



Senate Bill 154: Landlord and Tenant – Eviction Action – Right to Counsel

Committee: Judicial Proceedings Committee

Date: January 28, 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.

SB 154 establishes free legal counsel for tenants during eviction proceedings, including the first appeal. To qualify for free legal counsel, tenants must be members of households with an income that is 50% or less of the state's median income. To accomplish its purpose, SB 154 establishes a coordinator position within the Office of the Attorney General to administer the Right to Counsel in Evictions Fund. This fund would finance legal representation in evictions and other related proceedings.

MMHA has publically supported a right to counsel program, **at public expense**, for all pro se litigants in eviction proceedings, including residents and small landlords. While MMHA supports an eviction right to counsel program, we cannot support SB 154 due to the following concerns.

I. Funding Mechanism

Landlords should not be required to pay for their tenants' attorneys. SB 154 notes that funding for the Right to Counsel in Evictions Fund may come from any source. Other bills before the General Assembly this session increase unrecoverable surcharges on eviction filings. Establishing a right to counsel funded by unrecoverable filing fees is nothing less than a tax targeted at housing providers designed to restrict and chill the industry's access to courts. This fundamentally unacceptable precedent must be addressed by prohibiting the use of filing fees imposed on landlords to fund the programs delineated within SB 154.

According to information from the District Court of Maryland, more than 98% of eviction filings are a direct response to unpaid rent. These failure to pay rent cases are summary in nature; they are not complex cases subject to the same time constraints and litigious issues found in other types of landlord-tenant cases. When the decision in an eviction case is predicated solely on a tenant's failure to pay rent, attorneys will have little to offer.

Over the past decade, the defendant appearance rate in landlord-tenant cases is 3.64%. As the task force established under SB 154 reviews data from the District Court, it will quickly conclude that the vast majority of landlord-tenant cases will be unaffected by an attorney's presence. Thus, the



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change sought in SB 154 can be accomplished with specifically delineated, limited funding directed at the 2% of eviction filings that are **not** related to a tenant's failure to pay rent.

II. Role of the Attorney General

SB 154 creates an apparent conflict of interest by placing responsibility for implementation of the right to counsel program, the appointment of a Task Force that monitors the program, and the choice of the Coordinator of the program solely under the authority of the Attorney General. Further, SB 154 invests the Attorney General with total control for overseeing the genesis of a project designed to recruit and coordinate attorneys to provide representation to indigent client across all of Maryland's 24 counties. Thus, it is concerning that this important matter is being placed solely within the confines of the administrative office of the Attorney general with no independent oversight by the General Assembly or the Governor.

When the General Assembly formed the Maryland Public Defender's Office to represent indigent criminal defendants it constructed the office to be independent of other administrative agencies. Further, a Board of Trustees was formed to review the administration of the Public Defender system and advise the Public Defender on its operation. The Board of Trustees coordinates the activities of Public Defender Regional Advisory Boards and consults on matters such as fees and the formation of panels of attorneys. Members of the Board of are appointed by the Governor with senate advice and consent, one member each is selected by the Senate President and House Speaker. Moreover, all members must be practicing attorneys-at-law.¹

As the General Assembly now contemplates the genesis of a "Civil Public Defender to support Maryland's most vulnerable citizens, it should be keenly cognizant of assuring independence of this powerful and important program.

III. Equal Task Force Representation

SB 154 establishes the Right to Counsel in Eviction Task Force, which consists of up to 15 members appointed by the Attorney General that may include:

- Representatives of the Maryland State Bar Association;
- Representatives of Tenant Advocacy Groups;
- Representatives of the Judiciary;
- Representatives of Community Groups; and
- Tenants and Other Interested Citizens.

Landlords, housing providers, and their representatives are conspicuously absent from the task force. Without equal representation from landlords on the task force, SB 154 fails to ensure that tenants and landlords have an opportunity to better communicate and improve the industry for all Maryland residents.

IV. Clarify the Purpose



The stated purpose of SB 154 is to provide a public right to counsel to defend against evictions, yet on page 4 lines 23-29, the purpose of the bill changes to establish that tenants will be provided with publicly funded attorneys who may bring civil actions against landlords. Moreover, on page 5, lines 7-14, the bill ensures a right to counsel when a landlord notifies a tenant that they will not renew a tenancy and when a designated organization determines that a proceeding on behalf of a covered individual should be initiated.

Plainly stated, SB 154 grants tenants a right to counsel when landlords choose not to renew a lease in order to sell a property or whenever an organization decides tenants should sue their landlords. The wide scope established by SB 154 will lead to unnecessary, protracted litigation that will disrupt the housing industry and further clog the court system.

On page 8, lines 9-10, the overly broad scope of the bill is further delineated. Specifically, SB 154 establishes that the Right to Counsel in Evictions Fund may be used to, “fully implement a civil right to legal representation in evictions *and other related proceedings in the state.*” To be clear, MMHA has supported an eviction right to counsel at public expense, but MMHA cannot support a program that exposes landlords to publicly funded civil actions. In its current posture, SB 154 exposes landlords to excessive and frivolous lawsuits that may be brought at public expense with simple affirmation from a designated organization. Funding these legislative mandates against property owners increases operating costs, which may lead to increased rent prices.

MMHA understands that the legal system can be difficult to navigate and supports a right to counsel program at public expense. However, SB 154 lacks independent oversight for the right to counsel program, fails to guarantee equal representation of landlords on the task force, exposes landlords to a broad scope of publicly funded lawsuits, and potentially requires landlords to fund attorneys for their tenants. For these reasons, MMHA respectfully requests an unfavorable report from the committee.

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