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February 16, 1972

Mr. John C. Eldridge
Governor's Office
State House
Annapolis, Maryland

Dear Mr. Eldridge:

Enclosed is the report of the Governor's Commission on Landlord-Tenant Law.

The legislative proposals have been given to Delegate Martin Kircher to be introduced. This was done in accordance with the conversation between the Governor and Judge Silver. The bill should be introduced shortly.

If you have any questions or there is any information I can give you, please do not hesitate to call me.

Very truly yours,

W. Minor Carter

WMC:hs
Enclosure

COMMISSION ON LANDLORD-TENANT LAW REVISION

The Honorable Marvin Mandel
State House
Annapolis, Maryland 21401

Dear Governor Mandel:

I am transmitting herewith the interim report of your Commission on Landlord-Tenant Law Revision with our legislative proposals. It is the present hope of the Commission to have the final report with the entire review of landlord-tenant law completed in time for the 1973 General Assembly.

Respectfully submitted,

Edgar P. Silver
Chairman

Enclosure

MEMBERS OF THE GOVERNOR'S COMMISSION ON

LANDLORD-TENANT LAW REVISION

Mr. Irvin Alter

Mr. Michael Butler

Mr. W. Minor Carter

Mr. Earl W. Eschbacher, Jr.

Mr. G. Greg Everngam

Mr. Ramsey W.J. Flynn

Mr. Morton Funger

Mr. Moe Hochberg

Honorable Lester Jones

Mr. George Laurent

Professor James W. McElhaney

Mr. Michael Millemann

Mr. John Morrison

Mr. Howard Offitt

Mr. Thomas E. O'Neill

Mrs. Margaret B. Pollard

Mrs. Anita Price

Mr. William Sallow

Honorable George E. Snyder

Judge Edgar P. Silver, Chairman

REPORT OF THE GOVERNOR'S COMMISSION ON LANDLORD-TENANT LAW REVISION

The Governor's Commission on Landlord-Tenant Laws was established by Resolution 46 of the 1970 Session of the General Assembly. In accordance with this Resolution, the Governor appointed the Commission members and the Commission held its first meeting on August 26, 1970. The Commission hired Professor James W. McElhaney of University of Maryland Law School to serve as Reporter of the Commission.

Judge Silver, appointed Chairman of the Commission by the Governor, set forth the guidelines of the Commission in accordance with Resolution 46 and stated that he wanted the Commission to produce practical legislation which would clarify the area of landlord-tenant law. Judge Silver also stated that he wanted the Commission to meet in areas outside Baltimore to more fully understand the various landlord-tenant problems in the State.

The Commission has held 19 meetings since its inception and presents this report as an interim report. The Commission hopes to submit a final report to the Governor prior to the 1973 Session of the General Assembly. The final report will

complete the recommended revision and consolidation of landlord-tenant law in Maryland. This report contains only those recommendations that the Commission recommends for the 1972 Legislature.

The Commission, in deciding what type of legislation and revision to make, voted to limit their study to residential dwellings and residential leases. The Commission felt that commercial leases presented an entirely different array of problems and, therefore, could be better studied by a Commission that would deal solely with commercial properties.

The Commission met the majority of the time in Baltimore City, but held meetings in the Washington area also. The turnout of the public ranged from poor to overwhelming. There was a particularly large turnout in Montgomery County, when the Commission held a public hearing in Silver Spring.

A number of the initial meetings were devoted to hearing citizen complaints and suggestions. Both landlords and tenants came before the Commission as well as experts in various areas, such as representatives of housing and community development, legal aid law reform, apartment owners association, etc. From this testimony, the Commission was able to ascertain what areas were of particular and immediate importance to both the landlord and the tenant.

The Commission has attempted to act in these areas, and will

attempt to furnish an entire Landlord-Tenant Code in time for the 1973 Session of the General Assembly. The Commission recommends the following proposals to the Governor. Copies of the legislation are attached.

Perhaps the most important and far-reaching bill that the Commission recommends is a statewide rent escrow bill. This bill will allow a tenant, under certain circumstances, to withhold his rent and pay it into an escrow account until certain repairs are made. This bill will apply to all residential dwelling units and is to provide tenants with a mechanism for encouraging repair of serious and dangerous defects within their dwelling which present a substantial and serious threat of danger to their life, health or safety. The bill has spelled out a number of specific examples that are considered to be dangerous and it is the intent of the Commission that only substantive dangers be covered by this bill. The bill is somewhat stronger than the present law in Baltimore City and it is the intent that this stronger bill be enacted statewide without weakening amendments. Under this bill, a tenant, if he believes that a defect exists, must give a landlord notice in writing. The landlord is given reasonable time to repair the defect, a reasonable time being presumed to be 30 days. Mr. Everngam stated that he wanted to be noted in the Committee Report that he is against any form of rent escrow.

However, if the landlord refuses to make repairs, the

tenant may bring an action of rent escrow, allowing the tenant to pay rent into court until the repairs are made. An action of rent escrow will also allow the tenant to raise the defects as a defense to an action for any rent due by the landlord. If the court finds that the conditions exist, the court may order that the rent be paid into court, or that the rent be abated or reduced to an amount determined by the court.

If the repairs are made, the court shall order the moneys be paid to the landlord. If, after six months, no repairs have been made by the landlord, the moneys in the escrow account may be disbursed to the tenant.

The next most far-reaching proposal of the Commission is the security deposit bill. This bill requires that the landlord pay interest of 3% on all security deposits over $50. Deposits will not draw interest unless they have been deposited for a minimum of six months and will draw interest only in six month intervals. The bill also limits the amount of security deposit to a maximum of one month's rent, and places the landlord in a fiduciary capacity as to the security deposits.

The Commission has drawn up a court notice in plain language. Presently, this is called the eviction notice. The Commission feels that this is misleading, since it is actually a notice for the tenant to appear in court, if he so desires, to defend the action by the landlord for payment of rent. The

notice is in plain language to make clear to the tenant the exact meaning of the notice.

Along with the plain language court notice, the Commission also proposes that a put-out notice be adopted and that this be in plain language. This notice would be sent after the case has been heard in court and when the court decides that the tenant is to be evicted unless he pays his rent. This notice fully explains that the tenant must pay his rent or be evicted. The date of the eviction is also set forth. Both of these notices and the forms of the notices have been approved by Clerks of the District Court.

The Commission also decided upon a number of other matters that they do not consider to be controversial. The right of redemption of a leased premises up to the actual time of eviction has been codified. This gives the tenant the right to pay his back rent and court costs up to the time an officer of the court is actually evicting him. In some areas of the state, the landlord is not required to accept the rent after the court action for eviction has been completed, and, therefore, the tenant has no recourse but to leave the premises. This will end this practice.

The Commission also has extended the doctrine of quiet enjoyment of the premises to require the landlord to deliver the leased premises to the tenant at the beginning of the term.

Presently, if the prior tenant holds over, it is the responsibility of the incoming tenant to evict him. This would place the burden on the landlord to evict the tenant who is holding over.

Copies of the bills in legislative form are attached.

Interim

REPORT OF THE GOVERNOR'S COMMISSION ON LANDLORD-TENANT LAW REVISION

February, 1972

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Copies of the bills in legislative form are attached.

REPORT TO GOVERNOR'S COMMISSION
ON LANDLORD-TENANT LAW REVISION
LANDLORD'S DUTIES AND TENANT'S REMEDIES

Steven G. Davison
Reporter

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Landlord's Duties and Tenant's Remedies

Landlord's Duty to Deliver and Maintain the Premises in a Habitable Condition

Under the common law, the landlord had no duty, unless expressly provided in the lease, to deliver and maintain the premises in a safe and habitable condition. There were some exceptions to this rule. The common law did require the landlord to deliver residential premises in a safe and habitable condition in the case of a short term lease of furnished premises (Ingalls v Hobbs, 156 Mass. 348, 31 NE 280 (1892); Young v Povich, 121 Me. 141, 116 A.2d 26 (1922); 2 American Law of Property §3.45 (Casner ed. 1952)); and where the premises were under construction at the time of the lease agreement. J.D. Young Corp. v McClintic, 26 SW 2d 460 (Tex. Civ. App. 1930); Woolford v Electric Appliances, Inc.; 24 Cal. App. 2d 385, 75 P.2d 112 (1938). The basis for these exceptions was that the tenant did not have a reasonable opportunity of inspection before entering into the lease agreement.

The common law doctrine of caveat emptor (the "buyer beware"), which was the basis for the common law rule that the landlord had no duty to deliver or maintain the premises in a safe and habitable condition, was based on the concept that the tenant could inspect the premises, and enter into a rental agreement or look elsewhere. Under the common law, the land, not the dwelling unit, was recognized as the subject of the lease; conveyance of the dwelling unit was considered to be incidental to the lease.

The only implied covenant imposed upon the landlord by the common law was the duty to guarantee the tenant's quiet enjoyment of the premises. This implied covenant required that neither the landlord, nor his agents, interfere with a tenant's enjoyment, use and possession of the premises. Gazzolo v Chambers, 73 Ill. 75 (1874). This covenant, however, did not make the landlord responsible for the acts of wrongdoers such as other tenants. Jones on Lanldord and Tenant §352. Where the landlord breached his covenant of quiet enjoyment, the tenant justifiably could abandon the premises, terminate the lease, and cease paying rent.

This is referred to as "constructive eviction." The courts eventually recognized that a landlord could constructively evict a tenant by failing to provide essential services such as heat, water, or electricity. Most courts, however, have held that a tenant's only means to escape liability for payment of rent under the doctrine of constructive eviction is to vacate the premises and terminate the lease; if the tenant continues to reside in the premises, he continues to be liable for payment of rent.

Under the common law, the tenant took the premises in the condition in which they were delivered at the start of the term, unless the premises were subject to the furnished room exception or the new housing exception; or unless the landlord had fraudulently concealed the condition of the premises from the tenant prior to the execution of the rental agreement; or unless the defects were known to the landlord and could not be discovered by the tenant upon reasonable investigation.

In addition, under the common law, the landlord had no implied duty to repair or maintain the premises after the tenant took possession of the premises, unless the rental agreement expressly required the landlord to do so. Even if the rental agreement imposed such a duty upon the landlord, the tenant was obligated to pay rent despite a breach of an agreement by the landlord to repair or maintain the premises. The tenant's only remedy was to sue the landlord for breach of this covenant.

Recently, the courts, reflecting a changing attitude toward landlord-tenant relations, have imposed affirmative duties upon landlords to deliver and maintain residential rental premises in a safe and habitable condition. The first court to hold that a landlord has an implied duty to deliver the premises in a habitable condition was the Wisconsin Supreme Court. Pines v Perssion, 14 Wis. 590, 111 NW 2d 409 (1969). The court in the Pines case departed from the common law principle of caveat emptor in ruling that the premises were subject to an implied warranty of habitability, which requires the landlord, at the inception of the lease, to deliver the premises in a habitable condition. The court held that this warranty was implied from local building and housing codes. The

court held that the tenant's duty to pay rent and the landlord's duty to deliver habitable premises were mutually dependent, and that a breach by the landlord of the duty relieved the tenant from liability for payment of rent. The court held that where the landlord breached his duty to deliver the premises in a habitable condition, the tenant was absolved from his duty to pay rent under the rental agreement and could vacate the premises and terminate the lease; and was liable only for the reasonable rental value of the premises during the time of actual occupancy.

A different approach was applied in Brown v Southall Realty Co., 237 A2d 834 (D.C. Ct. App. 1968), where the District of Columbia Court of Appeals held that a lease was subject to principles of contract law and that where the lease is executed by a landlord who has knowledge that the premises contain defects which constitute violations of housing code regulations with respect to habitability and safety of the premises, the lease agreement is void. (The court held that the lease was void under the rule that a contract generally is illegal and void if it is executed in violation of a prohibition of a public statute or ordinance). Brown held that where a lease was held to be illegal and void on these grounds, the tenant was not required to pay rent to the landlord. The tenant's remedy under Brown, however, is limited. The court did not recognize an implied warranty of habitability. The limitation in the court's remedy lies in the fact that the tenant's only remedy is to vacate the premises. When the contract becomes void, due to the violation, the tenant becomes a tenant at sufferance who can be evicted by a landlord after notice to quit (usually thirty days in most jurisdictions, including Maryland (MD RP Article Sec. 8-402(b)(4)). Diamond Housing Corporation v Robinson, 257 A.2d (D.C. Ct. App. 1969), later app. 463 F.2d 853 (D.C. Cir. 1972) (this later appeal held that a tenant in this situation could raise the defense of retaliatory eviction where the landlord sought to evict him after the lease was declared void). The Brown decision did not provide a remedy for the urban dweller who cannot afford to vacate, or who does not want to vacate.

The doctrine of implied warranty of habitability was further extended by the Circuit Court of Appeals of the District of Columbia in Javins v First National Realty Corp., 428 F.2d 1071 (1970). In Javins, the court recognized that urban residential rental premises were subject to an implied warranty of habitability (implied from housing code regulations and measured by the standards set forth in the housing code) during the term of the lease. The court reached this result after holding that leases for urban residential rental premises should be interpreted and construed under contract principles. The court in Javins held that duties imposed upon the landlord under the implied warranty of habitability could not be waived by the tenant or shifted by the rental agreement. The court held that an implied warranty of habitability exists not only at the beginning of the tenancy (as recognized in Brown), but also during the term of the rental agreement. Where the landlord breaches his duty to maintain the premises in a safe and habitable condition during the term of the lease, the tenant, rather than abandoning the premises as in Brown, has the option of remaining in possession and having his rent reduced by an appropriate amount.

Javins thus extends Pines (and alleviates the inadequate remedy provided by Brown) by allowing a tenant to remain in possession of the premises and to have the amount of his rent payment reduced where the landlord has breached his duty to maintain the premises in a habitable condition.

Other courts have followed Pines and Javins and recognized an implied warranty of habitability that requires a landlord to deliver the premises, and to maintain the premises during the term of the rental agreement, in a safe and habitable condition. Courts have recognized that a landlord breaches the implied warranty of habitability where substantial violations of housing and building codes occur or where defects exist that substantially affect the health, safety, or well-being of a tenant. Breach of the implied warranty of habitability may occur where the landlord fails to provide heat, hot water, or essential services, or where the premises are infested by rodents. On the other hand, leaks in water faucets, cracks in walls, or unpainted walls (or other conditions affecting the aesthetics or amenities of the premises) have not been found to

breach the implied warranty of habitability.

The courts have recognized that where the landlord breaches his duties imposed by the implied warranty of habitability, the tenant is entitled to normal contract remedies. These remedies include damages (where the tenant continues to pay the rent specified by the rental agreement); recission of the rental contract and termination of the lease (which requires the tenant to vacate the premises); or abatement of the rent (with the tenant remaining in possession of the premises for the term specified by the rental agreement). Courts have applied two different standards to determine the amount by which rent should be abated when the landlord has breached his duties under the implied warranty of habitability and where the tenant elects to remain in possession of the premises. "One method is to determine the difference between the amount of rent provided for in the lease and the fair rental value of the premises with the unfit condition. The more common measure of damages, however, is the difference between the fair market rental values of the premises with and without the breach." Note, supra, 16 Arizona Law Review at 114 (footnotes omitted).

The Uniform Residential Landlord and Tenant Act has essentially accepted the implied warranty of habitability doctrine as defined by Javins, Pine, and other courts. Maryland courts have not yet recognized an implied warranty of habitability in residential agreements. Maryland RP Article §8-203.1(a)(2)(i) provides a limited warranty of habitability and safety. It is applicable only if a landlord "offers more than 4 dwelling units for rent on one parcel of property or at one location and ... rents by means of written leases...." This statutory provision, which requires a written lease to contain a "statement that the premises will be made available in a condition permitting habitation, with reasonable safety...," may be waived by the tenant or modified in the rental agreement. This statutory warranty will thus be unavailable to most tenants.

Section 2.104 of the Uniform Residential Landlord and Tenant Act provides a warranty of habitability that arises at the inception of the tenancy and continues until the termination of the tenancy. Section 2.104(a)(2) requires the landlord to maintain the premises in a habitable condition, as well as to deliver the premises

in a habitable condition. (Any liability of the landlord under lease provisions or under Section 2.104 is relieved at the time of a good faith sale to a bona fide purchaser. URLTA §2.105. A successor in interest would, of course, be subject to the landlord's duty to maintain the premises of existing tenants in a habitable condition). Section 2.104 requires that landlords comply with the requirements of building and housing codes materially affecting health and safety. Where housing and building codes impose greater duties upon a landlord than specifically imposed by Section 2.104, the landlord is required to comply with the stricter requirements of the housing and building codes. Section 2.104(b). (The courts, as in Javins and Pine, have viewed housing and building codes as defining the scope of duties under the implied warranty of habitability. Some courts have held that duties not specifically imposed by housing and building codes may be implied under the implied warranty of habitability doctrine). The URLTA also specifically imposes upon the landlord the duty to maintain and repair electrical, plumbing, sanitary, heating, ventilation, air conditioning, and other services provided by the landlord. The landlord under the URLTA also has the specific duty to provide and maintain rubbish and waste receptacles and to arrange for their removal. The URLTA also requires the landlord to provide tenants with reasonable amounts of water and heat. (A landlord is excepted from the duty of providing water and heat if the dwelling unit receives these services from an installation within the "exclusive control of the tenant and supplied by a direct public utility connection;" or if the landlord is not required by law to provide such services). Section 2.104(a)(3) of the URLTA adopts the common law doctrine that the landlord is required to maintain common areas in a safe and clean condition.

Under the URLTA, a landlord and tenant of a single-family dwelling unit may agree in writing that the tenant will perform the landlord's duties with respect to trash removal and provision of water and heat, as well as perform specified repairs, maintenance tasks, alterations, or remodeling. Such agreements must be entered in good faith and not for the purpose of evading the obligations

of the landlord.

Landlords and tenants of any dwelling units other than single family residences also may agree that the tenant will perform specified repairs, remodeling, alterations or maintenance tasks, provided that the agreement is in good faith and supported by adequate consideration; is in a writing separate from the lease; and is not for the purpose of evading the landlord's obligations. The tenant, however, may not agree to perform work necessary to cure building or housing code violations. In addition, such an agreement cannot diminish the landlord's responsibilities and duties to other tenants on the premises. "Section 2.104(e) of the Uniform Act prohibits a landlord from conditioning performance of any of his duties under the rental agreement on the tenant's performance of any separate agreements between the parties. This section of the Uniform Act has been criticized on the ground that it is unfair to require the landlord to continue providing services to a tenant when the tenant fails to perform his agreed tasks." Note, supra, 16 Arizona Law Review at 113 note 251.

Because the landlord cannot evade the obligations imposed by Section 2.104, a landlord and tenant apparently can only agree to have the tenant perform work not necessary to meet the landlord's duties to comply with applicable housing or building codes or to maintain the premises in a habitable condition.

Under Section 4.101 of the URLTA, the tenant may terminate the lease, subject to certain conditions, for any material noncompliance by the landlord with the rental agreement or any noncompliance with Section 2.104 (requiring the landlord to deliver the premises in a fit condition and to maintain the premises during the term of the lease) materially affecting health and safety. In order to exercise this remedy, the tenant must give written notice to the landlord specifying the acts and omissions constituting the default and notifying the landlord that the rental agreement will terminate not less than 30 days after his receipt of notice if the breach is not remedied within 14 days. The landlord, however, may cure his breach if the breach is remediable by repairs, payment of damages, or otherwise, and he adequately remedies the breach before

the period specified in the notice. (The notice and cure provisions of the URLTA parallel the provisions of the Uniform Commercial Code (governing contracts and agreements for the sale of goods) with respect to notice of breach of warranty, UCC §2-607(5), and right of the seller to cure breaches of the contract, UCC §2-508). Under Section 4.101 of the URLTA, if substantially the same breach reoccurs within six months, the tenant may terminate the rental agreement on 14 days written notice to the landlord specifying the breach and date of termination. A tenant cannot exercise this remedy under Section 4.101 where a condition is due to his own deliberate or negligent act or omission or such an act or omission of his family or other persons on the premises with his consent). Under Section 4.101, the tenant may recover damages and obtain injunctive relief for any non-compliance by the landlord with the rental agreement or with the landlord's obligation to deliver and maintain a fit premises. If the landlord's non-compliance is willful, the tenant may recover reasonable attorneys' fees. If the rental agreement is terminated, the landlord must return all security recoverable by the tenant under Section 2.101 and all pre-paid rent.

These provisions of the URLTA change the common law of landlord-tenant, which generally made the landlord's duties under the rental agreement independent of the tenant's duty to pay rent. Under the common law, where the landlord breached a covenant, a tenant continued to have the duty to pay rent and could not terminate the lease, except where the landlord breached the covenant of quiet enjoyment (in which case, under the doctrine of constructive eviction, the tenant could abandon the premises and terminate the lease). The tenant was required by the common law to continue to pay the rent and to sue the landlord for breach of the rental agreement (except where the doctrine of constructive eviction applied). Section 4.105 of the URLTA (discussed infra) complements Section 4.101 by allowing a tenant, in a suit for rent due and unpaid or a suit for possession for unpaid rent, to raise the landlord's breach of the lease or non-compliance with the URLTA as a basis for a counterclaim.

Maryland's rent escrow statute (RP Article Section 8-211 (1975 supplement)) provides tenants with remedies for defects in the premises presenting "a serious and substantial threat to the life, health or safety of the occupants." Section 8-211(a),(c). The Maryland statute is generally consistent with tenant remedies under the URLTA. The Maryland statute, enacted by the 1975 Regular Session of the Maryland General Assembly, provides a variety of methods for dealing with housing defects. It applies to all publicly and privately owned residential dwelling units, whether single or multiple units, but not to farm tenancies. The tenant, however, may not exercise the remedies under the Maryland statute until the landlord has been given written notice of the defects and a reasonable period of time to effect the repairs himself. The tenant may not utilize remedies under this section where he has previously received a specified number of summonses for rent due and unpaid or where the defects are due to the tenant, his family, agents, employees, or social guests. The tenant, where the landlord has failed to cure defects after notice and opportunity to cure, may either bring a rent escrow action in court, paying his rent into court, or raise the landlord's failure to act as a defense in a suit for possession for non-payment of rent or in a suit for rent due and unpaid. Whether the tenant raises this issue affirmatively or defensively, the court is given wide discretion to order appropriate relief, which may include termination of the lease, abatement and reduction of the amount of rent, or payment of the rent escrow to landlord, tenant, or a court-appointed administrator to effect the necessary repairs. (RP Article Section 8-403 requires the tenant to pay rent into escrow of a court or appropriate administrative agency where the tenant and landlord are before the court in a rent due and payable summary ejectment action (RP Article Section 8-401) or a holding over action (RP Article Section 8-402) where a long adjournment is ordered).

Section 4.103 of the URLTA would change the common law to authorize self-help by the tenant to repair minor defects. Maryland has no such statutory provision; Maryland's rent escrow statute requires judicial authorization of repairs to be paid out of rent. Section 4.103 provides the tenant with a remedy of self-help to repair minor defects. Where the landlord has breached the rental agreement or his duties under Section 3.104 to maintain the premises, the tenant has the alternative of suing the landlord for damages under Section 4.101(b), or may have the repairs made himself where the cost of repairs is less than $100.00 or one half the periodic rent, whichever is greater. If the tenant elects the latter remedy, he must give the landlord notice in writing of his intention to correct the defect and give the landlord an opportunity to cure his defect. If the landlord fails to remedy the defect, the tenant may have the repairs made. The repairs must be done in a workmanlike manner, and must be reasonable. (Arizona requires that the repair be made only by licensed contractor). The tenant, after submitting an itemized statement to the landlord, may deduct the cost of repairs from his next rent payment. A tenant may not repair at the landlord's expense if the condition was caused by the fault of the tenant, his family, or other persons on the premises with his consent.

Under Section 4.104 of the URLTA, the tenant has a remedy for the landlord's willful or negligent failure to supply heat, water (hot or cold) or other essential services. (A tenant proceeding under Section 4.104 with respect to a breach may not also proceed under Section 4.101 or Section 4.103). The Maryland rent escrow statute is substantially the same as the URLTA in this section, although the Maryland statute does not require that the landlord have acted willfully or negligently. The remedy under the Maryland statute is based upon the condition of the premises alone. Under the Maryland statute, the tenant must give the landlord notice of the defects and a reasonable period of time to effect the repairs (there is a rebuttable presumption that a period exceeding 30 days is unreasonable). If the landlord does not repair after notice is given, the tenant may bring an action of rent escrow and pay the rent into court. The district court may then order any appropriate

relief, including ordering use of the rent escrow funds to effect the repairs. Under the Maryland statute, the court has great latitude in the distribution of the rent escrow to effect the necessary repairs. (Both the Maryland statute and Section 4.104 of the URLTA provide no remedy to the tenant where the condition was caused by acts of the tenant, his family, or guests). The remedies under Section 4.104 of the URLTA are different from those specifically authorized by the Maryland rent escrow statute. Under Section 4.104, the tenant, after giving written notice to the landlord (no period for cure of the breach by the landlord is provided in this section), may take reasonable and appropriate measures to procure reasonable amounts of essential services and deduct their reasonable amount from the periodic rent; recover damages based upon diminuition in the fair rental value of the premises; or procure reasonable substitute housing during the landlord's non-compliance, during which period the tenant is excused from paying rent. Where the tenant elects to procure reasonable substitute housing, Section 4.104(b) provides for damages for the actual and reasonable, or fair and reasonable, value of the substitute housing (not to exceed the periodic rent) plus reasonable attorneys' fees. Unlike the procedure under the Maryland rent escrow statute, the tenant under Section 4.104 of the URLTA does not have the option of affirmatively paying his rent into a rent escrow fund in court. Under Section 4.105 of the URLTA, the tenant would raise the landlord's failure to supply essential services as a "counterclaim" (or defense) to a suit for possession for nonpayment of rent or to a suit for rent due and payable, a procedure which is optional under the Maryland rent escrow statute. Unlike Section 4.104 of the URLTA, the Maryland statute provides for neither damages nor for attorneys' fees in a rent escrow action. One criticism of Section 4.104 is that when the landlord needs to make a major repair, for example, replacement of the heating plant, the landlord would not only have to pay the cost of repairs, but must also pay damages to his tenants for expenses incurred while procuring substitute services. This problem could force greater use of "shell" corporations by landlords to limit their liability, which would further remove the landlord from personal contact with his tenants. It could also

force or influence a number of landlords to not repair their premises and to abandon them, resulting in abandonment of great number of multi-unit residential dwellings, particularly in inner city areas where landlords' profits are often marginal. Maryland's rent escrow statute, by requiring judicial supervision and authorization of repairs with rent funds, seems to be more fair than the URLTA for both landlords and tenants.

Under Section 4.105 of the URLTA, the landlord's non-compliance with the rental agreement or the URLTA is a defense (or basis for a counterclaim) in a landlord's suit for possession for non-payment of rent or for unpaid rent while the tenant is in possession. Section 4.105(a) authorizes the court to require the tenant to pay all or part of the rent into court. This procedure under Section 4.105 thus parallels the procedure under the Maryland rent escrow statute where the tenant elects to withhold his rent and raise the landlord's conduct as a defense in a suit for possession for non-payment of rent, for collection of unpaid rent, or for distress for rent. Section 4.105 authorizes the court to determine the amount to be paid to each party, thus impliedly authorizing the court to abate or reduce the rent where appropriate. In the phrase "in an action for rent when the tenant is in possession" in Section 4.105(a), it is not clear whether "possession" refers to "legal" possession (the right to possession under the lease during the term of the lease) or to actual physical possession. The difference is important, because if the tenant has legal possession he should be made to pay rent, even if he does not actually occupy the leased premises, unless he has a valid counterclaim or defense against the landlord. On the other hand, if the tenant has validly terminated the lease under the Act due to the landlord's non-compliance with provisions of the rental agreement or the URLTA, but the tenant continues to reside on the premises as a holdover tenant, the tenant should still be liable for rent. (See Section 4.301(c)). A more explicit definition of "possession" under Section 4.105 would appear to be needed. Maryland's rent due and payable summary ejectment statute (RP Article §8-401) and holding over statute (RP Article §8.402) do not specifically allow a tenant to file a counterclaim against the landlord when the landlord brings an action for possession or for rent. Maryland's retaliatory eviction statute (RP Article Section 8-208.1) impliedly appears to allow such defense to be raised under

RP Article Section 8-401, although it does not specifically govern a landlord's non-renewal of a lease. See discussion, infra. In addition, Maryland's rent escrow statute provides a defense in suits for possession, distress for rent, or rent due and payable but is applicable only in situations where the conditions of the premises substantially affect health and safety.

The remedies of the Maryland rent escrow statute are available to a tenant where there are defects that are a fire hazard or a serious and substantial threat to the life, safety or health of occupants. The Maryland statute specifically lists certain defects which are considered to meet these standards, including lack of heat, light, electricity, hot or cold running water, adequate sewage disposal facilities, and paint containing lead pigments. This list is stated not to be an inclusive list. The statute specifically excludes certain defects, such as small cracks in the walls, floor or ceiling, conditions reducing the aesthetic value of the premises, lack of linoleum or tiles on the floors, or lack of air conditioning. Section 4.104 of the URLTA similarly specifically applies only where the landlord willfully or negligently fails to supply essential services such as heat, running water, hot water, electricity, or gas. Section 4.103 of the URLTA, however, allows the tenant to make self-help repairs of any conditions, where the reasonable cost of repair is below a specified amount, caused by the landlord's failure to comply with the rental agreement or with the landlord's duties under Section 2.104 to deliver or maintain the premises in suitable condition. The application of Section 4.101 of the URLTA, however, is more troublesome, since it applies only where there is a "material non-compliance" with the rental agreement or a non-compliance with Section 2.104 "materially affecting health or safety." It is reasonable to assume that a court would find that such conditions are essentially the same as those to which the Maryland rent escrow statute and Section 4.104 of the URLTA apply. It has been suggested that "some relevant considerations to aid in making the determination would seem to be the seriousness of the condition and the duration of its existence." Note, 16 Ariz. Law Rev. at 113.

If a landlord unlawfully removes or excludes the tenant from the leasehold premises, or purposefully diminishes or interrupts essential services (such as heat, water, electricity, or gas), the tenant has a remedy under Section 4.107 of the URLTA. (Section 4.107 provides a remedy for a landlord's violation of Section 4.207). Section 4.107 appears to codify the common law prohibitions against self-help eviction by a landlord and against constructive eviction of a tenant by interrupting essential services. The tenant under Section 4.107 may recover possession or terminate the rental agreement, but in either case he may recover punitive damages up to three months periodic rent or three-fold actual damages, whichever is greater, plus reasonable attorneys' fees. There is no such statewide statute in Maryland, although the City of Baltimore has a statute specifically prohibiting a landlord from reducing essential services (P.L.L. §9-15). Under this public local law, Baltimore City may find the landlord $50.00 or imprison him for 10 days, or both, for reducing the essential services to which the tenant is entitled without the tenant's consent.

