

## House Bill 31

### Courts – Surcharges and Payment to Special Funds – Prohibited Lease Provisions



Before the Senate Judicial Proceedings Committee, Mar. 30, 2021

Position: FAVORABLE WITH AMENDMENTS

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Renters United Maryland (RUM) is a statewide coalition of renters, organizers, and advocates for safe, stable housing. We stand on the principle that housing is a human right that is critical to an individual's quality of life, the health of families, and the prosperity of communities.

HB 31 raises the filing surcharge on actions for failure to pay rent and other civil actions. **The members of RUM listed below urge a favorable with amendments report on HB 31. However, if the bill is not amended to remove the fee pass-through to tenants, then Renters United Maryland opposes the bill.**

HB 31 was amended in the House adding a provision that allows the Court and/or Landlord to pass on the increased failure to pay rent surcharge to the tenant after "THE FIRST THREE SURCHARGES ASSESSED IN A YEAR" (page 4, line 4; page 5, line 14). Renters United Maryland strongly opposes this amendment and opposes the bill if this provision is not struck.

1. **By allowing a fee pass-through, tenants who are struggling the most will face higher fees to avoid eviction and more instability** – especially now in the middle of a pandemic when 200,000 families are facing eviction. This defeats the purpose of the bill which is to disincentivize serial eviction filing and increase housing stability.
2. **Tenants still have an incentive to pay the rent timely because landlords can still assess a 5% late fee and court filing fee** – just not this increased surcharge.
3. **If a landlord truly wants to evict a tenant who is chronically late, then after 3 judgments the landlord can foreclose on the right to redeem (e.g., no "pay and stay")**. There is no need for the landlord to continue seeking judgments and then passing on this increased surcharge.
4. **A provision that allows landlords to pass on the fee to tenants in some circumstances but not others would be almost impossible for tenants and their attorneys to enforce.**

Additionally, HB 31 as amended, does not provide the significant relief proposed in SB 530/HB729. HB 31 should be amended to reflect SB 530 in the following ways:

- A. **Raise the filing surcharge to \$120 to remove the State subsidy for the serial filing of eviction actions.** SB 530 proposed raising the surcharge to "no less than \$120," which would place Maryland closer to the average fee in other jurisdictions.
- B. **Extend the increased surcharge to all eviction actions, including tenant holding over or breach of lease evictions.** Without increasing the fee for all eviction actions – not just failure to pay rent – landlords will have an incentive to file other types of eviction cases, as they are doing so right now with an 85% increase in tenant-holding-over actions compared to last year in order to avoid pandemic protections.

**C. Prohibit pass-through of the increased surcharge to the tenant as described above.**

Finally, RUM supports an allocation of increased surcharge revenue to 1) MLSC and 2) the Right to Counsel Special Fund. Both MLSC and Renters United Maryland support dividing the revenue between MLSC and the Right to Counsel Special Fund. The right to counsel is a separate program from MLSC (although it will be administered by MLSC) and should have a separate allocation to accomplish its goals. Otherwise, the General Assembly would be passing a bill promising a right to counsel in eviction cases and will have missed a significant opportunity to pay for implementing the right. **RUM proposes amending HB 31 to remove the allocation of revenue to the Rental Assistance Special Fund.** The State of Maryland has received or will receive nearly \$800M in rental assistance funds related to COVID-19. The COVID relief bill signed by former President Trump in December 2020 allocated \$402M to Maryland for purposes of rental assistance, i.e., paying back due rent and utilities. These funds must be spent by Sept. 30, 2022. The recently signed American Recovery Plan Act provides an estimated \$318M to Maryland for rental assistance. These funds must be spent by Sept. 30, 2025. This is in addition to over \$50M in CARES Act funding allocated to Maryland and local jurisdictions that is being used now for rental assistance. [According to a needs' analysis by Stout, Risius Ross based on census data, this is more than sufficient to cover any need for rental assistance in the near term for MD.](#)

**In summary, RUM supports the following amendments:**

- A. Striking the provision that allows for the court/landlord to pass on the increased surcharge to tenants after three assessments** (page 4, line 4; page 5, lines 14-15);
- B. Increasing the eviction case surcharge to \$120;**
- C. Extending the surcharge to all eviction cases, not just failure to pay rent;**
- D. Revenue from the surcharge should be divided between 1) MLSC and 2) the Right to Counsel Special Fund.**

We have attached proposed amendments as well as our testimony on SB 530 that provides the substantive policy rationale for supporting this legislation.

