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Maryland General Assembly
2021 Housing Judiciary Committee

February 15, 2021

Subject: **Written Testimony for HB0112 Residential Property – Eviction Proceedings – Sealing of Court Records**

Dear 2021 Housing Judiciary Committee,

We appreciate the opportunity to provide comment on **HB0112 Residential Property – Eviction Proceedings – Sealing of Court Records**. We understand the intent of the proposed legislation as being an effort to further the protections of tenants seeking to have a "fresh start" and to reduce the number of obstacles a tenant faces if there are judgments on their record. Judgments that a landlord could interpret as reflecting a negative tenancy history, therefore reducing the tenant's potential ability to find a rental home.

The proposed legislation is not limited to just judgments related to a failure to pay rent, but applies to any landlord-tenant judgments that could result in eviction. The legislation as written is unclear and inconsistent with the other statutes in Title 8 of Maryland's Real Property Article. The legislation also presents challenges to Public Housing Authorities, which are bound to follow Federal Regulations regarding the operation of Public Housing and Housing Choice Voucher programs.

We understand the concerns for tenants; however, we present to you several concerns we have regarding the impact that the proposed legislation presents to Public Housing Authorities (PHAs) both in its public housing program and in its voucher programs. We have shared these concerns

with some other authorities and have the consent of the Housing Authority of Baltimore City, The Housing Opportunities Commission of Montgomery County, the Housing Authority of Prince George's County, the Housing Commission of Talbot, the Crisfield Housing Authority, the Wicomico County Housing Authority, and the Glenarden Housing Authority to state that they join in this letter. The concerns are as follows.

Conflicts with Federal Regulatory Screening Requirements

PHAs are required to comply with federal regulation in its screening requirements for eligibility and suitability for federally subsidized housing assistance. **Under 24 CFR § Part 960,** PHAs are required to have policies that **"Preclud[e] admission of applicants whose habits and practices reasonably may be expected to have a detrimental effect on the residents or the project environment;" 24 CFR § 960.202(a)(iii)**.

It is understood that participants in a Public Housing or Voucher program are low and very low income and often have a history of financial challenge. Notwithstanding, HUD expects PHAs to maintain policies that enable them to screen tenants' financial and criminal history. See **24 CFR § 960. 203.** HUD also recognizes that a Voucher landlord is responsible for screening tenants "on the basis of their tenancy histories". **See 24 CFR § 982.307.** To counter-balance the negative results that may appear as a result of a financial and criminal screen, HUD also allows PHAs to consider mitigating factors such as rehabilitation efforts, length of time from the negative incidents to the time of application, and severity of the incident. HUD's recognition of discretion amply covers any reasonable considerations that need to be given to a tenant to have a "fresh start."

Additionally, there are specific categories in which a PHA must deny admission. See **24 CFR § 960.204 Denial of admission for criminal activity or drug abuse by household members.**

(a) ***Required denial of admission*** -

(1) ***Persons evicted for drug-related criminal activity.*** The PHA standards **must** prohibit admission of an applicant to the PHA's public housing program for three years from the date of the eviction if any household member has been evicted from federally assisted housing for drug-related criminal activity. However, the PHA may admit the household if the PHA determines:

(i) The evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program approved by the PHA; or

(ii) The circumstances leading to the eviction no longer exist (for example, the criminal household member has died or is imprisoned).

(2) ***Persons engaging in illegal use of a drug.*** The PHA **must** establish standards that prohibit admission of a household to the PHA's public housing program if:

(i) The PHA determines that any household member is currently engaging in illegal use of a drug (For purposes of this section, a household member is "currently engaged in" the criminal activity if the person has engaged in the behavior recently enough to justify a reasonable belief that the behavior is current); or

(ii) The PHA determines that it has reasonable cause to believe that a household member's illegal use or pattern of illegal use of a drug may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

(3) ***Persons convicted of methamphetamine production.*** The PHA **must** establish standards that permanently prohibit admission to the PHA's public housing program if any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(4) ***Persons subject to sex offender registration requirement.*** The PHA **must** establish standards that prohibit admission to the PHA's public housing program if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In the screening of applicants, the PHA must perform necessary criminal history background checks in the State where the housing is located and in other States where household members are known to have resided. (See part 5, subpart J of this title for provisions concerning access to sex offender registration records.)

