



February 17, 2021

House Bill 0524

Anne Arundel County and Prince George's County — Repossession for Failure to Pay Rent —
Rental Property License Information

Judiciary Committee

Position: Favorable

Thank you for the opportunity to provide testimony in support of **House Bill 0524, legislation that would essentially codify current Maryland case law regarding the requirement for rental licensing in connection with Failure to Pay Rent cases in Anne Arundel and Prince George's Counties.** Arundel Community Development Services, Inc. (ACDS) serves as Anne Arundel County's nonprofit housing and community development agency, helping Anne Arundel County residents and communities thrive through the provision of safe and affordable housing opportunities, programs to prevent and end homelessness, and community development initiatives. In fulfilling this role, ACDS administers grants to nonprofit partners, directly develops and implements programming, and advises the County on housing and community development policy initiatives.

Background.

In Maryland, **if a local jurisdiction requires that a residential rental property have a rental license, then that property must in fact be licensed in order for a landlord to make use of the summary ejectment court process (Failure to Pay Rent).** This requirement is a result of a 2011 Court of Appeals decision called *McDaniel v. Baranowski*. (419 Md. 560, 19 A.3d 927). In that case, the Court held that if a landlord lacks a rental license for a property that is required by law to be licensed, then that landlord does not have "claimant status" for bringing a Failure to Pay Rent action in court. In other words, **if a landlord lacks a license when one is required, the landlord does not have standing to file a summary ejectment Failure to Pay Rent case.** *McDaniel* remains the law of the land to this date.

Immediately after the Court decided *McDaniel*, **the standard court form Complaint for Failure to Pay Rent (attached) was modified** to include a section at the beginning of the Complaint regarding rental licensing where landlord must indicate whether the property is required to be licensed, and if so, **the landlord must provide a rental license number as a required element of the Complaint.** Since that time, **despite the clear holding of the *McDaniel* case and the specific requirements on the standard court form, courts have grappled with exactly what proof of licensing is required, and when.** By adding just a few paragraphs to the existing Failure to Pay

Rent statute, this bill clears up any confusion and provides clear standards, at least for Anne Arundel and Prince George's County courts.

The Bill.

The additions to the Failure to Pay Rent statute contemplated in HB 524 would result in three specific clarifications/codifications of current case law:

1. **Proof of Standing to Sue Required in Order to File:** If a property is required by local law to have a residential rental license, **the landlord would simply be required to provide a copy of the rental license they have already identified in the Complaint form**, or other documentation demonstrating that the property is in compliance with local licensing laws upon filing a Complaint for Failure to Pay Rent. Currently, if a landlord files a lawsuit without actually having the required license, the case proceeds to a hearing by the Court, and it is at that point that cases are frequently dismissed by the judge because the landlord lacks standing to sue. This bill would eliminate those cases from adding to the already busy Failure to Pay Rent dockets. *This does not create a new requirement for licensing of properties that are not already required to be licensed pursuant to local law – the requirement applies only if a property is required by local law to have a residential rental license.*
2. **Current License is a Prerequisite to Filing:** The rationale behind the *McDaniel* requirement that a rental property be licensed in accordance with local laws is that **the licensing process provides some level of assurance that the rental property is safe and habitable. A temporary or provisional license - which could be issued before an inspection has even taken place and which may never result in an inspection or the issuance of an actual rental license – provides no such assurance** because it does not establish that the property meets the health and safety standards of a fully licensed property.

One only need review **the language that is already in the Court's form Failure to Pay Rent Complaint to ascertain the Court's view of the law.** If the landlord is required to be licensed in order to operate the property as a rental, then **the Complaint requires that the landlord must provide a yes or no answer, under penalty of perjury, to the question "Is the Landlord *currently* licensed/registered?"** By definition, neither a "provisional" nor a "temporary" license is a *current* license as required by Maryland law. Rather, they are simply a stepping stone to getting a license. Similarly, an expired license, by definition, is not a current license. Accordingly, a yes answer to the question "Is the Landlord *currently* licensed/registered?" would be false. This bill would help ensure that landlords do not mistakenly rely on a license that does not meet the requirement of the law when they certify their complaints under penalty of perjury.

3. **Burden of Proof at Trial:** Finally, HB 524 confirms that **the landlord has the burden of proving by a preponderance of the evidence that the property is licensed in accordance with all applicable local rental property licensing laws.** Again, this is not a change to existing case law, but rather codification of current case law holding that licensing pursuant to local law is both a prerequisite to the filing of a Failure to Pay Rent case (to give standing to sue) and being in compliance with local rental licensing laws is also an element of the

landlord's cause of action for Failure to Pay Rent. As the plaintiff, the landlord already has the burden of proving all elements of his or her case.

Failure to Pay Rent dockets are very busy and are often very chaotic. This bill would help to eliminate cases from the Court's docket that are bound for dismissal until those cases can be filed in compliance with the law, and it codifies that a rental license (when required by local law) is a required element of a landlord's Failure to Pay Rent cause of action. **The three minor adjustments to the Failure to Pay Rent statute would provide clear direction to court clerks, courts, tenants and landlords regarding the interpretation and implementation of current case law**, and would result in the smoother evaluation and hearing of Failure to Pay Rent cases going forward in Anne Arundel and Prince George's Counties.

For the reasons noted above, we urge a FAVORABLE report on HB 524.

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