**The following members of Renters United Maryland urge the Committee to issue a report that is Favorable with Amendments**

Public Justice Center	Homeless Persons Rep. Project	CASA De Maryland
Jews United for Justice	Santoni, Vocci & Ortega, LLC	Md. Ctr. on Economic Policy
Md. Legislative Coalition	Right to Housing Alliance	Our Revolution, MD
Md. Access to Justice Commission	Communities United	

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## Renters United Maryland Amendments to HB 31 before Judicial Proceedings Committee

1. Strike page 3, line 14 through page 4, line 4 and insert the following:
 

“(c) (1) The filing fees and costs in a civil case are those prescribed by law subject to modification by law, rule, or administrative regulation. “(2) The Chief Judge of the District Court shall assess a surcharge that: (i) 1. May not be [more than: 1. \$8 per summary ejectment case] LESS THAN \$120 PER CASE FOR SUMMARY EJECTMENT, TENANT HOLDING OVER, OR BREACH OF LEASE THAT SEEKS A JUDGMENT FOR POSSESSION OF RESIDENTIAL PROPERTY AGAINST A RESIDENTIAL TENANT; and 2. MAY NOT BE MORE THAN \$18 per case for all other civil cases; [and] (ii) IF ASSESSED UNDER ITEM (I)1 OF THIS PARAGRAPH, SHALL BE ASSESSED AGAINST A LANDLORD AND MAY NOT BE AWARDED OR ASSIGNED BY THE DISTRICT COURT AS A FEE OR COST AGAINST A RESIDENTIAL TENANT; AND (III) Shall be deposited AS FOLLOWS: 1. \$60 INTO THE RIGHT TO COUNSEL IN EVICTIONS SPECIAL FUND; AND 2. \$60 into the Maryland Legal Services Corporation Fund established under § 11-402 of the Human Services Article. (3) (i) In addition to the surcharge assessed under paragraph (2) of this subsection, the Chief Judge of the District Court shall assess a surcharge that may not be more than \$10 per case for the following cases filed in Baltimore City: 1. Summary ejectment; 2. Tenant holding over; 3. Breach of lease; and 4. Warrant of restitution. (ii) The revenue generated from the surcharge on filing fees collected by the District Court in Baltimore City under subparagraph (i) of this paragraph shall be: 1. Remitted quarterly to the Baltimore City Director of Finance; and 2. Used to fund the enhancement of sheriff benefits and the increase in sheriff personnel to enhance the service of domestic violence orders. (4) In addition to the surcharge assessed under paragraphs (2) and (3) of this subsection, the Chief Judge of the District Court shall assess a surcharge that: (i) May not be more than: 1. \$3 per summary ejectment case; and 2. \$8 per case for all other civil cases; and (ii) Shall be deposited into the Circuit Court Real Property Records Improvement Fund established under § 13-602 of this article. (5) The Court of Appeals may provide by rule for waiver of prepayment of filing fees and other costs in cases of indigency.”
2. On page 5, strike lines 8-16 and insert the following:
 

“(d) A landlord may not use a lease or form of lease containing any provision that: (7) Is against public policy and void pursuant to § 8-105 of this title; [or] (8) Permits a landlord to commence an eviction proceeding or issue a notice to quit solely as retaliation against any tenant for planning, organizing, or joining a tenant organization with the purpose of negotiating collectively with the landlord; OR (9) PROVIDES THAT A TENANT IS RESPONSIBLE FOR, OR REQUIRES A TENANT TO AGREE TO BE RESPONSIBLE FOR, PAYMENT OF A FILING SURCHARGE ASSESSED AGAINST THE LANDLORD BY THE DISTRICT COURT UNDER § 7-301(C)(2)(I)1 OF THE COURTS ARTICLE.”
3. On page 6, strike lines 20 through page 7, line 33, and insert the following:
 

“(a) Whenever the tenant or tenants fail to pay the rent when due and payable, it shall be lawful for the landlord to have again and repossess the premises. (b) (1) Whenever any landlord shall desire to repossess any premises to which the landlord is entitled under the provisions of subsection (a) of this section, the landlord or the landlord’s duly qualified