Landlord's Duty to Deliver Possession

Both Maryland (RP Article Section 8-204) and the URLTA (Sections 2.103 and 4.102) follow the majority English rule requiring the landlord to deliver actual possession of the premises to the tenant, as opposed to the minority American rule requiring the landlord only to convey the legal right to possession (with no obligation to ensure actual possession when third parties wrongfully exclude the tenant). See Note, 16 Arizona Law Rev. at 106-107. Both Maryland and the URLTA provide for an abatement of rent until the landlord delivers actual possession of the leasehold premises to the tenant. The URLTA suggests 5 days notice by the tenant to the landlord where the landlord fails to deliver possession, after which the lease is terminated. Maryland does not specify any specific time for notice of termination in such situations, but the notice of termination must be delivered in writing before delivery of possession. The Maryland statute and the URLTA (Section 2.103) allow the landlord to bring an eviction suit against a wrongfully holding-over tenant even though the landlord has entered into a lease with a new tenant. These provisions change the common law position that the landlord could not maintain such an eviction action, because he had only a reversion, not the present possessory interest (which the new tenant has) required in order to bring an eviction suit. The Maryland statute and the URLTA also provide that the tenant has the option of recovering possession and consequential damages from the landlord if possession is not delivered at the beginning of the term. The URLTA provides for triple the rent or triple the actual damages, whichever is greater, plus reasonable attorneys' fees, where a person's failure to deliver possession is willful and not in good faith. These remedies for the tenant are subject, both under Maryland statute and the URLTA, to the duty to mitigate damages.

Damage to the Premises

Under the common law, the tenant was held liable for rent under his lease even though the entire leased premises may have been destroyed by fire or other casualty. Section 4.106 of the URLTA would change the common law to afford the tenant several remedies in case of fire or other casualty damage to the leased premises. If the premises are destroyed or damaged by fire or other casualty to such an extent that the tenants' use of the unit is substantially impaired, the tenant can immediately vacate the premises and can terminate the lease as of the date of vacating by giving written notice to the landlord, within 14 days of his intention to terminate the rental agreement. The tenant may also continue to occupy the premises if he can lawfully do so, vacating those parts of the premises made unusable by the casualty, in which case rent is reduced in proportion to diminuition of the fair rental value of the premises. If the lease is terminated, the tenant may recover all security recoverable under Section 2.101 and all pre-paid rent. Section 4.106 does not specifically state that it is inapplicable where the tenant, his family, or his guests deliberately or negligently cause the fire or casualty, but this might be implied. Maryland has a similar statute (RP Article §8-112), but the Maryland statute is not as clear or thorough as the URLTA in this area. Maryland allows for the termination of the rental agreement for fire or "unavoidable accident" in leases of under seven years. Maryland also provides for payment of rent to terminate upon proportional payment of the rent up to the day of the fire or unavoidable accident. A major dissimilarity between Maryland's statute and Section 4.106 of the URLTA is that under Maryland statute the premises must be untentable, which would probably require total uninhabitability of the entire premises, while the URLTA is applicable where the premises are only partially destroyed or damaged. The URLTA leaves some question as to the extent of damage necessary for a tenant to claim "substantial impairment" and thus invoke the remedies provided under Section 4.106. See 16 Arizona Law Rev. at 118-121.

Landlord's Duty to Disclose

Section 2.102 of the URLTA required disclosure to the tenant of the names and addresses of the owner(s) and the manager(s) of the premises. This requirement is intended to provide the tenant with the correct information with respect to who is responsible for the obligations imposed upon the landlord by the URLTA.

In the absence of disclosure to the tenant, the person collecting rent is considered to be the agent of the non-disclosing party.

Maryland RP Article §8-210 stipulates that the owner(s) shall post a sign in a conspicuous place on the property that lists the names, addresses, and telephone numbers of the owner(s) or management entity. This information may be provided in the lease agreement in lieu of posting.

Maryland RP Article §8-203.1 requires a landlord "who offers more than 4 dwelling units for rent on one parcel of property or at one location," and who leases by means of written leases, to provide a copy of the lease form to any prospective tenant upon written request. The URLTA has no such provision.

These disclosure requirements and the requirement to give a copy of the lease to prospective tenants should be incorporated into one section. A copy of the lease and disclosure of the landlord's name, address and telephone number should be provided in advance of the execution of the rental agreement. This would allow prospective tenants and their lawyers to review the provisions of the rental agreement in advance of signing it, and would disclose to the prospective tenant the person(s) responsible for repairs and maintenance and for receipt of rent, complaints, and service of process.

Draft
106:dej
8/13/74

Baltimore

MARYLAND UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT

ARTICLE I

GENERAL PROVISIONS AND DEFINITIONS

Part I

SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THE ACT

SECTION 1.101 Short Title. This Act shall be known and may be cited as the "Uniform Residential Landlord and Tenant Act."

SECTION 1.102 Purposes; Rules of Construction.

(a) This Act shall be liberally construed and applied to promote its underlying purposes and policies.

(b) Underlying purposes and policies of this Act are

(1) to simplify, clarify, modernize and revise the law governing the rental of dwelling units and the rights and obligations of landlord and tenant;

(2) to encourage landlord and tenant to maintain and improve the quality and availability of housing;

(3) to encourage the development of optimum utilization of the supply of dwelling units.

(4) to make uniform throughout this State the law as it applies to residential rental agreements.

SECTION 1.103 Supplementary Principles of Law Applicable. Unless displaced by the provisions of this Act, the principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause supplement its provisions.

SECTION 1.104 Construction Against Implicit Repeal. This Act being a general act intended as a unified coverage of its subject m is to be construed as impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

SECTION 1.105 Administration of Remedies; Enforcement.

(a) The remedies provided by this Act shall be so administered that the aggrieved party may recover appropriate damages but neither consequential or special nor penal damages may be had except as specifically provided by this Act or by other rule of law. The aggrieved party has a duty to mitigate damages.

(b) Any right or obligation declared by this Act is enforceable by action unless the provision declaring it specifies a different and limited effect.

SECTION 1.106 Settlement of Disputed Claim or Right. Notwithstanding any provision of this Act regarding the contractual waiver of rights a claim or right arising under this Act or under a rental agreement may be settled by agreement for less value than the amount claimed if such agreement is entered into knowingly and in good faith and such settlement agreement does not constitute a subterfuge of the provisions of this Act.

[Drafter's note: Part I follows the NAREB Draft with minor exceptions in Section 1.106.]

Part II

SCOPE AND JURISDICTION

SECTION 1.201 Territorial Application. This Act applies to, regulates, and determines rights, obligations and remedies under a rental agreement, wherever made, for a dwelling unit located within this state.

SECTION 1.202 Exclusions from Application of Act. Unless created to avoid the application of this Act, the following arrangements are not governed by this Act:

(1) Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service.

(2) Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his interest.

(3) Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization.

(4) Transient occupancy in a hotel, or motel or lodgings subject to cite state transient lodgings or room occupancy excise tax act.

(5) Occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises.

(6) Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative.

(7) Occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes.

This subtitle does not apply to leases of property leased exclusively for business, commercial, manufacturing, mercantile, or industrial purposes or any other purpose which is not exclusively residential, where the term of the lease, including all renewals provided for, does not exceed 99 years. A lease of the entire condominium, cooperative, or other building for multiple-family use on the property constitutes a business and purpose. The term "multiple-family use"

does not apply to any duplex or single-family structure converted to a multiple-dwelling unit.

SECTION 1.203 Jurisdiction and Service of Process.

(a) The District Court of this state may exercise original jurisdiction over any landlord or tenant with respect to any conduct in this state governed by this Act or with respect to any claim arising from a transaction subject to this Act, within its jurisdictional limits as otherwise provided by law. Otherwise, the circuit court for each county or the Baltimore City Court shall have original jurisdiction.

(b) The District Court of this State may sit as a court of equity, with respect to any claim or conduct set forth in the foregoing subsection (a). to render monetary judgments pursuant to the provisions of Art. C J, § 6

(c) Service of process and the acquisition of jurisdiction over the person of any landlord or tenant shall be governed by the laws of this state which would otherwise control any type of action or proceeding instituted. the

SECTION 1.204. Preemption. It is the intention of the legislature to occupy the whole field on behalf of the state of establish the legal relationship between landlord and tenant; provided however that nothing contained in this act shall be construed to in any manner or limit or restrict the regulation as otherwise provided by law of residential premises by a local government and the relationships between that government and the owner of such premise or the tenant of such premises.

[Drafter's note: Part II: §§1.201, 1.202, 1.204 follow the NAREB Draft, §1.203 is heavily modified to fit Maryland law.]

Part III

GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION; NOTICE.

SECTION 1.301 General Definitions. Subject to additional definitions contained in subsequent Articles of this Act which apply to specific Articles or Parts thereof, and unless the context otherwise requires, in this Act or Parts thereof, and unless the context otherwise requires, in this Act

(1) "Action" includes recoupment, counterclaim, setoff, suit in equity, and any other proceeding in which rights are determined, including an action for possession.

(2) "Building and housing codes" include any law, ordinance, or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance of any premises, or dwelling unit.

(3) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

(4) "Good faith" means honesty in fact in the conduct of the transaction concerned.

(5) "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part, and it also means a manager of the premises who fails to disclose as required by Section 2.102.

(6) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, 2 or more persons having a joing or common interest, and any

or commercial entity.

(7) "Owner" means one or more persons, jointly or severally, in whom is vested (i) all or part of the

SECTION 1.304 Notice. Unless a section of this Code requires or a rental agreement requires notice to be in a particular form, or conveyed by a specified means, "notice" shall be notice in fact. A person has notice of a fact if (i) he has actual knowledge of it, (ii) he has received a notice or notification of it, or (iii) from all the facts and circumstances known to him at the time in question he has reason to know that it exists. A person "knows" or "has knowledge" of a fact if he has actual knowledge of it.

A person "notifies" or "gives" a notice or notification to another by taking steps reasonably calculated to inform the other in ordinary course whether or not the other actually comes to know of it. A person "receives" a notice or notification when (i) it comes to his attention, or (ii) in the case of the landlord, it is delivered at the place of business of the landlord through which the rental agreement was made or at any place held out by him as the place for receipt of the communication, or (iii) in the case of the tenant, it is delivered in hand to the tenant or mailed by registered or certified mail to him at the place held out by him as the place for receipt of the communication, or in the absence of such designation, to his last known place of residence.

"Notice," knowledge or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction, and in any event from the time it would have been brought to his attention if the organization had exercised reasonable diligence.

[Drafter's note: Part III follows exactly the NAREB draft]

Part IV

GENERAL PROVISIONS

SECTION 1.401 Terms and Conditions of Rental Agreement.

(a) The landlord and tenant may include in a rental agreement,

hot water equipment, nor any other essential facility or service with any other dwelling unit.

(14) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

SECTION 1.302 Obligation of Good Faith. Every duty under this Act and every act which must be performed as a condition precedent to the exercise of a right or remedy under this Act imposes an obligation of good faith in its performance or enforcement.

SECTION 1.303 Unconscionability.

(a) If the court, as a matter of law, finds

(1) a rental agreement or any provision thereof was unconscionable when made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result; or

(2) a settlement in which a party waives or agrees to forego a claim or right under this Act or a rental agreement was unconscionable at the time it was made, the court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision, or limit the application of any unconscionable provision to avoid any unconscionable result.

(b) If unconscionability is put into issue by a party or by the court upon its own motion the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making the determination.

SECTION 1.403 Prohibited and Mandatory Provisions in Rental Agreements.

(a) No rental agreement shall contain any of the following provisions:

(1) A provision whereby the tenant authorizes any person to confess judgment on a claim arising out of the rental agreement.

(2) A provision whereby the tenant agrees to waive or forego any right or remedy provided by this Act or by other applicable law.

(3) A provision providing for penalty for late payment of rent in excess of five percent of the amount due for the rental period for which the payment wad delinquent. In the case of rental agreement under which the rent is paid in weekly rental installments a penalty of Five Dollars may be charged for the late payment of rent; provided however that such late payments shall constitute, in the aggregate, no more than Ten Dollars per month.

(4) Any provision whereby the tenant waives his right to a jury trial.

(5) Any provision whereby the tenant agrees to a period required for the landlord's notice to quit less than that provided by this Act; provided, however, that neither party is prohibited hereby from agreeing to a longer notice period than that required by applicable law; ~~so long as~~ provided however, that in no case shall the notice period provided thereby provide for a longer notice period to be furnished by the tenant to the landlord in order to terminate the tenancy than that required of the landlord to the tenant in order to terminate the tenancy.

(6) Any provision authorizing the landlord to take possession of the leased premises, or the tenant's personal

terms and conditions not prohibited by this Act or other rule of law including rent, term of the agreement, and other provisions governing the rights and obligations of the parties.

(b) In absence of agreement, the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit.

(c) Rent shall be payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, rent is payable at the dwelling unit and periodic rent is payable at the beginning of any term of one month or less and otherwise in equal monthly installments at the beginning of each month. Unless otherwise agreed, rent shall be uniformly apportionable from day-to-day.

(d) Unless otherwise provided by the rental agreement, the tenancy shall be presumed to be week-to-week in case of a roomer who pays weekly rent, and in all other cases month-to-month.

SECTION 1.402 Effect of Unsigned or Undelivered Written Rental Agreement.

(a) If the landlord does not sign and deliver a written rental agreement signed and delivered to him by the tenant, acceptance of rent without reservation by the landlord and delivery of possession to the tenant gives the rental agreement the same effect as if it had been signed and delivered by the landlord.

(b) If a written rental agreement given effect by the operation of this section provides for a term longer than one year, it is effective only for one year.

property therein (unless the rental agreement has been terminated by action of the parties or by operation of law, and such personal property has been abandoned by the tenant) without the benefit of formal legal process.

(7) Any provision of a rental agreement, the effect of which is to indemnify the landlord, hold the landlord harmless, or preclude or exonerate the landlord from any liability to the tenant, or to any other person, for any injury, loss, damage, or liability arising from any omission, fault, negligence, or other misconduct of the landlord on or about the leased premises or any elevators, stairways, hallways, or other appurtenances used in connection with them, and not within the exclusive control of the tenant. No insurer may claim a right of subrogation by reason of the invalidity or unenforceability of any such provision.

(b) Any landlord who offers more than four dwelling units for rent in one parcel of property or at any one location and who rents by means of written rental agreements, shall:

(1) Provide, upon written request from any prospective applicant for rental agreement, a copy of the proposed form of the rental agreement in writing, complete in every material detail, except for the date, name and address of the tenant, designation of the premises, and the rental rate, without requiring execution of the rental agreement or any prior deposit; and

(2) Embody in the form of the lease and in any executed lease the following:

(I.) A statement that the premises will be made available in the condition permitting habitation, with reasonable safety, if that is the agreement, or if that is not the [illegible] statement of the agreement concerning the condition of the premises; and

(II.) The landlord's and the tenant's specific obligations as to heat, gas, electricity, water, and repair of the premises.

(c) Penalties for violations of this Section

(1) Any rental agreement provision which is not in conformity with the terms of this Section shall be unenforceable by the landlord.

(2) If the landlord includes in any rental agreement a provision not in conformity with the terms of this Section, at any time subsequent to ninety days after the effective date hereof, and tenders a rental agreement containing such provision, or attempts to enforce, and/or makes known to the tenant an intent to enforce any such provision, the tenant may recover any actual damages incurred as a reason thereof, including reasonable attorney's fees.

[Drafter's note: Section 1.403 is a restatement of current Maryland law, restructured in form only to coincide with the organization of this act, and including certain stylistic changes. Substantive rights accorded by current Sections 8-208, 8-203.1, 8-105, and 8-501 of the Maryland Code have not been altered.]

SECTION 1.404 Separation of Rents and Obligations to Maintain Property Forbidden. A rental agreement, assignment, conveyance, trust deed, or security instrument may not permit the receipt of rent free of the obligation to comply with Section 2.104

Drafted by J. Carbi

MARYLAND UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT

ARTICLE I

GENERAL PROVISIONS AND DEFINITIONS

Part I

SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THE ACT

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(a) This Act shall be liberally construed and applied to promote its underlying purposes and policies.

(b) Underlying purposes and policies of this Act are

(1) to simplify, clarify, modernize and revise the law governing the rental of dwelling units and the rights and obligations of landlord and tenant;

(2) to encourage landlord and tenant to maintain and improve the quality and availability of housing;

(3) to encourage the development of optimum utilization of the supply of dwelling units.

(4) to make uniform throughout this State the law as it applies to residential rental agreements.

SECTION 1.103 Supplementary Principles of Law Applicable. Unless displaced by the provisions of this Act, the principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause supplement its provisions.

SECTION 1.104 Construction Against Implicit Repeal. This Act [illegible] intended as a unified coverage of its subject matter, no part of it is to be construed as impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

SECTION 1.105 Administration of Remedies; Enforcement.

(a) The remedies provided by this Act shall be so administered that the aggrieved party may recover appropriate damages but neither consequential or special nor penal damages may be had except as specifically provided by this Act or by other rule of law. The aggrieved party has a duty to mitigate damages.

(b) Any right or obligation declared by this Act is enforceable by action unless the provision declaring it specifies a different and limited effect.

SECTION 1.106 Settlement of Disputed Claim or Right. Notwithstanding any provision of this Act regarding the contractual waiver of rights a claim or right arising under this Act or under a rental agreement may be settled by agreement for less value than the amount claimed if such agreement is entered into knowingly and in good faith and such settlement agreement does not constitute a subterfuge of the provisions of this Act.

[Drafter's note: Part I follows the NAREB Draft with minor exceptions in Section 1.106.]

Part II

SCOPE AND JURISDICTION

SECTION 1.201 Territorial Application. This Act applies to, regulates, and determines rights, obligations and remedies under a rental agreement, wherever made, for a dwelling unit located within this state.

SECTION 1.202 Exclusions from Application of Act. Unless created to avoid the application of this Act, the following arrangements are not governed by this Act:

(1) Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service.

(2) Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his interest.

(3) Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization.

(4) Transient occupancy in a hotel, or motel or lodgings subject to cite state transient lodgings or room occupancy excise tax act.

(5) Occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises.

(6) Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative.

(7) Occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes.

This subtitle does not apply to leases of property leased exclusively for business, commercial, manufacturing, mercantile, or industrial purposes or any other purpose which is not exclusively residential, where the term of the lease, including all renewals provided for, does not exceed 99 years. A lease of the entire condominium, cooperative, or other building for multiple-family use on the property constitutes a business [illegible]l purpose. The term "multiple-family use"

does not apply to any duplex or single-family structure converted to a multiple-dwelling unit.

SECTION 1.203. Jurisdiction and Service of Process.

(a) The District Court of this state may exercise original jurisdiction over any landlord or tenant with respect to any conduct in this state governed by this Act or with respect to any claim arising from a transaction subject to this Act, within its jurisdictional limits as otherwise provided by law. Otherwise, the circuit court for each county or the Baltimore City Court shall have original jurisdiction.

(b) The District Court of this State may sit as a court of equity, with respect to any claim or conduct set forth in the foregoing subsection (a).

(c) Service of process and the acquisition of jurisdiction over the person of any landlord or tenant shall be governed by the laws of this state which would otherwise control any type of action or proceeding instituted.

SECTION 1.204. Preemption. It is the intention of the legislature to occupy the whole field on behalf of the state of establishing the legal relationship between landlord and tenant; provided however that nothing contained in this act shall be construed to in any manner or limit or restrict the regulation as otherwise provided by law of residential premises by a local government and the relationships between that government and the owner of such premises or the tenant of such premises.

[Drafter's note: Part II: §§1.201, 1.202, 1.204 follow the NAREB Draft, §1.203 is heavily modified to fit Maryland law.]

Part III

GENERAL DEFINITIONS AND
PRINCIPLES OF INTERPRETATION; NOTICE.

SECTION 1.301 General Definitions. Subject to additional definitions contained in subsequent Articles of this Act which apply to specific Articles or Parts thereof, and unless the context otherwise requires, in this Act or Parts thereof, and unless the context otherwise requires, in this Act

(1) "Action" includes recoupment, counterclaim, setoff, suit in equity, and any other proceeding in which rights are determined, including an action for possession.

(2) "Building and housing codes" include any law, ordinance, or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance of any premises, or dwelling unit.

(3) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

(4) "Good faith" means honesty in fact in the conduct of the transaction concerned.

(5) "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part, and it also means a manager of the premises who fails to disclose as required by Section 2.102.

(6) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, 2 or more persons having a joing or common interest, and any other legal or commercial entity.

(7) "Owner" means one or more persons, jointly or severally, in whom is vested (i) all or part of the

legal title to property; or (ii) all or part of the beneficial ownership and a right to present use and enjoyment of the premises; and the term includes a mortgagee in possession.

(8) "Person" includes an individual or organization.

(9) "Premises" means a dwelling unit and the structure of which it is a part and facilities and appurtenances therein and grounds, areas and facilities held out for the use of tenants generally or whose use is promised to the tenant.

(10) "Rent" means all payments to be made to the landlord under the rental agreement.

(11) "Rental agreement" means all agreements, written or oral, and valid rules and regulations adopted under Section 3.102 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

(12) "Roomer" means a person occupying a dwelling unit that lacks a major bathroom or kitchen facility, in a structure where one or major facilities are used in common by occupanty of the dwelling unit and other dwelling units. Major facility in the case of a bathroom means toilet, or either a bath or shower, and in the case of a kitchen means refrigerator, stove or sink.

(13) "Single family residence" means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single family residence if it has direct access to a street thoroughfare and shares neither heating facilities,

SECTION 1.304 Notice. Unless a section of this Code requires or a rental agreement requires notice to be in a particular form, or conveyed by a specified means, "notice" shall be notice in fact. A person has notice of a fact if (i) he has actual knowledge or it, (ii) he has received a notice or notification of it, or (iii) from all the facts and circumstances known to him at the time in question he has reason to know that it exists. A person "knows" or "has knowledge" of a fact if he has actual knowledge of it.

A person "notifies" or "gives" a notice or notification to another by taking steps reasonably calculated to inform the other in ordinary course whether or not the other actually comes to know of it. A person "receives" a notice or notification when (i) it comes to his attention, or (ii) in the case of the landlord, it is delivered at the place of business of the landlord through which the rental agreement was made or at any place held out by him as the place for receipt of the communication, or (iii) in the case of the tenant, it is delivered in hand to the tenant or mailed by registered or certified mail to him at the place held out by him as the place for receipt of the communication, or in the absence of such designation, to his last known place of residence.

"Notice," knowledge or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction, and in any event from the time it would have been brought to his attention if the organization had exercised reasonable diligence.

[Drafter's note: Part III follows exactly the NAREB draft]

Part IV

GENERAL PROVISIONS

Terms and Conditions of Rental Agreement.

(a) The landlord and tenant may include in a rental agreement,

hot water equipment, nor any other essential facility or service with any other dwelling unit.

(14) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

SECTION 1.302 Obligation of Good Faith. Every duty under this Act and every act which must be performed as a condition precedent to the exercise of a right or remedy under this Act imposes an obligation of good faith in its performance or enforcement.

SECTION 1.303 Unconscionability.

(a) If the court, as a matter of law, finds

(1) a rental agreement or any provision thereof was unconscionable when made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result; or

(2) a settlement in which a party waives or agrees to forego a claim or right under this Act or a rental agreement was unconscionable at the time it was made, the court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision, or limit the application of any unconscionable provision to avoid any unconscionable result.

(b) If unconscionability is put into issue by a party or by the court upon its own motion the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making the determination.

SECTION 1.403 Prohibited and Mandatory Provisions in Rental Agreements.

(a) No rental agreement shall contain any of the following provisions:

(1) A provision whereby the tenant authorizes any person to confess judgment on a claim arising out of the rental agreement.

(2) A provision whereby the tenant agrees to waive or forego any right or remedy provided by this Act or by other applicable law.

(3) A provision providing for penalty for late payment of rent in excess of five percent of the amount due for the rental period for which the payment wad delinquent. In the case of rental agreement under which the rent is paid in weekly rental installments a penalty of Five Dollars may be charged for the late payment of rent; provided however that such late payments shall constitute, in the aggregate, no more than Ten Dollars per month.

(4) Any provision whereby the tenant waives his right to a jury trial.

(5) Any provision whereby the tenant agrees to a period required for the landlord's notice to quit less than that provided by this Act; provided, however, that neither party is prohibited hereby from agreeing to a longer notice period than that required by applicable law; ~~so long as~~ provided however, that in no case shall the notice period provided thereby provide for a longer notice period to be furnished by the tenant to the landlord in order to terminate the tenancy than that required of the landlord to the tenant in order to terminate the tenancy.

(6) Any provision authorizing the landlord to take possession of the leased premises, or the tenant's personal

terms and conditions not prohibited by this Act or other rule of law including rent, term of the agreement, and other provisions governing the rights and obligations of the parties.

(b) In absence of agreement, the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit.

(c) Rent shall be payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, rent is payable at the dwelling unit and periodic rent is payable at the beginning of any term of one month or less and otherwise in equal monthly installments at the beginning of each month. Unless otherwise agreed, rent shall be uniformly apportionable from day-to-day.

(d) Unless otherwise provided by the rental agreement, the tenancy shall be presumed to be week-to-week in case of a roomer who pays weekly rent, and in all other cases month-to-month.

SECTION 1.402 Effect of Unsigned or Undelivered Written Rental Agreement.

(a) If the landlord does not sign and deliver a written rental agreement signed and delivered to him by the tenant, acceptance of rent without reservation by the landlord and delivery of possession to the tenant gives the rental agreement the same effect as if it had been signed and delivered by the landlord.

(b) If a written rental agreement given effect by the operation of this section provides for a term longer than one year, it is effective only for one year.

property therein (unless the rental agreement has been terminated by action of the parties or by operation of law, and such personal property has been abandoned by the tenant) without the benefit of formal legal process.

(7) Any provision of a rental agreement, the effect of which is to indemnify the landlord, hold the landlord harmless, or preclude or exonerate the landlord from any liability to the tenant, or to any other person, for any injury, loss, damage, or liability arising from any omission, fault, negligence, or other misconduct of the landlord on or about the leased premises or any elevators, stairways, hallways, or other appurtenances used in connection with them, and not within the exclusive control of the tenant. No insurer may claim a right of subrogation by reason of the invalidity or unenforceability of any such provision.

(b) Any landlord who offers more than four dwelling units for rent in one parcel of property or at any one location and who rents by means of written rental agreements, shall:

(1) Provide, upon written request from any prospective applicant for rental agreement, a copy of the proposed form of the rental agreement in writing, complete in every material detail, except for the date, name and address of the tenant, designation of the premises, and the rental rate, without requiring execution of the rental agreement or any prior deposit; and

(2) Embody in the form of the lease and in any executed lease the following:

(I.) A statement that the premises will be made available in the condition permitting habitation, with [illegible] safety if that is the agreement, or if that is not the agreement, a statement of the agreement concerning the condition of the premises; and

(II.) The landlord's and the tenant's specific obligations as to heat, gas, electricity, water, and repair of the premises.

(c) Penalties for violations of this Section

(1) Any rental agreement provision which is not in conformity with the terms of this Section shall be unenforceable by the landlord.

(2) If the landlord includes in any rental agreement a provision not in conformity with the terms of this Section, at any time subsequent to ninety days after the effective date hereof, and tenders a rental agreement containing such provision, or attempts to enforce, and/or makes known to the tenant an intent to enforce any such provision, the tenant may recover any actual damages incurred as a reason thereof, including reasonable attorney's fees.

[Drafter's note: Section 1.403 is a restatement of current Maryland law, restructured in form only to coincide with the organization of this act, and including certain stylistic changes. Substantive rights accorded by current Sections 8-208, 8-203.1, 8-105, and 8-501 of the Maryland Code have not been altered.]

SECTION 1.404 Separation of Rents and Obligations to Maintain Property Forbidden. A rental agreement, assignment, conveyance, trust deed, or security instrument may not permit the receipt of rent free of the obligation to comply with Section 2.104

Drafted by J. Carb

FINAL DRAFT

UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT

NATIONAL CONFERENCE OF COMMISSIONERS ON

UNIFORM STATE LAWS

1155 East 60th Street

Chicago, Illinois 60637

August 10, 1972

This bill is turkey indeed.

Last years bill :- 1197 - ~~prohibits increase in rent~~ prohibits increase in rent & is arbitrary rent control & should be punished

's policy to encourage improvement. Rent Control -

Best enforcer is vacant apartment - don't stifle new construction

"No raise in rent above similar accomodations for other similar tenants"

Tenant must be right & good faith is not necessary. Need be justified motive is not important.

UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT

ARTICLE I

GENERAL PROVISIONS AND DEFINITIONS

Part I

SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THE ACT

SECTION 1.101 Short Title. This Act shall be known and may be cited as the "Uniform Residential Landlord and Tenant Act."

SECTION 1.102 Purposes; Rules of Construction.

(a) This Act shall be liberally construed and applied to promote its underlying purposes and policies.

(b) Underlying purposes and policies of this Act are

(1) to simplify, clarify, modernize and revise the law governing the rental of dwelling units and the rights and obligations of landlord and tenant;

(2) to encourage landlord and tenant to maintain and improve the quality of housing; and

(3) to make uniform the law among those states which enact it.

SECTION 1.103 Supplementary Principles of Law Applicable. Unless displaced by the provisions of this Act, the principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause supplement its provisions.

SECTION 1.104 Construction Against Implicit Repeal. This Act being a general act intended as a unified coverage of its subject matter, no part of it is to be construed as impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

SECTION 1.105 Administration of Remedies; Enforcement.

(a) The remedies provided by this Act shall be so administered that the aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages.

(b) Any right or obligation declared by this Act is enforceable by action unless the provision declaring it specifies a different and limited effect.

SECTION 1.106 Settlement of Disputed Claim or Right. A claim or right arising under this Act or on a rental agreement, if disputed in good faith, may be settled by agreement.

Part II

SCOPE AND JURISDICTION

SECTION 1.201 Territorial Application. This Act applies to, regulates, and determines rights, obligations and remedies under a rental agreement, wherever made, for a dwelling unit located within this state.

