



SB454

A Measure to Reduce Unnecessary Evictions in a Time of Crisis

Position: Favorable with Amendments

Judiciary

Community Mediation Maryland

February 9, 2021

We strongly urge you to vote in favor of SB454 with the proposed amendments (see attached).

Community Mediation Maryland (CMM) supports 15 community mediation centers located throughout the state. CMM provides training, technical assistance, and the development of partnerships with statewide agencies and organizations.

Community mediation centers throughout the state provide mediation at no charge and at a time and place convenient for the participants. Mediation gives people a chance to speak, to be heard, and to hear each other. Mediation ensures that participants make their own decisions and develop long-term solutions that meet the needs of everyone involved. Mediation is confidential and voluntary. Mediators are neutral parties in the mediation and do not give advice.

Mediation centers receive landlord/tenant mediation referrals from the District Court, through the self-help center or individuals can request mediation directly through the center. Use of mediation early in the process can prevent the situation from escalating, requiring court intervention and keeps families in their homes. In mediation, participants are able to work collaboratively to develop solutions that address the conflict and explore the underlying issues resulting in a long-term plan. Over 90% of mediation participants reported they would recommend mediation to others in conflict.

As community-based providers, we see the positive impact of mediation by bringing people together to work through their challenges in a collaborative process, resolving the underlying issues and developing solutions that work for everyone.

Research shows that mediation works.

The Maryland Judiciary Statewide Evaluation of Alternative Dispute Resolution research study included an analysis of the long-term costs to court and the probability of returning to court.

This long-term analysis indicated that cases that reached an agreement in ADR are less likely to return to court for enforcement action in the 12 months following the intervention compared to cases that did not get an agreement in ADR (including those that reached an agreement on their own, ADR cases that did not get an agreement, and cases that got a verdict).

Reaching an agreement in ADR decreases the predicted probability of returning to court for an enforcement action. Cases that reached agreement in mediation are half as likely (21%) to return to court for enforcement actions compared to cases that reached a verdict (46%).

The analysis finds the following in terms of the long-term impact of ADR on the self-reported outcomes we measure. Participants who went through ADR are more likely than those who went through the court process to report:

- 1) An improved relationship and attitude toward the other participant measured from before the intervention (the ADR session or trial) to 3-6 months later.
- 2) That the outcome was working, satisfaction with the outcome, and satisfaction with the judicial system 3-6 months after the intervention.

Community Mediation Maryland strongly supports this bill with the proposed amendments.

To see the complete summary of outcomes visit <https://mdmediation.org/wp-content/uploads/2020/11/Impact-of-District-Court-DOT-ADR-Summary.pdf> or to see the detailed study: <https://mdmediation.org/wp-content/uploads/2019/09/districtcourtcomparisonfullreport.pdf>

Attachment:
Proposed amendments

Proposed Amendments to HB52/SB454: Alterations in Actions for Repossession and Establishment of Eviction Diversion Program

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.