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agent or attorney shall file the landlord's written complaint under oath or affirmation, in the District Court of the county wherein the property is situated: (i) Describing in general terms the property sought to be repossessed; (ii) Setting forth the name of each tenant to whom the property is rented or any assignee or subtenant; (iii) Stating the amount of rent and any late fees due and unpaid, less the amount of any utility bills, fees, or security deposits paid by a tenant under § 7-309 of the Public Utilities Article; (iv) Requesting to repossess the premises and, if requested by the landlord, a judgment for the amount of rent due, costs, EXCLUDING ANY SURCHARGE ASSESSED AGAINST THE LANDLORD UNDER § 7-301(C)(2)(I)1 OF THE COURTS ARTICLE, and any late fees, less the amount of any utility bills, fees, or security deposits paid by a tenant under § 7-309 of the Public Utilities Article; (v) If applicable, stating that, to the best of the landlord's knowledge, the tenant is deceased, intestate, and without next of kin; and (vi) If the property to be repossessed is an affected property as defined in § 6-801 of the Environment Article, stating that the landlord has registered the affected property as required under § 6-811 of the Environment Article and renewed the registration as required under § 6-812 of the Environment Article and:

1. A. If the current tenant moved into the property on or after February 24, 1996, stating the inspection certificate number for the inspection conducted for the current tenancy as required under § 6-815(c) of the Environment Article; or B. On or after February 24, 2006, stating the inspection certificate number for the inspection conducted for the current tenancy as required under § 6-815(c), § 6-817(b), or § 6-819(f) of the Environment Article; or
2. Stating that the owner is unable to provide an inspection certificate number because:
  - A. The owner has requested that the tenant allow the owner 36 access to the property to perform the work required under Title 6, Subtitle 8 of the Environmental Article;
  - B. The owner has offered to relocate the tenant in order to allow the owner to perform work if the work will disturb the paint on the interior surfaces of the property and to pay the reasonable expenses the tenant would incur directly related to the relocation; and
  - C. The tenant has refused to allow access to the owner or refused to vacate the property in order for the owner to perform the required work."



**Senate Bill 530**  
**Landlord and Tenant – Eviction Actions – Filing Surcharge and**  
**Prohibited Lease Provisions**  
 Before the Senate Judiciary Proceedings Committee, Feb. 26, 2021

Position: FAVORABLE

**Renters United Maryland (RUM) is a statewide coalition of renters, organizers, and advocates for safe, stable housing. We stand on the principle that housing is a human right that is critical to an individual’s quality of life, the health of families, and the prosperity of communities. The following members of Renters United Maryland urge a FAVORABLE report on SB 530:**

Public Justice Center	Homeless Persons Rep. Project	CASA De Maryland
Mont. County Renters’ Alliance	Santoni, Vocci & Ortega, LLC	Eva Rosen, Ph.D., Georgetown Univ.
Catholic Charities	Right to Housing Alliance	Ches. Physicians for Social Respons.
Strong Future Maryland	Health Care for the Homeless	Md. Access to Justice Commission
Md. Legislative Coalition	Communities United	Md. Ctr. on Economic Policy
Our Revolution, MD	Beyond the Boundaries	Civ. Advoc. Clinic, Univ. of Baltimore
Jews United for Justice		

**Housing Court must be about Housing Justice – not the frontline of landlord debt collection.** Today in Maryland the opposite is true. Over 660,000 eviction complaints are filed each year (pre-pandemic) with only approximately 730,000 renter households in the state.

**Why? Because the General Assembly has given landlords cheap, easy access to a state-financed debt collection system called “rent court” to obtain rent/repossession.** According to the Attorney General, other states charge an average of \$122 per filing for eviction; Maryland charges \$15 per filing – one of the lowest in the country. Service of process costs only \$5 for first-class mailing and posting to the leased property (“nail and mail” service). Most other states require landlords to send a pre-filing notice to the tenant: “Pay \$xx within 10 days or we will file a complaint.” Maryland does not.

**One part of the solution: SB 530 removes the incentive for landlords to file for eviction each month on the 6th if the tenant is only one day late with the rent.** [Eighty-four percent](#) of Baltimore City eviction actions are filed with only one month’s rent due. Under SB 530, landlords will be incentivized to send a notice to the tenant first, reminding the tenant to pay. Landlords will have an incentive to work out a payment plan or even make repairs to the roof so that the tenant will pay the rent and landlords will not need to file a more expensive eviction action. Raising the surcharge was a key recommendation of the Attorney General’s Task Force that produced [Confronting the COVID-19 Access to Justice Crisis](#).

**SB 530 must retain strong protections against landlords passing on these surcharges to the very tenants who are desperately trying to avoid eviction.** SB 530 does that by stating that the court may

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not pass on the surcharge to a tenant in an eviction action, and the landlord may not pass on the surcharge to a tenant in a lease provision. The bill also provides a remedy to the tenant if the landlord does so. There are a number of provisions in Maryland law that stop creditors from passing on certain fees to debtors including some mortgagee inspection, escrow, and servicing fees. *See, e.g.*, Md. Code Ann., Com. Law 12-121(b) and 12-109.2. The benefits of a uniquely swift summary ejectment/collection process accrue to the landlord, and so this additional surcharge should stay with the landlord.