SECTION 1.202 Exclusions from Application of Act. Unless created to avoid the application of this Act, the following arrangements are not governed by this Act:

(1) Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service.

(2) Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the pur-

chaser or a person who succeeds to his interest.

(3) Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization.

(4) Transient occupancy in a hotel, or motel or lodgings subject to cite state transient lodgings or room occupancy excise tax act.

(5) Occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises.

(6) Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative.

(7) Occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes.

SECTION 1.203 Jurisdiction and Service of Process.

(a) The court of this state may exercise jurisdiction over any landlord with respect to any conduct in this state governed by this Act or with respect to any claim arising from a transaction subject to this Act. In addition to any other method provided by rule or by statute, personal jurisdiction over a landlord may be acquired in a civil action or proceeding instituted in the court by the service of process in the manner provided by this section.

(b) If a landlord is not a resident of this state or is a corporation not authorized to do business in this state and engages in any conduct in this state governed by this Act, or engages in a transaction subject to this Act, he may designate an agent upon whom service of process may be made in this state. The agent shall be a resident of this state or a corporation authorized to do business in this state. The designation shall

be in a writing and filed with the Secretary of State . If no designation is made and filed or if process cannot be served in this state upon the designated agent, process may be served upon the Secretary of State , but service upon him is not effective unless the plaintiff or petitioner forthwith mails a copy of the process and pleading by registered or certified mail to the defendant or respondent at his last reasonably ascertainable address. An affidavit of compliance with this section shall be filed with the clerk of the court on or before the return day of the process, if any, or within any further time the court allows.

Part III

GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION; NOTICE.

SECTION 1.301 General Definitions. Subject to additional definitions contained in subsequent Articles of this Act which apply to specific Articles or Parts thereof, and unless the context otherwise requires, in this Act

(1) "Action" includes recoupment, counterclaim, setoff, suit in equity, and any other proceeding in which rights are determined, including an action for possession.

(2) "Building and housing codes" include any law, ordinance, or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance of any premises, or dwelling unit.

(3) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

(4) "Good faith" means honesty in fact in the conduct of the transaction concerned.

(5) "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part, and it also means a manager of the premises who fails to disclose as required by Section 2.102.

(6) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, 2 or more persons having a joint or common interest, and any other legal or commercial entity.

(7) "Owner" means one or more persons, jointly or severally, in whom is vested (i) all or part of the legal title to property; or (ii) all or part of the beneficial ownership and a right to present use and enjoyment of the premises; and the term includes a mortgagee in possession.

(8) "Person" includeds an individual or organization.

(9) "Premises" means a dwelling unit and the structure of which it is a part and facilities and appurtenances therein and grounds, areas and facilities held out for the use of tenants generally or whose use is promised to the tenant.

(10) "Rent" means all payments to be made to the landlord under the rental agreement.

(11) "Rental agreement" means all agreements, written or oral, and valid rules and regulations adopted under Section 3.102 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

(12) "Roomer" means a person occupying a dwelling unit that lacks a major bathroom or kitchen facility, in a structure where one or more major facilities are used in common by occupants of the dwelling unit and other dwelling units. Major facility in the case of a bathroom means toilet, or either a bath or shower, and in the case of a kitchen means refrigerator, stove or sink.

(13) "Single family residence" means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with any other dwelling unit.

(14) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

SECTION 1.302 Obligation of Good Faith. Every duty under this Act and every act which must be performed as a condition precedent to the exercise of a right or remedy under this Act imposes an obligation of good faith in its performance or enforcement.

SECTION 1.303 Unconscionability.

(a) If the court, as a matter of law, finds

(1) a rental agreement or any provision thereof was unconscionable when made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable provision, or limit the application of any unconscionable provision to avoid

an unconscionable result; or

(2) a settlement in which a party waives or agrees to forego a claim or right under this Act or under a rental agreement was unconscionable at the time it was made, the court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision, or limit the application of any unconscionable provision to avoid any unconscionable result.

(b) If unconscionability is put into issue by a party or by the court upon its own motion the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making the determination.

SECTION 1.304 Notice. A person has notice of a fact if (i) he has actual knowledge of it, (ii) he has received a notice or notification of it, or (iii) from all the facts and circumstances known to him at the time in question he has reason to know that it exists. A person "knows" or "has knowledge" of a fact if he has actual knowledge of it.

A person "notifies" or "gives" a notice or notification to another by taking steps reasonably calculated to inform the other in ordinary course whether or not the other actually comes to know of it. A person "receives" a notice or notification when (i) it comes to his attention, or (ii) in the case of the landlord, it is delivered at the place of business of the landlord through which the rental agreement was made or at any place held out by him as the place for receipt of the communication, or (iii) in the case of the tenant, it is delivered in hand to the tenant or mailed by registered or certified mail to him at the place held out by him as the place for receipt of the

communication, or in the absence of such designation, to his last known place of residence.

"Notice," knowledge or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction, and in any event from the time it would have been brought to his attention if the organization had exercised reasonable diligence.

Part IV

GENERAL PROVISIONS

SECTION 1.401 Terms and Conditions of Rental Agreement.

(a) The landlord and tenant may include in a rental agreement, terms and conditions not prohibited by this Act or other rule of law including rent, term of the agreement, and other provisions governing the rights and obligations of the parties.

(b) In absence of agreement, the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit.

(c) Rent shall be payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, rent is payable at the dwelling unit and periodic rent is payable at the beginning of any term of one month or less and otherwise in equal monthly installments at the beginning of each month. Unless otherwise agreed, rent shall be uniformly apportionable from day-to-day.

(d) Unless the rental agreement fixes a definite term, the tenancy shall be week-to-week in case of a roomer who pays weekly rent, and in all other cases month-to-month.

SECTION 1.402 /~Effect of Unsigned or Undelivered Rental Agreement.~/

(a) If the landlord does not sign and deliver a written rental agreement signed and delivered to him by the tenant, acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord.

(b) If the tenant does not sign and deliver a written rental agreement signed and delivered to him by the landlord, acceptance of possession and payment of rent without reservation gives the rental agreement the same effect as if it had been signed and delivered by the tenant.

(c) If a rental agreement given effect by the operation of this section provides for a term longer than one year, it is effective only for one year.

SECTION 1.403 /Prohibited Provisions in Rental Agreements./

(a) No rental agreement may provide that the tenant:

(1) agrees to waive or to forego rights or remedies under this Act;

(2) authorizes any person to confess judgment on a claim arising out of the rental agreement;

(3) agrees to pay the landlord's attorney's fees; or

(4) agrees to the exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or the costs connected therewith.

(b) A provision prohibited by Section (a) included in a rental agreement is unenforceable. If a landlord deliberately uses a rental agreement containing provisions known by him to be prohibited, the tenant may recover actual damages sustained by him and not more than /3/ months' periodic rent and reasonable attorney's fees.

SECTION 1.404 /Separation of Rents and Obligations to Maintain Property Forbidden./ A rental agreement, assignment, conveyance, trust deed, or security instrument may not permit the receipt of rent free of the obligation to comply with Section 2.104(a).

ARTICLE II

LANDLORD OBLIGATIONS

SECTION 2.101 /Security Deposits; Prepaid Rent./

(a) A landlord may not demand or receive security, however denominated, in an amount or value in excess of /1/ month /s/ periodic rent.

(b) Upon termination of the tenancy property or money held by the landlord as ~~security may be~~ /prepaid rent and/ applied to the payment of accrued rent and the amount of damages which the landlord has suffered by reason of the tenant's noncompliance with Section 3.101 all as itemized by the landlord in a written

notice delivered to the tenant together with the amount due /~14~/ days after termination of the tenancy and delivery of possession and demand by the tenant.

(c) If the landlord fails to comply with sub-section (b) the tenant may recover the property and money due him together with damages in an amount equal to /~twice~/ the amount wrongfully withheld and reasonable attorney's fees.

(d) This section does not preclude the landlord or tenant from recovering other damages to which he may be entitled under this Act.

(e) The holder of the landlord's interest in the premises at the time of the termination of the tenancy is bound by this section.

SECTION 2.102 /~Disclosure.~/

(a) The landlord or any person authorized to enter into a rental agreement on his behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the anme and address of

(1) the authorized to manage the premises; and

(2) an owner of the premises or a person authorized to act for and on behalf of the owner for the prupose of service of process and for the purpose of receiving and receipting for notices and demands.

(b) The information required to be furnished by this section shall be kept current and this section extends to and is enforceable against any successor landlord, owner, or manager.

(c) A person who fails to comply with subsection (a) becomes an agent of each person who is a landlord for the purpose of

(1) service of process and receiving and receipting for notices and demands, and

(2) performing the obligations of the landlord under this Act and under the rental agreement and expending or making available for the purpose all rent collected from the premises.

SECTION 2.103 /Landlord to Supply Possession of Dwelling Unit./ At the commencement of the term the landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and Section 2.104. The landlord may bring an action for possession against any person wrongfully in possession and may recover the damages provided in Section 4.301(c).

SECTION 2.104 /Landlord to Maintain Fit Premises./

(a) The landlord shall

(1) comply with the requirements of applicable building and housing codes materially affecting health and safety;

(2) make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(3) keep all common areas of the premises in a clean and safe condition;

(4) maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him;

(5) provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal; and

(6) supply running water and reasonable amounts of hot water at all times and reasonable heat /~between /~October 1_/ and /~May 1_/_/ except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or t dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection.

If the duty imposed by paragraph (1) is greater than any duty imposed by any other paragraph of this subsection, the landlord's duty shall be determined by reference to paragraph (1).

(b) The landlord and tenant of a single family residence may agree in writing that the tenant perform the landlord's duties specified in paragraphs (5) and (6) of subsection (a) and also specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(c) The landlord and tenant of any dwelling unit other than a single family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if

(1) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(2) the work is not necessary to cure noncompliance with Section 204 (a)(1); and

(3) the agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.

(d) The landlord may not treat performance of the separate agreement described in subsection (c) as a condition to any obligation or performance of any rental agreement.

SECTION 2.105 /Limitation of Liability./ (a) Unless otherwise agreed, a landlord, who conveys premises that include a dwelling unit subject to a rental agreement in a good faith sale to a bona fide purchaser, is relieved of liability under the rental agreement and this Act as to events occurring subsequent to written notice to the tenant of the conveyance. However, he remains liable to the tenant for any property and money to which the tenant is entitled under Section 2.101.

(b) Unless otherwise agreed, a manager of premises that include a dwelling unit is relieved of liability under the rental agreement and this Act as to events occurring after written notice to the tenant of the termination of his management.

ARTICLE III

TENANT OBLIGATIONS

SECTION 3.101 /Tenant to Maintain Dwelling Unit./ The tenant shall

(1) comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

(2) keep that part of the premises that he occupies and uses as clean and safe as the condition of the premises permit;

(3) dispose from his dwelling unit all ashes, rubbish, garbage, and other waste in a clean and safe manner;

(4) keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

(5) use in a resonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances including elevators in the premises;

(6) not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or knowingly permit any person to do so; and

(7) conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises.

SECTION 3.102 [Rules and Regulations.] A landlord, from time to time, may adopt rulesor regulations,however described, concerning the tenant's use and occupancy of the premises. It is enforceable against the tenant only if

(1) its purpose is to promote the convenience, safety, or welfare of the tenants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;

(2) it is reasonably related to the purpose for which it is adopted;

(3) it applies to all tenants in the premises in a fair manner;

(4) it is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform him of what he must or must not do to comply;

(5) it is not for the purpose of evading the obligations of the landlord; and

(6) the tenant has notice of it at the time he enters into the rental agreement;

A rule or regulation adopted after the tenant enters into the rental agreement is enforceable against the tenant if reasonable notice of its adoption is given to the tenant and it does not work a substantial modification of his bargain.

SECTION 3.103 [Access.]

(a) The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

(b) The landlord may enter the dwelling unit without consent of the tenant in case of emergency.

(c) The landlord shall not abuse the right of access or use it to harass the tenant. Except in case of emergency or if it is impracticable to do so, the landlord shall give the tenant at least [2] days' notice of his intent to enter and enter only at reasonable times.

(d) The landlord has no other right of access except by court order, and as permitted by Sections 4.202 and 4.203(b), or if the tenant has abandoned or surrendered the premises.

SECTION 3.104 [Tenant to Use and Occupy.] Unless otherwise agreed, the tenant shall occupy his dwelling unit only as a dwelling unit. The rental agreement may require that the tenant notify the landlord of any anticipated extended absence from the premises in excess of [7 days] no later than the first day of the extended absence.

ARTICLE IV

REMEDIES

Part I

TENANT REMEDIES

SECTION 4.101 [Noncompliance by the Landlord - In General.]

(a) Except as provided in this Act, if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with Section

2.104 materially affecting health and safety, the tenant may deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than [30 days] after receipt of the notice if the breach is not remedied in [14 days], and the rental agreement shall terminate as provided in the notice subject to the following. If the breach is remediable by repairs on the payment of damages or otherwise and the landlord adequately remedies the breach prior to the date specified in the notice, the rental agreement will not terminate. If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs with [6] months, the tenant may terminate the rental agreement upon at least [14 days] written notice specifying the breach and the date of termination of the rental agreement. The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of his family, or other person on the premises with his consent.

(b) Except as provided in this Act, the tenant may recover damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or Section 2.104. If the landlord's noncompliance is wilful the tenant may recover reasonable attorney's fees.

(c) The remedy provided in subsection (b) is in addition to any right of the tenant arising under Section 4.101(a).

(d) If the rental agreement is terminated, the landlord shall return all prepaid rent and security recoverable by the tenant under Section 2.101.

SECTION 4.102 /¯Failure to Deliver Possession._/ If the landlord fails to deliver possession of the dwelling unit to the tenant as provided in Section 2.103, rent abates until possession is delivered and the tenant

(1) upon at least /¯5_/ days written notice to the landlord terminate the rental agreement and upon termination the landlord shall return all prepaid rent and security; or

(2) demand performance of the rental agreement by the landlord and, if the tenant elects, maintain an action for possession of the dwelling unit against the landlord or any person wrongfully in possession and recover the damages sustained by him.

If a person's failure to deliver possession is wilfull and not in good faith, an aggrieved person may recover from that person an amount not more than /¯3_/ months' periodic rent or /¯threefold_/ the actual damages sustained by him, whichever is greater, and reasonable attorney's fees.

SECTION 4.103 /¯Self-Help for Minor Defects._/

(a) If the landlord fails to comply with the rental agreement or Section 2.104, and the reasonable cost of compliance is less than /¯$100_/, or an amount equal to /¯one-half_/ of the periodic rent, whichever amount is greater, the tenant may recover damages for the breach under Section 4.101(b) or may notify the landlord of his intention to correct the condition at the landlord's expense. If the landlord fails to comply within /¯14_/ days after being notified by the tenant in writing or as promptly as conditions require in case of emergency, the tenant may cause the work to be done in a workmanlike manner and, after submitting to the landlord an itemized statement, deduct from his rent the actual and reasonable cost or the fair and reasonable value of the work, not exceeding the amount specified in this subsection.

(b) A tenant may not repair at the landlord's expense if the condition was caused by the deliberate or negligent act or omission of the tenant, a member of his family, or other person on the premises with his consent.

SECTION 4.104 /~~Wrongful Failure to Supply Heat, Water, Hot Water or Essential Services.~~/

(a) If contrary to the rental agreement or Section 2.104 the landlord deliberately or negligently fails to supply running water, hot water, or heat, or essential services, the tenant may give written notice to the landlord specifying the breach and may

(1) procure reasonable amounts of hot water, running water, heat and essential services during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent, or

(2) recover damages based upon the dimunition in the fair rental value of the dwelling unit, or

(3) procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

In addition to the remedy provided in subdivision (3) the tenant may recover the actual and reasonable cost or fair and reasonable value of the substitute housing not in excess of an amount equal to the periodic rent, and in any case under this subsection reasonable attorney's fees.

(b) If the tenant proceeds under this section, he may not proceed under Section 4.101 or Section 4.103 as to that breach.

(c) The rights under this section do not arise until the tenant has given notice to the landlord or if the condition was caused by the deliberate or negligent act or omission of the tenant, a member of his family, or other person on the premises with his consent.

SECTION 4.105 /Landlord's Noncompliance as Defense to Action for Possession or Rent./

(a) In an action for possession based upon nonpayment of the rent or in an action for rent where the tenant is in possession, the tenant may /counterclaim/ for any amount which he may recover under the rental agreement or this Act. In that event the court from time to time may order the tenant to pay into court all or part of the rent accrued and thereafter accruing, and shall determine the amount due to each party. The party to whom a net amount is owed shall be paid first from the money paid into court, and the balance by the other party. If no rent remains due after application of this section, judgment shall be entered for the tenant in the action for possession. If the defense or counterclaim by the tenant is without merit and is not raised in good faith the landlord may recover reasonable attorneys fees.

(b) In an action for rent where the tenant is not in possession, the tenant may /counterclaim/ as provided in subsection (a) but the tenant is not required to pay any rent into court.

SECTION 4.106 /Fire or Casualty Damage./

(a) If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the dwelling unit is substantially impaired, the tenant may

(1) immediately vacate the premises and notify the landlord in writing within /14 days/ thereafter of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or

(2) if continued occupancy is lawful, vacate any part of the dwelling

unit rendered unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the dimunition in the fair rental value of the dwelling unit.

(b) If the rental agreement is terminated the landlord shall return all prepaid rent and security recoverable under Section 2.101. Accounting for rent in the event of termination or apportionment is to occur as of the date of the casualty.

SECTION 4.107 /Tenant's Remedies for Landlord's Unlawful Ouster, Exclusion, or Dimunition of Service./ If the landlord unlawfully removes or excludes the tenant from the premises or wilfully diminishes services to the tenant by interrupting or causing the interruption of electric, gas, water or other essential service to the tenant, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount not more than /3/ months periodic rent or /threefold/ the actual damages sustained by him, whichever is greater, and a reasonable attorney's fee. If the rental agreement is terminated the landlord shall return all prepaid rent and security.

Part II

LANDLORD REMEDIES

SECTION 4.201 /Noncompliance with Rental Agreement; Failure to Pay Rent/ (a) Except as provided in this Act, if there is a material noncompliance by the tenant with the rental agreement or a noncompliance with Section 3.101 materially affecting health and safety, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than /30/ days after receipt of the notice, if the breach is not remedied in /14/ days, and the rental agreement shall terminate as provided in the notice subject to the following. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the

breach prior to the date specified in the notice, the rental agreement will not terminate. If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within /~6~/ months, the landlord may terminate the rental agreement upon at least /~14~/ days written notice specifying the breach and the date of termination of the rental agreement.

(b) If rent is unpaid when due and the tenant fails to pay rent within /~14~/ days after written notice by the landlord of nonpayment and his intention to terminate the rental agreement if the rent is not paid within that period of time, the landlord may terminate the rental agreement.

(c) Except as provided in this Act, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or Section 3.101. If the tenant's noncompliance is wilful the landlord may recover reasonable attorneys fees.

SECTION 4.202 /~Failure to Maintain.~/ If there is noncompliance by the tenant with Section 3.101 materially affecting health and safety that can be remedied by repair, replacement of a damaged item or cleaning, and the tenant fails to comply as promptly as conditions require in case of emergency or within /~14~/ days after written notice by the landlord specifying the breach and requesting that the tenant remedy it within that period of time, the landlord may enter the dwelling unit and cause the work to be done in a workmanlike manner and submit an itemized bill for the actual and reasonable cost or the fair and reasonable value thereof as rent on the next date when periodic rent is due, or if the rental agreement has terminated, for immediate payment.

SECTION 4.203 [Remedies for Absence, Nonuse and Abandonment.]

(a) If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence in excess of [7] days as required in Section 3.104 and the tenant wilfully fails to do so, the landlord may recover actual damages from the tenant.

(b) During any absence of the tenant in excess of [ ] days, the landlord may enter the dwelling unit at times reasonably necessary.

(c) If the tenant abandons the dwelling unit, the landlord shall make reasonable efforts to rent it at a fair rental. If the landlord rents the dwelling unit for a term beginning prior to the expiration of the rental agreement, it is deemed to be terminated as of the date the new tenancy begins. The rental agreement is deemed to be terminated by the landlord as of the date the landlord has notice of the abandonment, if the landlord fails to use reasonable efforts to rent the dwelling unit at a fair rental or if the landlord accepts the abandonment as a surrender. If the tenancy is from month-to-month, or week-to-week, the term of the rental agreement for this purpose shall be deemed to be a month or a week, as the case may be.

SECTION 4.204 [Waiver of Landlord's Right to Terminate.]

Acceptance of rent with knowledge of a default by tenant or acceptance of performance by the tenant that varies from the terms of the rental agreement or rules or regulations subsequently adopted by the landlord constitutes a waiver of his right to terminate the rental agreement for that breach, unless otherwise agreed after the breach has occurred.

SUMMARY CHART OF ANALYSIS AND RECOMMENDATIONS WITH RESPECT TO ADOPTION OF UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT IN MARYLAND

by Steven J. Davison, Reporter

Explanation of abbreviations on chart:

URLTA = Uniform Residential Landlord and Tenant Act

* = Significant section of URLTA recommended for priority action by Commission

Subject = Subject covered by section of URLTA

Maryland = Section of Real Property Article, Maryland Annotated Code, which is comparable to cited section of URLTA

Bill = Section of Proposed Bill to Enact URLTA which is comparable to cited section of URLTA and Maryland statute

Law Review = Pages in Davison, The Uniform Residential Landlord and Tenant Act and Its Potential Effects Upon Maryland Landlord-Tenant Law, 5 University of Baltimore Law Review 247, which discusses cited sections of URLTA and Maryland statute

Explanation of abbreviations of recommendations on chart:

None = No recommendation

URLTA = Adopt cited section of URLTA

R-MD = Repeal Maryland statute

R-URLTA = Reject cited section of URLTA

K-MD = Keep Maryland Statute, reject URLTA section(if any)

A-MD = Reject URLTA section, but amend Maryland statute to include provisions of URLTA

A-URLTA = Adopt URLTA section with amendments to include provisions in Maryland statute and repeal Maryland statute

	URLTA	Subject	Maryland	Bill	Law Review	Recommendation
	Article I	General Provisions				
	Part I					
	1.101	Short title	None	8-201, p. 1	None	URLTA
	1.102	Purposes, Rules of construction	None	8-202, pp. 1-2	None	URLTA
	1.103	Supplementary principles	None	8-203, p. 2	None	URLTA
	1.104	Construction	None	8-204, p. 2	None	URLTA
*	1.105	Remedies, Enforcement	8-207	8-205, p. 2	295-296	A-MD
	1.106	Settlements	None	8-206, p. 2	251, footnote 30	URLTA
	Part II					
	1.201	Application	None	8-207, p. 3	251-252	URLTA
	1.202	Application	None	8-208, p. 3	252-253	URLTA
	1.203	Jurisdiction, Service of Process	None	8-209, pp. 3-4	252	URLTA
	Part III					
	1.301	Definitions	8-101	8-210, pp. 4-5	251	URLTA
	1.302	Good faith	None	8-211, p. 5	251	URLTA
	1.303	Unconscionability	None	8-212, p. 5	283-284	None
	1.304	Notice	None	8-213, p. 6	None	URLTA
	Part IV					
	1.401	Rental Agreement	None	8-214, pp. 6-7	270-271, 293-295	URLTA
	1.402	Unsigned Rental Agreement	None	8-215, p. 7	None	URLTA
*	1.403	Prohibited Lease Provisions	8-208	8-216, pp. 7-8	281-284	A-MD

	URLTA	Subject	Maryland	Bill	Law Review	Recommendation
	1.404	Obligations	None	8-218, p. 9	251	URLTA
	None	Liquidated damages	8-212	8-217, p. 8	None	None
	Article II- Landlord Obligations					
	2.101	Security deposits	8-203	8-219, pp. 9-11	266-270	A-MD
	2.102	Disclosure	8-210	8-220, p. 11	265-266	A-MD
	None	Record of rent	8-208.2	8-221, pp. 11-12	271, footnote 209	K-MD
	None	Receipt for rent	8-205	8-222, p. 12	None	K-MD
	2.103	Delivery of possession	8-204(f)	8-223, p. 12	263-264	A-URLTA
*	2.104	Duty to Maintain Premises	8-203(a)(2)	8-224, pp. 12-13	253-262	URLTA, R-MD
	2.105	Limitation of Liability	None	8-225, p. 13	258	URLTA
	None	Lease Options	8-202	8-226, pp. 13-14	None	K-MD
	Article III- Obligations					
*	3.101	Duty to Maintain Premises	None	8-227, p. 14	274-275	URLTA
*	3.102	Rules and Regulations	None	8-228, pp. 14-15	282	URLTA
	3.103	Access	None	8-229, p. 15	277-278	URLTA
	3.104	Use and occupancy	None	8-230, p. 15	None	URLTA
	Article IV- Remedies					
	Part I- Tenant Remedies					
*	4.101	Landlord's Non-compliance	8-211	8-231, pp. 15-19	253-262	A-MD

	URLTA	Subject	Maryland	Bill	Law Review	Recommendation
	4.102	Failure to Deliver Possession	8-204(e)	8-232, pp. 19-20	263-264	A-URLTA
*	4.103	Self help repairs	None	8-233, p. 20	260	None
	4.104	Denial of essential services	None	8-234, pp. 20-21	261-262	URLTA
	4.105	Landlord's non-compliance as defense	8-211	8-235, p. 21	261-262	URLTA
	4.106	Fire or casualty damage	8-112	8-236, p. 21	272-274	A-URLTA
*	4.107	Unlawful ouster, denial of services	None	8-237, p. 22	262	URLTA
	Part II-	Landlord's Remedies				
	4.201	Failure to pay rent	8-401	8-238, p. 22	271-272	A-MD
*	4.202	Failure to maintain premises	None	8-239, p. 22	274-275	URLTA
	4.203	Absence, nonuse, abandonment	None	8-240, p. 23	278-281	URLTA
	4.204	Waiver	None	8-241, p. 23	285	URLTA
	4.205	Distress for rent	Subtitle 3	8-242, p. 23	271-272	None
	4.206	Remedy after termination	None	8-243, p. 23	272	URLTA
	4.207	Recovery of possession	None	8-244, pp. 23-24	None	URLTA

URLTA	Subject	Maryland	Bill	Law Review	Recommendation
Part III- Abuse of Access					
4.301	Holdover tenants	8-402	None	285-290, 293-295	K-MD
4.302	Abuse of access	None	8-245, p. 24	277-278	A-URLTA
Article V- Retaliatory Conduct					
5.101	Retaliatory Eviction	8-208.1	8-246, pp. 24-26	290-293	A-URLTA
None	Retaliatory Eviction	8-206	8-247, p. 26	None	K-MD
Article VI- Effective Date					
6.101	Effective date	None	8-248, p. 26	None	URLTA
6.102	Specific Repealer	None	None	None	R-URLTA
6.103	Savings clause	None	8-249, pp. 26-27	None	URLTA
6.104	Severability	None	8-250, p. 27	None	URLTA

Steven G. Davison
Reporter, Governor's
Commission on
Landlord - Tenant Law
Revision
3600 S. 14th Street
Arlington, Virginia 22204

August 15, 1974

Alan Wilner, Esq.
Office of the Governor
State House
Annapolis, Maryland 21404

Dear Mr. Wilner:

On behalf of the Governor's Commission on Landlord - Tenant Law Revision, I am forwarding two draft bills that the Commission approved at their meeting on July 1, 1974. I have been requested by the Commission to forward these two bills to the office of the Governor for consideration for introduction to the legislature as administration bills.

The first bill governs appeals by landlords or tenants from district court judgments, and would repeal Section 8-401(f) of the Annotated Code of Maryland. This bill was introduced in the last session of the legislature as S.B. No.729.

The second bill, which was introduced in the last session of the legislature as H.B. No.1546, would authorize a tenant to bring an action of rent escrow to pay rent into court where the landlord, after notice from tenant, fails to repair and eliminate substantial and dangerous conditions and defects in the leased premises.

If I can be of future assistance to you with respect to this matter, please contact me. Beginning August 19, I will be teaching at the University of Baltimore Law School. My office telephone number at the law school will be 727-6350 ext. 308. My home phone number is (703) 979-3852.

On behalf of the Commission, I thank you for your attention to this matter.

Sincerely yours,

Steven G. Davison

SGD:kk
Enclosures
cc: Hans F. Mayer
Judge Edgar P. Silver

A BILL ENTITLED

AN ACT concerning

Real Property - Appeals from Rent Court

FOR the purpose of providing a right of appeal in all cases involving landlord and tenant law from the District Court, the appropriate Circuit Court and to the Court of Special Appeals and providing for an appeal bond.

BY adding to

Article - Real Property
Section 8-117
Annotated Code of Maryland
(As enacted by Chapter 12 (S.B.200) of the 1974 Regular Session of the General Assembly)

BY Repealing

Article - Real Property
Section 8-401(f)
Annotated Code of Maryland
(As enacted by Chapter 12 (S.B.200) of the 1974 Regular Session of the General Assembly)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, that new Section 8-117 be and it is hereby added to Article - Real Property, of the Annotated Code of Maryland (As enacted by Chapter 12 (S.B.200) of the 1974 Regular Session of the General Assembly) to read as follows:

Article - Real Property

(A) APPEAL BY AGGRIEVED PARTY. ANY AGGRIEVED PARTY MAY APPEAL FROM THE JUDGMENT OF THE DISTRICT COURT TO THE CIRCUIT COURT FOR ANY COUNTY OR THE BALTIMORE CITY COURT, AS THE CASE MAY BE, AT ANY TIME WITHIN TWO DAYS FROM THE RENDITION OF THE JUDGMENT. ON APPEAL THE CASE SHALL BE TRIED DE NOVO BY THE COURT TO WHICH THE CASE WAS APPEALED, DESPITE THE AMOUNT OF RENT CLAIMED TO BE DUE AND UNPAID ON THE PREMISES SOUGHT TO BE REPOSSESSED BY THE LANDLORD.

