. The workgroup finds that Executive Order Number 20-06-29-01 is necessary and reasonable to protect the health and safety of Marylanders during the duration of the state of emergency and catastrophic health emergency.

Recommendation 3: The workgroup recommends that the Governor continue the protections in Executive Order Number 20-06-29-01 and that the order remain in effect until the termination of the state of emergency and the proclamation of the catastrophic health emergency has been rescinded.

Some members of the workgroup (Senator Cassilly and Senator West) disagreed with Finding 3 and Recommendation 3. The members' opposition for Finding 3 and Recommendation 3 mirror the opposition to Finding 2 and Recommendation 2 (see above).

Finding 4: Late fees and penalties for failure to pay rent should be prohibited. Some landlords may be tempted to impose late fees or penalties on tenants who are unable to pay rent. Unlike the CARES Act, none of the Governor's executive orders prohibit landlords from imposing late fees and/or penalties on tenants who are unable to pay their rent due to COVID-19 economic hardship. The workgroup finds that the imposition of late fees or penalties due to failure to pay rent on tenants already facing economic instability during the pandemic will further exacerbate the financial instability of tenants, thus jeopardizing the tenant's ability to maintain housing.

Recommendation 4: The workgroup recommends that the Governor issue an executive order making it explicit that a landlord may not impose late fees and/or penalties on tenants who are unable to pay rent due to COVID-19 loss of income. The workgroup recognizes and appreciates that certain landlord advocacy groups have encouraged their members not to impose certain late fees and/or penalties; however, the workgroup recommends that this policy be issued by an executive order to ensure equal protection for all Marylanders.

Finding 5: The State should support the right to legal counsel in eviction cases. MMHA has stated, and the workgroup agrees, that "the legal system can be confusing and stressful for litigants even without the occurrence of a global pandemic." The vast majority of tenants in eviction proceedings do not have counsel. In cities and states that have implemented a right to counsel for eviction cases, the number of evictions has dropped substantially. According to the latest study by Stout, based on an analysis of case information in Baltimore City, tenants who are represented can avoid disruptive displacement in 92% of cases. In addition, the right to counsel is estimated to save substantial funds (a potential savings to the State of over $18 million if instituted only in Baltimore City) over the long term, as it avoids future reliance on a whole host of social service programs. A right to counsel is supported by MMHA, the American Bar Association, the Maryland Access to Justice Commission, and others. Additionally, Attorney General Brian Frosh recently announced the creation of the Access to Justice COVID-19 Task Force that will make recommendations regarding the civil legal justice system, including a focus on housing and landlord-tenant issues. Therefore, the workgroup finds that the State should support the right to legal counsel in eviction cases, including failure to pay rent cases. To address this finding, the workgroup makes three recommendations.

Recommendation 5: The workgroup recommends the creation of a pilot program that will guarantee tenants and small landlords the right to publicly supported legal services. The pilot program should implement best practices based on the experience of cities and states that have right to counsel policies. The workgroup urges that all potential sources of funds be considered to support the creation and implementation of a pilot program, including federal funds under the CARES Act, CDBG funds, and Emergency Solutions Grants funds.

Recommendation 6: The workgroup recommends that, if the pilot program under Recommendation 5 is successful, the pilot program should be expanded to provide legal services to, at a minimum, all landlord-tenant cases.

Recommendation 7: Additionally, as an interim and supplementary measure, the workgroup recommends that a cadre of advocates should be recruited and trained to assist tenants with housing counseling, connect tenants with human services needs as requested, and help tenants navigate through the maze of legal proceedings. This program could be modeled after domestic violence advocate programs.

A member of the workgroup (Senator Cassilly) did not agree with Finding 5, Recommendation 5, and Recommendation 6. The member did not support the creation of a right to counsel in landlord-tenant matters, finding it unnecessary and requiring a funding stream that the State cannot afford given its many current needs.

Finding 6: The Judiciary should continue to take proactive steps to address the forthcoming increase in filings of failure to pay rent cases. After reviewing information from a wide range of housing experts, advocates, and interested parties, the workgroup finds that an onslaught of new failure to pay rent eviction filings will occur once the Judiciary's suspension order on failure to pay rent cases is lifted on August 31, 2020. Many of the tenants facing potential eviction will be rent-stressed for the first time and would have been able to pay rent had it not been for unemployment and underemployment due to COVID-19. The workgroup recommends that the Judiciary take proactive steps to address the forthcoming increase in filings of failure to pay rent cases. To address this finding, the workgroup makes two recommendations.

