



Bill No: HB 729-- Landlord and Tenant - Eviction Actions - Filing Surcharge and Prohibited Lease Provisions

Committee: Judiciary

Date: 2/17/2021

Position: Oppose

The Apartment and Office Building Association of Metropolitan Washington (AOBA) represents members that own or manage more than 23 million square feet of commercial office space and 133,000 apartment rental units in Montgomery and Prince George's Counties. Many AOBA members manage market-rate affordable rental communities that operate on thin margins and house low and moderate-income Marylanders.

This bill would increase the surcharge for summary ejectment, tenant holding over or breach of lease from \$8 to not less than \$120. The fee will be assessed against the housing provider and may not be awarded or assigned as a fee against the resident. A housing provider may not use a lease that contains a provision that requires a resident to be responsible for payment of a filing surcharge assessed by the Court. The bill specifies that surcharge fees cannot be added to the judgement amount if the Court finds in the housing provider's favor.

AOBA supports efforts to reduce the number of evictions in Maryland but cannot support an exorbitant fee increase that increases the cost to access the Court system by 1400%. In Prince George's County, 156,238 failure to pay rent cases were filed using the court's online filing system in 2019. Had those filings been brought with the proposed \$120 surcharge fee, it would have cost housing providers in excess of \$18,748,560 to access the District Court to exercise their only legal remedy when a resident has failed to pay the rent. This bill will also dramatically increase costs when a housing provider attempts to enforce the legal contract they entered with the resident on occasions when the resident violates that contract in non-financial ways.

Further, the rhetoric around this bill has been misleading and mischaracterizes the actual costs to file for an eviction. It has been said that the \$15 filing fee is one of the lowest in the Country. The statement ignores the total court costs involved in a failure to pay rent case that ranges from \$60 to \$80. This total includes a \$15 or \$25 filing fee, a

\$5 surcharge for each tenant of record, and a \$40 or \$50 warrant of restitution. These total costs align with most of our border states where the total cost to evict is \$71-\$81 in Virginia and \$45 in Delaware. According to TransUnion, the national average for court costs is \$50.

The fee increase is not tied to anything. It is an arbitrary amount that seeks to weaponize filing fees to create a new barrier for housing providers accessing the Court. However, as designed by the Maryland General Assembly, the court system and current eviction process is the only remedy available to housing providers seeking to remove residents that have not paid rent or otherwise violate community rules. The current system also allows residents the ability to redeem up to three times per year – four in Baltimore City. In fact, the right to redeem contributes to the high number of eviction filings as many of the filings are levied against the same group of residents who consistently owe outstanding rent.

Additionally, we have no evidence of any other state that prohibits the filing fee from being passed on to the resident by the housing provider or the court. This would be an unprecedented tax on housing providers' access to the court system. It has been said that an increased filing fee and the inability for a housing provider to pass those costs through to a resident will deter filings or change filing practices so housing providers wait longer to file for a failure to pay rent eviction. Unfortunately, that would ultimately increase the number of physical evictions as residents would be forced to pay a much larger, possibly prohibitive, outstanding rent balance to utilize their right of redemption. Thus, the prohibition on passing the filing fee to the tenant (1) is a tax on housing providers' access unique to Maryland; (2) could be construed as a taking not imposed on any other litigant in the State; and (3) if it does modify housing provider behavior, could have the unintended consequence of increasing actual evictions as residents cannot redeem.

However, housing providers do not take lightly the impact an eviction has on a household. During the COVID-19 pandemic they have reached out to cost-burdened residents to create payment plans—often accepting small amounts to help keep impacted residents safely housed. AOBA and its members have called out for rental assistance and when allowed applied for rental assistance on behalf of and in conjunction with residents. AOBA supports other legislation before the Committee that would increase filing fees and partially fund rental assistance because we know the best way to keep people housed is to provide robust and ongoing rental assistance programs. The industry would welcome working collaboratively to develop, balanced and innovative approaches to help underserved and disenfranchised communities. Yet this bill is neither balanced, nor does it truly help community members. It is merely punitive towards the rental housing industry which provides some of the most affordable housing in Maryland.

For these reasons AOBA requests and unfavorable report on HB 729.

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