

March 11, 2021

The Honorable Luke Clippinger, Chairman
House Judiciary Committee
101 House Office Building, 6 Bladen Street
Annapolis, MD 21401

RE: House Bill 1346 - Landlord and Tenant - Eviction Proceedings - Catastrophic Health Emergencies - Unfavorable

Dear Chairman Clippinger and Members of the Committee,

I am writing in my capacity as both the Legislative Chairman of the Building Owners and Managers Association of Greater Baltimore (BOMA), and as a member of its Board of Directors, to respectfully request an unfavorable report on House Bill 1346.

BOMA, through its nearly 300 members, represents owners and managers of all types of commercial property, comprising 143 million square feet of office space in Baltimore and Central Maryland. Our members' facilities support over 19,000 jobs and contribute \$2.5 billion to the Maryland economy each year.

BOMA is sensitive to the burdens that have been imposed on Maryland citizens and businesses during the COVID 19 pandemic. Our members, some of whom are small businesses themselves, have worked diligently with tenants to maintain their presence in the premises they lease. Our members know that our long term fortunes require that we be as flexible as possible during this emergency.

House Bill 1346, however, imposes a new burden, but only on landlords. By establishing an affirmative defense in a legal action to collect rent, the bill removes the incentive for a commercial tenant to negotiate with a landlord to remain in the leased premises. BOMA submits that the negotiations that have taken place between commercial tenants and their landlords since the State of Emergency was declared last year, and which continue to this day, are exactly what we should expect from this segment of our business community. Negotiation may be painful, but it is better than the alternative. We should also point out that most litigation is resolved through a process of negotiation. That may no longer be true if House Bill 1346 becomes law.

There are also important unanswered questions about how the provisions of House Bill 1346 may be interpreted and enforced. For example, on page 3, in line 2, the loss of income that underlies the affirmative defense created in the bill must result from the Emergency Proclamation. Does that mean that the Proclamation is the sole cause of the loss of income, or could it be a contributing cause? The bill is unclear on that point. Even though a tenant must document the loss of income under Section 8-902 (B)(2), this question of causation remains unanswered.

The criteria for a court to consider whether a tenant has suffered a “substantial loss of income” is found on page 3, in lines 3 and 4: “lost or reduced business, required closure, or temporary or permanent loss of employees.” Although a tenant is required to document a substantial loss of income, there is not even a requirement that the tenant make a good faith demonstration, supported by objective evidence, of its inability to pay the rent it agreed to pay under a lease.

Finally, there is the question of timing. If the affirmative defense created in House Bill 1346 is raised in litigation immediately following the passage (and the effective date of this Emergency Bill), does it apply retroactively to the entire period in which the Governor’s Order was in effect? What if the “substantial loss of income” could only be demonstrated for a short period of time while the Order was effective? Is the landlord precluded from taking any action to protect its interests during the entire period of the other periods of the Order?

These are just a few of the questions that have arisen during our consideration of this legislation. In light of these questions and other concerns, BOMA respectfully requests an unfavorable report on House Bill 1346

Sincerely,

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

Kevin J. Bauer
Legislative Chair

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