

Testimony in Support of Senate Bill 454
**Alterations in Actions for Repossession and Establishment of Eviction
Diversion Program**

Before the Judicial Proceeding Committee: February 9, 2021

To: Hon. William C. Smith, Jr., Chair, and Members of the Judicial Proceedings Committee

Position: Favorable with Amendments

We strongly urge you to vote in favor of SB454 with proposed amendments. SB454 presents a system of actions and supports to promote housing stability and the payment of rent. Recognizing the impact of housing displacement on the tenant, homeowner, and community, this legislation strikes a balance between pre-filing access to services, notice, and negotiation, with involvement of the court for appropriate matters. This integrated approach can disrupt the impending eviction crisis and establish practices to address the already high numbers of failure to pay rent actions in the District Court for the State of Maryland.

Even prior to the COVID-19 pandemic, our state and nation faced an eviction crisis. In fiscal 2019 there were 669,788 landlord-tenant cases statewide accounting for more than 40 percent of all District Court filings.¹ While the closure of the courts has temporarily paused evictions, an unprecedented number of people will face housing insecurity and potential homelessness when the courts resume operations. This will create reverberating, destabilizing effects for families, communities, and the economy, and pose a significant threat to the public health and safety.

Early Intervention

The establishment of pre-filing actions connects landlords and tenants with eviction prevention resources early in the process. All too often landlords and tenants rely upon the triggering event of a court action to begin negotiation or seek financial supports. Promoting and incentivizing appropriate dispute resolution prior to filing has the combined impact of addressing conflicts earlier and reducing the already overburdened failure to pay rent dockets. Early intervention promotes housing stability, which helps to reduce homelessness and the other adverse consequences of evictions such as child separations, adult psychological stress,

¹ MARYLAND JUDICIARY, MARYLAND JUDICIARY 2019 STRATEGIC PLAN 55, <https://mdcourts.gov/sites/default/files/import/publications/annualreport/2019strategicplanupdate.pdf>

intimate partner violence, food insecurity, problems in school, and family separations.²

In addition to connecting landlords and tenants with services earlier, the inclusion of negotiation and alternative dispute resolution (ADR) before filing will reduce the failure to pay rent docket in the courts. Pre-filing dispute resolution options can be helpful for all parties involved. Judiciary data shows that half of the landlord-tenant cases in Charles County that were referred to a new mediation program ended in a settlement agreement.³ In Baltimore City, 81 percent of Rent Court cases that went to mediation resulted in a settlement. Of these settlements, 77 percent were full agreements, and the remainder were partial agreements.⁴ Each agreement reached before involvement of the District Court and without the finding of a writ for possession frees up valuable court resources as well the resources in sheriff's office associated with executing an eviction.

Uses Existing Infrastructure

This legislation expands the opportunities for conflict resolution in rent matters by using the existing ADR infrastructure to create numerous pathways to access mediation and other forms of dispute resolution both before and after filing an action in the District Court.

Maryland is a national and international leader in court-based alternative dispute resolution. Currently, mediation and settlement conferencing is available at all levels of the court system. Mediation is a voluntary, self-determinative, and confidential process in which participants discuss their mutual concerns and, if they both agree, negotiate a settlement agreement. The District Court of Maryland ADR Office relies upon its staff and a statewide roster of volunteer ADR practitioners and partnerships with ADR organizations to provide mediation and settlement conferences for civil cases on the day of trial or before the trial date. ADR for failure to pay rent cases is available on a limited basis in two jurisdictions and only on the day of trial.⁵ ADR for other landlord-tenant matters is provided on a broader basis. In all instances, services are provided at no charge to the litigants.

² U.S. DEP'T OF HOUSING & URBAN DEVELOPMENT, OFFICE OF POLICY DEVELOPMENT & RESEARCH, FAMILY OPTIONS STUDY, SHORT-TERM IMPACTS OF HOUSING AND SERVICES INTERVENTIONS FOR HOMELESS FAMILIES (July 2015), available at https://www.huduser.gov/portal/portal/sites/default/files/pdf/familyoptionsstudy_final.pdf.

