MARYLAND MULTI-HOUSING ASSOCIATION, INC.

Senate Bill 454, Real Property – Alterations in Actions for Repossession and Establishment of Eviction Diversion Program

Committee: Judicial Proceedings Committee
Date: February 9, 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.

Senate Bill 454 seeks to reduce the number of judgments entered in Failure to Pay Rent (FTPR) cases by establishing an Eviction Diversion Program (the Program) and mandating that the Chief Judge of the District Court establish the Program in some jurisdictions, while keeping it discretionary in others. The Bill places new requirements on housing providers to participate in the Program and to follow new procedures as well as provide a variety of new notices to residents as prerequisites to being able to avail themselves of their legal right to file Failure to Pay Rent cases to collect unpaid rent. The Bill, among other provisions, alters rules for getting adjournments or continuances and lengthens time periods for seeking and obtaining judgments and warrants of restitution, drastically altering failure to pay rent (FTPR) collection procedures established by this Legislature over the last 40 years, causing detriment to both housing providers and the residents they serve.

MMHA OPPOSES this Bill because, although it may be well intentioned, the Program described in the Bill is cumbersome, duplicative of many well-established and trusted mediation and alternative dispute resolution programs currently working in this space, ignores local laws governing current practices of housing providers and residents, establishes potentially unconstitutional barriers to the courts for litigants and, simply put, is completely unworkable.

I. Background

Maryland's Landlord -Tenant statute is found in Md Real Property Code Annotated, Section 8. The rules and procedures found in that Article were established through the recommendations of two Gubernatorial Landlord-Tenant Commissions composed of members of the Legislature, the Judiciary and stakeholder communities. Together those Commissions created a system of laws and procedures designed to balance and protect the interests of both Landlords and Tenants - i.e. providing safe and affordable rental housing to residents with the expectation that the landlord will receive timely compensation for having provided that service - which this Legislature has reviewed and approved for over 40 years. This balance has stood the test of time, however, SB 454, likely motivated by the recent unprecedented, yet temporary, circumstances presented by the Global Pandemic, proposes permanent, sweeping, significant and unnecessary changes to this carefully legislated statutory architecture.

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II. SB 454's Mandatory versus discretionary establishment of the Program based upon numbers of FTPR cases filed in a jurisdiction undermines statutory rights of litigants and threatens the public's confidence in the Courts

The statutory rights established by this Legislature and justice for all litigants, is not dependent on numbers of cases filed, nor should it. While it may seem elemental that jurisdictions which contain more units of residential rental housing are likely to have more FTPR filings, using the number of cases filed to determine where the Program is mandatory versus discretionary threatens the important need for uniform statewide judicial procedure and by doing so, the fundamental fairness that Maryland housing providers and their residents have come to expect from every jurisdiction of the Maryland District Court. Many housing providers have communities in multiple jurisdictions in the state. Under this Bill those providers will find themselves faced with different prerequisites to be able to file in court and treating their residents differently from jurisdiction to jurisdiction. This not only disrupts reasonable business activity, but it also unfairly exposes these providers to claims and lawsuits for differential treatment of their residents.

III. By establishing prerequisite procedures which must be completed before an FTPR case may be filed SB 454 needlessly upends the current FTPR process designed by this Legislature to create balanced protections for the rights of both residents and housing providers in failure to pay rent cases.

The Failure to Pay Rent process is designed to protect residents from "self-help" evictions which expose them to unmerited harassment and dispossession while balancing the housing provider's need to be paid rent in a timely manner or to regain possession of the property. The right of a resident to "pay and stay", known as the right of redemption, which can be used by the resident 3 or 4 times per year is a unique and valuable right established through this process. This Bill undermines this balance by barring a housing provider from filing an FTPR complaint until new, cumbersome, and time-consuming prerequisites are met including:

1. A detailed "Notice of Delinquency and Legal Rights" to be delivered to the resident by first class mail and posting on the resident's rental unit 10 days before the Landlord can begin SB 454's new process for collecting unpaid rent. See, pages 7-8