Recommendation 8: The workgroup recommends that the Judiciary expand its mediation services as a means of encouraging landlords and tenants to come to agreement on payment plans. To promote the equitable and prompt resolution of cases referred to mediation, the mediation process should focus on failure to pay rent cases that do not raise defenses to failure to pay rent or other housing concerns, including substandard housing.

Recommendation 9: The workgroup recommends that the Judiciary explore the possibility of creating a special, perhaps temporary, housing court staffed by mediators and judges trained in the complexities of housing law that can adeptly address the enormous caseload that is expected.

Finding 7: Unrestricted availability of eviction cases on Case Search is detrimental to renters. Executive Order Number 20-04-03-01, in part, prohibits the eviction of a tenant, "if the tenant can demonstrate to the court, through documentation or other objectively verifiable means, that the tenant suffered a Substantial Loss of Income" resulting from COVID-19. This order is an important tool in protecting Marylanders from eviction during this pandemic; however, even if a tenant successfully raises a substantial loss of income defense, the case record will remain viewable to the general public and may negatively impact the tenant's ability to obtain adequate housing in the future. The workgroup finds that there must be a balance between recognizing the public interest in maintaining access to public records and protecting against unjust barriers to housing for those who have sustained substantial loss of income due to COVID-19.

Recommendation 10: The workgroup recommends that the Judiciary investigate and propose how best to limit public access to failure to pay rent cases if the tenant suffered a substantial loss of income due to job loss, reduction in compensated hours of work, closure of place of employment, or the need to miss work to care for a home-bound school-age child during the pandemic.

Some members on the workgroup (Senator Cassilly and Senator West) opposed Recommendation 10 and cited two factors for their opposition. First, that Recommendation 10 is a departure from Maryland's current policy in favor of publicly available case records. In general, Maryland case records are open to the public, and public access is only prohibited for special and compelling reasons. Second, this recommendation was not the subject of comment by representatives of the State's landlords.

Finding 8: The consumer reports of tenants who sustained loss of income and were unable to pay their rent due to COVID-19 should not be negatively impacted. The failure to pay rent and the accumulation of and failure to pay late fees due to a loss of income during the pandemic may negatively impact consumer reports. Poor consumer reports may perpetuate a cycle of unstable housing during a national health emergency for many Marylanders. Although evictions do not appear on consumer reports, the related collection accounts or debts do. The workgroup finds that the consumer reports of tenants who sustained loss of income and were unable to pay their rent due to COVID-19 should not be negatively impacted.

Recommendation 11: The workgroup recommends that the congressional delegations from Maryland explore federal legislation that would protect tenants from receiving negative consumer reports caused by the pandemic, including altering preemption under the Fair Credit Reporting Act to provide states more leeway to protect tenants from negative consumer reports.

Finding 9: DHCD must continue to closely monitor and respond to issues raised by Maryland homeowners. As in rental housing, it is expected that when federal assistance is no longer available after July 25, 2020, individuals who are experiencing unemployment will have difficulty making mortgage payments. Many lenders and financial institutions have voluntarily agreed to provide a 90-day forbearance at the outset, an additional 90 days upon request, and deferrals on mortgages. At the time of this report, information presented to the workgroup presents that overall, lenders have been willing to negotiate forbearance with their borrowers. However, the workgroup finds that the COVID-19 pandemic and resulting economic crisis is an evolving issue that must be monitored closely to ensure that Marylanders remain housing stable. To address this finding, the workgroup recommends that DHCD take the actions listed below.

Recommendation 12: The workgroup recommends that DHCD:

- closely monitor mortgage issues;
- extend forbearance protections made available to mortgages that are covered by the CARES Act to those that are not;
- require lenders to attest to having tried loss mitigation efforts as an alternative to foreclosure; and
- enhance and publicize existing housing counseling programs to assist mortgage holders who will be at risk for default.

Conclusion

The need for Marylanders to have stable housing during the COVID-19 pandemic is crucial to Maryland's efforts in stopping the spread of the virus and protecting the health of Marylanders. The workgroup believes that implementing the recommendations contained in this report will both save lives and assist in Maryland's economic recovery efforts.