



March 11, 2021

The Honorable Luke Clippinger, Chair
House Judiciary Committee
Room 101, House Office Building
Annapolis, MD 21401

Oppose – HB 1346 – Commercial Tenants – Personal Liability Clauses - Enforceability

Dear, Chair Clippinger and Committee Members:

The NAIOP Maryland Chapters represent 700 companies involved in development and ownership of commercial, mixed-use, and light industrial real estate. On behalf of our member companies, I am writing in opposition to HB 1346.

Through the COVID-19 crisis NAIOP member companies have modified or provided other types of rent forbearance for thousands of occupants and clients. Building owners, occupants and lenders continue to work together and urgently need access to every bit of creativity and agility to workout critical legal, practical, and financial issues if they are to reduce the downside of the COVID-19 crisis. The long-term solvency and short-term liquidity of commercial real estate markets and the ability of building owners to continue to modify the rents of occupants who are in financial hardship requires that the subset of businesses that can pay rents continue to do so.

Under House Bill 1346, a court is prohibited from granting a judgment for possession or repossession or issuing a warrant for restitution of possession or repossession of residential, commercial, or industrial real property if the tenant can demonstrate to the court that the tenant suffered a substantial loss of income.

One of our principle, concerns is that loss of income does not necessarily equate to an inability to pay. Most of our member companies and many building occupants have drawn on reserves, credit lines and other facilities to continue operating during the COVID-19 emergency. The bill would permit the loss of income defense in the case of a tenant that experienced a loss of income but may have received government grants or PPP loans that were intended to make rent payments or has other means to pay some of all rents.

In other cases a personal commitment or third-party entity may be the guarantor of rent payments. A silent partner, or a corporate parent, who is not the tenant may be the guarantor of lease payments for multiple business locations. The bill would bring into question the enforceability of these commercial lease agreements by focusing only on the income of one tenant location regardless of financial circumstances of the guarantor or the aggregated business locations. Often it is the third-party guarantee that qualifies a company to rent space. By indirectly eliminating the enforceability of third-party guarantees, the bill could have a chilling effect on new leases, lease renewal, forbearance, and lease modifications for companies experiencing economic stress from COVID-19.

HB 1346 appears to be written toward residential leases but also applies to commercial and industrial properties. In most commercial lease negotiations both sides of the agreement have professional representation from a broker, attorney, or both. The parties to commercial and industrial leases should not be subject to the same provisions applied to residential leases.

For these reasons NAIOP respectfully recommends your unfavorable report on HB 1346

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Ballentine".

Tom Ballentine, Vice President for Policy
NAIOP Maryland Chapters -*The Association for Commercial Real Estate*

cc: House Judiciary Committee Members
Nick Manis – Manis, Canning Assoc.