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HB 52 - Real Property – Alterations in Actions for Repossession and Establishment of Eviction Diversion Program

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Position: SUPPORT

The Public Justice Center is a not-for-profit, civil legal aid organization that serves over 700 renters each year throughout Maryland. Our attorneys work at the frontline of eviction defense in the district court’s “Failure to Pay Rent” eviction dockets, known colloquially as “Rent Court,” in which well over 600,000 eviction cases are processed annually. In FY 2019, with just under 670,000 eviction actions, there were 5 eviction cases filed for every one of Maryland’s cost-burdened households – meaning, those that pay 35 percent or more of income toward housing costs. These Marylanders face not only the challenge of unaffordable housing, but also a court system that, by design, constrains their opportunity to be heard. These constraints are not merely anecdotal. They have been studied and reported on, by [Public Justice Center](#) (2015), [Maryland Legal Aid](#) (2016), and [The Baltimore Sun](#) (2017). HB 52 follows the data. It also follows from 5 consecutive years of proposed legislation and two different “summer study” efforts (2016, 2019) focused on reform of “Rent Court.” The need for reform can be no clearer, amid the COVID-19 pandemic, which put [14 million American households](#) at risk of eviction – including an estimated [104,000 to 204,000 Maryland households](#) – at the end of 2020.

HB 52 sets forth **3 changes** to the “Failure to Pay Rent” (“FTPR”) process:

- 1) Establishes a 10-day notice period before a FTPR eviction can be filed and requires landlords to attempt to secure rental assistance and/or a mediated repayment plan as a precondition to filing the FTPR eviction case.
- 2) Creates an Eviction Diversion Program and 2-track court process:
 - First, in a status conference, before any trial date, litigants engage an Eviction Diversion Program (involving mediation, legal assistance, and rental assistance).
 - Then, if there is no alternative resolution and a trial is needed, the tenant has a formal time in the status conference to assert their defense and request documents that will be used against them at trial.

- Judges determine whether there will be a second court proceeding, based on whether the tenant’s defense is “meritorious.”
- Many cases will resolve without a second court proceeding. HB 52 allows judges to enter default judgment if a tenant fails to appear at the status conference.

3) Provides judges discretionary power to stay evictions, in 2 emergency circumstances:

- Critical medical conditions: the tenant shows evidence by motion that eviction will threaten their health or life (currently limited to 15 days if requested at trial)
- Homelessness: the tenant shows evidence by motion that eviction would impede imminent efforts by a government agency or charity to assist with re-housing and avoiding certain homelessness.

“Notice of Delinquency and Legal Rights” & 10-day notice period [p. 7-10]

In HB 52, Real Property Art. § 8-401 (d) establishes a pre-filing notice period and requires landlords to take three actions before they can file a FTPR eviction action: (1) send a “Notice of Delinquency and Legal Rights,” (2) complete the process of securing rental assistance, and (3) if rental assistance is unavailable, then complete a repayment plan negotiated via a neutral third party.

- Maryland and just 7 other states allow property owners to initiate a possessory action for non-payment of without any prior written notice to tenants. In those other jurisdictions, the pre-filing notice serves as notice of termination of the tenancy. This bill uses a pre-filing notice to accomplish a different objective, namely, to ensure that landlords and tenants engage with each other intentionally to avoid litigation – through rental assistance programs or negotiation of a payment plan. These steps prevent overreliance on the court’s FTPR process.
- The 10-day notice to the tenant specifies the amount of arrears, provides information about rental assistance and legal services, and requests the tenant’s participation in mediated negotiation of a payment plan and joint efforts to obtain rental assistance. The landlord is obligated for 10 days after delivery of the notice to take **affirmative, good faith efforts** to reach a resolution.
- What makes these efforts “complete” for the purpose of filing an FTPR action?
 - If a tenant fails to respond to the Notice within 10 days of delivery
 - If the tenant fails or refuses to take steps to complete a rental assistance process or negotiation of a repayment plan
 - If the tenant materially breaches the repayment plan

Sec. 8-401(d)(5) sets out the elements of a certification statement about completion of these efforts. The certification statement would be incorporated into the District Court’s form complaint for FTPR actions.

Eviction Diversion Program [p. 2-4]

HB 52 also creates new provision under the Courts & Judicial Proceedings Article for the establishment of an Eviction Diversion Program "to reduce incidence of judgments for repossession of residential property and to promote continuity of housing." Section 4-501 defines the range of "service providers" included in the Program – social work, counseling, financial assistance, alternative dispute resolution, and legal aid.

- The district courts are not required to provide these services. Rather, such services would be permitted "as appropriate," meaning, as service providers themselves make them available.
- Importantly, under § 4-503, the District Court's statutory obligation is to *facilitate* the provision of available services – not to fund it or to staff it.
- Only certain local courts would be required to establish an Eviction Diversion Program – those in which eviction filings in FY 19 totaled 10,000 or higher:

Anne Arundel County: 43,627
 Baltimore City: 135,207
 Baltimore County: 184,130
 Harford County: 24,440
 Howard County: 15,632
 Montgomery County: 48,922
 Prince George's County: 156,457
 Wicomico County: 11,521

The Eviction Diversion Program in HB 52 recasts "Rent Court" as a gateway to programs that effectively help to prevent entry of judgments for repossession. The District Court's responsibility under HB 52 is to effectively partner with service providers so that on-site screening for financial assistance, ADR, legal assistance and representation, etc., is available. This partnership already has seeds in Volunteer Lawyer of the Day programs in Baltimore City and Prince George's County and a Navigator Pilot Program in Baltimore City.

