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MARYLAND JUDICIAL COUNCIL
LEGISLATIVE COMMITTEE

To: Chairman Smith
From: The Maryland Judiciary
Date: March 28, 2023
RE: House Bill 691

The Maryland Judiciary remains strongly opposed to House Bill 691 as amended. The proposed bill is confusing, unworkable and would likely lead to individuals engaging in the unauthorized practice of law. Among the many issues in the bill are the following:

Unauthorized Practice of Law

As drafted, the bill allows a lead tenant, on behalf of other tenants, to file a rent escrow complaint alleging that a common serious and substantial defect exists in their apartments that puts the life and safety of the occupants at risk. This is not simply a lead tenant filling out paperwork. It requires the lead tenant to investigate the condition of other apartments, identify that the serious and substantial threat to life and safety is common to all the tenants joining the group, and draft and file a rent escrow complaint on behalf of themselves and all the other group members. Importantly, someone, presumably the lead tenant, must provide proof at trial to the court of the condition in each class members' apartment. If the lead tenant is not permitted to practice law pursuant to Section 10-206 of the Business Occupations and Professions Article of the Maryland Code, this conduct would likely be considered the unauthorized practice of law.

The purported justification for the need for this type of quasi class action is so every tenant would not have to come to court when the tenants have common issues. However, if only the lead petitioner were to appear for the hearing, they would be unable to satisfy the proof requirement for the other class tenants without engaging in the practice of law. They may be called upon to argue as to the conditions present in the other apartments, whether those other tenants satisfied the notice requirements to the landlord, whether the damages to the dwelling were a threat to health and safety of the occupants, and that the damages were not caused by the occupants among other issues. The bill is silent on who is required to attend both the initial hearing and any subsequent hearings regarding the action.

The amendments on page 6, lines 31-33 and page 7, lines 1-3 provide that nothing in the bill authorizes the lead petitioner to represent the interests of any other tenant do not properly address the issue of the lead tenant being engaged in the unauthorized practice of law. The amendments ignore that the lead tenant would be required to satisfy basic proof requirements not only when filing an initial rent escrow complaint on behalf of other tenants, but also at trial.

To further compound this issue, there is no requirement that the lead petitioner seek the permission of other tenants before naming these other tenants in the action. Even if the lead petitioner has permission from the other tenants, their interests may diverge at any time during the pendency of the action i.e., the lead tenant may have a worse condition in their apartment than another tenant or tenants, the lead tenant and the other tenants may disagree about the terms of settlement or whether the damage or danger has satisfactorily been fixed by the landlord. If the lead tenant is expected to continue to represent to the court the interests of the other tenants even when divergent from their own, the lead tenant would once again be engaging in the unauthorized practice of law. The amendments added to pages 6-7 simply turn a blind eye to what is occurring and do not satisfy this issue. Please see *Lukas v. Bar Association of Montgomery County*, 35 Md. App. 442, 371 A.2d 669 (1977) regarding the unauthorized practice of law.

Class Action

House Bill 691 attempts to create a new type of class action while completely ignoring the detailed requirements and safeguards set forth in the class action rule found in Maryland Rule 2-231. Please note that Maryland Rule 2-231 applies only to circuit court and that the District Court does not have jurisdiction over class action cases. The District Court is not structured to handle class action cases as both class actions and cases created by this bill could potentially include hundreds of litigants and could take multiple trial days. This would require tremendous additional judicial resources that are not accounted for in the bill. Not only would hearing times increase exponentially but other resources would be necessary to create and reconcile sub-escrow accounts, plus receive, organize, and rule on potentially hundreds of motions made by tenants asking to join the rent escrow action.