³ MARYLAND JUDICIARY, MARYLAND JUDICIARY 2019 STRATEGIC PLAN 9, <https://mdcourts.gov/sites/default/files/import/publications/annualreport/2019strategicplanupdate.pdf>.

⁴ CENTER FOR DISPUTE RESOLUTION UNIVERSITY OF MARYLAND FRANCIS KING CAREY SCHOOL OF LAW, REPORT ON THE 2016 RENT COURT ADR PILOT FOR THE DISTRICT COURT OF MARYLAND IN BALTIMORE CITY 5 <https://www.courts.state.md.us/sites/default/files/import/district/adr/pdfs/rentcourtreport.pdf>.

⁵ ADR is available on the failure to pay rent dockets in Baltimore City and Howard County. See <https://www.mdcourts.gov/sites/default/files/import/district/adr/when.pdf>

The Mediation Clinic at Maryland Carey Law has provided pre-trial and day of trial mediation in the District Court for Baltimore City since the 1990's and currently partners with the District Court ADR Office. This legislation capitalizes on the existing infrastructure of partnerships with ADR organizations (such as the Mediation Clinic and Community Mediation Maryland) to provide ADR either *before* or *after* a case is filed in the District Court.

Recent studies demonstrate the broad impact of mediation in these disputes. A study of mediation in the District Court of Maryland show that participants appreciate the opportunity to devise agreements that better fit their circumstances.⁶ Pilot projects in Maryland and other states that use mediation as one tool in a broader system of supports and resources for tenants can reduce evictions and prevent homelessness.⁷

Landlords and Tenants Maintain Their Current Rights

SB454 encourages the parties to work out mutually agreeable solutions before seeking court intervention. If the parties do not reach a voluntary settlement in mediation, however, the parties retain all of their rights to proceed with a court hearing. In this way, the legislation strikes a balance between promoting housing stability and preventing the devastating impacts of evictions on families and communities, while protecting the legal rights of property owners and tenants.

Conclusion

SB454 represents a well-designed, integrated system needed to respond to the eviction crisis and prevent homelessness. It will help provide pre-filing supports to maintain housing stability and payment of rent. The inclusion of mediation and other conflict resolution processes as part of an integrated approach builds upon successful programs in Maryland and other states. For these reasons, we ask you to give SB454, with proposed amendments, a favorable report.

Attachment: Proposed language amendments to SB454.

This testimony is submitted on behalf of the Mediation Clinic at the University of Maryland Carey School of Law and not by the School of Law, University of Maryland, Baltimore, or the University of Maryland system.

⁶ See *Impact of Alternative Dispute Resolution on Responsibility, Empowerment, Resolution, and Satisfaction with the Judiciary: Comparison of Short- and Long-Term Outcomes in District Court Civil Cases*, Administrative Office of the Courts, Court Operations (February 2016).

⁷ See [Report on the 2016 Rent Court ADR Pilot for the District Court of Maryland in Baltimore City](#), Center for Dispute Resolution at Maryland Carey Law (2017); Eisenberg & Ebner, [Disrupting the Eviction Crisis with Conflict Resolution Strategies](#), 41 MITCHELL-HAMLIN J. PUB. POL'Y & PRAC. 125 (2020).

**Proposed Amendments to SB454:
Alterations in Actions for Repossession and Establishment of Eviction
Diversion Program**

We support the purpose of SB454 which presents a system of actions and supports, before and after the filing of a failure to pay rent action, in the District Court for the State of Maryland to promote housing stability and payment of rent. The amendments detailed below reinforce the intention of the legislation while aligning it with existing alternative dispute resolution practices in Maryland and the core tenets of mediation including self-determination, confidentiality, voluntariness, and impartiality.