2. During this period, the resident is given time to respond to this notice, while as provided for on pages 9-10 the housing provider is mandated to make "affirmative, good faith efforts to resolve the claim". These efforts remain largely undefined in the Bill, but these include:
    i. Cooperating with providers of housing assistance, and
    ii. Negotiating a payment plan or other agreement with the Program (established by the court under this Bill) or Alternative Dispute Resolution Office.
    iii. Note that if a payment agreement is made between the resident and housing provider, the Bill indicates that a resident's material breach of a term of the agreement is deemed to be a failure of the resident allowing the housing provider to file its FTPR case, however, the Bill is silent regarding how long the provider must wait for this to occur before it can exercise that right.

iv. Moreover, on page 9, lines 24-26 "all efforts to cure late rent SHALL be completed before a complaint to repossess may be filed", again a situation left undefined, open-ended and fraught with potential liability for the housing provider.

3. When the housing provider files a FTPR complaint it must certify what the provider did to satisfy the prerequisites however, instead of carrying a rebuttable presumption of compliance these prerequisites become another element of the provider's case which must be proven to and determined by the Judge in every case. See, page 10, lines 8-25.

4. While these provisions and adding a 10-day prerequisite to the ability to file an FTPR case may sound immaterial, this addition when added to the existing timelines required by state and local laws makes the time to reach trial at least 15 days and in many jurisdictions as much as 30-45 days. Adding this procedure to the actual time to reach a judgment and obtain a writ extends the time from filing to redemption or repossession from an average of 40-50 days to over 60-120 days. This threatens the historic core of the FTPR statute and the balance this Legislature felt necessary to this process. (In this regard it is noteworthy that Maryland Courts have been closed to FTPR trials for almost a year due to COVID making it impossible for landlords to recover rent and leaving residents in dire uncertainty).

5. Once a case is filed the Bill imposes even more hurdles for both housing providers and residents.
   i. Any time after filing of the FTPR complaint a party may ask for a continuance to get an attorney, this will result in the resetting of the trial date, perhaps multiple times as the provision has no limitation on this request.
   ii. On pages 11-12 the Bill additionally requires that the housing provider and the resident attend a "status conference" which must occur within 10-15 days before the trial. There the Court can order the parties to mediation, settlement conferences or alternative dispute resolution, and the status conference can be continued for another 10-day period.
   The flaws in this provision are two-fold. First it presumes that all housing providers and all residents can schedule time for these matters. Most residents and many "Mom and Pop" housing providers have jobs or family obligations that make it difficult to attend protracted court proceedings. Finding time to attend a trial is often a hardship, attending a status conference in addition to trial is likely to be unworkable. Secondly, the Bill's reliance on the Courts and the litigants to have access to remote hearing platforms is misplaced since all of the larger filing Landlord /Tenant jurisdictions are still utilizing paper filing systems.
   iii. Moreover, the penalty for missing the status conference is draconian and risky. If the housing provider fails to attend the status conference the FTPR case is dismissed. This means that the housing provider, particularly those who do not have large holdings, will have to begin this onerous process again creating the risk that the housing provider will rely only on short term leases which do not promote housing stability, end the tenancy through some other legal means, such as a Breach of Proceeding, which does not afford the resident the right to redeem their tenancy as the FTPR

process does, or simply abandon its business and sell, reducing the much needed supply of affordable rental housing in this State.

6. Lastly, on page 15 lines 22-24 of the Bill creates a stay of execution of a judgment for repossession where it would "impede an act by a governmental or charitable organization to prevent homelessness of the resident or other occupant". This new provision in undefined, open ended, limitless and patently unfair to housing providers who cannot afford to wait to regain their property from a nonperforming resident.

For these reasons, MMHA opposes SB454's attempt to dismantle this Legislature's carefully crafted balance between the rights and remedies of housing providers and residents. MMHA requests an UNAVORABLE report on SB454.

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