(B) APPEAL BOND. THE TENANT, (INCLUDING SUBTENANT, ASSIGNEE, OR SOMEONE HOLDING UNDER THEM), IN ORDER TO STAY EXECUTION OF THE JUDGMENT FROM WHICH APPEAL IS TAKEN, SHALL PAY INTO COURT AN AMOUNT EQUAL TO THE AMOUNT IN DISPUTE, TOGETHER WITH ALL COSTS MENTIONED IN THE JUDGMENT AND OTHER SUCH COSTS (AND DAMAGES) AS SHALL BE INCURRED AND SUSTAINED BY REASON OF THE APPEAL, UNLESS THERE IS FILED A BOND IN A LIKE AMOUNT WITH SUCH SURETY AS MAY BE APPROVED PURSUANT TO THE MARYLAND DISTRICT RULES OR WITH OTHER SECURITY APPROVED BY THE COURT. SAID BOND SHALL NOT AFFECT IN ANY MANNER THE RIGHT OF THE LANDLORD TO PROCEED AGAINST THE TENANT, ASSIGNEE OR SUBTENANT FOR ANY AND ALL OF THE RENTS (AND OTHER CHARGES) THAT MAY BECOME DUE UNDER THE LEASE AND PAYABLE TO THE LANDLORD AFTER THE RENDITION OF THE JUDGMENT. THE COURT AT ITS

DISCRETION, MAY PROVIDE FOR A LESSER APPEAL BOND, IF IN ITS JUDGMENT THE INTERESTS OF JUSTICE SHALL BE FURTHERED THEREBY. IN THE EVENT THE LANDLORD SHALL APPEAL ANY JUDGMENT, IN THE MANNER AFORESAID, THE PRINCIPAL AMOUNT OF THE APPEAL BOND REQUIRED TO STAY THE EXECUTION OF ANY SUCH JUDGMENT SHALL BE AT THE DISCRETION OF THE COURT.

(C) APPEAL TO COURT OF SPECIAL APPEALS. ANY PARTY AGGRIEVED BY THE JUDGMENT OF THE CIRCUIT COURT FOR ANY COUNTY OR THE BALTIMORE CITY COURT, AS THE CASE MAY BE, MAY APPEAL SUCH JUDGMENT TO THE MARYLAND COURT OF SPECIAL APPEALS. ANY APPEAL TO THE MARYLAND COURT OF SPECIAL APPEALS PROVIDED FOR BY THIS SECTION SHALL BE GOVERNED BY THE MARYLAND RULES OF CIVIL PROCEDURE (APPEALS TO THE COURT OF SPECIAL APPEALS).

SECTION 2. AND BE IT FURTHER ENACTED, That Section 8-401(f) of Article - Real Property, of the Annotated Code of Maryland (As enacted by Chapter 12 (S.B.200) of the 1974 Regular Session of the General Assembly) be and it is hereby repealed.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1975.

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant - Rent Escrow

FOR the purpose of declaring the policy of Maryland in regard to dangerous and serious defects presenting a substantial and serious threat of danger to occupants of the dwellings, providing for a means to allow tenants to pay their rent into court when such defects exist, and setting up defenses for the landlord, and generally relating to landlord-tenant relationships and rent escrow.

BY adding to

Article - Real Property
Section 8-208
Annotated Code of Maryland
(As enacted by Chapter 12 of the 1974 Regular Session of the General Assembly)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That new Section 8-208 be and it is hereby added to Article - Real Property, of the Annotated Code of Maryland (As enacted by Chapter 12 of the 1974 Regular Session of the General Assembly) to read as follows:

Article - Real Property

8-208.

(A) (1) THE PURPOSE OF THIS SECTION IS TO PROVIDE TENANTS WITH A MECHANISM FOR ENCOURAGING THE REPAIR OF SERIOUS AND DANGEROUS DEFECTS WHICH EXIST WITHIN OR AS PART OF ANY RESIDENTIAL DWELLING UNIT, OR UPON THE PROPERTY USED IN COMMON OF WHICH THE DWELLING UNIT FORMS A PART. THE DEFECTS SOUGHT TO BE REACHED BY THIS ACT ARE THOSE WHICH PRESENT A SUBSTANTIAL AND SERIOUS THREAT OF DANGER TO THE LIFE, HEALTH AND SAFETY OF THE OCCUPANTS OF THE DWELLING UNIT, AND NOT THOSE WHICH MERELY IMPAIR THE AESTHETIC VALUE OF THE PREMISES, OR WHICH ARE, IN THOSE LOCATIONS GOVERNED BY SUCH CODES, HOUSING CODE VIOLATIONS OF A NON-DANGEROUS NATURE. FURTHERMORE, THE INTENT OF THIS SECTION IS NOT TO PROVIDE A REMEDY FOR DANGEROUS CONDITIONS IN THE COMMUNITY AT LARGE WHICH EXIST APART FROM THE LEASED PREMISES OR THE PROPERTY IN COMMON OF WHICH THE LEASED PREMISES FORMS A PART.

(2) IT IS DECLARED TO BE THE PUBLIC POLICY OF MARYLAND THAT MEANINGFUL SANCTIONS BE IMPOSED UPON THOSE WHO ALLOW DANGEROUS CONDITIONS AND DEFECTS TO EXIST IN LEASED PREMISES AND THAT AN EFFECTIVE MECHANISM BE ESTABLISHED FOR REPAIRING THESE CONDITIONS AND HALTING THEIR CREATION.

(B) (1) THIS SECTION APPLIES TO RESIDENTIAL DWELLING UNITS, LEASED FOR THE PURPOSE OF HUMAN HABITATION WITHIN THE STATE OF MARYLAND. THIS SECTION SHALL NOT APPLY TO FARM TENANCIES.

(2) THIS SECTION APPLIES TO ALL APPLICABLE DWELLING UNITS WHETHER THEY ARE:

(I) PUBLICLY OR PRIVATELY OWNED; OR

(II) SINGLE OR MULTIPLE UNITS.

(C) (1) THIS SECTION PROVIDES A REMEDY AND IMPOSES AN OBLIGATION UPON LANDLORDS TO REPAIR AND ELIMINATE CONDITIONS AND DEFECTS WHICH CONSTITUTE, OR IF NOT PROMPTLY CORRECTED WILL CONSTITUTE, A FIRE HAZARD OR A SERIOUS AND SUBSTANTIAL THREAT TO THE LIFE, HEALTH OR SAFETY OF OCCUPANTS, INCLUDING, BUT NOT LIMITED TO:

(I) LACK OF HEAT, OF LIGHT, ELECTRICITY, OR OF HOT OR COLD RUNNING WATER, EXCEPT WHERE THE TENANT IS RESPONSIBLE FOR THE PAYMENT OF THE UTILITIES AND THE LACK THEREOF IS THE DIRECT RESULT OF THE TENANT'S FAILURE TO PAY SUCH CHARGES; OR

(II) LACK OF ADEQUATE SEWAGE DISPOSAL FACILITIES; OR

(III) INFESTATION OF RODENTS IN TWO OR MORE DWELLING UNITS; OR

(IV) THE EXISTENCE OF PAINT CONTAINING LEAD PIGMENT ON SURFACES WITHIN THE DWELLING UNIT; OR

(V) THE EXISTENCE OF ANY STRUCTURAL DEFECT WHICH PRESENTS A SERIOUS AND SUBSTANTIAL THREAT TO THE PHYSICAL SAFETY OF THE OCCUPANTS; OR

(VI) THE EXISTENCE OF ANY CONDITION WHICH PRESENTS A HEALTH OR FIRE HAZARD TO THE DWELLING UNIT.

(2) THIS SECTION DOES NOT PROVIDE A REMEDY FOR THE LANDLORD'S FAILURE TO REPAIR AND ELIMINATE MINOR DEFECTS OR, IN THOSE LOCATIONS GOVERNED BY SUCH CODES, HOUSING CODE VIOLATIONS OF A NONDANGEROUS NATURE. THERE IS A REBUTTABLE PRESUMPTION THAT THE FOLLOWING CONDITIONS, WHEN THEY DO NOT PRESENT A SERIOUS AND SUBSTANTIAL THREAT TO THE LIFE, HEALTH AND SAFETY OF THE OCCUPANTS, ARE NOT COVERED BY THIS SECTION:

(I) ANY DEFECT WHICH MERELY REDUCES THE ESTHETIC VALUE OF THE LEASED PREMISES, SUCH AS THE LACK OF FRESH PAINT, RUGS, CARPETS, PANELING OR OTHER DECORATIVE AMENTTIES; OR

(II) SMALL CRACKS IN THE WALLS, FLOORS OR CEILINGS; OR

(III) THE ABSENCE OF LINOLEUM OR TILE UPON THE FLOORS, PROVIDED THAT THEY ARE OTHERWISE SAFE AND STRUCTURALLY SOUND; OR

(IV) THE ABSENCE OF AIR CONDITIONING.

(D) (1) IN ORDER TO EMPLOY THE REMEDIES CREATED BY THIS SECTION, THE TENANT SHALL GIVE THE LANDLORD NOTICE OF THE EXISTENCE OF THE DEFECTS OR CONDITIONS. THIS NOTICE SHALL BE GIVEN EITHER BY:

(I) A WRITTEN COMMUNICATION SENT BY CERTIFIED MAIL LISTING THE ASSERTED CONDITIONS OR DEFECTS; OR

(II) A WRITTEN VIOLATION, CONDEMNATION OR OTHER NOTICE FROM AN APPROPRIATE STATE, COUNTY, MUNICIPAL OR LOCAL GOVERNMENT AGENCY STATING THE ASSERTED CONDITIONS OR DEFECTS.

(2) UNLESS THE LANDLORD REFUSED TO MAKE THE REPAIRS OR CORRECT THE CONDITIONS, HE HAS A REASONABLE TIME AFTER RECEIPT OF NOTICE IN WHICH TO MAKE THE REPAIRS OR CORRECT THE CONDITIONS.

(I) THE LENGTH OF TIME DEEMED TO BE "REASONABLE" IS A QUESTION OF FACT FOR THE COURT, TAKING INTO ACCOUNT THE SEVERITY OF THE DEFECTS OR CONDITIONS AND THE DANGER THEY PRESENT TO THE OCCUPANTS.

(II) THERE IS A REBUTTABLE PRESUMPTION THAT A PERIOD IN EXCESS OF THIRTY (30) DAYS FROM THE RECEIPT OF NOTICE IS UNREASONABLE.

(E) (1) UPON REFUSAL OF THE LANDLORD TO MAKE THE REPAIRS OR CORRECT THE CONDITIONS, OR IF AFTER A REASONABLE TIME HE HAS FAILED TO DO SO, THE TENANT MAY:

(I) BRING AN ACTION OF RENT ESCROW TO PAY RENT INTO COURT BECAUSE OF THE ASSERTED DEFECTS OF CONDITIONS; OR

(II) REFUSE TO PAY RENT AND RAISE THE EXISTENCE OF THE ASSERTED DEFECTS OR CONDITIONS AS AN AFFIRMATIVE DEFENSE TO AN ACTION OR DISTRESS FOR RENT OR TO ANY COMPLAINT PROCEEDING BROUGHT BY THE LANDLORD TO RECOVER RENT OR THE POSSESSION OF THE LEASED PREMISES.

(2) WHETHER THE ISSUE OF RENT ESCROW IS RAISED AFFIRMATIVELY OR DEFENSIVELY, THE TENANT MAY REQUEST ONE OR MORE OF THE FORMS OF RELIEF HEREIN SET FORTH.

(F) (1) RELIEF UNDER THIS SECTION IS CONDITIONED UPON:

(I) GIVING PROPER NOTICE, AND WHERE APPROPRIATE, THE OPPORTUNITY TO CORRECT, AS DESCRIBED BY SUBSECTION (E) OF THIS SECTION.

(II) PAYMENT BY THE TENANT, INTO COURT, OF THE AMOUNT OF RENT REQUIRED BY THE LEASE, UNLESS THIS AMOUNT IS MODIFIED BY THE COURT AS PROVIDED IN SUBSECTION (G) OF THIS SECTION.

(III) IN THE CASE OF TENANCIES MEASURED BY A PERIOD OF ONE MONTH OR MORE, THE TENANT HAVING NOT RECEIVED MORE THAN THREE (3) SUMMONSES CONTAINING COPIES OF COMPLAINTS FILED BY THE LANDLORD AGAINST THE TENANT FOR RENT DUE AND UNPAID IN THE 12 MONTH PERIOD IMMEDIATELY PRIOR TO THE INITIATION OF THE ACTION BY THE TENANT OR BY THE LANDLORD.

(IV) IN THE CASE OF PERIODIC TENANCIES MEASURED BY THE WEEKLY PAYMENT OF RENT, THE TENANT HAVING NOT RECEIVED MORE THAN FIVE (5) SUMMONSES CONTAINING COPIES OF COMPLAINTS FILED BY THE LANDLORD AGAINST THE TENANT FOR RENT DUE AND UNPAID IN THE 12 MONTH PERIOD IMMEDIATELY PRIOR TO THE INITIATION OF THE ACTION BY THE TENANT OR BY THE LANDLORD, OR, IF THE TENANT HAS LIVED ON THE PREMISES SIX (6) MONTHS OR LESS, HAVING NOT RECEIVED THREE (3) SUMMONSES WITH COPIES OF COMPLAINTS FOR RENT DUE AND UNPAID.

(2) IT IS A SUFFICIENT DEFENSE TO THE ALLEGATIONS OF THE TENANT THAT:

(I) THE TENANT, HIS FAMILY, HIS AGENT, HIS EMPLOYEES, OR HIS ASSIGNEES OR SOCIAL GUESTS HAVE CAUSED THE ASSERTED DEFECTS OR CONDITIONS; OR

(II) THE LANDLORD OR HIS AGENTS WERE DENIED REASONABLE AND APPROPRIATE ENTRY FOR THE PURPOSE OF CORRECTING OR REPAIRING THE ASSERTED CONDITIONS OR DEFECTS.

(G) (1) THE COURT SHALL MAKE APPROPRIATE FINDINGS OF FACT AND MAKE ANY ORDER THAT THE JUSTICE OF THE CASE MAY REQUIRE, INCLUDING ANY ONE OR A COMBINATION OF THE FOLLOWING:

(I) ORDER THE TERMINATION OF THE LEASE AND RETURN OF THE LEASED PREMISES TO THE LANDLORD, SUBJECT TO THE TENANT'S RIGHT OF REDEMPTION;

(II) ORDER THAT THE ACTION FOR RENT ESCROW BE DISMISSED;

(III) ORDER THAT THE AMOUNT OF RENT REQUIRED BY THE LEASE, WHETHER PAID INTO COURT OR TO THE LANDLORD, BE ABATED AND REDUCED IN AN AMOUNT DETERMINED BY THE COURT TO BE FAIR AND EQUITABLE TO REPRESENT THE EXISTENCE OF THE CONDITIONS OR DEFECTS FOUND BY THE COURT TO EXIST.

(H) (1) AFTER RENT ESCROW HAS BEEN ESTABLISHED, THE COURT:

(I) SHALL, AFTER A HEARING, IF SO ORDERED BY THE COURT OR ONE IS REQUESTED BY THE LANDLORD, ORDER THAT THE MONEYS IN THE ESCROW ACCOUNT BE DISBURSED TO THE LANDLORD AFTER THE NECESSARY REPAIRS HAVE BEEN MADE; OR

(II) MAY, AFTER AN APPROPRIATE HEARING, ORDER THAT SOME OR ALL MONEYS IN THE ESCROW ACCOUNT BE PAID TO THE LANDLORD OR HIS AGENT, THE TENANT OR HIS AGENT, OR ANY OTHER APPROPRIATE PERSON OR AGENCY FOR THE PURPOSE OF MAKING THE NECESSARY REPAIRS OF THE DANGEROUS CONDITIONS OR DEFECTS; OR

(III) MAY, AFTER A HEARING IF ONE IS REQUESTED BY THE LANDLORD, APPOINT A SPECIAL ADMINISTRATOR WHO SHALL CAUSE THE REPAIRS TO BE MADE, AND WHO SHALL APPLY TO THE COURT TO PAY FOR THEM OUT OF THE MONEYS IN THE ESCROW ACCOUNT; OR

(IV) MAY, AFTER AN APPROPRIATE HEARING, ORDER THAT SOME OR ALL MONEYS IN THE ESCROW ACCOUNT BE DISBURSED TO PAY ANY MORTGAGE OR DEED OF TRUST ON THE PROPERTY IN ORDER TO STAY A FORECLOSURE; OR

(V) MAY, AFTER A HEARING, IF ONE IS REQUESTED BY THE TENANT, ORDER, IF NO REPAIRS ARE MADE OR IF NO GOOD FAITH EFFORT TO REPAIR IS MADE WITHIN SIX (6) MONTHS OF THE INITIAL DECISION TO PLACE MONEY IN THE ESCROW ACCOUNT, THAT THE MONEYS IN THE ESCROW ACCOUNT BE DISBURSED TO THE TENANT. SUCH AN ORDER WILL NOT DISCHARGE THE RIGHT ON THE PART OF THE TENANT TO PAY RENT INTO COURT AND AN APPEAL WILL STAY THE FORFEITURE; OR

(VI) MAY, AFTER AN APPROPRIATE HEARING, ORDER THAT THE MONEYS IN THE ESCROW ACCOUNT BE DISBURSED TO THE LANDLORD IF THE TENANT DOES NOT REGULARLY PAY, INTO THAT ACCOUNT, THE RENT OWED.

(I) IN THE EVENT ANY COUNTY OR BALTIMORE CITY IS SUBJECT TO A PUBLIC LOCAL LAW OR SHALL HAVE ENACTED AN ORDINANCE OR ORDINANCES COMPARABLE IN SUBJECT MATTER TO THIS ACT, COMMONLY REFERRED TO AS A "RENT ESCROW LAW", ANY SUCH ORDINANCE OR ORDINANCES SHALL SUPERCEDE THE PROVISIONS OF THIS ACT.

SECTION 2. AND BE IT FURTHER ENACTED, That if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of this Act which can be given effect without the invalid provisions or application, and to this end all the provisions of this Act are declared to be severable.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1975.

Steven G. Davison
Reporter, Governor's
Commission on Landlord -
Tenant Law Revision
3600 S. 14th Street
Arlington, Virginia 22204

September 26, 1974

Thomas J. Peddicord
Assistant Legislative Officer
Executive Department
State of Maryland
Annapolis, Maryland 21404

Dear Mr. Peddicord:

On behalf of the Governor's Commission on Landlord - Tenant Law Revision, I am forwarding a draft bill that the Commission approved at their meeting on September 11, 1974. I have been requested by the Commission to forward this bill to the Office of the Governor for consideration for introduction to the legislature as an administration bill.

This bill would amend Section 8-208(f) of the Real Property Article of the Maryland Code. (Section 8-208 was enacted by Ch. 645 (S.B. 731) of the 1974 Legislative session). The proposed amendment to 8-208(f) would delete the words, "or either party's right to terminate, or not renew a lease pursuant to the terms of the lease or the provisions of other applicable law." The sponsor of this proposed amendment, Mr. Carbine, believes that these words in Section 8-208(f) are an exception to, and in effect negate, the retaliatory eviction prohibition of Section 8-208. Deletion of these words would prevent these words from having such a negatory effect.

I expect that the Commission will make amendments to the first bill which I forwarded to you on August 15, which would provide for a right of appeal in all landlord - tenant cases. The bill in question would add a new Section 8-117 to the Real Property Article, and would repeal only Section 8-401(f). As I indicated to the Commission, however, the Holding Over provision, Section 8-402, has provisions for appeal under Section 8-402(b)(2), and there is also a provision for appeals from distraint of rent judgments under Section 8-332. (Citations are to the Real Property Article as re-codified by Chapter 12 (S.B. 200) of the 1974 Regular Session). These two sections should be amended to conform with proposed Section 8-117. Because I will be proposing amendments to Section 8-402(b)(2) and Section 8-332 in conjunction with proposed Section 8-117, please suspend further action with respect to the previously forwarded bill.

On behalf of the Commission, I thank you for your attention to this matter.

Sincerely yours,

Steven Davison

Steven Davison

SGD:erg

Enclosure

AN ACT concerning

Landlords and Tenants - Failure to Pay Rent

FOR the purpose of providing that a landlord shall give notice and serve process upon both a tenant and his subtenant, assignee, or someone holding under them, in a suit to have again and repossess leased premises for failure to pay rent, that judgments for rent due and payable may be recorded under certain circumstances, and that any party to an appeal from a judgment for rent due and payable may apply to have the hearing of the appeal expedited.

BY repealing and re-enacting, with amendments,

Article - Real Property
Section 8-401
Annotated Code of Maryland
(As enacted by Ch. 12 (S.B.) of the Acts of the 1974 Regular Session of the General Assembly)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, that Section 8-401 of the Annotated Code of Maryland (As enacted by Ch. 12 (S.B. 200) of the 1974 Regular Session of the General Assembly) be and it is hereby repealed, and re-enacted, with amendments, to read as follows:

8-401. Failure to Pay Rent.

(a) Whenever the tenant, under any lease of property, express or implied, verbal or written, OR HIS SUBTENANT OR ASSIGNEE OR SOMEONE HOLDING UNDER THEM, shall fail to pay THE FULL AMOUNT OF the rent when due and payable, it shall be lawful for the landlord to have again and repossess the premises so rented.

(b) Whenever any landlord shall desire to have again and repossess any premises to which he is entitled under the provisions of Sec. 8-401(a), he or his duly qualified agent or attorney, shall make his written complaint under oath or affirmation, before the District Court of the county wherein the property is situated, describing in general terms the property sought to be had again and repossessed, and also setting forth the name of the tenant to whom the property is rented [or] AND THE NAME OF his assignee or subtenant OR PERSON HOLDING UNDER THEM, with the amount of rent therein due and unpaid; and praying by warrant to have again and repossess the premises, together with judgment for the amount of rent due AND PAYABLE and costs. The District Court forthwith shall issue its summons, directed to any official of the county entitled to serve process, and ordering him to notify by first class mail the tenant, AND HIS assignee, [or] subtenant, OR PERSON HOLDING UNDER THEM, forthwith to appear before the District Court at the trial to be held on the fifth day after the filing of the complaint, to answer the landlord's complaint to show cause why the prayer of the landlord should not be granted, and the official shall forthwith proceed to serve the summons upon the tenant, AND UPON HIS assignee, [or] subtenant, OR

PERSON HOLDING UNDER THEM, in the property or upon [his] THEIR known or authorized agent, but if for any reason, neither the tenant, NOR HIS assignee or subtenant, OR SOMEONE HOLDING UNDER THEM, nor [his] THEIR agent, can be found, then the official shall affix an attested copy of the summons conspicuously upon the property AT THE TENANT's LAST KNOWN ADDRESS, AND AT THE PREMISES, and the affixing of the summons, for purposes of this section, shall be conclusively presumed to be a sufficient service upon all person whatsoever, if in addition, the tenant, AND HIS assignee, [or] subtenant, OR SOMEONE HOLDING UNDER THEM, [has] HAVE also been notified by first class mail.

(c) If at the trial on the fifth day aforesaid the District Court judge is satisfied the interests of justice will be better served by an adjournment to enable [either] ANY party to procure his necessary witnesses, it may adjourn the trial for a period not exceeding one day, except by consent of all parties, the trial may be adjourned for a period exceeding one day, and if at the trial or due adjournment thereof, it appears to the satisfaction of the court before whom the complaing has been made and tried, that the rent or any part of the rent is actually due and unpaid, the court shall give judgment in favor of the landlord for the amount of the rent found due AND PAYABLE UNDER THE LEASE, with costs of suit and shall order that the tenant, HIS SUBTENANT, OR ASSIGNEE, OR SOMEONE HOLDING UNDER THEM, and all persons claiming or holding by or under the tenant, shall yield and render up possession of said premises unto the landlord, or his duly qualified agent or attorney, within two days thereafter; if, however, the tenant, HIS SUBTENANT, ASSIGNEE, SOMEONE HOLDING UNDER THEM, or someone for [him] THEM at the trial or due adjournment thereof, tender the rent found to be due UNDER THE LEASE and unpaid, together with the costs of the suit, the complaint shall be entered satisfied and no further proceeding shall be had hereunder.

(d) If judgment is given in favor of the landlord, and tenant OR HIS SUBTENANT OR ASSIGNEE OR SOMEONE HOLDING UNDER THEM FAIL [fails] to comply with the requirements of the order within two days, the court shall, at any time after the expiration of two days, issue its warrant, directed to any official of the county entitled to serve process, ordering him to cause the landlord to have again and repossess the property by putting him (or his duly qualified agent or attorney for his benefit) in possession thereof, and for that purpose to remove from the property, by force if necessary, all the furniture, implements, tools, goods, effects or other chattels of every description whatsoever belonging to the tenant, or to any person claiming or holding by or under said tenant. If the landlord does not order a warrant of restitution within sixty days from the date of judgment or from the expiration date of any stay of execution, whichever shall be the later, the case shall be considered dismissed[.], UNLESS THE JUDGMENT HAS BEEN RECORDED. NO JUDGMENT FOR RENT DUE AND PAYABLE MAY BE RECORDED UNLESS PROOF OF PERSONAL SERVICE TO ALL DEFENDANTS IS MADE TO THE COURT PRIOR TO ENTRY OF JUDGMENT.

(e) In any action of summary ejectment for failure to pay rent where the landlord is awarded a judgment giving him restitution of the leased premises, the tenant, SUBTENANT, ASSIGNEE, OR SOMEONE HOLDING UNDER THEM, shall have the right to redemption of the leased premises by tendering in cash, certified check or money order to the landlord or his agent all past due rent and fees, at any time before actual execution of the eviction order. This subsection does not apply to any tenant, SUBTENANT, ASSIGNEE, OR PERSON HOLDING UNDER THEM, who has received more than three summons containing copies of complaints filed by the landlord against the tenant, SUBTENANT, ASSIGNEE, OR PERSON HOLDING UNDER THEM for rent due UNDER THE LEASE and unpaid in the 12 months prior to the initiation of the action to which the subsection otherwise would apply.

(f) ANY AGGRIEVED PARTY TO AN ACTION UNDER THIS SECTION [the tenant] may appeal from the judgment of the District Court to the Circuit Court for any county or the Baltimore City Court, as the case may be, at any time within two days from the rendition of the judgment; the tenant, SUBTENANT, ASSIGNEE, OR SOMEONE HOLDING UNDER THEM, in order to stay any execution of the judgment, shall give a bond to the landlord with one or more sureties, who are owners of sufficient property in the State of Maryland, with condition to prosecute the appeal with effect, and answer to the landlord in all costs and damages mentioned in the judgment, and such other damages as shall be incurred and sustained by reason of the appeal; the bond shall not affect in any manner the right of the landlord to proceed against the tenant, assignee, [or] subtenant, OR SOMEONE HOLDING UNDER THEM for any and all rents that may become due and payable to the landlord after the rendition of the judgment. THE APPELLATE COURT SHALL UPON APPLICATION OF ANY PARTY TO A PROCEEDING UNDER THIS SECTION, SET A DAY FOR THE HEARING OF THE APPEAL, NOT LESS THAN FIVE NOR MORE THAN FIFTEEN DAYS AFTER THE APPLICATION, AND NOTICE FOR THE ORDER FOR A HEARING SHALL BE SERVED ON THE OPPOSITE PARTY OR PARTIES OR THEIR COUNSEL AT LEAST FIVE DAYS BEFORE THE HEARING.

SECTION 2. AND BE IT FURTHER ENACTED, that this Act shall take effect July 1, 1975.

A BILL ENTITLED

AN ACT concerning

Real Property - Retaliatory Eviction

FOR the purpose of prohibiting retaliatory evictions in residential leases, defining retaliatory evictions, mobile home, landlord, and tenant; to provide for comparable local ordinances to supersede the provisions of this Act in certain cases; to provide an exception to this Act, and relating generally thereto.

BY repealing and re-enacting, with amendments,

Article - Real Property
Section 8-?08(f)
Annotated Code of Maryland
(As enacted by Chapter 645 (Senate Bill 731) of the 1974 Regular Session of the General Assembly)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, that Section 8-?08(f) of Article - Real Property, of the Annotated Code of Maryland (As enacted by Chapter 645 (S.B. 731) of the Acts of the 1974 Regular Session of the General Assembly) be and it is hereby repealed and re-enacted, with amendments, to read as follows:

Article - Real Property

8-?08

(f) Nothing in this section may be interpreted to alter the landlord's or the tenant's rights arising from breach of any provision of a lease [,or either party's right to terminate, or not renew a lease pursuant to the terms of the lease or the provisions of other applicable law].

SECTION ?. AND BE IT FURTHER ENACTED, that this Act shall take effect July 1, 1975.

Steven G. Davison
Reporter, Governor's
Commission on Landlord -
Tenant Law Revision
3600 South 14th Street
Arlington, Virginia 22204

October 21, 1974

Thomas J. Peddicord
Assistant Legislative Officer
Executive Department
State of Maryland
Annapolis, Maryland 21404

Dear Mr. Peddicord:

On behalf of the Governor's Commission on Landlord - Tenant Law Revision, I am forwarding two draft bills that the Commission approved at their meeting on October 8, 1974. I have been requested by the Commission to forward these bills to the Office of the Governor for consideration for introduction to the legislature as administration bills.

On behalf of the Commission, I am also resubmitting the proposed amendment to Section 8-208(f) of the Real Property Article in order to correct an error in the version of the bill that I previously submitted to you on September 26, 1974. The version of the bill that I previously forwarded erroneously deleted the words "breach of" in front of the words "any provision" in the existing version of Section 8-208(f).

The first bill approved by the Commission at their October 8 meeting is a revised version of the appeal bill which was previously forwarded by me on August 15, 1974. The enclosed version of the appeal bill supersedes and replaces the previously forwarded version of the appeal bill. The enclosed version of the appeal bill would enact a new Section 8-117 into the Real Property Article of the Annotated Code of Maryland, which would provide a right of appeal in all cases involving landlord and tenant law in the District Court, the Circuit Court or the Baltimore City Court. The proposed appeal bill would repeal and re-enact, with amendments, Section 8-401(f), (Rent Due and Payable), Section 8-402(b)(2) and Section 8-402(c) (Holding Over), and Section 8-332 (Distress for Rent), to provide appeals from judgments under these sections in accordance with the appeal provisions of proposed Section 8-117. The provisions of the appeal bill would repeal any similar or inconsistent appeal provisions in existing versions of Sections 8-401(f), 8-402(b)(2), 8-402(c), and 8-332.

The Commission considered the question of including a provision in the enclosed appeal bill with respect to jury trials. The District Court, which has exclusive jurisdiction of landlord -

tenant law cases, does not have jury trials, although the Maryland Constitution provides that any party may pray for a jury trial where the amount in controversy exceeds $500. Mrs. Patricia Kostrisky, Chief Clerk of the District Court, has indicated that this jury trial problem is one which exists in all actions over which the District Court has exclusive jurisdiction. Because this jury trial problem in landlord - tenant law cases in the District Court, where the amount in controversy exceeds $500, is not a problem unique to landlord - tenant law cases, the Commission decided at their October 8 meeting not to deal with this problem in the appeal bill, but to bring it to the attention of the Governor's office for action.