(b) ***Persons that abuse or show a pattern of abuse of alcohol.*** The PHA **must** establish standards that prohibit admission to the PHA's public housing program if the PHA determines that it has reasonable cause to believe that a household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

(c) ***Use of criminal records.*** Before a PHA denies admission to the PHAs public housing program on the basis of a criminal record, the PHA must notify the household of the proposed action to be based on the information and must provide the subject of the record and the applicant with a copy of the criminal record and an opportunity to dispute the accuracy and relevance of that record. (See part 5, subpart J of this title for provisions concerning access to criminal records.)

(d) ***Cost of obtaining criminal record.*** The PHA may not pass along to the applicant the costs of a criminal records check.

In the Voucher program, "The PHA must terminate program assistance for a family evicted from housing assisted under the program for serious violation of the lease." **See 24 CFR § 982.552**. The Voucher program also limits admissions based upon prior tenancy issues:

> The PHA may at any time deny program assistance for an applicant, or terminate program assistance for a participant, for any of the following grounds: …(ii) If any member of the family has been evicted from federally assisted housing in the last five years; (iii) If a PHA has ever terminated assistance under the program for any member of the family... (v) If the family currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act. (vi) If the family has not

reimbursed any PHA for amounts paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.

See 24 CFR § 982.552.

As currently written, the proposed State legislation would prevent PHAs from having access to Court records that would inform the PHA whether the applicant falls under the mandatory and discretionary prohibitions to receiving federally subsidized housing or participation in a Voucher program.

Limits Due Process Rights of Landlords

As written the proposed legislation would abrogate the right of landlords and property owners. Landlords and property owners should have the right to have access to tenancy history information, particularly actions that have been adjudicated by the Courts. Court records indicate the tenant applicant's conduct in criminal activity, payment history, generally lease compliance, and can certainly be an indicator of future property and rental payment conduct. There are significant costs to maintaining and repairing properties. If a tenant damages property, the landlord is ultimately responsible for repairs. Sealing court records prevents landlords from making their own decision whether to take on the risks associated with a tenant with a negative rental history. It forces landlords to provide tenancy to tenants that have a track record of damaging property and or not paying rent. Landlords are not allowed to discriminate based upon source of income; however, they should be able to determine if a tenant is credit worthy or otherwise has a history of breach of lease.

The State of Maryland has fair housing laws in place to ensure the landlords and property owners do not engage in illegal, discriminatory practices against residents. We believe these adequately address the concerns of ensuring the tenant's opportunity to find a rental home are not hindered by bad conduct of the landlord.

The Language of the Proposed Statute is Unclear and Overbroad

Procedurally we also note the legislation as written is unclear in its terminology and alleviates tenant responsibility by unduly shifting the burden to the Court and/or the Landlord. The proposed statute is focused on sealing a record. While that is not the same as an expungement, it has the same effect if it precludes anyone from every finding the judgment in a

docket search or being able to use the sealed judgment if they happen to learn of it through another means. Typically, when a document is sealed it can still be used by the parties at interest. This statue does not even allow that limited use.

The proposed language, in (A)(1) states "**THE DISTRICT COURT SHALL SEAL ALL COURT RECORDS RELATING TO AN EVICTION PROCEEDING:"** This language places the onus on the court to search for court records relating to eviction proceedings and places no responsibility on the tenant to ask for the record to be sealed. By comparison, a defendant must seek an expungement of a criminal record. It does not happen automatically or at the Court's initiative.

