



Bill No: HB 1312-- COVID-19 Eviction and Housing Relief Act of 2021

Committee: Judiciary & Environment and Transportation

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. AOBA members are very familiar with the impact COVID-19 has had on households as they see firsthand the financial impact to working Marylanders. Many AOBA members own or operate Class B and C properties which predominately house low and moderate-income households that have been disproportionately affected by the pandemic.

This bill substantially alters the existing eviction process for a specified period; makes permanent a minimum amount of rent delinquency for a failure to pay rent action; prohibits rent increases; establishes the Maryland Rent Relief Fund and requirements for the fund; requires "Just Eviction" standards across the State; and requires certain notices and reporting on the Department of Housing and Community Development. This bill is exceptionally broad and attempts to create or modify several substantial sections of the real property article and landlord-tenant law. Additionally, the bill is duplicative of many state and local actions already enacted and/or creates a different standard from legislation currently governing emergency protections for residents in response to COVID-19. For instance, the State has already created COVID-19 related affirmative defenses for Failure to Pay Rent—AOBA submits there is no need to duplicate those orders in this legislation.

AOBA members support the intent behind the creation of the "Maryland Rent Relief Fund" to provide rental assistance into early-2025. Rental assistance is the best way to prevent evictions of vulnerable Marylanders and will also help maintain the rental housing industry as a viable provider of affordable housing in the State. However, this bill treats small and large housing providers differently when both are suffering tremendous financial losses.

This legislation would also establish a "just cause" eviction requirement effective from the end of the COVID-19 state of emergency until April 30, 2022. AOBA has long opposed just cause eviction because it requires a housing provider to house and renew a

resident's lease unless the provider can prove in court the existence of one of eight "just causes" for eviction or non-renewal. During a time when people are increasingly confined to their homes, this section of the bill would make it significantly more difficult to remove a nuisance tenant by requiring a housing provider to prove in court their lease was not renewed for "just cause". This may require residents to be dragged into court to testify against a problematic neighbor--often neighboring residents will not testify for fear of retribution from the problem tenant. However, if the housing provider cannot document and prove the offending behavior, the nuisance tenant will not be removed, and the good tenants will suffer. In a larger sense, "Just Cause" completely undermines the current Tenant Holding Over statute which provides a fair, judicial, remedy for both housing provider and resident when a resident remains in a unit after their tenancy has expired.

This bill prohibits rent increases or charging fees for non-payment of rent or late fees until April 30, 2022. Many jurisdictions in the State—City of Annapolis, Anne Arundel Co., Baltimore City, Baltimore Co., City of Frederick, Howard Co., Montgomery Co., Prince George's Co., and the City of Salisbury to name a few—have all weighed in on the issue and passed local ordinances in accordance with the need of their jurisdictions. All these local ordinances extend protection beyond the duration of the state of emergency but remain tied to the state of emergency. AOBA submits that these ordinances should prevail.

Further, this bill establishes several prerequisites to filing a failure to pay rent (FTPR) case. Effective until April 30, 2022, a housing provider wishing to file a failure to pay rent case must first (1) provide written notice to a resident that includes a description of the past due rent; (2) a request that the tenant take a number of actions within 10 days of notice to correct the past due rent including seeking rental assistance or negotiating a payment plan through third party mediator; (3) provide a resident information about free legal services, rental assistance and the District Court's Alternative Dispute Resolution Office. This notice must be delivered by first-class mail and affixed to the resident's door. If the tenant does not respond within 10 days, only then may a housing provider file for repossession of the unit. During the 10 period a housing provider is required to make "good-faith efforts to cure the unpaid rent".

By establishing prerequisite procedures which must be completed before a repossession case may be filed this bill needlessly upends the current FTPR process designed by the Legislature to create balanced protections for the rights of both tenants and housing providers in failure to pay rent cases. When the housing provider ultimately files an FTPR complaint they must certify how they satisfied the prerequisites; these prerequisites now become another element of the provider's case which must be proven and determined by the Judge in every case. In practice, since March 2020, AOBA members have supported residents in seeking rental assistance and offered residents a variety of creative payment plans during the COVID-19 pandemic. These payment plans offered to forgive percentages of outstanding rent, extend 18 months, or numerous other provisions to help tenants-yet less than 5% of tenants were interested in these plans. Now this bill attempts to mandate payment plan negotiation for housing providers and residents alike. Additionally, a resident's material breach of a term of the payment plan agreement

allows the housing provider to file its FTPR case, however the bill is silent regarding how long the provider must wait for this to occur before it can exercise that right.

Although adding a 10-day prerequisite period before the filing of a failure to pay rent action seems like a modest concession it adds to an already lengthy court process. In Montgomery and Prince George's Counties, prior to the COVID pandemic, it consistently took 3-4 weeks after filing to get to the District Court for a FTPR hearing. It also consistently took 6-8 weeks for an eviction in Prince George's County and longer in Montgomery County. Housing providers can count on it taking a minimum of 9-12 weeks for any legal remedy for failure to pay rent—during which time the outstanding rent balance continues to grow. Housing providers almost never see these balances repaid. An additional 10 days, while seemingly inconsequential, will deepen that outstanding rent balance at a time when class C properties are already seeing 30% delinquencies in rent payments.

Another way this bill seeks to alter the current eviction process, both immediately and permanently is to modify section 8-401 of the Real Property Article to mandate that a housing provider may not file a failure to pay rent complaint if a resident owes less than \$600 of unpaid rent. It has been said that housing providers are too quick to file a failure to pay rent claim in court and use the court system as a collection agency. However, housing providers must file failure to pay rent cases in court because there is no other legal way to collect unpaid rent in Maryland. Part of the legal failure to pay rent process also establishes a resident's right to redeem which allows a tenant to avoid eviction by paying outstanding costs at any time before the eviction is enforced. Unfortunately, creating a \$600 threshold to file in court may 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. Finally, this threshold serves as another barrier to keeping housing providers out of court and from exercising their legal rights. Should that happen, providers may potentially file for civil collections, but that will also jeopardize a resident's credit history.

AOBA members believe this bill is well intentioned and also want to protect vulnerable tenants. However the economic realities of this pandemic also impact rental housing providers and swinging the balance too far in the direction of the tenant challenges the sustainability of the industry as a whole, and thus affordable housing in Maryland.

For these reasons AOBA requests an unfavorable report on HB 1312.

For further information contact Erin Bradley, AOBA Vice President of Government Affairs, at 301-904-0814 or eradley@aoba-metro.org.