The second bill approved by the Commission at their October 8 meeting is a revision of Section 8-402 of the Real Property Article of the Annotated Code of Maryland (Holding Over). The proposed amendments are non-substantive amendments to 8-402 in response to the Revisor's Note to Title 8 of Chapter 12 (S.B. 200) of the 1974 Regular Session of the General Assembly (re-codification of the Real Property Article). The proposed amendments to Section 8-402 would specifically authorize a sheriff or constable, in enforcing an eviction order, to remove the wrongfully holding over defendant's goods from the premises. This authority is specifically authorized under Section 8-401, but not under Section 8-402. The proposed amendments to Section 8-402 would also amend the appeal and appeal bond provisions in Section 8-402 so as to be similar to the provisions of the proposed appeal bill. In the event that both the appeal bill and the proposed amendments to Section 8-402 are enacted, Section 6 of the appeal bill provides that the appeal and appeal bond amendments under the appeal bill supersede and repeal similar and inconsistent appeal and appeal bond sections presently provided in Section 8-402.

If I can be of further assistance to you with respect to these matters, please contace me. On behalf of the Commission I thank you for your attention to this matter.

Sincerely yours,

Steven G. Davison

Steven G. Davison

SGD:erg

Enclosures

cc: Alan Wilner, Esquire
Office of the Governor
State House
Annapolis, Maryland 21404

Hans Mayer
Office of the Governor
State House
Annapolis, Maryland 21404

Judge Edgar P. Silver
2407 Rockwood Avenue
Baltimore, Maryland 21202

A BILL ENTITLED

AN ACT concerning

Real Property - Retaliatory Eviction

FOR the purpose of prohibiting retaliatory evictions in residential leases, defining retaliatory evictions, mobile home, landlord, and tenant; to provide for comparable local ordinances to supersede the provisions of this Act in certain cases; to provide an exception to this Act, and relating generally thereto.

BY repealing and re-enacting, with amendments,

Article - Real Property
Section 8-?08(f)
Annotated Code of Maryland
(As enacted by Chapter 645 (Senate Bill 731) of the 1974 Regular Session of the General Assembly)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, that Section 8-?08(f) of Article - Real Property, of the Annotated Code of Maryland (As enacted by Chapter 645 (S.B. 731) of the Acts of the 1974 Regular Session of the General Assembly) be and it is hereby repealed and re-enacted, with amendments, to read as follows:

Article - Real Property

8-?08

(f) Nothing in this section may be interpreted to alter the landlord's or the tenant's rights arising from breach of any provision of a lease, [or either party's right to terminate, or not renew a lease pursuant to the terms of the lease or the provisions of other applicable law].

SECTION 2. AND BE IT FURTHER ENACTED, that this Act shall take effect July 1, 1975.

A BILL ENTITLED

AN ACT concerning

Real Property - Appeals from Rent Court

FOR the purpose of providing a right of appeal in all cases involving landlord and tenant law from the District Court, the appropriate Circuit Court and to the Court of Special Appeals and providing for an appeal bond.

BY ADDING TO

Article - Real Property
Section 8-117
Annotated Code of Maryland
(As enacted by Chapter 12 (S.B. 200) of the 1974 Regular Session of the General Assembly)

BY Repealing and re-enacting, with amendments,

Article - Real Property
Section 8-401(f)
Annotated Code of Maryland
(As enacted by Chapter 12 (S.B. 200) of the 1974 Regular Session of the General Assembly)

Article - Real Property
Section 8-402(b)(2)
Annotated Code of Maryland
(As enacted by Chapter 12 (S.B. 200) of the 1974 Regular Session of the General Assembly)

Article - Real Property
Section 8 - 402(c)
Annotated Code of Maryland
(As enacted by Chapter 12 (S.B. 200) of the 1974 Regular Session of the General Assembly)

Article - Real Property
Section 8-332
Annotated Code of Maryland
(As enacted by Chapter 12 (S.B. 200) of the 1974 Regular Session of the General Assembly.

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, that new Section 8-117 be and it is hereby added to Article - Real Property, of the Annotated Code of Maryland (As enacted by Chapter 12 (S.B. 200) of the 1974 Regular Session of the General Assembly to read as follows:

Article - Real Property

(A) APPEAL BY AGGRIEVED PARTY. ANY AGGRIEVED PARTY MAY APPEAL FROM THE JUDGMENT OF THE DISTRICT COURT TO THE CIRCUIT

COURT FOR ANY COUNTY OR THE BALTIMORE CITY COURT, AS THE CASE MAY BE, AT ANY TIME WITHIN TWO DAYS FROM THE RENDITION OF THE JUDGMENT. ON APPEAL THE CASE SHALL BE TRIED DE NOVO BY THE COURT TO WHICH THE CASE WAS APPEALED, DESPITE THE AMOUNT OF RENT CLAIMED TO BE DUE AND UNPAID ON THE PREMISES SOUGHT TO BE REPOSSESSED BY THE LANDLORD.

(B) APPEAL BOND. THE TENANT, INCLUDING THE SUBTENANT, ASSIGNEE OR SOMEONE HOLDING UNDER THEM, IN ORDER TO STAY EXECUTION OF THE JUDGMENT FROM WHICH APPEAL IS TAKEN, SHALL PAY INTO COURT AN AMOUNT EQUAL TO THE AMOUNT IN DISPUTE, TOGETHER WITH ALL COSTS MENTIONED IN THE JUDGMENT AND OTHER SUCH COSTS AS SHALL BE INCURRED AND SUSTAINED BY REASON OF THE APPEAL, UNLESS THERE IS FILED A BOND IN A LIKE AMOUNT WITH SUCH SURETY AS MAY BE APPROVED PURSUANT TO THE MARYLAND DISTRICT RULES OR WITH OTHER SECURITY APPROVED BY THE COURT. SAID BOND SHALL NOT AFFECT IN ANY MANNER THE RIGHT OF THE LANDLORD TO PROCEED AGAINST THE TENANT, ASSIGNEE OR, SUBTENANT FOR ANY AND ALL OF THE RENTS THAT MAY BECOME DUE AND PAYABLE TO THE LANDLORD AFTER THE RENDITION OF THE JUDGMENT. THE COURT AT ITS DISCRETION, MAY PROVIDE FOR A LESSER APPEAL BOND, IF IN ITS JUDGMENT THE INTERESTS OF JUSTICE SHALL BE FURTHERED THEREBY. IN THE EVENT THE LANDLORD SHALL APPEAL ANY JUDGMENT, IN THE MANNER AFORESAID, THE PRINCIPAL AMOUNT OF THE APPEAL BOND REQUIRED TO STAY THE EXECUTION OF ANY SUCH JUDGMENT SHALL BE AT THE DISCRETION OF THE COURT.

(C) APPEAL TO COURT OF SPECIAL APPEALS. ANY PARTY AGGRIEVED BY THE JUDGMENT OF THE CIRCUIT COURT FOR ANY COUNTY OR THE BALTIMORE CITY COURT, AS THE CASE MAY BE, MAY APPEAL SUCH JUDGMENT TO THE MARYLAND COURT OF SPECIAL APPEALS. ANY APPEAL TO THE MARYLAND COURT OF SPECIAL APPEALS PROVIDED FOR BY THIS SECTION SHALL BE GOVERNORED BY THE MARYLAND RULES OF CIVIL PROCEDURE (APPEALS TO THE COURT OF SPECIAL APPEALS.)

SECTION 2. AND BE IT FURTHER ENACTED, that section 8-401(f) of Article - Real Property, of the Annotated Code of Maryland (As enacted by Chapter 12 (S.B. 200) of the 1974 Regular Session of the General Assembly), be and it is hereby repealed, and re-enacted, with amendments, to read as follows:

(f) [The tenant may appeal from the judgment of the District Court to the Circuit Court for any county or the Baltimore City Court, as the case may be, at any time within two days from the rendition of the judgment; the tenant, in order to stay any execution of the judgment, shall give a bond to the landlord with one or more sureties, who are owners of sufficient property in the State of Maryland, with condition to prosecute the appeal with effect, and answer to the landlord in all costs and damages mentioned in the judgment, and such offer damages as shall be incurred and sustained by reason of the appeals; the bond shall not affect in any manner the right of the landlord to proceed against the tenant, assignee, or subtenant, for any and all rents that may become due and payable to the landlord after the rendition of the judgment.] ANY AGGRIEVED PARTY MAY APPEAL FROM THE JUDGMENT OF THE DISTRICT COURT IN ACCORDANCE WITH SECTION 8-117. THE CIRCUIT COURT FOR ANY COUNTY, OR THE BALTIMORE CITY COURT, AS THE CASE MAY BE, UPON THE APPLICATION OF ANY PARTY TO

PROCEEDING UNDER THIS SECTION , SHALL SET A DAY FOR THE HEARING OF THE APPEAL, NOT LESS THAN FIVE NOR MORE THAN 15 DAYS AFTER THE APPLICATION, AND NOTICE FOR THE ORDER FOR A HEARING SHALL BE SERVED ON THE OPPOSITE PARTY OR PARTIES OF THEIR COUNSEL AT LEAST FIVE DAYS BEFORE THE HEARING.

SECTION 3. AND BE IT FURTHER ENACTED, that section 8-402(b)(2) of Article - Real Property of the Annotated Code of Maryland (As enacted by Chapter 12 (S.B. 200) of the 1974 Regular Session of the General Assembly) be and it is hereby repealed, and re-enacted, with amendments, to read as follows:

Article - Real Property

(2) Judgment and Appeal. If upon hearing the parties, or in case the tenant or person in possession shall neglect to appear after the summons and continuance the court shall find that the landlord had been in possession of the leased property, that the said lease or estate is fully ended and expired, that due notice to quit as aforesaid had been given to the tenant or person in possession, and that he had refused so to do, the court shall thereupon give judgment for the restitution of the possession of said premises and shall forthwith issue its warrant to the sheriff or a constable in the respective counties commanding him forthwith to deliver to the landlord possession thereof in as full and ample manner as the landlord was possessed of the same at the time when the leasing was made, and shall give judgment for costs against the tenant or person in possession and so holding over. [Either party] ANY AGGRIEVED PARTY shall have the right to appeal there from [to the Circuit Court for the county, or the Baltimore City Court within ten days from the judgment.] IN ACCORDANCE WITH SECTION 8-117. [If the tenant appeals and files with the district court an affidavit that the appeal is not taken for delay, and also a good and sufficient bond with one or more securities conditioned that he will prosecute the appeal with effect and well and truly pay all rent in arrear and all costs in the case before the district court and in the appellate court and all loss or damage which the landlord may suffer by reason of the tenant's holding over, including the value of the premises during the time he shall so hold over, then the tenant or person in possession of said premises may retain possession thereof until the determination of said appeal.] The appellate court shall, upon application of [either] ANY party, set a day for the hearing of the hearing of the appeal, not less than five nor more than 15 days after the application, and notice for the order for a hearing shall be served on the opposite party OR PARTIES or [his] THEIR counsel at least five days before the hearing. If [the] A judgment of the district court [shall be] in favor of the landlord IS AFFIRMED BY THE APPELLATE COURT, a warrant shall be issued by the appellate court to the sheriff, who shall proceed forthwith to execute the warrant.

SECTION 4. AND BE IT FURTHER ENACTED, that Section 8-402(c) of Article - Real Property of the Annotated Code of Maryland (As enacted by Chapter 12 (S.B. 200) of the 1974 Regular Session of the General Assembly) be and it is hereby repealed, and re-enacted, with amendments, to read as follows:

(c) Ejectment where one-half year's rent is due.

In all case between landlord and tenant, where one-half year's rent shall be in arrear and the landlord has the lawful right to reenter for the non-payment thereof, the landlord may, without any formal demand of reentry, serve a copy of a declaration in ejectment for the recovery of the property; if the declaration cannot be legally served, or no tenant be in actual possession of the property, then he shall affix it upon the door of any demised messuage, or if the action of ejectment shall not be for the recovery of any messuage, then upon some notorious place of the property described in the declaration of ejectment; such affixing shall be deemed legal service thereof, which service or affixing of such declaration in ejectment shall stand in the place and stead of a demand and reentry. If the court shall enter a verdict for the landlord, he shall have judgment and execution in the same manner as if the rent in arrear had been legally demanded and a reentry made. If the tenant or other person claiming or deriving under the lease, shall permit a judgment to be rendered against him, and execution to be executed thereon, without paying the rent and arrears, together with full costs, and without proceeding for relief in equity within six calendar months after the execution, the tenant and all other person claiming and deriving under the said lease shall be barred and foreclosed from all relief or remedy in law or equity, other than by appeal for reversal of such judgment.. ANY AGGRIEVED PART TO AN ACTION UNDER THIS SUBSECTION MAY APPEAL FROM THE JUDGMENT OF THE DISTRICT COURT IN ACCORDANCE WITH SECTION 8-117. Nothing herein contained shall bar the right of any mortgagee of the lease , or any part thereof, who shall not be in possession, so as such mortgagee shall and do, within six calendar months after such judgment obtained and execution executed, pay all costs and damages sustained by the landlord and perform all the covenenats and agreements which, on the part and behalf of the first tenant, are and ought to be performed.

SECTION 5. AND BE IT FURTHER ENACTED, that Section 8-332 of Article - Real Property of the Annotated Code of Maryland (As enacted by Chapter 12 (S.B. 200) of the 1974 Regular Session of the General Assembly)be and it is hereby repealed, and re-enacted, with amendments, to read as follows:

Article - Real Property

(a) Right to Appeal.

Any aggrieved party may appeal from any final order or judgment in an action of distress [to the Circuit Court of the County or the Baltimore City Court, as the case may be.] IN ACCORDANCE WITH SECTION 8-117. [The appeal shall be taken within 14 days from the date of the order or judgment.]

(b) Time for Taking Appeal; Trial

[On appeal the case shall be tried de novo.] On the application of any party to the action for a prompt hearing of the appeal, it shall be set for trial as soon as possible. Any party has the right to a jury trial on application in accordance with the rules adopted by the appellate court.

(c) Appeal does not stay subsequent distress for rent; exception;

An appeal does not stay or prevent a subsequent distress for rent falling due after the original petition for distress. However, the court may order a stay of all further proceedings including those for subsequent rent, if the tenant files an appeal bond approved by the court.

[(d) Stay of execution when approved appeal bond filed.]

[An appeal does not stay execution of a judgment or order unless an approved appeal bond is filed.]

SECTION 6. AND BE IT FURTHER ENACTED, That this Act shall repeal any similar or inconsistent provisions with respect to appeal and appeal bonds previously provided in Section 8-401(f), Section 8-402(b)(2), Section 8-402(c), and Section 8-332, of Article - Real Property of the Annotated Code of Maryland.

SECTION 7. AND BE IT FURTHER ENACTED, that this Act shall take effect July 1, 1975.

AN ACT concerning

Landlords and Tenants - Vacating Residential Leases

FOR the purpose of providing that a landlord may recover damages from a tenant as well as a subtenant, assignee or someone holding under them who unlawfully holds over beyond the termination of the lease, that a landlord may repossess a property from a tenant, subtenant, assignee or someone holding under them who is in actual possession of the premises and who is unlawfully holding over beyond the termination of the lease, and that a sheriff or constable shall, in delivering possession of premises to a landlord, remove from the property, by force if necessary, all chattels of every description, not belonging to the landlord, found on the premises.

BY repealing and re-enacting, with amendments,

Article - Real Property
Section 8-402
Annotated Code of Maryland
(As enacted by Ch. 12 (S.B. 200), and as amended by Ch. 375 (S.B. 730), of the Acts of the 1974 Regular Session of the General Assembly)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, that Section 8-402 of the Annotated Code of Maryland (As enacted by Ch. 12 (S.B. 200), and as amended by Ch. 375 (S.B. 730), of the Acts of the 1974 Regular Session of the General Assembly) be and it is hereby repealed, and re-enacted, with amendments, to read as follows:

8-402. Holding Over

(a) Liability of Tenant.

(1) If a tenant under any lease, OR SUBTENANT, ASSIGNEE, OR SOMEONE HOLDING UNDER THEM, shall unlawfully hold over beyond the termination of the lease, he shall be liable in damages to the landlord as set out in the following paragraphs unless the lease provides some other measures of damages.

(2)(i) Where the leased premises are IN THE ACTUAL POSSESSION OF AND ARE used by the tenant, SUBTENANT, ASSIGNEE, OR SOMEONE HOLDING UNDER THEM, as [the] HIS residence [of the tenant], OR THE RESIDENCE OF his family [or someone holding under them], then the measure of damages shall be the landlord's actual damages, but not exceeding double the rent under the lease (apportioned for the duration of the holdover.)

(ii) Where the leased premises are IN THE ACTUAL POSSESSION OF AND ARE used by the tenant, SUBTENANT, ASSIGNEE, or someone holding under [him] THEM primarily for nonresidential purposes, the measure of damages shall be double the rent under the lease (apportioned for the duration of the holdover) or double the rental value of the premises (apportioned for such period), whichever is higher; provided, however, that if the landlord fails specifically to elect the latter measure before he institutes his action against the tenant, SUBTENANT,

ASSIGNEE, OR SOMEONE HOLDING UNDER THEM, the measure shall be double[d] the rent under the lease.

(iii) The double rent and double rent value set forth in subparagraphs (i) and (ii) of this paragraph shall include, and not be in addition to, apportioned rent for the period of holdover at the rate under the lease.

(iv) Damages in excess of the rental rate specified in the lease shall accrue only from the end of the term or thirty (30) days after the delivery of the notice referred to in Sec. 8-402-(a)(3) (whichever is later) until the tenant, SUBTENANT, ASSIGNEE, or SOMEONE HOLDING UNDER THEM, vacates the premises; provided, however, that the damages shall never be less than the apportioned rent for the period of holdover at the rent rate under the lease.

(v) Any action to recover the damages referred to in this section may be brought by suit separate from the eviction or removal proceeding or in the same action and in any court having jurisdiction over the amount in issue.

(3) Notice of Liability. The provisions of this section shall be inapplicable unless the landlord gives the tenant, SUBTENANT, ASSIGNEE, OR SOMEONE HOLDING UNDER THEM, WHO IS IN ACTUAL POSSESSION OF THE PREMISES, notice in writing that [the tenant] HE may be liable for double the rent under the lease or double the rental value (if the latter be applicable); said notice may contain other information. The notice provisions of this section may not be waived by lease provision or otherwise. The notice may be given at any time before or after the termination of the lease but not more than 100 days before the termination of the lease.

(4) Nonexclusive remedy. Nothing contained herein is intended to limit any other remedies which a landlord may have against a holdover tenant, SUBTENANT, ASSIGNEE OR SOMEONE HOLDING UNDER THEM, WHO IS IN ACTUAL POSSESSION OF THE PREMISES, under the lease or under applicable law. Nor shall a notice given to a tenant, SUBTENANT, ASSIGNEE OR SOMEONE HOLDING UNDER THEM, WHO IS IN ACTUAL POSSESSION OF THE PREMISES, under the lease or under applicable law. Nor shall a notice given to a tenant, SUBTENANT, ASSIGNEE OR SOMEONE HOLDING UNDER THEM, WHO IS IN ACTUAL POSSESSION OF THE PREMISES, under Sec. 8-402(a)(3) be construed as an election of remedies by the landlord if the notice is given prior to the end of the lease term.

(b) Notice to Quit

(1) Notice to Remove; Complaint to District Court; Procedure. Where any interest in property shall be leased for any definite term or at will, and the landlord shall desire to repossess the property after the expiration of the term for which it was leased and shall give notice in writing one month before the expiration of the term or determination of said will to the tenant, AND TO THE SUBTENANT, ASSIGNEE, OR SOMEONE HOLDING UNDER THEM, WHO IS IN ACTUAL POSSESSION, [or to the person actually in possession of the property] to remove from the property at the end of the term, and if [the tenant or person in actual possession] HE shall refuse to comply therewith, the landlord may make complaint therewith,

in writing to the district court of the county where the property is located. The court shall forthwith issue its summons to the tenant, SUBTENANT, ASSIGNEE OR SOMEONE HOLDING UNDER THEM, WHO IS [or person] in actual possession that he be and appear on a day stated in the summons before the court to show cause (if any he have) why restitution of the possession of the said estate so leased should not be forthwith made to the landlord. Upon the failure of [either] ANY of the parties to appear before the court on the day stated in the summons, the court shall continue the case to a day not less than six nor more than ten days after said day so first stated and notify the parties of such continuance.

(2) Judgment and Appeal. If upon hearing the parties, or in case the tenant, SUBTENANT, ASSIGNEE, OR SOMEONE HOLDING UNDER THEM, WHO IS [or person] in ACTUAL possession shall neglect to appear after the summons and continuance the court shall find that the landlord had been in possession of the leased property, that the said lease or estate is fully ended and expired, that due notice to quit as aforesaid had been given to the tenant, AND TO THE SUBTENANT, ASIGNEE, OR SOMEONE HOLDING UNDER THEM, WHO IS [or person] IN ACTUAL possession OF THE PREMISES and that he had refused so to do, the court shall thereupon give judgment for the restitution of the possession of said premises and shall forthwith issue its warrant to the sheriff or a constable in the respective counties commanding him forthwith to deliver to the landlord possession thereof in as full and ample manner as the landlord was possessed of the same at the time when the leasing was made AND FOR THAT PURPOSE TO REMOVE FROM THE PROPERTY, BY FORCE IF NECESSARY, ALL THE FURNITURE, IMPLEMENTS, TOOLS, GOODS, EFFECTS OR OTHER CHATTELS OF EVERY DESCRIPTION, NOT BELONGING TO THE LANDLORD, FOUND ON THE PREMISES, and shall give judgment for costs against the tenant, SUBTENANT, ASSIGNEE, OR SOMEONE HOLDING UNDER THEM WHO IS [or person] in ACTUAL possession OF THE PREMISES AND so holding over. [Either party] ANY OF THE PARTIES shall have the right to appeal therefrom to the Circuit Court for the county, or the Baltimore City Court within ten days from the judgment. [If the tenant appeals and files with the district court an affidavit that the appeal is not taken for delay, and also a good and sufficient bond with one or more securities conditioned that he will prosecute the appeal with effect and will and truly pay all rent in arrear and all costs in the case before the district court and in the appellate court and all loss or damage which the landlord may suffer by reason of the tenant's holding over, including the value of the premises during the time he shall so hold over, then the tenant or person in possession of said premises may retain possession thereof until the determination of said appeal.] ON APPEAL THE CASE SHALL BE TRIED DE NOVO BY THE COURT TO WHICH THE CASE WAS APPEALED. THE TENANT, INCLUDING THE SUBTENANT, ASSIGNEE OR SOMEONE HOLDING UNDER THEM, IN ORDER TO STAY EXECUTION OF THE JUDGMENT FROM WHICH APPEAL IS TAKEN, SHALL PAY INTO COURT AN AMOUNT EQUAL TO THE AMOUNT IN DISPUTE, TOGETHER WITH ALL COSTS MENTIONED IN THE JUDGMENT AND OTHER SUCH COSTS AS SHALL BE INCURRED AND SUSTAINED BY REASON OF THE APPEAL, UNLESS THERE IS FILED A BOND IN A LIKE AMOUNT WITH SUCH SURETY AS MAY

BE APPROVED PURSUANT TO THE MARYLAND DISTRICT RULES OR WITH OTHER SECURITY APPROVED BY THE COURT. SAID BOND SHALL NOT AFFECT IN ANY MANNER THE RIGHT OF THE LANDLORD TO PROCEED AGAINST THE TENANT, ASSIGNEE OR, SUBTENANT FOR ANY AND ALL OF THE RENTS THAT MAY BECOME DUE AND PAYABLE TO THE LANDLORD AFTER THE RENDITION OF THE JUDGMENT. THE COURT AT ITS DISCRETION, MAY PROVIDE FOR A LESSER APPEAL BOND, IF IN ITS JUDGMENT THE INTERESTS OF JUSTICE SHALL BE FURTHERED THEREBY. IN THE EVENT THE LANDLORD SHALL APPEAL ANY JUDGMENT, IN THE MANNER AFORESAID, THE PRINCIPAL AMOUNT OF THE APPEAL BOND REQUIRED TO STAY THE EXECUTION OF ANY SUCH JUDGMENT SHALL BE AT THE DISCRETION OF THE COURT. The appellate court shall, upon application of [either] ANY party, set a day for the hearing of the appeal, not less than five nor more than 15 days after the application, and notice for the order for a hearing shall be served on the opposite party or PARTIES OR [his] THEIR counsel at least five days before the hearing. If [the] A judgment of the district court [shall be] in favor of the landlord IS AFFIRMED BY THE APPELLATE COURT, a warrant shall be issued by the appellate court to the sheriff, who shall proceed forthwith to execute the warrant.

(3) No judgment for restitution when possessor alleges title in third party. If the tenant, SUBTENANT, ASSIGNEE, OR SOMEONE HOLDING UNDER THEM, WHO IS [or person] in ACTUAL possession OF THE PREMISES, shall allege that the title of the leased property is disputed and claimed by some person whom he shall name, by virtue of a right of title accruing or happening since the commencement of the lease; by descent or deed from or by devise under the last will or testament of the landlord, and if thereupon the person so claiming shall forthwith appear, or upon a summons to be immediately issued by the district court and, made returnable within six days next following, shall appear before the court and shall, under oath, declare that he believes that he is entitled in manner aforesaid to the leased property and shall, with two sufficient securities, enter into bond to the plaintiff, in such sum as the court shall think is a proper and reasonable security to said plaintiff or parties in interest, to prosecute with effect his claim at the next term of the circuit court for the county, or the next term of the Baltimore City Court, as the case may be, then the district court shall forbear to give judgment for restitution and costs. If the said claim shall not be prosecuted as aforesaid, the district court shall proceed to give judgment for restitution and costs and issue its warrant within ten days after the end of said term of court.

(4) The provisions of Section 8-402(b) shall apply to all cases of tenancies from year to year, tenancies of the month and by the week. In case of tenancies from year to year (including tobacco farm tenancies), notice in writing shall be given three months before the expiration of the current year of the tenancy, except that in case of all other farm tenancies, the notice shall be given six months before the expiration of the current year of the tenancy; and in monthly or weekly tenancies, a notice in writing of one month or one week, as the case may be, shall be so given; and the same proceeding shall apply, so far as may be, to cases of forcible entry and detainer.

This subsection (4), so far as it relates to notices, shall not apply in Baltimore City.

(5) When the tenant, or THE SUBTENANT, ASSIGNEE, OR SOMEONE HOLDING UNDER THEM, WHO IS IN ACTUAL POSSESSION OF THE PREMISES, shall give notice by parole to the landlord or to his agent or representatives, at least one month before the expiration of the lease or tenancy in all cases except in cases of tenancies from year to year, and at least three months' notice in all cases of tenancy from year to year (except in all cases of farm tenancy, the notice shall be six months), of [the] HIS INTENTION [of the tenant] to remove at the end of the TERM [that year] and to surrender possession of the property at that time, [and] IF the landlord, his agent, or representative shall prove RECEIPT OF [the] SUCH notice [from the tenant] by competent testimony, it shall not be necessary for the landlord, his agent or representative to provide a written notice to the tenant, OR TO THE SUBTENANT, ASSIGNEE, OR SOMEONE HOLDING UNDER THEM, WHO IS IN ACTUAL POSSESSION OF THE PREMISES, but the proof of such notice [from the tenant] as aforesaid shall entitle his landlord to recover possession of the property hereunder. This subparagraph (5) shall not apply in Baltimore City.

(c) Ejectment where one-half year's rent is due.

In all cases between landlord and tenant, SUBTENANT, ASSIGNEE, OR SOMEONE HOLDING UNDER THEM, where one-half year's rent shall be in arrear and the landlord has the lawful right to reenter for the nonpayment thereof, the landlord may, without any formal demand of reentry, serve a copy of a declaration in ejectment for the recovery of the property; if the declaration cannot be legally served, or [no] THE tenant, SUBTENANT, ASSIGNEE, OR SOMEONE HOLDING UNDER THEM NOT be in actual possession of the property, then he shall affix it upon the door of any demised messuage, or if the action of ejectment shall not be for the recovery of any messuage, then upon some notorious place of the property described in the declaration of ejectment; such affixing shall be deemed legal service thereof, which service or affixing such declaration in ejectment shall stand in the place and stead of a demand and reentry. If the court shall enter a verdict for the landlord, he shall have judgment and execution in the same manner as if the rent in arrear had been legally demanded and a reentry made. [If the tenant or other person claiming or deriving under the lease, shall permit a judgment to be rendered against him, and execution to be executed thereon, without paying the rent and arrears, together with full costs, and without proceeding for relief in equity within six calendar months after the execution, the tenant and all other persons claiming and deriving under the said lease shall be barred and foreclosed from all relief or remedy in law or equity, other than by appeal for reversal of such judgment, and the landlord shall thenceforth hold the property discharged from the lease.] ANY AGGRIEVED PARTY MAY APPEAL FROM THE JUDGMENT OF THE DISTRICT COURT TO THE CIRCUIT COURT FOR ANY COUNTY OR THE BALTIMORE CITY COURT, AS THE CASE MAY BE, AT ANY TIME WITHIN TWO DAYS FROM THE RENDITION OF THE JUDGMENT.

ON APPEAL THE CASE SHALL BE TRIED DE NOVO BY THE COURT TO WHICH THE CASE WAS APPEALED. THE TENANT, INCLUDING THE SUBTENANT, ASSIGNEE OR SOMEONE HOLDING UNDER THEM, IN ORDER TO STAY EXECUTION OF THE JUDGMENT FROM WHICH APPEAL IS TAKEN, SHALL PAY INTO COURT AN AMOUNT EQUAL TO THE AMOUNT IN DISPUTE, TOGETHER WITH ALL COSTS MENTIONED IN THE JUDGMENT AND OTHER SUCH COSTS AS SHALL BE INCURRED AND SUSTAINED BY REASON OF THE APPEAL, UNLESS THERE IS FILED A BOND IN A LIKE AMOUNT WITH SUCH SURETY AS MAY BE APPROVED BY THE COURT. SAID BOND SHALL NOT AFFECT IN ANY MANNER THE RIGHT OF THE LANDLORD TO PROCEED AGAINST THE TENANT, ASSIGNEE OR, SUBTENANT FOR ANY AND ALL OF THE RENTS THAT MAY BECOME DUE AND PAYABLE TO THE LANDLORD AFTER THE RENDITION OF THE JUDGMENT. THE COURT AT ITS DISCRETION, MAY PROVIDE FOR A LESSER APPEAL BOND, IF IN ITS JUDGMENT THE INTERESTS OF JUSTICE SHALL BE FURTHERED THEREBY. IN THE EVENT THE LANDLORD SHALL APPEAL ANY JUDGMENT, IN THE MANNER AFORESAID, THE PRINCIPAL AMOUNT OF THE APPEAL BOND REQUIRED TO STAY THE EXECUTION OF ANY SUCH JUDGMENT SHALL BE AT THE DISCRETION OF THE COURT. Nothing herein contained shall bar the right of any mortgagee of the lease, or any part thereof, who shall not be in possession, so as such mortgagee shall and do, within six calendar months after such judgment obtained and execution executed, pay all costs and damages sustained by the landlord and perform all the covenants and agreements which, on the part and behalf of the first tenant, are and ought to be performed.