The proposed language in (B)(1)(I) states**: "IF THE COURT PROCEEDINGS DO NOT RESULT IN A JUDGMENT IN FAVOR OF THE LANDLORD, 30 DAYS AFTER THE FINAL RESOLUTION OF THE EVICTION PROCEEDING; OR."** As drafted, the "Eviction Proceeding" language is unclear and inconsistent with the related statutes. Maryland Real Property Title 8 does not use the term "eviction proceeding." The statutes in Title 8 refer to various types of actions for Non-Payment of Rent, Tenant Hold Overs, Proceedings Upon Breach of Lease and Summary Ejectment of Deceased Tenants. As relief under those actions a Landlord can seek a warrant restitution of the property for non-compliance with a judgment. It is legally impossible to get to an eviction proceeding without a judgment in favor of the landlord. Secondly, from a procedural perspective, to avoid confusion the language should make clear how to count the thirty days. Does the thirty days count from the order granting the warrant of restitution or from the enforcement of the warrant by the Sheriff. Depending on the amount in controversy and the type of tenant breach of lease action, the time to note an appeal is ten (10) to thirty (30) days from the judgment and then the time until the appeal is heard can be many more months. The judgment date is weeks to months before any possible enforcement of an order of restitution. As a matter of practice, evictions often get delayed due to a back log in the Sheriff's office, the weather, holidays, court closures, postponements, stays, and other reasons. Accordingly, the starting date to count the thirty days needs to be clarified and it should make clear that the time should not be counted against the Landlord if the delay was not caused by the Landlord's lack of prosecution.

The proposed language in (B)(1)(II) states: **"EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, IF THE COURT PROCEEDINGS RESULT IN A JUDGMENT IN FAVOR OF THE LANDLORD, 3 YEARS AFTER THE FINAL ORDER OR JUDGMENT IN THE**

EVICTION PROCEEDING." The use of eviction proceeding is inconsistent with the restitution terminology used elsewhere in Title 8. In addition, we simply do not understand the intent of this paragraph.

The proposed language in (B) (2) states, **"IF A TENANT IS A DEFENDANT IN A SUBSEQUENT EVICTION PROCEEDING DURING THE 3–YEAR PERIOD SPECIFIED IN PARAGRAPH (1)(II) OF THIS SUBSECTION, THE DISTRICT COURT SHALL SEAL ALL RECORDS RELATING TO THE EARLIER EVICTION PROCEEDING 3 YEARS AFTER THE MOST RECENT FINAL ORDER OR JUDGMENT IN AN EVICTION PROCEEDING INVOLVING THE TENANT."** This language seems to reward the tenant by sealing earlier judgments each time a second case arises. Taking this example to the extreme, under this language a tenant could have 36 cases resulting in judgment in a three (3) year period and only one (1) would show on a record.

The proposed language in (C) states: **"THE DISTRICT COURT MAY SEAL COURT RECORDS RELATING TO AN ACTION OF EVICTION AT ANY TIME, ON A MOTION BY THE TENANT, IF: (1) THE TENANT DEMONSTRATES BY A PREPONDERANCE OF THE EVIDENCE THAT: (I) THE TENANT WAS EVICTED FROM A UNIT UNDER A FEDERAL OR STATE SITE–BASED HOUSING ASSISTANCE PROGRAM OR A FEDERAL OR STATE TENANT–BASED HOUSING ASSISTANCE PROGRAM;** This section is not consistent with (A)(1), which states the burden is on the Court to seal. We do believe this section is more appropriate in requiring the tenant to take the initiative to request a record be sealed, but as mentioned above, the only accurate means a private landlord has to assess the likelihood of a tenant to comply with lease terms is by checking the tenant's prior court history. Sealing that record precludes the landlord that opportunity. This section is also problematic for PHAs because a PHA is allowed to deny admission to a public housing program or voucher program whenever a tenant owes a current debt to a PHA. Unfortunately, PHAs do not always have a way to search debts owed other PHAs and the only way to learn of the debt is through a judgment search. By sealing the judgment, PHAs would not be able to comply with federal regulations related to debts owed PHAs.