Substitution of Lead Petitioner

The amendments to House Bill 691 do not adequately address the practicality of court hearings required to reach appropriate relief as described in the bill. For example, the bill is devoid of direction if the first lead tenant has had their case satisfied, moved, paid rent, or decides to leave the action prior to the conclusion of the case. It purports to permit the court to appoint another lead petitioner but does not address how the court would determine who to appoint. What if there is a disagreement among the remaining tenants as to who should act as the lead petitioner? What if no one is prepared or wants to be named the lead petitioner? The court should not be involved in the appointment of individuals who bring actions in court. Further, and notwithstanding that the court should not be determining who the lead petitioner will be, the bill lacks a meaningful standard of review or direction of how a second tenant would be qualified to become the lead tenant. Would this be done by hearing? By motion? Additionally, the bill is silent on whether a tenant once replaced as lead needs to be notified at all. The constant substitution of lead petitioners allows the initial tenants to vanish out of the case and a whole new set of tenants to appear and carry the case forward prior to a judgement being entered.

The bill remains silent on what happens to the funds in the escrow account of the lead tenant were the tenant to depart the case prior to the issuance of a judgment. Do the funds remain held in escrow and

not disbursed until final judgment? Page 9, lines 14-21 describes the forfeiture of escrow funds to the tenant after six months if repairs are not made but given the complexity of balancing many tenants and many repairs, six months could easily pass without appropriate repairs being concluded in all dwellings. If the funds are returned to the lead tenant, and the new lead tenant has not funded their escrow account, it is unclear whether the case may proceed. Page 6, lines 18-19 allows the court to remove the lead tenant if the lead tenant fails to fund their escrow account. Would the court be appointing a new lead tenant and then promptly removing them for failure to fund the escrow account?

Other Issues presented by proposed House Bill 691

In addition, the bill allows any tenant to join the case with leave of the court but does not allow other tenants already in the action to either consent or decline the joinder. Again, page 5, lines 18-21 are silent on all the complex factors of joining tenants to an existing case, without certifying a class or establishing a class action. Presumably, each tenant would have to attend a scheduled hearing to provide proof to the court that joinder should occur and to support the facts set out in their request. Who would be required to be present at the hearing? A lead petitioner or the tenant who has requested to be joined? Further, the proposed language provides no standard of review for the court to determine whether to allow or reject the joinder of other tenants. How would the lead petitioner know the conditions of a tenant's apartment that is seeking joinder? If the purported goal of this bill is to avoid the necessity of these individuals participating in the court hearing and instead deferring to a lead petitioner, how would their evidence be proven to the court?

The bill permits an endless number of tenants to join the class at different 30-day increments. For example, the bill provides that tenants may join the action after the lead petitioner first established the rent escrow. If new members join the class during the 30-day window, new escrow accounts would be established, and new members could then join again during the new 30-day window. Presumably the court could not move forward to adjudicating the case until all these tenants have joined. This would cause significant delays for all parties involved and would also strain judicial resources to consistently track the moving target of a 30-day timeframe.

Page 6, line 20-21 of the amended bill permits the court to remove a lead petitioner if it is in the "interest of justice." This is not a standard that provides any guidance to the judiciary.

In addition, page 8, lines 1-4 of the amended bill seem to condition relief by rent escrow on payment by either a tenant or the lead tenant, but not both. This would presumably allow the court to disburse funds from one tenant to the landlord to assist with repairs on all tenant dwellings.

Existing Relief

The existing statutory and rule structure provide the relief sought by this bill. For example, 10 tenants can presently file rent escrows and move to consolidate the cases for trial. Consolidation is a well understood mechanism in the court and provides for the orderly and efficient adjudication of cases. The process outlined in House Bill 691 ignores this existing protection and significantly confuses the process.

House Bill 691 codifies the warranty of habitability which already exists in common law and has already been codified in Baltimore City. To codify again would be redundant and unnecessary.

Additionally, House Bill 691 adds language to allow a rent escrow when a tenant alleges that the existence of mold in a dwelling is a serious and substantial threat to life and safety. A claim of mold as a threat to health as a basis for rent escrow can already be brought under the existing language in Real Property Code §8-211(e)(5): "The existence of any condition which presents a health or fire hazard to the dwelling unit."

Conclusion

Given the serious gaps in language, silence on important operational issues, and the potential for court users to engage in the unauthorized practice of law, proposed House Bill 691 in its original form and as amended, has not been comprehensively designed and raises significant legal concerns.