Expand Provider of Pre-filing ADR Services to Align with Existing Practices

Page 8, line 21: (D)(V)(1) requires the “Notice of Delinquency and Legal Rights This is Not an Eviction Notice” to include a “request that the tenant apply for financial assistance from a service provider or that the tenant negotiate a payment plan through:

1. The District Court Alternative Dispute Resolution Office; or
2. The Eviction Diversion Program;

Amendment:

“Notice of Delinquency and Legal Rights This is Not an Eviction Notice” to include a “request that the tenant apply for financial assistance from a service provider or that the tenant negotiate a payment plan through:

1. The District Court Alternative Dispute Resolution Office *or designated ADR Organization*; or
2. The Eviction Diversion Program;

Add definition of ADR Organization to 4-501

4-501 (D) “ADR Organization” means an entity that is designated by the court to select individuals with the applicable qualifications to conduct non-fee-for-service ADR.

The District Court ADR Office provides valuable mediation and settlement conference services on the day of trial through its roster of volunteer ADR practitioners and mediation before the day of trial through partnerships with ADR Organizations. Title 17-103 of the Maryland Rules defines ADR Organization as “an entity, including an ADR unit of a court, that is designated by the court to select individuals with the applicable qualifications required by Rule 9-205 or the Rules in this Title to conduct a non-fee-for-service ADR ordered by the court.”

The District Court ADR Office provides services for matters under the jurisdiction of the District Court. Currently individuals contacting the District Court for mediation prior to filing a case are referred to an ADR Organization (one of 15 community mediation centers or Maryland Carey Law Clinical Law Program). The addition of

“or designated ADR Organization” (1) addresses any concerns regarding authority of the District Court ADR Office get involved in matters before they are filed, (2) ensures the ADR provider conducts mediation on a non-fee-for-service basis, and (3) provides the tenant and landlord with additional options for receiving ADR services.

Adjust Standard of Review of Pre-trial Settlement Agreements to Align with Contract Law

p. 12, row 7-11 (F)(IV): If the parties agree to resolve the landlord’s complaint without a trial on the merits, they shall submit an agreement to the judge who, if satisfied that the terms of the agreement are fair and equitable, shall dismiss the landlord’s complaint in accordance with Maryland Rule 3-506(B).

Amendment:

If the parties agree to resolve the landlord’s complaint without a trial on the merits, they shall submit an agreement to the judge who, if satisfied that the terms of the agreement are *not unconscionable or contrary to law*, shall dismiss the landlord’s complaint in accordance with Maryland Rule 3-506(B).

The language of Maryland Rule 3-506(B), dismissal upon stipulated terms, is silent regarding a standard of review. Unconscionable as defined by Maryland courts as an agreement with both procedural and substantive problems. Procedural unconscionability arises during the formation of a contract and is akin to fraud or duress that occurs in the formation of the agreement. It can include use of fine print and twisted, unclear language. The weaker party might not have had a choice about whether and how to enter into the contract, and is impeded in the bargaining process. *Freedman v. Comcast Corp.*, 190 Md. App. 179, 208 (2010). Substantive unconscionability deals with the terms of the contract. The contract has provisions that are contrary to public policy or are outright illegal, and are unreasonably harsh. *Id.* at 208-09. These contracts are not only lopsided and favor the more powerful party, but they unreasonably favor that party. *Id.*

“Fair and equitable” is not explicitly defined as “not unconscionable” in Maryland law, but the terms are largely synonymous. An agreement must be “fair and equitable in procurement and result.” *Frey v. Frey*, 298 Md. 552, 563 (1984). These two prongs – procurement and result – are akin to the two prongs of an unconscionable contract – unfair in process and unfair in substance. Although the terms fair and equitable have a legal definition as interpreted by Maryland courts, the terms have a colloquial meaning to self-represented litigants.

The substitution of “not unconscionable or contrary to law” maintains the court’s interest in protecting the integrity of settlement agreements while maintaining deference to the negotiated terms of the parties. Using “not unconscionable or

contrary to law” rather than “fair and equitable” would provide the court with a clearer and better-established standard.

This is submitted on behalf of the Mediation Clinic at the University of Maryland Carey School of Law and not on behalf of the School of Law; the University of Maryland, Baltimore; or the University of Maryland System.