SECTION 2. AND BE IT FURTHER ENACTED, that this Act shall take effect July 1, 1975.

Steven G. Davison
Reporter, Governor's
Commission on Landlord -
Tenant Law Revision
3600 South 14th Street
Arlington, Virginia 22204

November 20, 1974

Thomas J. Paddicord
Assistant Legislative Officer
Executive Department
State of Maryland
Annapolis, Maryland 21404

Dear Mr. Paddicord:

On behalf of the Governor's Commission on Landlord - Tenant Law Revision, I am forwarding a draft bill that the Commission approved, unanimously, at their meeting on November 12, 1974. I have been requested by the Commission to forward this bill to the Office of the Governor for consideration for introduction to the legislature as an administration bill.

The enclosed bill is a conversion condominium buyer's protection bill. The bill would amend Section 11-102.1 of the Annotated Code of Maryland (Chapter 704 (H.B. 133) of the 1974 Regular Session of the General Assembly). The bill would amend Section 11-102.1 (a), which requires written notice of conversion to be given to tenants 120 days prior to conversion, to require written notice of conversion to be given to tenants at least 120 days prior to the initial offer of sale of condominium units to members of the public. This proposed amendment was suggested by Mr. Barry Fitzpatrick, chairman of the Bar Association Condominium Committee. The Commission subcommittee on condominium conversion, which drafted the enclosed bill, agreed with Mr. Fitzpatrick that the date when notice is required under Section 11-102.1 is difficult to ascertain, since Title 11 of the Real Property Article does not define when "conversion" of a residential building to a condominium occurs. This amendment proposed by the enclosed bill that notice be given at least 120 days prior to the initial offer of sale of condominium units to members of the public is a more readily ascertainable date, and permits a tenant in a residential rental building to be converted to a condominium to exercise right of first refusal to purchase his premises as a condominium unit prior to the initial offer of sale of condominium units to members of the public.

The enclosed bill provides that the owner of a residential rental building being converted to a condominium must make each tenant, in the notice of conversion required by Section 11-102.1 (a), a written bona fide offer of sale of the unit of the condominium which the tenant leases, unless the tenant's premises will be substantially altered in physical layout when the building is

converted to a condominium. During the first 90 days subsequent to receipt of notice of conversion, each tenant in a building to be converted to a condominium would have the exclusive right to contract for the purchase of the unit which he leases. The enclosed bill would also amend Section-102.1 to provide that a tenant cannot be served with a notice to vacate pursuant to Section 8-402(b)(1) until 90 days after receipt of notice of conversion to condominium. The enclosed bill would permit a tenant, subsequent to receipt of notice of conversion to condominium, to terminate his lease, without liability to the landlord, except for breaches of covenants in the lease or for non-payment of rent which occurred prior to the termination of the lease by the tenant. Subsection (G) of the enclosed bill specifies in detail the exact form and content of the notice of conversion to condominium which must be sent by an owner to each tenant. The content of the notice specified by the enclosed bill would inform a tenant of his rights and responsibilities under the enclosed bill with respect to purchase of his premises as a condominium unit.

The enclosed would also provide to all purchasers of condominium units in a condominium that has been converted from a residential rental building, implied warranties, for a period of one year from taking of possession, that the unit and its structure and its fixtures which are part of the unit (excepting appliances such as refrigerators, stoves, dishwashers, and clothes washers and dryers) are free from faulty materials, constructed according to sound engineering standards, constructed in a workmanlike manner, and fit for habitation. A similar implied warranty is required by the enclosed bill, jointly through the council of unit owners, with respect to the common elements of the condominium (including boilers, heating plant, plumbing and water plant, ventilation system, and air conditioning system). These implied warranties are provided to any purchaser of a condominium unit in a condominium which is converted from a residential rental building, not just to tenants of the building prior to conversion.

The enclosed bill would also amend Section 11-124 to require that a purchaser of a unit in a condominium converted from a residential rental building be provided with information in addition to that required to be furnished to purchasers of units in new condominiums. The additional required information is a copy of a statement of the actual operating expenses of the building as a residential rental renting for at least one year prior to the date of delivery of the notice of conversion; and a certified copy of a report by a professional licensed engineer with respect to the structural integrity of the building and the condition and operability of boilers, heating plant, plumbing and water plant, ventilation system, and air conditioning system. The enclosed bill would limit the liability of a professional licensed engineer for mistakes, errors, or omissions in such reports. A professional licensed engineer who prepares such a report could not have any financial and/or property interest in the condominium.

The enclosed bill was drafted by the Commission's condominium conversion subcommittee. Mr. Barry Fitzpatrick, chairman of the Bar Association Condominium Committee, and Mr. William Flynn of the Home Builders Association Condominium Committee, were consulted and aided in the drafting of this bill. John Morrison, though not a member of the subcommittee, participated in subcommittee meetings and in the drafting of the bill. Mr. Morrison voted in favor of the bill at the Commission meeting. The Home Builders Association has proposed several minor amendments to the enclosed bill; these proposed amendments were presented at the November 12 meeting of the Commission by Mr. Morrison. These proposed amendments are on the agenda for discussion at the Commission's meeting on December 10. Mr. Minor Carter indicated to the Commission at their November 12 meeting that the Bar Association Condominium Committee, which had reviewed the subcommittee's first draft of the enclosed bill prior to the Commission's meeting, would review the enclosed bill at a meeting in early December. Mr. Carter stated that the Bar Association Committee would probably propose minor, technical changes to the enclosed bill at the December 10 meeting of the Commission. Consideration of proposed amendments to the enclosed bill by the Bar Association Condominium Committee is on the agenda for the Commission's meeting of December 10. Mr. Robert Franquet, a member of the Commission, will present the enclosed bill to tenants' organizations in Montgomery County and Prince George's County. Consideration of proposed amendments to the enclosed bill by tenants' organizations is on the agenda for the Commission's meeting of December 10. I will promptly forward any amendments to the enclosed bill that the Commission approves at their December 10 meeting.

The agenda for the December 10 meeting of the Commission includes consideration and a vote on a separate bill to regulate the conversion of residential rental buildings to condominiums. That bill would regulate conversion of rental buildings to condominiums by requiring that all tenants be provided with comparable replacement housing prior to conversion, that a certain percentage of tenants would have to approve conversion, and that a certain percentage of units in a conversion condominium remain as rental premises after conversion.

The Commission, at their November 12 meeting, tabled consideration of proposed amendments to Section 8-401 (Rent Due and Payable) until the December 10 meeting. The members of the Commission tabled that bill because of a desire to obtain further information with respect to the effects upon tenants of the provision in Section 8-401(e), enacted in the last Session of the General Assembly, providing that a tenant has no right to cure for failure to pay rent if he has received three or more summons for rent due and unpaid in the previous 12 months. I will promptly forward that bill to you if passed by the Commission at their December 10 meeting.

There are no other proposed bills requiring consideration and vote by the Commission at their December 10 meeting.

If I can be of further assistance to you with respect to these matters, please contact me. On behalf of the Commission, I thank you for your attention to this matter.

Sincerely yours,

Steven G. Davison

Steven G. Davison

SGD:eg

Enclosure

cc: Alan Wilner, Esquire

Hans Mayer

Judge Edgar P. Silver

AN ACT concerning

Real Property - Conversion of Apartments to Condominiums

FOR the purpose of providing that residential real property may not be converted to a condominium unless the owner has notified the tenants by a certain period of time prior to the initial offer of sale of condominium units to members of the public, providing that landlords must provide certain information to tenants in such notices, providing to tenants in buildings to be converted to condominiums a first right of refusal to purchase the condominium unit in which they are residing, providing tenants in a building to be converted to a condominium a right to terminate the lease prior to the date of termination if the tenant obtains new premises or purchases the condominium unit in which he is residing, and providing that a developer who converts rental buildings to a condominium warrants certain conditions with respect to common elements to the council of unit owners and warrants certain conditions with respect to the unit to each unit owner.

BY Repealing, and re-enacting, with amendments,

Article - Real Property
Section 11-102.1
Annotated Code of Maryland
(As enacted by Chapter 704 (H.B. 133) of the 1974 Regular Session of the General Assembly)

BY Repealing, and re-enacting, with amendments,

Article - Real Property
Section 11-124
Annotated Code of Maryland
(As enacted by Chapter 641 (S.B. 714) of the 1974 Regular Session of the General Assembly)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, that Section 11-102.1 of the Annotated Code of Maryland (as enacted by Chapter 704 (H.B. 133) of the 1974 Regular Session of the General Assembly) be and it is hereby repealed, and re-enacted, with amendments, to read as follows:

[](a) Residential real property may not be converted to a condominium unless the owner of the residential real property has given 120 days prior written notice of the conversion to each of the tenants of the building or buildings scheduled for conversion.] THE OWNER OF THE RESIDENTIAL RENTAL BUILDING OR BUILDINGS TO BE CONVERTED TO A CONDOMINIUM HAS GIVEN WRITTEN NOTICE OF CONVERSION TO EACH TENANT OF THE BUILDING OR BUILDINGS SCHEDULED FOR CONVERSION AT LEAST 120 DAYS PRIOR TO THE INITIAL OFFER OF SALE OF CONDOMINIUM UNITS TO MEMBERS OF THE PUBLIC.

(B) THE OWNER OF A RESIDENTIAL RENTAL BUILDING OR BUILDINGS TO BE CONVERTED TO A CONDOMINIUM SHALL MAKE TO EACH TENANT OF THE BUILDING OR BUILDINGS SCHEDULED FOR CONVERSION, IN THE NOTICE REQUIRED UNDER SUBSECTION (A), A WRITTEN BONA FIDE OFFER OF SALE OF THE UNIT OF THE CONDOMINIUM WHICH THE TENANT LEASES, BUT ONLY IF SUCH UNIT IS TO BE RETAINED IN THE BUILDING, WHEN CONVERTED TO A CONDOMINIUM, WITHOUT SUBSTANTIAL ALTERATION IN ITS LAYOUT. DURING THE FIRST 90 DAYS SUBSEQUENT TO RECEIPT OF THE NOTICE REQUIRED BY SUBSECTION (A), EACH OF SAID TENANTS SHALL HAVE THE EXCLUSIVE RIGHT TO CONTRACT FOR THE PURCHASE OF THE UNIT HE LEASES. ACCEPTANCE OR REJECTION OF SUCH OFFER BY A TENANT SHALL BE IN WRITING AND SHALL BE EXECUTED AND DELIVERED AS SPECIFIED BY THE NOTICE REQUIRED BY SUBSECTION (A).

(C) THE NOTICE REQUIRED IN SUBSECTION (A) SHALL BE SENT BY CERTIFIED FIRST CLASS MAIL, RETURN RECEIPT REQUESTED.

[(b)](D) A tenant may not be required to vacate the property DURING THE FIRST 120 DAYS AFTER RECEIPT [during the period] of the notice required under subsection (a) except for:

(1) Violation of a covenent in the lease, or
(2) Non-payment of rent.

(E) NO TENANT SHALL BE SERVED WITH A NOTICE TO VACATE PURSUANT TO SECTION 8-402(B)(1) UNTIL 90 DAYS AFTER HE RECEIVED THE NOTICE REQUIRED BY SUBSECTION (A).

(F) SUBSEQUENT TO RECEIPT OF THE NOTICE REQUIRED BY SUBSECTION (A), A TENANT MAY TERMINATE HIS LEASE, WITHOUT LIABILITY TO THE LANDLORD, EXCEPT FOR DAMAGES FOR BREACHES OF COVENANTS IN THE LEASE OR FOR NON-PAYMENT OF RENT WHICH OCCURRED PRIOR TO THE TERMINATION OF THE LEASE BY THE TENANT PURSUANT TO THIS SUBSECTION.

(G) A STATEMENT OF NOTICE REQUIRED BY SUBSECTION (A) IS SUFFICIENT FOR THE PURPOSES OF THIS TITLE IF IT CONTAINS THE INFORMATION, AND IS SUBSTANTIALLY IN THE FORM, SET FORTH BELOW:

NOTICE OF CONVERSION TO CONDOMINIUM

THIS IS TO INFORM YOU, _____, AS A TENANT(S) OF RENTAL PREMISES OF THE _____ BUILDING(S) LOCATED AT _____, THAT THE BUILDING(S) WILL BE CONVERTED TO CONDOMINIUMS. BY MARYLAND STATUTE, CONVERSION OF THE BUILDING IN WHICH YOU ARE A TENANT TO A CONDOMINIUM CANNOT TAKE PLACE UNLESS YOU HAVE RECEIVED WRITTEN NOTICE OF CONVERSION AT LEAST 120 DAYS PRIOR TO THE INITIAL OFFER OF SALE OF CONDOMINIUM UNITS TO THE PUBLIC. AS A TENANT IN THIS BUILDING, YOU MAY NOT BE REQUIRED TO VACATE YOUR LEASED PREMISES DURING THE FIRST 120 DAYS AFTER RECEIPT OF THIS NOTICE EXCEPT FOR VIOLATION OF A

PROVISION IN YOUR LEASE OR FOR NON-PAYMENT OF RENT. AS A TENANT IN THIS BUILDING, YOU CANNOT BE SERVED WITH A NOTICE TO VACATE THESE PREMISES UNTIL 90 DAYS AFTER RECEIPT OF THIS NOTICE. UPON RECEIPT OF THIS NOTICE, YOU HAVE THE RIGHT, AT ANY TIME HEREAFTER, TO TERMINATE THIS LEASE, PRIOR TO THE DATE OF TERMINATION UNDER THE LEASE, WITHOUT LIABILITY TO THE LANDLORD, EXCEPT FOR DAMAGES FOR BREACHES OF COVENANTS IN THE LEASE OR FOR NON-PAYMENT OF RENT WHICH OCCURRED PRIOR TO YOUR TERMINATION OF THE LEASE.

PURSUANT TO THIS NOTICE, YOU ARE HEREBY MADE A BONA FIDE OFFER OF SALE OF THE UNIT OF THE CONDOMINIUM WHICH YOU PRESENTLY LEASE. THE TERMS OF THIS OFFER OF SALE ARE ENCLOSED IN A SEPARATE DOCUMENT.

IF YOU ACCEPT THIS OFFER OF SALE, YOU WILL HAVE CONTRACTED TO PURCHASE A CONDOMINIUM UNIT IN THIS BUILDING WHICH UNIT IS PHYSICALLY (BY DIMENSIONS) THE SAME PREMISES THAT YOU ARE PRESENTLY LEASING. DURING THE FIRST 90 DAYS SUBSEQUENT TO THIS NOTICE, YOU HAVE THE EXCLUSIVE RIGHT TO CONTRACT FOR THE PURCHASE OF THE CONDOMINIUM UNIT WHICH YOU PRESENTLY LEASE. YOUR ACCEPTANCE OR REJECTION OF THIS OFFER OF SALE, IN WRITING, MUST BE SENT WITHIN 90 DAYS TO THE FOLLOWING PERSON:

(OWNER/AGENT)

IF YOU PURCHASE THIS CONDOMINIUM UNIT, MARYLAND STATUTES PROVIDE THAT THE OWNER WARRANTS THAT THE UNIT, ITS STRUCTURE, AND FIXTURES (EXCLUDING APPLIANCES SUCH AS REFRIGERATOR, STOVE, DISHWASHER, OR CLOTHES WASHER OR DRYER) ARE FOR ONE YEAR FROM DATE OF PURCHASE:

(1) FREE FROM FAULTY MATERIALS;
(2) CONSTRUCTED ACCORDING TO SOUND ENGINEERING STANDARDS;
(3) CONSTRUCTED IN A WORKMANLIKE MANNER; AND
(4) FIT FOR HABITATION.

THE FOLLOWING DOCUMENTS RELATING TO THE CONDOMINIUM CAN BE OBTAINED UPON REQUEST:

(1) A COPY OF THE PROPOSED DECLARATION AND BY-LAWS;

(2) A COPY OF THE PROPOSED ARTICLES OF INCORPORATION OF THE COUNCIL OF UNIT OWNERS, IF IT IS TO BE INCORPORATED;

(3) A COPY OF ANY PROPOSED MANAGEMENT CONTRACT, EMPLOYMENT CONTRACT, OR OTHER CONTRACT AFFECTING THE USE, MAINTENANCE, OR ACCESS OF ALL OR PART OF THE CONDOMINIUM TO WHICH IT IS ANTICIPATED THE UNIT OWNERS OR THE COUNCIL OF UNIT OWNERS WILL BE A PARTY FOLLOWING CLOSING;

(4) A COPY OF THE PROPOSED ANNUAL OPERATING BUDGET FOR THE CONDOMINIUM INCLUDING REASONABLE DETAILS CONCERNING THE ESTIMATED MONTHLY PAYMENTS BY THE PURCHASER FOR ASSESSMENTS, AND MONTHLY CHARGES FOR THE USE, RENTAL, OR LEASE OF ANY FACILITIES NOT PART OF THE CONDOMINIUM;

(5) A COPY OF ANY LEASE TO WHICH IT IS ANTICIPATED THE UNIT OWNERS OR THE COUNCIL OF UNIT OWNERS WILL BE A PARTY FOLLOWING CLOSING;

(6) A DESCRIPTION OF ANY CONTEMPLATED EXPANSION OF THE CONDOMINIUM WITH A GENERAL DESCRIPTION OF EACH STAGE OF EXPANSION AND THE MAXIMUM NUMBER OF UNITS THAT CAN BE ADDED TO THE CONDOMINIUM;

(7) A COPY OF THE FLOOR PLAN OF THE UNIT OF THE PROPOSED CONDOMINIUM WHICH HAS BEEN OFFERED TO YOU FOR SALE, TOGETHER WITH THE INFORMATION THAT IS NECESSARY TO SHOW THE LOCATION OF THE COMMON ELEMENTS AND OTHER FACILITIES TO BE USED BY THE UNIT OWNERS AND INDICATING WHICH FACILITIES WILL BE PART OF THE CONDOMINIUM AND WHICH FACILITIES WILL BE OWNED BY OTHERS;

(8) A COPY OF A STATEMENT OF THE ACTUAL OPERATING EXPENSES OF THE BUILDING AS A RESIDENTIAL RENTAL BUILDING FOR AT LEAST 12 MONTHS PRIOR TO THE DATE THAT THE NOTICE REQUIRED BY SUBSECTION (A) IS DELIVERED; AND

(9) A CERTIFIED COPY OF A REPORT BY A LICENSED PROFESSIONAL ENGINEER WITH RESPECT TO THE STRUCTURAL INTEGRITY OF THE BUILDING AND THE CONDITION AND OPERABILITY OF BOILERS, HEATING PLANT, PLUMBING AND WATER PLANT, VENTILATION SYSTEM, AND AIR CONDITIONING SYSTEM (IF ANY).

ALL SUCH DOCUMENTS, AS WELL AS THIS NOTICE, SHOULD BE READ BY YOU, AND IT IS RECOMMENDED THAT AN ATTORNEY-AT-LAW BE CONSULTED, PRIOR TO ACCEPTANCE OF THIS OFFER OF SALE.

IF YOU DO ACCEPT THE OFFER OF SALE OF THE CONDOMINIUM UNIT ENCLOSED BY THIS NOTICE. YOU MAY RESCIND, IN WRITING, THE CONTRACT OF SALE WITHOUT STATING ANY REASON AND WITHOUT ANY LIABILITY ON YOUR PART IF YOUR WRITTEN RESCISSION IS MAILED TO THE LANDLORD WITHIN FIFTEEN DAYS OF YOUR SIGNING OF THE CONTRACT OF SALE. YOUR WRITTEN RESCISSION OF THE CONTRACT OF SALE MUST BE MAILED FIRST CLASS, RETURN RECEIPT REQUESTED.

(H)1 IN EVERY SALE OF A UNIT OF A CONDOMINIUM THAT HAS BEEN CONVERTED FROM A RESIDENTIAL RENTAL BUILDING OR BUILDINGS, WARRANTIES ARE IMPLIED THAT THE UNIT AND ITS STRUCTURE AND ITS FIXTURES WHICH ARE PART OF THE UNIT (EXCEPTING APPLIANCES SUCH AS REFRIGERATORS, STOVES, DISHWASHERS, AND CLOTHES WASHERS AND DRYERS) ARE:

(A) FREE FROM FAULTY MATERIALS;
(B) CONSTRUCTED ACCORDING TO SOUND ENGINEERING STANDARDS;
(C) CONSTRUCTED IN A WORKMANLIKE MANNER; AND
(D) FIT FOR HABITATION.

UNLESS AN EXPRESS WARRANTY SPECIFIES A LONGER PERIOD OF TIME, THE WARRANTIES PROVIDED FOR IN THIS SUBSECTION EXPIRE ONE YEAR AFTER THE TAKING OF POSSESSION BY A UNIT OWNER.

(2) WHERE A CONDOMINIUM HAS BEEN CONVERTED FROM A RESIDENTIAL RENTAL BUILDING OR BUILDINGS, THE VENDOR IMPLIEDLY WARRANTS TO EACH PURCHASER, JOINTLY THROUGH THE COUNCIL OF UNIT OWNERS, THAT THE COMMON ELEMENTS, INCLUDING BOILERS, HEATING PLANT, PLUMBING AND WATER PLANT, VENTILATION SYSTEM, AND AIR CONDITIONING SYSTEM (IF ANY), ARE:

(A) FREE FROM FAULTY MATERIALS;
(B) CONSTRUCTED AND/OR INSTALLED ACCORDING TO SOUND ENGINEERING STANDARDS;
(C) CONSTRUCTED AND/OR INSTALLED IN A WORKMANLIKE MANNER; AND
(D) FIT FOR INTENDED PURPOSES AND FOR NORMAL OPERATIONS.

UNLESS AN EXPRESS WARRANTY SPECIFIES A LONGER PERIOD OF TIME, THE WARRANTIES PROVIDED FOR IN THIS SUBSECTION EXPIRE ONE YEAR FROM THE DATE THAT THE DECLARATION REQUIRED BY SECTION 11-102 IS RECORDED. ONLY THE COUNCIL OF UNIT OWNERS SHALL HAVE STANDING TO ENFORCE SAID WARRANTY.

SECTION 2. BE IT HEREBY ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, that Section 11-124 of the Annotated Code of Maryland (as enacted by Chapter 641 (S.B. 714) of the 1974 Regular Session of the General Assembly) be and it is hereby repealed and reenacted, with amendments, to read as follows:

Disclosure Requirements.

(A) Not later than 15 days prior to the closing of the initial sale of each unit to a member of the public, the vendor shall furnish to the purchaser the following:

* * * * *

[No change in subsections (1) - (7)]

(8) A COPY OF A STATEMENT OF THE ACTUAL OPERATING EXPENSES OF THE BUILDING AS A RESIDENTIAL RENTAL BUILDING FOR AT LEAST 12 MONTHS PRIOR TO THE DATE THAT THE NOTICE REQUIRED BY SUBSECTION (A) IS DELIVERED, BUT ONLY WHERE THE CONDOMINIUM IS CONVERTED FROM A RESIDENTIAL RENTAL BUILDING.

(9) A CERTIFIED COPY OF A REPORT BY A LICENSED PROFESSIONAL ENGINEER WITH RESPECT TO THE STRUCTURAL INTEGRITY OF THE BUILDING AND THE CONDITION AND OPERABILITY OF BOILERS, HEATING PLANT, PLUMBING AND WATER PLANT, VENTILATION SYSTEM, AND AIR CONDITIONING SYSTEM (IF ANY), BUT ONLY WHERE THE CONDOMINIUM IS CONVERTED FROM A RESIDENTIAL RENTAL BUILDING. A LICENSED PROFESSIONAL ENGINEER SHALL BE LIABLE FOR MISTAKES, ERRORS, OR OMISSIONS IN SUCH REPORT ONLY WHERE SUCH MISTAKES, ERRORS, OR OMISSIONS ARE THE RESULT OF

WILLFUL, RECKLESS, OR MALICIOUS CONDUCT OR THE RESULT OF GROSS NEGLIGENCE. A LICENSED PROFESSIONAL ENGINEER WHO PREPARES SUCH REPORT WITH RESPECT TO A CONDOMINIUM WHICH IS CONVERTED FROM A RESIDENTIAL RENTAL BUILDING SHALL HAVE NO FINANCIAL AND/OR PROPERTY INTEREST IN SAID CONDOMINIUM AT THE TIME OF PREPARATION AND/OR ISSUANCE OF SAID REPORT.

* * * * *

[No changes in subsections (C) - (G)]

SECTION 3. AND BE IT FURTHER ENACTED, that this Act shall take effect July 1, 1975.

Steven G. Davison
Reporter, Governor's
Commission on Landlord -
Tenant Law Revision
3600 South 14th Street
Arlington, Virginia 22204

December 19, 1974

Thomas J. Peddicord
Assistant Legislative Officer
Executive Department
State of Maryland
Annapolis, Maryland 21404

Dear Mr. Peddicord:

On behalf of the Governor's Commission on Landlord - Tenant Law Revision, I am forwarding a draft bill that the Commission approved, unanimously, at their meeting on December 10, 1974. I am also re-submitting the conversion condominium buyer's protection bill, which was amended by the Commission at their meeting on December 10, 1974. I have been requested by the Commission to forward these bills to the Office of the Governor for introduction to the General Assembly as Commission bills.

The bill adopted by the Commission at their December 10 meeting would amend Section 8-401 of the Annotated Code of Maryland (Chapter 656 (S.B. 839) of the 1974 Regular Session of the General Assembly). The bill would amend Section 8-401 (Rent Due and Payable) by requiring that a landlord, in bringing a summary ejectment suit under Section 8-401, must give notice and serve process upon both the tenant and a subtenant, assignee or someone holding under them, if any. The bill would also provide for recording of judgments in actions brought under Section 8-401. If a judgment was recorded, Section 8-401(d) would provide that a case would not be dismissed even if warrant of restitution was not ordered within 60 days from the date of judgment. A judgment under Section 8-401 could not be recorded unless the landlord proved personal service to all defendants prior to entry of judgment. These provisions with respect to recording of judgments under Section 8-401 were recommended by Ms. Patricia Kostrisky, Chief Clerk of the District Court. These recording of judgment provisions are similar to other provisions in Maryland statutes with respect to recording of judgments. The proposed amendments to Section 8-401, would also delete the last sentence in Section 8-401(e), which makes a tenant's right to cure under Section 8-401(e) inapplicable if the tenant has received more than three summons containing copies of complaints filed by the landlord against the tenant for rent due and unpaid in the 12 months prior to the initiation of the action. This sentence was added to Section 8-401(e) by Chapter 656 of the 1974 Regular Session of the General Assembly. This sentence was opposed by tenants' organizations

and members of the Commission representing tenants' organizations. Mr. Irving Alter, a member of the Commission, stated that he and other landlords with whom he had talked did not oppose repeal of this sentence in Section 8-401(e). It was my opinion, and the opinions of Mr. Gerald Walsh and Mr. James Carbine, members of the Commission, that this sentence in Section 8-401(e) probably is unconstitutional in violation of the Due Process clause of the United States Constitution, since it penalizes tenants who successfully or in good faith raise defenses in summary ejectment suits such as rent escrow, violation of rent control statutes, retaliatory rent increases, or no rent due and payable. The enclosed bill would also amend the appeal and security bond provisions of Section 8-401(f) to make them similar to the provisions in the proposed Appeal Bill and in the proposed amendments to Section 8-402(b)(2) (Holding Over).

The Commission approved several amendments to the conversion condominium buyers' protection bill at the December 10 meeting. These amendments were adopted after consideration of proposed amendments by the Condominium Committee of the Home Builders Association of Maryland. No amendments were proposed by tenants' organizations or by the Bar Association Condominium Committee. The first amendment approved by the Commission adds to Section 1.1(b) of the original bill a provision that failure by a tenant to notify the owner of acceptance of an owner's offer of sale of his unit as a condominium, within 90 days of receipt by the tenant of notice of conversion from the owner, constitute rejection of said offer of sale. The form of notice specified by Section 1.1(g) of the bill has also been amended to reflect this amendment. The second amendment approved by the Commission amends Section 1.1(g), which permits a tenant to terminate his lease, prior to the date of termination under his lease, after receipt of notice of conversion. The amendments provide that in order to terminate a lease pursuant to Section 1.1(g), a tenant must send notice of termination of his lease in writing by first class mail, return receipt requested, to a person specified by the landlord in the notice of conversion. The amendments also provide that the lease terminates 30 days after a tenant has sent notice of termination of his lease pursuant to subsection 1.1(g). The form of notice specified by Section 1.1(g) has also been amended to reflect this amendment.

The Commission has no proposed bills for discussion and vote at the January 4, 1975, meeting. The Commission at the December 10 meeting tabled discussion of the separate bill to regulate the conversion of residential rental buildings to condominiums. At the January 14 meeting, the Commission will begin to discuss and study the Uniform Residential Landlord and Tenant Act drafted by the National Conference of Commissioners of Uniform State Laws. The agenda for the January 14, 1975, meeting will also include

discussion of rent control legislation and mobile home park landlord - tenant problems.

If I can be of further assistance to you with respect to these matters, please contact me. On behalf of the Commission, I thank you for your attention to this matter.

Sincerely yours,

Steven G. Davison

Steven G. Davison

Enclosures

cc: Alan Wilner, Esquire
Judge Edgar P. Silver
Hans Mayer

SGD:eg

Steven G. Davison
Reporter, Governor's
Commission on Landlord-
Tenant Law Revision
3600 South 14th Street
Arlington, Virginia 22204

September 11, 1975

Thomas J. Peddicord
Assistant Legislative Officer
Executive Department
Annapolis, Maryland 21404

Dear Tom:

On behalf of the Governor's Commission on Landlord-Tenant Law Revision, I am forwarding three bills that have been approved by the Commission. I have been requested by the Commission to forward these bills to the office of the Governor for introduction to the General Assembly as Commission bills.