Status Conference and Trial [p.11-13]

HB 52 puts the adjudication phase of FTPR eviction actions into two tracks – and does so for two reasons: (1) so that the litigants' first interaction with the court is Eviction Diversion, rather than a trial; and (2) so that tenants with a viable defense will be effectively heard and then prepared for trial.

This bill proposes a status conference as the first proceeding. As with the current FTPR process, if a tenant fails to appear at this first proceeding, the court may enter a default judgment for possession; and if the landlord fails to appear, the court may dismiss the action. Many actions will proceed onto the "second track" because of alternative resolutions or simply because the tenant has already made payment of rent between the filing date and status conference date. The status conference would occur between 10 and 15 days after the filing of the complaint.

This preliminary hearing affords litigants a "recess" to allow for screening by eviction diversion services and additionally offers judges a juncture by which to hear from the parties about potential for a mediated

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resolution. The judge may decide whether to order the parties to undertake mediation or settlement conference. The parties could reach a resolution (for example, a stipulated dismissal), or they could move onto the trial phase. This approach is modeled after New York City's Housing Court resolution/trial process.

At the status conference, when no alternative resolution can be reached, the tenant must be heard on any defense or counterclaim. If the judge is satisfied that the tenant has raised a meritorious defense/counterclaim, the judge schedules a trial on a later date, not more than 10 days later unless the parties agree to a longer continuance, and may order parties to exchange documents that will be used as evidence at trial. Otherwise, the court may schedule a trial in the ordinary course, including a same-day trial.

These provisions (1) for ordering a referral to mediation and (2) for hearing the tenant's defense before trial may appear unnecessary at first glance. Yet, the current FTPR process so lacks the ordinary features of adversarial civil proceedings, these additional provisions have become absolutely necessary to clarify in law.

"Rent Court" currently proceeds without discovery and, because of the rapid pre-judgment timeline, defendants lack opportunity to answer a complaint, file pre-trial motions, or subpoena witnesses and records. Among defendants who contest FTPR actions, few understand what defenses apply to their case or how to raise an applicable defense – until they are at court and engaging with civil legal services. Indeed, in Public Justice Center's research, we found that among nearly 300 tenants who appeared at "Rent Court,"

Nearly three in four respondents (73%) reported that they did not know they could raise a defense based on serious housing defects. More than half (57%) of respondents reported that they did not know they could ask the judge, at trial, to allow payment of rent into a court escrow account. Eighty-six percent responded that they were unaware of the right to rent abatement.¹

Among nearly 300 surveyed defendants, Public Justice Center found that 168 of them had a prima facie legal defense to their FTPR eviction action based on their landlords' failure to redress severe housing defects. However, "[i]nstead of bringing forward 168 prima facie implied warranty or rent escrow defenses, renters were largely diverted to other outcomes. Barely a third of them attempted their available defenses, and only 13 succeeded – yielding an abysmal eight-percent success rate."²

The 2-track FTPR process proposed in HB 52 above would formalize a structure in which defendants can obtain legal information, brief advice, and/or legal representation, which can then be applied to mediation and to trial. In contrast to judicial preference or unpredictable docket management, this structure provides a reliable and standardized process by which to be heard before the court.

HB 52's early interventions and due process promote housing stability and effective use of public funding for emergency relief and homelessness prevention

¹ Public Justice Center, *Justice Diverted: How Renters Are Processed in Baltimore City Rent Court* 33 (2015), <https://abell.org/sites/default/files/files/cd-justicediverted216.pdf>.

² *Id.* at 36.

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This bill would ensure that Maryland's public policy is to put rental assistance funds and other eviction prevention funds at higher priority than the "Rent Court" process. HB 52 incentivizes landlord's resort to "upstream" resolutions (financial assistance, mediated payment plans) before they bring a lawsuit. It also boosts the potential for alternative resolutions by establishing a formal pre-trial structure within the FTPR process for services providers to engage litigants and for judges to order alternative dispute resolution if deemed appropriate.

The procedural changes to the FTPR eviction process are long-needed and have been opposed by the multi-family and real estate industry because those special interest groups prioritize rapid adjudication over any other policy objective. Public Justice Center believes that some "delay" in this rapid court process is warranted.

The procedural changes in this bill are as follows:

1. "Notice of Delinquency and Legal Rights": 10-day period
2. Status conference: 10-15 days after complaint filed in court
3. Trial: set no later than 10 days after status conference
4. Petition for warrant: after the appeal period ends (10 days after entry of judgment)

This timeline projects to require, in the most developed cases, 40 days.

Please issue a report of FAVORABLE on HB 52. If you have any questions, please contact Zafar Shah, shahz@publicjustice.org, (410) 625-9409 Ext. 237.