We have no objection to the proposed language in (C)(II) and (III), but as written it does not require that the tenant seeking the sealed action give notice to the interested landlord and an opportunity for that landlord to defend the claim of retaliation or wrongful eviction. Those reasons could have been raised in the underlying action and sealing the judgment after the fact both allows the tenant to ask the Court to revisit its prior decision and denies the landlord an

opportunity to be heard on a matter to which it may remain interested thereby creating a due process issue.

The proposed language in (C) (IV) allows sealing when **"THE PARTIES ENTERED INTO A SETTLEMENT AGREEMENT THAT DID NOT RESULT IN THE LANDLORD RECOVERING POSSESSION OF THE RESIDENTIAL PROPERTY;"** but the language does not recognize that the settlement agreement may require performance over time to remain compliant. If the judgment is prematurely sealed before the time to complete the settlement agreement has passed, the Landlord will be denied the ability to enforce the settlement agreement. For instance, if the parties agree to a repayment over a year and the failure to make timely payment under the agreement allows enforcement of the judgment, if the judgment is sealed, there is no effective way to enforce the settlement agreement.

The proposed language in (E) (1) states **"THE DISTRICT COURT SHALL PROVIDE A COPY OF AN ORDER ISSUED UNDER THIS SECTION TO THE TENANT OR THE TENANT'S COUNSEL."** This direction makes clear that the process of sealing does not allow for the Landlord to have notice of the request, to present an opposition to the request, or even to learn of the order even though the Landlord is a party to the action and has a vested interest in the outcome of the action, including any decision to seal the information related to the action resulting in a judgment in Landlord's favor. We believe it is a denial of due process under the law to the Landlord.

Like our concerns with respect to (E)(1) above, the proposed language in (F), **"A RECORD SEALED UNDER THIS SECTION MAY BE OPENED ONLY: ON WRITTEN REQUEST BY THE TENANT; OR ON ORDER OF THE DISTRICT COURT ON A SHOWING OF COMPELLING NEED"** seems to raise due process questions regarding the Landlord's right to re-open and enforce their own judgment or to use the history of breach of lease to persuade the Court why an action for breach of lease warrants termination of the lease. Under common law, the Court has discretion to continue the tenancy despite a material breach; accordingly, presentation of all past violations are important to show the reason for the requested relief. PHAs which are typically viewed as housing of last resort are particularly dependent upon a history of other breaches to support an action to end a tenancy. See Brown v. Housing Opportunities Com'n of Montgomery County, 350 Md. 570, 714 A.2d 197, 203 (1998).

Finally, the legislation's intention to apply retroactively, as stated in Section 2, is overbroad and impractical. The language in (A)(1) places the burden on the Court to seal on its

own initiative without requiring a motion by tenant and this section makes it retroactive indefinitely. Does the Court have the resources to review its prior closed cases and take that action without cause? Subsequent language in the statue allows the tenant to file a motion requesting the seal, but under both scenarios the interested landlord is denied notice and an opportunity to be heard regarding a matter in which the landlord is the judgment holder creating a denial of due process issue for the landlord.

Conclusion

We recognize we have written a very lengthy response when our endorsement was sought on a bill designed to help tenants. Unfortunately, the bill is overbroad and not focused in its reach. Its practical effect will prevent PHAs from complying with Federal Regulations. Even if the records are sealed and PHAs are allowed an exception to use the sealed information, there is no practical way for PHAs to obtain the information that through sealing is no longer searchable in Maryland Judiciary Case Search. For the reasons mentioned above we are opposed to the proposed legislation as written.

Thank you for the opportunity to submit comment.

Sincerely,

Melissa Maddox-Evans, ED/CEO
Housing Authority City of Annapolis