I expect that the Commission, at its September 8th meeting, will approve five additional bills. I will forward such bills to you as soon as possible after approval. These five bills involve amendments to RP Article Section 8-402(b)(2); amendments to RP Articles Sections 8-401(c)(3) and 8-401(d); amendments to RP Article Section 10-201(b) (express and implied warranties for converted condominiums); amendments to the retaliatory eviction law, RP Article Section 8-208.1; and amendments to RP Article Section 8-203.1 (provisions prohibited in leases).

One of the three bills approved by the Commission involves substantial amendments to RP Article Section 8-402 (Holding Over Beyond Termination). This bill includes the proposed amendments to Section 8-402 encompassed in S.B. 467 and H.B. 138 of the 1975 Regular Session. The amendments encompassed in S.B. 467 and H.B. 138 were primarily non-substantive amendments to Section 8-402 in response to the Revisor's Note to Title 8 of Chapter 12 (S.B. 200) of the 1974 Regular Session. These proposed amendments are discussed in my letter to you of October 21, 1974.

In addition, the Commission's bill includes amendments which involve substantial changes to Section 8-402. These proposed amendments to Section 8-402 resulted from consideration by the Commission of proposed amendments to Section 8-402 proposed by the Apartment Builders and Owners Council through Mr. Samuel Blibaum. The principal amendments proposed in the Commission's bill would repeal the provisions in Section 8-402(a) providing for recovery of damages by the landlord against holdover tenants. Section 8-402(a) limits the landlord's damages against holdover tenants to double the rent or rental value.

However, the landlord may use the summary proceedings for recovery of possession under Section 8-402 to recover such damages; in such a suit under Section 8-402, personal service of process is not required, the tenant has no rights of discovery, and the tenant does not have adequate time to prepare his case. The Commission believes that repeal of Section 8-402(a), which would leave a landlord seeking damages against a holdover tenant with the same rights and remedies as other contract creditors, would be fair to both landlords and tenants. Landlords would be able to recover all actual damages against holdover tenants, whereas Section 8-402(a) presently limits the amount of damages. Landlords testified before the Commission that actual damages caused by a holdover tenant are often more than the maximum authorized by Section 8-402(a). Under this proposed amendment, a landlord could still bring summary proceedings to recover possession from a holdover tenant. However, a landlord, who would be able to quickly recover possession of the premises, would not be better off than other contract creditors by having a summary proceeding to recover damages. Recovery of damages against a holdover tenant would occur in a normal civil suit, with a tenant having the right to personal service of process, rights of discovery, and adequate time to prepare his case. An action under Section 8-402(a) is an action for damages, which type of action is not normally determined by a summary proceeding as provided under Section 8-402.

The Commission's bill would also delete the last sentence of Section 8-402(b)(1), which directs the court to grant a continuance if a party has failed to appear. The Commission believes that this provision rewards dilatory action by permitting parties to gain a delay by failing to appear. The present law hurts both tenants and landlords when the opposing party fails to appear.

The Commission's bill also would amend Section 8-402 by requiring a landlord, in a summary proceeding to recover possession, to serve both the tenant and subtenant, assignee or someone holding under them; but a landlord would have no duty to serve a subtenant or assignee unless the tenant has given the landlord written notice of assignment or subleasing, or the landlord has consented to assignment or subleasing if such consent is required by the lease.

The Commission's bill would also amend the last sentence of Section 8-402(c) to indicate that the mortgagee being referred to is a mortgagee of a ground rent lease. The Commission believes that this is the intended application of this sentence.

The second bill approved by the Commission involves non-substantive amendments to RP Article Section 8-401 (Rent Due and Payable). This bill is the same as S.B. 270 of the 1975 Regular Session, except for one minor amendment. The amendments to Section 8-401 proposed by S.B. 270 were discussed in my letter to you of December 19, 1974. The Commission's bill that I am enclosing amends S.B. 270 by providing that a landlord would not have to notify and serve summons and complaint on an assignee or subtenant under RP 8-401 unless the landlord has received written notice from the tenant of assignment or subleasing; or unless the landlord has consented to assignment or subleasing where the lease requires such consent. The Commission's bill reflects the amendments to Section 8-401 effected by Chapter 642 (H.B. 41) of the 1975 Regular Session.

The third bill approved by the Commission is a bill providing uniform appeal provisions in landlord-tenant cases. This bill is the same as S.B. 483 and H.B. 251 of the 1975 Regular Session, with some amendments as discussed below. S.B. 483 and H.B. 251 were discussed in my letter to you of October 21, 1974. At the present time, appeals in landlord-tenant cases are provided for only under RP Article Sections 8-332 (Distress for Rent), 8-401 (Rent Due and Payable), and 8-402 (Holding Over). There are no provisions for appeal in other important landlord-tenant actions such as those under RP Article Section 8-203 (Security Deposits) and RP Article Section 8-208.1 (Retaliatory Evictions). The Commission's bill would establish uniform appeal procedures for all landlord-tenant cases. The Commission's bill would amend S.B. 483 and H.B. 251 to allow appeals to be brought within five days, rather than the two days presently provided by Section 8-401. The Commission believes that five days is a reasonable and fair amount of time in which to bring an appeal.

If I can be of further assistance to you with respect to these bills, please contact me. On behalf of the Commission, I thank you for your attention to this matter.

Sincerely yours,

Steven G. Davison

Steven G. Davison
Reporter

SGD/eg

cc: Members: Landlord-Tenant Commission

Steven G. Davison
Reporter, Governor's
Commission on Landlord-
Tenant Law Revision
3600 South 14th Street
Arlington, Virginia 22204

September 29, 1975

Thomas J. Peddicord
Assistant Legislative Officer
Executive Department
State House
Annapolis, Maryland 21404

Dear Tom:

On behalf of the Governor's Commission on Landlord-Tenant Law Revision, I am enclosing three bills that were approved by the Commission at its meeting on September 22nd. I have been requested by the Commission to forward these bills to the office of the Governor for introduction to the General Assembly as Commission bills.

The first bill would amend Section 10-201(b) of the Real Property Article, to extend the warranty provisions of Title 10, Subtitle 2, of the Real Property Article (which are presently applicable only to "newly constructed private dwelling units") to condominiums converted from rental units. This bill would supplement Section 11-102.1 of the Real Property Article, as amended by Chapter 786 (H.B. 1330) of the 1975 Regular Session, which regulates the conversion of rental buildings to condominiums. The Commission unsuccessfully attempted to amend H.B. 1330 (Chapter 786) before passage to provide warranties to purchasers of converted condominiums. The enclosed bill (which had no equivalent version in the 1975 Regular Session) would extend the warranty provisions of Title 10, Subtitle 2, of the Real Property Article, to each condominium unit and to the common elements of a condominium which is converted from a rental building. The bill is drafted so that the warranties are applicable only at the time of sale by the developer of the converted condominium; these warranties would not apply when an individual owner of a unit in a converted condominium later sells his unit to someone else. The warranties with respect to the common elements of a converted condominium could be enforced only by the council of unit owners, not by individual unit owners acting independently. The scope of warranties applicable to converted condominiums would otherwise be the same as those for newly constructed private dwelling units pursuant to Title 10, Subtitle 2, of the Real Property

Article. As in the case of warranties for newly constructed private dwelling units, warranties applicable to converted condominiums could be excluded or modified as provided by RP Article Sections 11-202(c) and 11-203(d).

The second bill would make additional amendments to RP Article Section 8-402, in addition to those enclosed in the bill forwarded to you with my letter of September 11, 1975. The Commission desires to submit the enclosed bill as a separate bill, since it involves different substantive amendments to RP Article Section 8-402. The enclosed bill, however, incorporates amendments to Section 8-402 proposed in the earlier bill. The enclosed bill would amend Section 8-402(b)(2) to authorize courts, in suits to eject holdover tenants, to stay execution of judgment for restitution of possession up to thirty days. (Section 8-402(b)(2) is renumbered Section 8-403(B)(1) in the bill enclosed on September 9th proposing amendments to Section 8-402). At present, Section 8-402(b)(2) specifically authorizes stay of execution of judgment for only two days, but many district court judges nevertheless stay execution for up to thirty days. The enclosed bill would thus specifically authorize current practices, but would protect the rights of landlords where execution is stayed for more than two days. Under the enclosed bill, if a judge stays execution of judgment for more than two days, a tenant must be required to pay all rent in arrear; and to pay the landlord for remaining on the premises after the termination of the lease, in an amount equivalent to a proportion of the tenant's rent under the now-terminated lease. The tenant, before stay of execution could be issued, would have to pay the landlord all rent in arrear and an initial payment for possession, in an amount not to exceed the amount of an individual rent payment made by the tenant under the now-terminated lease. As an example, if a landlord was seeking to eject a holdover week-to-week tenant who paid $60 per week rent (in advance) and the court entered a two week stay of execution, the tenant would have to pay the landlord $60 at the time of entry of judgment (in addition to any rent in arrear). The tenant would then make another payment of $60 to the landlord prior to the tenant's second week of remaining in possession pursuant to the stay of execution. The Commission believes that stays of execution beyond two days are often necessary in order for tenants to find new housing, particularly in situations where landlords give notices to quit to periodic week-to-week or month-to-month tenants. Courts, in their discretion, could enter stays of execution for up to thirty days where necessary for the tenant to find new housing, but the tenant would be required to pay the landlord for remaining in possession. (The bill does not refer to such payments for possession as "rent," since technically a holdover tenant is a tenant at sufferance, whose legal status is only slightly above that of a trespasser).

The third bill which I am enclosing would amend the retaliatory eviction statute, RP Article Section 8-208.1. The bill would amend 8-208.1 to specifically make the retaliatory eviction statute applicable to termination or non-renewal of a lease or to termination of a periodic tenancy by a landlord for retaliatory purposes. Section 8-208.1(a)(2) presently refers only to "eviction" by a landlord, which in conjunction with Section 8-208.1(f), apparently makes the retaliatory eviction statute inapplicable to termination or nonrenewal of a written lease or termination of a periodic tenancy. The bill would also amend Section 8-208.1(a)(2) to make it applicable where a landlord "ejects" a tenant or brings or threatens to bring an action for possession. Section 8-208.1(a)(2) would also be amended to make it explicit that the retaliatory eviction statute applies only to tenants of residential property. Although this is legally unnecessary since the statute is included in RP Article Title 8, Subtitle 2 (which is entitled "Residential Leases"), the Commission believes that such an amendment is necessary to alleviate confusion by members of the public. The enclosed bill would also amend Section 8-208.1(e), which presently provides that an eviction by a landlord, after six months following the determination of the merits of an initial case by a court or administrative agency, is conclusive proof that the eviction is not a retaliatory eviction. The proposed amendment would make passage of this six month period only a rebuttable presumption ("prima facie evidence") that the landlord's action is not retaliatory, although this presumption would be subject to rebuttal by the tenant. The bill also proposes deleting Section 8-208.1(g), which would have the effect of repealing retaliatory eviction laws in Baltimore City, Montgomery County, and Prince Georges County. The Commission believes that landlord-tenant statutes should be uniform throughout the state.

If I can be of further assistance to you with respect to these bills, please contact me. On behalf of the Commission, I thank you for your attention to this matter.

Sincerely,

Steven G. Davison

Steven G. Davison
Reporter

SGD/eg

Enclosures

cc: Commission Members

RETALIATORY EVICTIONS

5/ 7/75

X

8-208.1

AN ACT concerning

Landlord and Tenant - Retaliatory Evictions

FOR the purpose of providing that it is against public policy and void for a landlord to embody in a written lease a provision authorizing a landlord to evict a tenant or to fail to renew a lease for certain retaliatory reasons; providing that a landlord may not fail to renew a lease nor terminate a periodic tenancy for certain retaliatory reasons; providing for mandatory award of attorney fees and court costs against a landlord where a tenant successfully raises a defense of retaliatory eviction; repealing the restrictions on a tenant's right to raise the defense of retaliatory eviction where a tenant has received a certain number of summonses and complaints for rent due and unpaid; and providing that an eviction of a tenant or the failure to renew a lease, after the expiration of 6 months following determination of the merits of litigation or an administrative agency proceeding initiated by the filing of a lawsuit or written complaint by a tenant, is prima facie evidence that an eviction is not a retaliatory eviction, subject to rebuttal by a tenant.

BY repealing and re-enacting, with amendments,

Article - Real Property
Section 8-208.1
Annotated Code of Maryland
(1974 Volume and 1975 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section 8-208.1 of Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1975 Supplement) be and it is hereby repealed and re-enacted, with amendments, to read as follows:

Article - Real Property

8-208.1

(a) Definitions; prohibited evictions.

(1) Definitions:

(i) "Mobile home" is a home including house trailer but excluding camping trailer, travel trailer, truck camper and motor home, which is a movable or portable unit, designed and constructed to be towed on its own frame and wheels and connected to utilities for year-round occupancy. The term includes:

(1) a unit containing parts that may be folded, collapsed or telescoped when towed and is expandable to provide additional cubic capacity; and

(2) a unit composed of two or more separately towable components designed to be joined into one integral unit capable of being again separated into the components for repeated towing.

(ii) "Landlord" [included] INCLUDES a mobile home park owner or operator.

(iii) "Tenant" includes mobile home dweller.

(2) No landlord [shall] MAY evict OR EJECT A TENANT OF ANY RESIDENTIAL PROPERTY; BRING OR THREATEN TO BRING AN ACTION FOR POSSESSION AGAINST A TENANT OF ANY RESIDENTIAL PROPERTY; TERMINATE OR FAIL TO RENEW A WRITTEN LEASE OF A TENANT OF ANY RESIDENTIAL PROPERTY; TERMINATE A PERIODIC TENANCY OF A TENANT OF ANY RESIDENTIAL PROPERTY, OR [arbitrarily] increase the rent or decrease the services to which [the] A tenant OF ANY RESIDENTIAL PROPERTY has been entitled, for any of the following reasons:

(1) Solely because the tenant or his agent has filed a written complaint, or complaints, with the landlord or with any public agency or agencies against the landlord; or

(2) Solely because the tenant or his agent has filed a law suit, or law suits, against the landlord; or

(3) Solely because the tenant is a member or organizer of any tenants' organization.

(b) Meaning of "retaliatory evictions." - [Evictions] ACTIONS OF A LANDLORD described in subsection (a) of this section shall be called "retaliatory evictions."

(c) Attorney's fees and costs. - If in any eviction OR EJECTMENT proceeding the judgment be in favor of the tenant for any of the aforementioned defenses, the court [may] ~~SHALL~~ enter judgment for reasonable attorney fees and court costs against the landlord.

(d) Conditions for relief. - The relief provided under this section is conditioned upon:
(i) In the case of tenancies measured by a period of one month or more, the tenant having not received more than 3 summonses containing copies of complaints filed by the landlord against the tenant for rent due and unpaid in the 12 month period immediately prior to the initiation of the action by the tenant or by the landlord.
(ii) In the case of periodic tenancies measured by the weekly payment of rent, the tenant having not received more

than 5 summonses containing copies of complaints filed by the landlord against the tenant for rent due and unpaid in the 12 month period immediately prior to the initiation of the action by the tenant or by the landlord, or, if the tenant has lived on the premises 6 months or less, having not received 3 summonses with copies [or] OF complaints for rent due and unpaid.

[(e)] (D) Evictions not deemed "retaliatory evictions." - [No eviction shall be deemed to be a "retaliatory eviction" for purposes of this section upon the expiration of a period of 6 months following the determination of the merits of the initial case by a court (or administrative agency) of competent jurisdiction.] THE COMMENCEMENT OF AN ACTION FOR POSSESSION OR FOR EVICTION, OR THE ISSUANCE OF A NOTICE TO QUIT TO A TENANT, OR THE FAILURE TO RENEW A LEASE, OR THE TERMINATION OF A PERIODIC TENANCY, BY A LANDLORD, AFTER THE EXPIRATION OF SIX MONTHS FOLLOWING DETERMINATION OF THE MERITS OF LITIGATION OR AN ADMINISTRATIVE AGENCY PROCEEDING INITIATED BY THE FILING OF A LAWSUIT OR WRITTEN COMPLAINT BY A TENANT, IS PRIMA FACIE EVIDENCE, SUBJECT TO REBUTTAL BY A TENANT, THAT THE ACTION OF THE LANDLORD IS NOT A RETALIATORY EVICTION.

Delete [(E) PROVISIONS PROHIBITED IN A LEASE.- ANY PROVISION IN ANY WRITTEN LEASE OR WRITTEN FORM OF LEASE OF ANY RESIDENTIAL PREMISES PURPORTING TO PERMIT A LANDLORD TO BRING AN ACTION FOR POSSESSION OR FOR EVICTION, OR TO ISSUE A NOTICE TO QUIT, OR TO NOT RENEW THE LEASE, SOLELY FOR ONE OF THE REASONS STATED IN SECTION (A)(2), IS AGAINST PUBLIC POLICY AND VOID.]

(E) Rights not affected. - Nothing in this section may be interpreted to alter the landlord's or the tenant's rights arising from breach of any provision of a lease, or either party's right, NOT INCONSISTENT WITH THIS SECTION, to terminate or not renew a lease pursuant to the terms of the lease or the provisions of other applicable law.

DELETE [(F) Effect of ordinance comparable in subject matter. - In the event any county or Baltimore City shall have enacted an ordinance comparable in subject matter to this section, that ordinance shall supercede the provisions of this section.]

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1976.

Approved by Commission
9/22/75

AN ACT concerning

Landlord and Tenant - Retaliatory Evictions

FOR the purpose of providing that a landlord may not terminate or fail to renew a lease, or terminate a periodic tenancy, or eject a tenant or bring or threaten to bring an action for possession against a tenant, for certain retaliatory reasons; providing that an eviction of a tenant or the failure to renew a lease, after the expiration of 6 months following determination of the merits of litigation or an administrative agency proceeding initiated by the filing of a lawsuit or written complaint by a tenant, is prima facie evidence that such action is not a retaliatory action, subject to rebuttal by a tenant; and repealing public local laws and ordinances with respect to retaliatory eviction.

BY repealing and re-enacting, with amendments,

Article - Real Property
Section 8-208.1
Annotated Code of Maryland
(1974 Volume and 1975 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 8-208.1 of Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1975 Supplement) be and it is hereby repealed and re-enacted, with amendments, to read as follows:

Article - Real Property

8-208.1

(a) Definitions; prohibited evictions.

(1) Definitions:

(i) "Mobile home" is a home including house trailer but excluding camping trailer, travel trailer, truck camper and motor home, which is a movable or portable unit, designed and constructed to be towed on its own frame and wheels and connected to utilities for year round occupancy. The term includes:

(1) a unit containing parts that may be folded, collapsed or telescoped when towed and is expandable to provide additional cubic capacity; and

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HIBITING ANY OBVIOUS
FECT BE RESUBMITTED
HAVING ALREADY
PASSED THIS BODY

(2) a unit composed of two or more separately towable components designed to be joined into one integral unit capable of being again separated into the components for repeated towing.

(ii) "Landlord" [included] INCLUDES a mobile home park owner or operator.

(iii) "Tenant" includes mobile home dweller.

(2) No landlord [shall] MAY evict OR EJECT A TENANT OF ANY RESIDENTIAL PROPERTY; BRING OR THREATEN TO BRING AN ACTION FOR POSSESSION AGAINST A TENANT OF ANY RESIDENTIAL PROPERTY; TERMINATE OR FAIL TO RENEW A WRITTEN LEASE OF A TENANT OF ANY RESIDENTIAL PROPERTY; TERMINATE, OR [arbitrarily] increase the rent or decrease the services to which [the] A tenant OF ANY RESIDENTIAL PROPERTY has been entitled, for any of the following reasons:

(1) Solely because the tenant or his agent has filed a written complaint, or complaints, with the landlord or with any public agency or agencies against the landlord; or

(2) Solely because the tenant or his agent has filed a law suit, or law suits, against the landlord; or

(3) Solely because the tenant is a member or organizer of any tenants' organization.

(b) Meaning of "retaliatory evictions." - [Evictions] ACTIONS OF A LANDLORD described in subsection (a) of this section shall be called "retaliatory evictions."

(c) Attorney's fees and costs. - If in any eviction OR EJECTMENT proceeding the judgment be in favor of the tenant for any of the aforementioned defenses, the court may enter judgment for reasonable attorney fees and court costs against the landlord.

(d) Conditions for relief. - The relief provided under this section is conditioned upon:

(i) In the case of tenancies measured by a period of one month or more, the tenant having not received more than 3 summonses containing copies of complaints filed by the landlord against the tenant for rent due and unpaid in the 12 month period immediately prior to the initiation of the action by the tenant or by the landlord.

(ii) In the case of periodic tenancies measured by the weekly payment of rent, the tenant having not received more than 5 summonses containing copies of complaints filed by the landlord against the tenant for rent due and unpaid in the 12 month period immediately prior to the initiation of the action by the tenant or by the landlord, or, if the tenant has lived on the premises 6 months or less, having not received 3 summonses with copies [or] OF complaints for rent due and unpaid.

(e) Evictions not deemed "retaliatory evictions." - [No eviction shall be deemed to be a "retaliatory eviction" for purposes of this section upon the expiration of a period of 6 months following the determination of the merits of the initial case by a court (or administrative agency) of competent jurisdiction.] THE COMMENCEMENT OF AN ACTION FOR POSSESSION OR FOR EVICTION OR THE ISSUANCE OF A NOTICE TO QUIT TO A TENANT, OR THE TERMINATION OR FAILURE TO RENEW A LEASE, OR THE TERMINATION OF A PERIODIC TENANCY, BY A LANDLORD, AFTER THE EXPIRATION OF SIX MONTHS FOLLOWING DETERMINATION OF THE MERITS OF LITIGATION OR AN ADMINISTRATIVE AGENCY PROCEEDING INITIATED BY THE FILING OF A LAWSUIT OR WRITTEN COMPLAINT BY A TENANT, IS PRIMA FACIE EVIDENCE, SUBJECT TO REBUTTAL BY A TENANT, THAT THE ACTION OF THE LANDLORD IS NOT A RETALIATORY EVICTION.

(f) Rights not affected. - Nothing in this section may be interpreted to alter the landlord's or the tenant's rights arising from breach of any provision of a lease, or either party's right, NOT INCONSISTENT WITH THIS SECTION, to terminate or not renew a lease pursuant to the terms of the lease or the provisions of other applicable law.

[(g) Effect of ordinance comparable in subject matter. - In the event any county or Baltimore City shall have enacted an ordinance comparable in subject matter to this section, that ordinance shall supercede the provisions of this section.]

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1976.

Steven G. Davison
Reporter, Governor's
Commission on Landlord-
Tenant Law Revision
3600 South 14th Street
Arlington, Virginia 22204

October 27, 1975

Thomas J. Peddicord
Assistant Legislative Officer
Executive Department
State House
Annapolis, Maryland 21404

Dear Tom:

On behalf of the Governor's Commission on Landlord-Tenant Law Revision, I am enclosing two bills that were approved by the Commission at its meeting on October 14th. I have been requested by the Commission to forward these bills to the Office of the Governor for introduction to the General Assembly as Commission bills.

The first bill would delete Section 8-203.1(b) of the Real Property Article. The Commission proposes deleting Section 8-203.1(b) because it is in conflict with Sections 8-208(a)(2) and 8-208(a)(6) of the Real Property Article. Section 8-208(a)(6) prohibits provisions in any residential lease that authorize the landlord to take possession of the premises or the tenant's personal property except pursuant to law. Section 8-208(a)(2) prohibits any provision in a residential lease whereby a tenant waives any of his rights under law; Section 8-208(a)(2), in conjunction with the prohibitions against retaliatory evictions (Real Property Article Section 8-208.1) prohibits provisions in residential leases authorizing the landlord to evict for retaliatory reasons. Section 8-203.1(b) also prohibits such lease provisions, but unlike Section 8-208, which applies to all residential leases, Section 8-203.1(b) applies only to landlords who offer "more than 4 [residential] dwelling units for rent on one parcel of property or at one location" and rent "by means of written leases." Section 8-203.1(b) thus directly conflicts with Sections 8-208(a)(2) and 8-208(a)(6) with respect to scope of coverage, and consequently should be repealed.

The second bill would require landlords to give week-to-week tenants a month's notice to quit. This bill would amend Section 8-402(b)(4), which presently requires a landlord to give week-to-week tenants only a week's notice to quit. The Commission believes that a week is insufficient time for a tenant to find new housing. This bill reflects the proposed amendments to Section 8-402(b)(2) which are contained in Section 8-402(D) of the bill to amend Section 8-402 (approved by the Commission on April 8, 1975) which was forwarded to you with my letter of September 11, 1975. The enclosed bill substantively amends Section

8-402(b)(4) by deleting the phrase "or one week, as the case may be," in the third and fourth lines from the bottom of the section.

These bills are the final bills which will be submitted by the Commission for consideration by the 1976 Regular Session of the General Assembly.

If I can be of further assistance to you with respect to these bills, please contact me. On behalf of the Commission, I thank you for your attention to this matter.

Sincerely,

Steven G. Davison
Reporter

cc: Commission Members

SGD/eg

Enclosures (2)

Steven G. Davison
Reporter, Governor's
Commission on Landlord-
Tenant Law Revision
3600 South 14th Street
Arlington, Virginia 22204

December 1, 1975

Alan Wilner, Esquire
Executive Department
State House
Annapolis, Maryland 21404

Dear Mr. Wilner:

Mr. William Sallow, Chairman of the Governor's Commission on Landlord-Tenant Law Revision, has requested me to contact you with respect to planning several dinner meetings for the Commission next year. Mr. Sallow would like to hold two or three meetings by the Commission next spring in local counties including in Montgomery County and/or Prince Georges County and possibly in an Eastern shore county and/or a western county. These meetings would be preceded by a dinner for members of the Commission, to be paid for by the state.

I would like to know whether the costs of such dinner meetings would have to be paid out of the Commission's FY 1976 budget, or whether other funds would be available for this purpose. If such costs must be met by the Commission's budget, would you please inform me as to the amount of funds remaining to be spent by the Commission in the FY 1976 budget. If the Commission's budget must pay for the costs of such dinner meetings, the Commission would like to request an additional $1000 to be included in the FY 1977 budget to cover the costs of three or four such dinner meetings.

I would also appreciate your informing me as to the procedures for submitting bills to the State Treasurer to pay for the costs of dinner meetings by the Commission.

Thank you for your attention to these matters.

Sincerely yours,

Steven G. Davison
Steven G. Davison
Reporter

SGD/eg

cc: William Sallow
Chairman

Steven G. Davison
Reporter, Governor's
Commission on Landlord-
Tenant Law Revision
3600 South 14th Street
Arlington, Virginia 22204

December 1, 1975

Thomas J. Peddicord
Assistant Legislative Officer
Executive Department
State House
Annapolis, Maryland 21404

Dear Tom:

I would appreciate your sending me the numbers and copies of the eight enrolled computer-printed bills to be submitted to the Legislature by the Governor's Commission on Landlord-Tenant Law Revision. I would also appreciate your informing me of the House and Senate Committees which will consider the Commission's bills, and the names, offices, and phone numbers of the chairman and counsel of the appropriate committees.

The Commission will probably approve one bill at their December 9th meeting. Please let me know if it will be possible to pre-file this bill for the 1976 Regular Session, or whether I should hold this bill for the 1977 Regular Session.

Thank you for your attention to these matters.

Sincerely yours,

Steven G. Davison
Steven G. Davison
Reporter

SGD/eg

cc: William Sallow
Chairman

STATE OF MARYLAND

EXECUTIVE DEPARTMENT

ANNAPOLIS, MARYLAND 21404

MARVIN MANDEL
GOVERNOR

December 2, 1975

Mr. Steven G. Davison
Reporter, Governor's Commission
on Landlord Tenant Law Revision
3600 South 14th Street
Arlington, Virginia 22204

Dear Steve:

Enclosed are copies of two bills which you had submitted to our office for approval and which have been pre-filed. I have noted the sponsor and bill number on each. The remaining six bills have been prepared, but they have not yet been initialed by the chairman and therefore have not yet been pre-filed.

Delegate Martin Becker is Chairman of the House Economic Matters Committee; his aide is Mr. Thomas Steich; the phone number is 267-5471.

Delegate Joseph Owens is Chairman of the House Judiciary Committee; his aide is Mr. Thomas Smith; the phone number is 267-5224. Delegate Owens is holding the remaining six bills.

Any further legislation recommended by the Commission cannot be pre-filed. However, if you could send any proposals to me by mid-December, I could have the bills ready for introduction on the first day of the session.

Sincerely,

Tom Peddicord

Thomas J. Peddicord
Assistant Legislative Officer

TJP:ma

Enclosures

12/2/75

AN ACT concerning

DUTY TO PROVIDE LEASE FORMS TABLE

Landlord and Tenant - Duty to Provide Lease Form 8-213

FOR the purpose of requiring landlords who rent by means of written leases to provide prospective tenants with copies of the proposed form of lease; providing that landlords may charge prospective tenants a reasonable fee for providing copies of the proposed form of lease; and providing that a prospective tenant who has been denied a copy of a proposed form of lease by a landlord may obtain equitable relief requiring such landlord to deliver a copy of the proposed form of lease, plus reasonable attorney's fees and costs.

By repealing and re-enacting, with amendments,

Article - Real Property
Section 8-203.1(a)
Annotated Code of Maryland
(1974 Volume and 1975 Supplement)

By enacting

Article - Real Property
Section 8-213
Annotated Code of Maryland
(1974 Volume and 1975 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 8-203.1(a) of Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1975 Supplement) be and it is hereby repealed and re-enacted with amendments to read as follows:

Article - Real Property

§8-203.1.

(a) [Duty to provide form of lease;] [P]rovisions required in leases. - After January 1, 1975, any landlord who offers more than 4 dwelling units for rent on one parcel of property or at one location and who rents by means of written leases, shall[:]

[(1) Provide, upon written request from any prospective applicant for a lease, a copy of the proposed form of lease in writing, complete in every material detail, except for the date, the name and address of the tenant, the designation of the premises, and the rental rate, without requiring execution of the lease or any prior deposit; and]

[(2)] [E]mbody in the form of lease and in any executed lease the following:

[(i)](1) A statement that the premises will be made available in a condition permitting habitation, with reasonable safety, if that is the agreement, or if that is not the agreement, a statement of the agreement concerning the conditions of the premises; and

[(ii)](2) The landlord's and the tenant's specific obligations as to heat, gas, electricity, water and repair of the premises.