**Leaving the assessment of the surcharge to “judicial discretion” as some landlords have requested only reinforces the status quo in which tenants almost always pay.** “Judicial discretion” is what happens now. In all default judgments or judgments in favor of the landlord, the Court may award court costs against the tenant right now, and the Court routinely does so. The assessment of costs, while already discretionary under Real. Prop. § 8-401, is virtually automatic in practice. Even if the case does not go to trial – perhaps because the tenant has a defense and the landlord voluntarily dismisses the case – the landlord still assesses the court costs against the tenant via a lease provision allowing them to do so. “Judicial discretion” means, in practice, that the tenant almost always pays.<sup>1</sup> It is unconscionable for landlords to pass on any additional fee or charge directly to tenants already most at risk of eviction.

**Serial complaint filing also causes tenants to fall further and further in debt. Right now, landlords often file on the 6<sup>th</sup> of each month and add additional fees to the ledger thereby digging a deeper hole -- even if the tenant only owes \$300 or is one day behind.** Under the current regime, even if the tenant is only one day late or only owes \$300, the landlord adds to the tenant’s ledger a 1) 5% late fee, 2) court filing fee of \$20 to \$30, and 3) often an “agent fee” (a fee to cover additional, purported administrative costs). These additional fees make it even hard for tenants to catch up. Landlords will still maintain their 5% late fee, but SB 530 will provide an incentive for the landlord to send a notice first, work out a payment plan, or fix a habitability issue before filing for eviction.

**Serial complaint filing is a significant problem for tenants who want to defend their eviction cases. If a renter has a defense to the eviction complaint, they must take off work, find alternative childcare, rearrange medical appointments and show up at court often with as little as 2 days’ notice!** Contrary to assertions by Md. Multi Housing Assoc., renters have many defenses in these cases. In one 2016 survey of tenants who were at court, 80% had a defense. [Sixty-eight percent of tenants had a defense based on uninhabitable conditions](#) in the property (but only 8% of tenants were able to successfully raise the defense *pro se*). Other non-habitability-related defenses include that the landlord lacks a license/lead registration; accounting errors in the ledger; seeking excessive fees and non-rent charges; and wrongfully trying to foreclose the right to redeem.

**Landlords are quick to blame the tenant’s “right of redemption” in Maryland for the high filing rate, but a comparison to D.C. reveals that this is misleading.** The right of redemption, also known as the

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<sup>1</sup> There is one exception: In the approximately 2,600 cases (2,602 in FY 2019) involving rent escrow each year, if the court finds in favor of the tenant, the court will likely not award the landlord costs.

right to “pay and stay,” means that the tenant can pay off a rent judgment anytime before the eviction for three judgments in a 12-month period. On the 4th judgment (5th in Balt. City), the landlord can foreclose that right. *Maryland has an eviction complaint filing rate of 2.35 cases per cost-burdened renter household (2019 ACS & Judiciary data). D.C. has an eviction complaint filing rate of 0.54 cases per cost-burdened household (2018-29 DC Court & ACS data).* D.C. has a right to redeem just like Maryland. So why the difference in filing rate? D.C. reduces the easy access of landlords to filing and litigating by requiring a pre-filing notice and allocating almost \$5 million/year to representation for tenants. To further reduce the filing of eviction complaints, D.C. is considering raising the cost of filing to \$100. **D.C. has recognized that by removing the special access that landlords receive to an incredibly cheap, low-entry-barrier eviction process, the district can reduce serial filings and create a fairer system for all.**

**The disparate impact of the eviction crisis on Black households cannot be overstated: [According to State DHCD 35.5% of Black renters in Maryland are facing eviction compared to 13.9% of White renters](#).** The well-documented systemic and institutionalized racism in housing, income, wealth, and so many other markers of human thriving have been exacerbated by this pandemic. The question is whether the General Assembly will have the courage to act and address the nature of the eviction process driving the crisis and resulting disparate impact on Black and brown communities.

Nothing is more dehumanizing in our civil legal system than the current “cattle call” approach to failure-to-pay-rent eviction cases. Raising the filing surcharge is a critical component of reducing the number of eviction cases, funding a right to counsel in eviction cases, and restoring the court as a place of housing justice instead of a cheap, easy way for landlords to quickly collect alleged debts.

**The RUM Members listed above urge the Committee to issue a FAVORABLE report on SB 530.**