



Bill No: SB 154, Landlord and Tenant—Eviction Action—Right to Counsel

Committee: Judicial Proceedings

Date: 1/28/2021

The Apartment and Office Building Association of Metropolitan Washington (AOBA) represents members that own or manage more than 23 million square feet of commercial office space and 133,000 apartment rental units in Montgomery and Prince George’s Counties. AOBA has joined the rental housing industry in publicly supporting a right to counsel for tenants and small landlords, if right to counsel is funded at public expense. While AOBA supports establishment of a Right to Counsel program, SB 154 as drafted raises numerous concerns.

This bill establishes free legal counsel for tenants during eviction proceedings, including the first appeal. The free legal counsel extends to households with an income that is 50% or less of the state’s median income. SB 154 also 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.

The role of the Attorney General’s Office raises questions about independent oversight and governance. AOBA believes the bill creates a conflict of interest by making the Attorney General’s office responsible for governance of the Right to Counsel program and the Coordinator that oversees the program, appointing the head of the Taskforce that monitors the program, and sole oversight of the program while the Office also regulates the multifamily housing industry in its consumer protection role. Members believe that it is appropriate for a Right to Counsel Program to have independent oversight from the General Assembly or other state level actor. If contrasting this new Right to Counsel Program—which is akin to a public defender for civil matters—to the Maryland Public Defenders Office, we must note that the Public Defender’s Office is independent of other agencies. The General Assembly also entrusted a Board of Trustees to review the administration of the Public Defender system and advise on its operations. Further, members of the Board are appointed by the Governor with General Assembly advice and with one member each selected by the Senate President and House Speaker. The

structure of the Public Defender's office ensures the office's independence; AOBA is in favor of a similar independent structure for the Right to Counsel Program.

AOBA also notes that there is no housing industry representation on the Taskforce established in the bill. As outlined in SB 154, the taskforce comprised of up to 15 members appointed by the Attorney General 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. Housing providers are clearly left out of the process, but representation on the taskforce would be invaluable for facilitating communication and improvements of the eviction process as a whole—for both residents and housing providers. AOBA would support amendments to create a role for housing providers and/or industry representatives on the taskforce.

The Taskforce is charged with many responsibilities, including examining potential funding mechanisms. The bill currently states that the funding for the program is to come from the state budget generally, and notes that funding for the Right to Counsel in Evictions Fund may come from any source. AOBA reiterates its position that housing providers should not be required to pay for residents' attorneys. In Maryland, there is data to show that more than 98% of eviction filings are failure to pay rent actions. Thus, the legal action is solely based on a resident's action, for which there is no legal defense and the case is summary in nature. Attorneys may have little to offer, nonetheless AOBA believes it is a resident's right to have counsel. However, this Session there are several bills to increase unrecoverable surcharges on eviction filings. AOBA views establishing a Right to Counsel Program funded by unrecoverable filing fees as a tax on housing providers and a potential barrier to the industry's access to courts. This sets an unacceptable precedent which AOBA has long opposed. This could be addressed by prohibiting the use of filing fees to fund the Right to Counsel program outlined in SB 154.

As previously noted, the majority of eviction cases are for failure to pay rent and thus summary in nature. AOBA members believe the presence of lawyers in the 2% of eviction filings not related to non-payment of rent will be useful; but in the overwhelming majority of cases, lawyers will serve to slow down the eviction process and clog courts on cases for which—absent COVID-19-- there is no affirmative defense. The bill may also inadvertently increase the amount of lawsuits against housing providers as lines 7-14 on page 5 allows for the right to counsel when a housing provider chooses to terminate or not renew a tenancy-- as is their right under the lease. In the event of non-renewal because a resident breaches the lease through numerous noise complaints or violates the no-smoking addendum to the lease; in the event a housing provider wishes to sell the property and must terminate or not renew a tenancy, a designated organization may initiate a proceeding on behalf of the resident. It appears that this bill goes beyond merely establishing right to counsel for evictions and allows a designated organization to bring cases against housing providers as they deem fit. AOBA supports the right to counsel for eviction proceedings but takes issue with legislation that would create a cadre of publicly funded attorneys charged with bringing suit against housing providers.

AOBA understands that evictions greatly upset a household's stability and are often difficult for residents to navigate. Thus, a publicly funded Right to Counsel Program for eviction cases is appropriate and useful for Marylanders. However, AOBA cannot support a program that is not independent of the Attorney General's office; does not grant the industry representation on the taskforce; is funded on the backs of the rental housing industry and allows publicly funded attorneys to proactively sue housing providers.

For these reasons, AOBA asks that the bill be amended and would look forward to working with the Sponsor to address our stated concerns.

For further information contact Erin Bradley, AOBA Vice President of Government Affairs, at 301-904-0814 or ebradley@aoba-metro.org .