SECTION 2. AND BE IT FURTHER ENACTED, That new Section 8-213 be and it is hereby added to Article - Real Property of the Annotated Code of Maryland (1974 Volume and 1975 Supplement) to read as follows:

Article - Real Property

§8-213.

(A) DUTY TO PROVIDE LEASE FORM. - UPON WRITTEN OR ORAL REQUEST ANY LANDLORD WHO RENTS BY MEANS OF WRITTEN LEASES MUST PROVIDE TO ANY PROSPECTIVE TENANT, WHO HAS COMPLIED WITH THE LANDLORD'S APPLICATION REQUIREMENTS, A COPY OF THE PROPOSED FORM OF LEASE IN WRITING, COMPLETE IN EVERY MATERIAL DETAIL, EXCEPT FOR THE DATE, THE NAME AND ADDRESS OF THE TENANT, THE DESIGNATION OF THE PREMISES, AND THE RENTAL RATE.

(B) APPLICATION REQUIREMENTS. A LANDLORD'S APPLICATION REQUIREMENTS WITH WHICH A PROSPECTIVE TENANT MUST COMPLY UNDER SECTION (A) IN ORDER TO OBTAIN A COPY OF THE PROPOSED FORM OF LEASE MAY NOT INCLUDE EXECUTION OF THE LEASE OR PAYMENT OF ANY APPLICATION FEE OR PRIOR DEPOSIT.

(C) CHARGES FOR LEASE FORM. A LANDLORD MAY CHARGE A PROSPECTIVE TENANT WHO OBTAINS A COPY OF A PROPOSED FORM OF LEASE UNDER SECTION (A) A REASONABLE CHARGE, NOT TO EXCEED FIFTEEN CENTS PER PAGE, FOR THE COPY OF THE LEASE FORM.

(D) REMEDIES. A PROSPECTIVE TENANT WHO IS ENTITLED TO A COPY OF THE PROPOSED FORM OF LEASE UNDER SECTION (A) MAY OBTAIN INJUNCTIVE RELIEF, REASONABLE ATTORNEY'S FEES, AND COSTS, AGAINST A LANDLORD WHO HAS WILLFULLY FAILED TO COMPLY WITH SECTION (A).

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1976.

2/ /76

AN ACT concerning

Landlord and Tenant - Duty to Provide Lease Form

FOR the purpose of requiring landlords who rent by means of written leases to provide prospective tenants with copies of the proposed form of lease; providing that landlords may charge prospective tenants a reasonable fee for providing copies of the proposed form of lease; and providing that a prospective tenant who has been denied a copy of a proposed form of lease by a landlord may obtain equitable relief requiring such landlord to deliver a copy of the proposed form of lease, plus reasonable attorney's fees and costs.

By repealing and re-enacting, with amendments,

Article - Real Property
Section 8-203.1(a)
Annotated Code of Maryland
(1974 Volume and 1975 Supplement)

By enacting

Article - Real Property
Section 8-213
Annotated Code of Maryland
(1974 Volume and 1975 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 8-203.1(a) of Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1975 Supplement) be and it is hereby repealed and re-enacted with amendments to read as follows:

Article - Real Property

§8-203.1.

(a) [Duty to provide form of lease;] [P]rovisions required in leases. - After January 1, 1975, any landlord who offers more than 4 dwelling units for rent on one parcel of property or at one location and who rents by means of written leases, shall[:]

[(1) Provide, upon written request from any prospective applicant for a lease, a copy of the proposed form of lease in writing, complete in every material detail, except for the date, the name and address of the tenant, the designation of the premises, and the rental rate, without requiring execution of the lease or any prior deposit; and]

[(2)] [E]mbody in the form of lease and in any executed lease the following:

[(i)] (1) A statement that the premises will be made available in a condition permitting habitation, with reasonable safety, if that is the agreement, or if that is not the agreement, a statement of the agreement concerning the conditions of the premises; and
[(ii)] (2) The landlord's and the tenant's specific obligations as to heat, gas, electricity, water and repair of the premises.

SECTION 2. AND BE IT FURTHER ENACTED, That new Section 8-213 be and it is hereby added to Article - Real Property of the Annotated Code of Maryland (1974 Volume and 1975 Supplement) to read as follows:

Article - Real Property

Section 8-213.

(A) DUTY TO PROVIDE LEASE FORM. -

(1) UPON WRITTEN OR ORAL REQUEST, ANY LANDLORD WHO RENTS BY MEANS OF WRITTEN LEASES MUST GIVE TO ANY PROSPECTIVE TENANT, WHO HAS COMPLIED WITH THE LANDLORD'S APPLICATION REQUIREMENTS, A COPY OF THE PROPOSED FORM OF LEASE IN WRITING, COMPLETE IN EVERY MATERIAL DETAIL, EXCEPT FOR THE DATE, THE NAME AND ADDRESS OF THE TENANT, THE DESIGNATION OF THE PREMISES, AND THE RENTAL RATE.

(2) A LANDLORD IS REQUIRED TO GIVE A TENANT WHO HAS EXECUTED A WRITTEN LEASE A COPY OF SUCH LEASE WITHIN 30 DAYS OF EXECUTION OF THE LEASE.

(B) APPLICATION REQUIREMENTS. A LANDLORD'S APPLICATION REQUIREMENTS WITH WHICH A PROSPECTIVE TENANT MUST COMPLY UNDER SECTION (A)(1) IN ORDER TO OBTAIN A COPY OF THE PROPOSED FORM OF LEASE MAY NOT INCLUDE EXECUTION OF THE LEASE OR PAYMENT OF ANY APPLICATION FEE OR PRIOR DEPOSIT.

(C) A LANDLORD MAY CHARGE A PROSPECTIVE TENANT OR TENANT A REASONABLE FEE FOR A COPY OF A LEASEFORM OR LEASE FURNISHED PURSUANT TO SECTION (A).

(D) REMEDIES.

(1) AFTER GIVING A LANDLORD FIFTEEN DAYS WRITTEN REQUEST FOR A COPY OF THE LANDLORD'S LEASE FORM, A PROSPECTIVE TENANT WHO IS ENTITLED TO A COPY OF THE PROPOSED FORM OF LEASE UNDER SECTION (A)(1) MAY FILE AN ACTION TO OBTAIN INJUNCTIVE RELIEF, REASONABLE ATTORNEY'S FEES, AND COSTS, AGAINST A LANDLORD WHO HAS WILLFULLY FAILED TO COMPLY WITH SECTION (A)(1).

(2) IF A LANDLORD WILLFULLY FAILS TO COMPLY WITH SECTION (A)(2), A TENANT MAY OBTAIN INJUNCTIVE RELIEF, REASONABLE ATTORNEY'S FEES, AND COSTS AGAINST THE LANDLORD.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1977.

LAW OFFICES
WEINBERG AND GREEN
NINETEENTH FLOOR
10 LIGHT STREET
BALTIMORE, MD. 21202

SUITE 601
401 WASHINGTON AVENUE
TOWSON, MD. 21204

FIRM TEL. (301) 332-8600

WRITER'S DIRECT DIAL NUMBER

(301) 332-8764

January 7, 1976

Mr. Stephen G. Davidson
Instructor of Law
University of Baltimore
School of Law
500 W. Baltimore Street
Baltimore, Maryland 21201

Re: Governor's Landlord-Tenant Law Study Commission

Dear Steve:

As I will be beginning a very time-consuming trial on January 13, 1976, I will be unable to attend the Governor's Landlord-Tenant Commission meeting scheduled for that night.

As we discussed over the phone, I am satisfied with the subcommittee proposal which was the result of our meeting in late December; however, I wish to restate my position that the notice requirement contained in Section Two does not have to be written, and, if written, that it not be required to be by registered mail. Additionally, I have requested that the section contain a recital that the duty to return the security deposit remains that of the landlord notwithstanding the fact that he is, in this limited extent, exempted from the technical mailing and notice requirements of the security deposit law.

Again, I am sorry that I am unable to attend this meeting and hope that the Commission is able to act

on the proposal in time to submit it to the 1976 legislature.

Very truly yours,

James E. Carbine

106/ml

cc: Mr. William Sallow, Chairman

LAW OFFICES
WEINBERG AND GREEN
NINETEENTH FLOOR
10 LIGHT STREET
BALTIMORE, MD. 21202

SUITE 601
401 WASHINGTON AVENUE
TOWSON, MD. 21204

FIRM TEL. (301) 332-8600

WRITER'S DIRECT DIAL NUMBER

(301) 332-8764

January 7, 1976

Mr. Stephen G. Davidson
Instructor of Law
University of Baltimore
School of Law
500 W. Baltimore Street
Baltimore, Maryland 21201

Re: Governor's Landlord-Tenant Law
Study Commission

Dear Steve:

As I will be beginning a very time-consuming trial on January 13, 1976, I will be unable to attend the Governor's Landlord-Tenant Commission meeting scheduled for that night.

As we discussed over the phone, I am satisfied with the subcommittee proposal which was the result of our meeting in late December; however, I wish to restate my position that the notice requirement contained in Section Two does not have to be written, and, if written, that it not be required to be by registered mail. Additionally, I have requested that the section contain a recital that the duty to return the security deposit remains that of the landlord notwithstanding the fact that he is, in this limited extent, exempted from the technical mailing and notice requirements of the security deposit law.

Again, I am sorry that I am unable to attend this meeting and hope that the Commission is able to act

(over)

on the proposal in time to submit it to the 1976 legislature.

Very truly yours,

James E. Carbine

106/ml

cc: Mr. William Sallow, Chairman

MEMBER
REAL ESTATE BOARD OF BALTIMORE

NATIONAL ASSOCIATION
OF REAL ESTATE BOARDS

NATIONAL INSTITUTE
OF REAL ESTATE BROKERS

RESIDENTIAL
INDUSTRIAL
COMMERCIAL

SIDNEY H. LIPSCH REALTY, INC.

Realtor

6515 EDENVALE ROAD
BALTIMORE, MARYLAND 21209
HU 6-8750

January 8, 1976

Mr. William Flynn
c/o Greater Baltimore Board of Realtors
1501 West Mount Royal Avenue
Baltimore, Maryland 21217

Dear Mr. Flynn:

As a Real Estate Broker active in apartment leasing on a commission basis only, it is my opinion that House Bill #686, Chapter 864 approved by the Governor of Maryland on May 15, 1975 is injurious and unfair to the conduct of our business.

Any lease that holds only one party to the commitment is unfair enough, but not to provide for the expenses of leasing which requires an agent's commission, advertising, research of credit, and the explanation in the framing and signing of the lease is an inordinate hardship to the owner. Redecorating demanded by new tenants is also at the expense of the owner.

With no provision for proper expenses to employ a licensed broker for leasing, it can be expected that the law will cause the elimination of this phase of the business for real estate personnel who have become specialists in the field of apartment leasing.

In the Pickwick Apartments we have records to prove that 58% of our turnover is by tenants moving out prior to lease termination for reasons other than landlord-tenant disagreements (transferred, bought a house, divorce, death, job loss, etc.)

The duties involved in orienting a new tenant to the conditions of the lease, checking the tenant background, coordinating the date for move-in against move-out are just part of the duties a rental agent performs.

Our fees are predicated on the above services regardless of whose efforts provide the potential tenant.

This legislation clearly puts the broker expense on the owner who is the non-offending party.

Very truly yours,

SIDNEY H. LIPSCH REALTY, INC.

SIDNEY H. LIPSCH, PRESIDENT

SHL/fs
cc William Sallow

Steven G. Davison
Reporter, Governor's
Commission on Landlord-
Tenant Law Revision
3600 South 14th Street
Arlington, Virginia 22204

January 20, 1976

Mr. Henry Evans
Security Desk
State Office Building
301 West Preston Street
Baltimore, Maryland 21201

Dear Mr. Evans:

The Governor's Commission on Landlord-Tenant Law Revision has been able to secure another meeting place and, therefore, will not be meeting in the first floor Hearing Room at the State Highway Administration Building, 300 West Preston Street, Baltimore, on the evenings of February 10, March 9, April 13, May 11, and June 8, 1976.

Thank you for your attention to this matter.

Sincerely yours,

Steven G. Davison

Steven G. Davison
Reporter

SGD/eg

cc: William Sallow
Chairman

Steven G. Davison
Reporter, Governor's
Commission on Landlord-
Tenant Law Revision
3600 South 14th Street
Arlington, Virginia 22204

January 20, 1976

A. W. Smith
Room 201
State Highway Administration
300 West Preston Street
Baltimore, Maryland 21203

Dear Mr. Smith:

The Governor's Commission on Landlord-Tenant Law Revision has been able to arrange to use the Board Room at the University of Baltimore for its regular meetings on the second Tuesday of each month. Consequently, the Commission will not need to use the first floor Hearing Room at the State Highway Administration Building, 300 West Preston Street, on February 10, March 9, April 13, May 11, and June 8, 1976.

The Commission appreciates your efforts in arranging for its use of the Hearing Room in November and December 1975. I hope that this change in our future plans will not inconvenience you.

I have informed Mr. Henry Evans of State Security of this change in our plans.

Thank you very much for your help and cooperation.

Sincerely yours,

Steven G. Davison

Steven G. Davison
Reporter

SGD/eg

cc: William Sallow
Chairman

Steven G. Davison, Reporter
Governor's Commission on
Landlord-Tenant Law Revision
3600 S. 14th Street
Arlington, Va. 22204

February 19, 1976

8703
4-208-1
8-401/02 Fees payable

Delegate Joseph Owens, Chairman
Judiciary Committee
House of Delegates
State of Maryland
Annapolis, Maryland 21404

Dear Chairman Owens:

I am enclosing 20 copies of position statements on behalf of the Governor's Commission on Landlord-Tenant Law Revision with respect to House Bills 421, 822, 823, 855, 856, 1049, and 1100. These bills are departmental bills drafted and approved by the Commission. I hope that these position statements will aid members of the Judiciary Committee in consideration of these bills. If I can be of further assistance to the Committee with respect to these bills, please contact me. Thank you for your consideration of these position statements.

Sincerely yours,
Steven G. Davison
Steven G. Davison

MONTOMGERY COUNTY TENANTS ASSOCIATION, INC.
PO BOX 30212
BETHESDA, MD 20014

March 10, 1976

William Sallow
14 Leafydale Court
Pikesville, MD 21208

Dear Mr. Sallow:

Montgomery County Tenants Association (MCTA) is the largest group representing tenants in the County and has been an active participant in Tenant-Landlord affairs for almost six years.

Thus, it goes without saying that MCTA has the real interest of Tenant-Landlord Affairs at heart. Its prime purpose is education and legislation and enclosed is a copy of the By-Laws attesting to this.

Therefore, MCTA would like to be placed on the candidate list when a vacancy occurs on the Governor's Commission on Landlord-Tenant Law Revision. With the amount of experience MCTA has had in this area, its contacts at all governmental levels, we feel that we can make a valuable contribution to the Commission.

We appreciate your consideration.

Sincerely,

Ruth Lederer

Ruth Lederer, President
Montgomery County Tenants
Association, Inc.

Enclosures (2)

MONTOMGERY COUNTY TENANTS ASSOCIATION, INC.
PO BOX 30212
BETHESDA, MD 20014

March 10, 1976

William Sallow
14 Leafydale Court
Pikesville, MD 21208

Dear Mr. Sallow:

Montgomery County Tenants Association (MCTA) is the largest group representing tenants in the County and has been an active participant in Tenant-Landlord affairs for almost six years.

Thus, it goes without saying that MCTA has the real interest of Tenant-Landlord Affairs at heart. Its prime purpose is education and legislation and enclosed is a copy of the By-Laws attesting to this.

Therefore, MCTA would like to be placed on the candidate list when a vacancy occurs on the Governor's Commission on Landlord-Tenant Law Revision. With the amount of experience MCTA has had in this area, its contacts at all governmental levels, we feel that we can make a valuable contribution to the Commission.

We appreciate your consideration.

Sincerely,

Ruth Lederer

Ruth Lederer, President
Montgomery County Tenants
Association, Inc.

Enclosures (2)

MONTGOMERY COUNTY TENANTS ASSOCIATION, INC.
PO BOX 30312
BETHESDA, MD 20014

April 26, 1976

William Sallow
14 Leafydale Court
Pikesville, MD 21208

Dear Mr. Sallow:

The very untimely and unfortunate death of Robert Franquet has created a vacancy on the Governor's Commission on Landlord-Tenant Law Revision.

I am enclosing a copy of a letter sent to you previously and request that Montgomery County Tenants Association be given consideration for filling this vacancy.

Thank you for your attention.

Sincerely,

Ruth Lederer

Ruth Lederer, President
Montgomery County Tenants
Association, Inc.

Enclosure

MONTGOMERY COUNTY TENANTS ASSOCIATION, INC.
PO BOX 30312
BETHESDA, MD 20014

April 26, 1976

Governor Marvin Mandel
State House
Annapolis, MD 21404

Dear Governor Mandel:

Montgomery County Tenants Association (MCTA) would like consideration for the vacancy on the Governor's Commission on Landlord-Tenant Law Revision.

Enclosed are copies of letters sent to William Sallow, Chairman of the Commission.

Your attention will be greatly appreciated.

Sincerely,

Ruth Lederer

Ruth Lederer, President
Montgomery County Tenants
Association, Inc.

Enclosures (2)

BALTIMORE NEIGHBORHOODS, INC.

32 West 25th Street, Baltimore, Maryland 21218 • Area Code 301 - 243-6007

George B. Laurent
Executive Director

Donald J. Miller
Associate Director

May 13, 1976

Mr. William Sallow, Chairman
Governor's Landlord Tenant Laws
Study Commission
14 Leafydale Court
Pikesville, Maryland 21208

Dear Bill,

I am not sure how many tenant vacancies are available but I do hope that Bill Cox from the Baltimore County Tenants Association will be considered as well as a representative from the Montgomery County Tenants Association.

The MCTA is the largest and I believe most successful group in the state. The chairman of the House Judiciary Affairs Committee is from Montgomery County.

I understand that the newly formed Baltimore City Tenants group is interested in having a member on the Commission.

I have the feeling that if we are going to move ahead with legislation we are going to need the support of tenant groups and one way to involve the tenant groups is to have their representation on the Commission.

As far as I can see we have: Carbine, Dancy, Laurent, Olson and Walsh as tenant representatives. The "balance" calls for there to be 8 tenants, 8 landlords and 3 independents. This would indicate there are three places for tenants. I would hope that Mrs. Franquet's credentials are significant and that she does represent real support for the Commission. We are going to need every bit we can get. I don't know what Gorham is. When I talked to her she told me she was a landlord and she certainly voted that way on retaliatory eviction legislation. I still feel that she has come so seldom that she should be replaced.

I believe that we should re-consider the legislative package we presented to the 1976 legislature. If possible let us re-pass the relatively non-controversial legislation in June and schedule the "controversial" legislation for September so that we can get the bills in the legislative process as soon as possible.

The most critical bill is the retaliatory eviction bill. The tenants want it. The landlords are against it. I think we should vote on it in September without a re-hash of past arguments.

I for one am willing to table 8-401 and 8-402. These bills weren't our idea in the first place. They are complicated and though non-controversial with us, have caused us no end of trouble in the General Assembly for the last couple of years. Actually the only reason we have taken these up was at the request of the Committee re-codifying Maryland law who felt that this section of the law should be better stated. I hope that if we don't table them we will put them at the tail end of our work for this year.

One of the major criticisms voiced by the opposition was that our bills were poorly drafted. I don't know if this is a valid criticism or not - but I know that it is a very effective criticism before the House Judiciary Affairs Committee. May be we could have a drafting review committee to help this vital process. This doesn't mean I am unappreciative of Steve's hard work or ability. Its just that a committee of lawyers might be able to see things one lawyer might overlook.

I also hope that we will carefully consider the feasibility of introducing our legislation in the Senate.

Finally may I express the hope that you will be able to involve yourself in the process of sheperding our bills through the legislative process. This would include relations with the Governor's office and before the Committees of the General Assembly. I say this not in any sense of criticism of Steve, who I look upon as our technician, but simply because you are the chairman and you have probably the strongest credentials of any person on our Commission: chairmanship, legal background, years of government experience and of handling housing problems,

the respect of both landlord and tenants, and a finese in dealing with people.

Sincerely yours,

George B. Laurent
Executive Director

GBL/mb

BALTIMORE NEIGHBORHOODS, INC.
32 West 25th Street, Baltimore, Maryland 21218 • Area Code 301 - 243-6007

George B. Laurent
Executive Director

Donald J. Miller
Associate Director

May 24, 1976

Mr. William Sallow, Chairman
Governor's Landlord-Tenant Laws
Study Commission
14 Leafydale Court
Baltimore, Maryland 21208

Dear Mr. Sallow,

The Board of Directors of BNI has voted to give BNI's 1976 Human Relations Award to the Governor's Landlord Tenant Laws Study Commission. The Commission is composed of private citizens who serve without compensation and who give generously of their time and talents.

This award is in recognition of the distinguished service the Commission has rendered the people of Maryland since the Commission's inception in 1969.

Over the years the Commission has been responsible for initiating in Maryland a distinguished body of statewide legislation governing landlord-tenant relations.

- security deposit protection
- the tenant's right to possession at the beginning of a term
- rent escrow
- prohibition of retaliatory eviction
- lease reform: to be valid an automatic renewal clause must be signed by a tenant; tenant cannot be forced to agree to confess judgement; restriction

on amount of late charges that can be charged; tenant cannot be forced to agree to shorter period of notice than provided by law; forbidding landlord to take possession of the premises or a tenant's property without legal process.

- landlord and tenant must mitigate each others' damages.

BNI has strongly supported the Commission and its work since it was established. BNI pledges its continued support in the days ahead as the Commission works on new and vitally needed legislation.

Sincerely yours,

Dickens W. Warfield

Ms. Dickens W. Warfield
President

GBL/mb
Copy to: Governor Marvin Mandel
The General Assembly of Maryland

MONTGOMERY COUNTY TENANTS ASSOCIATION, INC.
PO BOX 30312
BETHESDA, MD 20014

May 27, 1976

Mr. William Sallow, Chairman
Governor's Landlord Tenant Laws Study Commission
14 Leafydale Court
Pikesville, Maryland 21208

Dear Mr. Sallow:

In addition to sending me a notice of a meeting for heads of State-wide Tenant Associations, George Laurent sent a copy of his letter to you regarding the Governor's Commission.

I was dismayed to read that Ruth Franquet is being considered to fill her late husband's seat on the Commission.

I do not feel, at this particular time in Landlord-Tenant Affairs, that sentimentality should give way to prudence and pragmatism. To the best of my knowledge, Mrs. Franquet has not participated in any Landlord-Tenant affairs in Montgomery County; she has not appeared nor spoken at any public hearings either at the County or State level nor has she worked on any legislation. Therefore, I cannot understand what credentials she would possess to even be considered for this position. And certainly, with her lack of experience, she cannot represent Montgomery County properly.

I believe that this is the time to appoint people who are involved in Tenant affairs. The lack of Landlord-Tenant legislation during this past Legislative Session certainly indicates that tenants need political clout - and that can be achieved only with Commissioners who are and have been involved in Tenant affairs and have achieved expertise in the field.

Montgomery County Tenants Association has, in my opinion, an excellent, well qualified person to recommend. Again, I request that you do not let sentimentality interfere with reality.

Thank you for your consideration.

Sincerely,

Ruth Lederer

Ruth Lederer, President
Montgomery County Tenants
Association, Inc.

cc: Governor Marvin Mandel

MONTGOMERY COUNTY TENANTS ASSOCIATION, INC.
PO BOX 30312
BETHESDA, MD 20014

June 14, 1976

William Sallow, Chairman
Governor's Commission on Landlord-Tenant Law Revision
14 Leafydale Court
Pikesville, MD 21208

Dear Mr. Sallow:

Montgomery County Tenants Association (MCTA) makes the following recommendation to fill a vancancy on the Governor's Commission on Landlord-Tenant Law Revision, LOY W. KIRKPATRICK.

Mr. Kirkpatrick is an attorney with the Department of Interior and has been active in Tenant Affairs in Montgomery County as legal adviser to the Willoughby Tenants Association and has served as a member of its Board of Directors for the past two (2) years.

Mr. Kirkpatrick has also participated in drafting Landlord-Tenant legislation both at the County and State level; has done extensive research into the Delaware Landlord-Tenant Law; and extensive research in Condominium problems and laws.

He has appeared at Public Hearings, both County and State and has participated in worksessions.

Mr. Kirkpatrick is 45 years of age, is married, has one child and resides at the Willoughby, 4515 Willard Avenue, Chevy Chase, MD 20015.

Enclosed is his resumé giving more details.

Thank you for your consideration.

Sincerely,

Ruth Lederer

Ruth Lederer, President
Montgomery County Tenants
Association, Inc.

cc: Michael S. Silver
Thomas Peddicord

Enclosure

BALTIMORE NEIGHBORHOODS, INC.

32 West 25th Street, Baltimore, Maryland 21218 • Area Code 301 - 243-6007

George B. Laurent
Executive Director

Donald J. Miller
Associate Director

June 15, 1976

Mr. William Sallow, Chairman
Governor's Landlord Tenant Laws
Study Commission
14 Leafydale Court
Baltimore, Maryland 21208

Dear Bill,

I have a pile of old material on the Commission including its first and only general report. If you also have material then maybe we can turn it over to Steve and he can have one of the students construct a complete file on the Commission.

Maybe there would be enough to create two files, one for the Recorder and one to put in the archives of the University of Baltimore (if they are still collecting such material). Then we can keep the record up to date.

I hope that some day we can get an in depth article in the Sun papers on the Commission.

Paul Olson has asked for a copy of the rules under which the Commission operates. May I suggest that if a new roster sheet is printed for the fall that a copy of the rules be provided as well.

IMPORTANT - May I ask that any revision to the retaliatory eviction bill exclude the word "written" before complaint. Most people call a government agency such as a Health Department or HCD. If the agency has record of the call that should be enough.

Sincerely yours,

George B. Laurent

George B. Laurent
Executive Director

GBL/mb
Copy to: Steven Davidson

MONTGOMERY COUNTY TENANTS ASSOCIATION, INC.
PO BOX 30312
BETHESDA, MD 20014

June 15, 1976

MEMORANDUM TO: Presidents and Members

FROM: Ruth Lederer, President MCTA RL

SUBJECT: Governor's Commission on Landlord-Tenant Law Revision

Ruth Franquet, the late Robert Franquet's wife, has circulated letters and is talking to various MCTA people requesting support for her appointment to the Governor's Commission on Landlord-Tenant Law Revision.

It is unfortunate that she has the perception that MCTA made diligent efforts to have her husband removed from the Governor's Commission after he resigned as MCTA's first vice president.

Enclosed is a copy of the letter that MCTA sent to the Secretary of the Commission. This is the ONLY communication MCTA made to the Commission with respect to Robert Franquet. Mrs. Franquet's attempt at divisiveness in the Tenants movement is not healthy - nor does it serve any useful purpose.

At this time in our struggle to make Landlord-Tenant matters more equitable for tenants, everyone should strive for unity.

While Ruth Franquet is to be admired for seeking the seat so soon after being tragically widowed, you should not let your compassion or sympathy sway your analysis of who will best represent tenants.

cc: William Sallow, Chairman
Governor's Commission on Landlord-Tenant Law Revision

Thomas Peddicord
Aide to Governor Mandel

Michael S. Silver
Assistant Appointments Officer

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
ANNAPOLIS, MARYLAND 21404

MARVIN MANDEL
GOVERNOR

June 16, 1976

Mr. George B. Laurent
Executive Director
Baltimore Neighborhood, Inc.
32 West 25th Street
Baltimore, Maryland 21218

Dear Mr. Laurent:

I have received your letter of June 9, 1976, concerning the Governor's Landlord-Tenant Laws Study Commission. I tried to reach you yesterday by telephone in order to explain the relationship of the Governor's Legislative Office to the Commission.

Governor Mandel requires all Executive Department legislation to be screened by his Legislative Office. Thus, every State agency, board, department, commission, etc., which wishes to present legislation to the General Assembly must forward that proposed legislation to this office. This policy allows the Governor to be aware of and screen any problems in the executive branch which require legislative solutions. We are also able to prevent conflicts between State agencies and facilitate their cooperate legislative efforts. In most cases, we actually draft each piece of legislation in order to comply with the General Assembly's rules regarding the style and organization of proposed legislation. This office then forwards each piece of legislation to the House and Senate leadership and requests that a Delegate or Senator place his name on the bill as the sponsor, followed by a "departmental" designation.

This entire effort is designed to present a unified package of executive branch legislation. In this capacity, I have worked with the members and staff of the Landlord-Tenant Commission for the past two sessions of the General Assembly.

However, the Governor's office takes no part in any of the decisions which may lead to the submission of legislation by the Commission. Nor do we in any way participate in the

legislative process. Once a departmental bill is drafted, the Commission is "on its own". The Governor feels that the ultimate decision as to the merits of each bill rests with the General Assembly.

This office takes an active part only in the Administration bills which the Governor presents to the General Assembly as his own legislative proposals for the year.

My role with the Landlord-Tenant Commission is thus a rather limited one. If I can shed any further light on this subject for you, please call me.

Sincerely,

Thomas J. Peddicord
Assistant Legislative Officer

TJP/jr

Steven G. Davison
Reporter, Governor's
Commission on Landlord-
Tenant Law Revision
3600 South 14th Street
Arlington, Virginia 22204

January 20, 1976

Thomas J. Peddicord
Assistant Legislative Officer
Executive Department
State of Maryland
Annapolis, Maryland 21404

Dear Tom:

On behalf of the Governor's Commission on Landlord-Tenant Law Revision, I am forwarding two bills that the Commission approved at their meeting on January 13, 1976. I have been requested by the Commission to forward these bills to the Office of the Governor for introduction to the 1976 Regular Session of the General Assembly as Commission bills.

The first bill would add a new subsection (j) to RP Article Section 8-203 (Security Deposits). This bill would provide that a landlord has no duty to return a security deposit, as required by Section 8-203(f), or to provide a written list of damages to be withheld from the security deposit, as required by Section 8-203(h), to tenants who have been evicted or ejected for breach of a condition or covenant of a lease prior to the termination of the tenancy, or to tenants who have vacated the premises prior to the termination of the tenancy, unless such tenants give written notice to the landlord, by certified mail return receipt requested, within 45 days of eviction, ejectment, or vacating the premises, demanding return of the security deposit. This bill was adopted by the Commission because it is believed that the damages owed to a landlord, by tenants who have been evicted or ejected for breach of the lease, or who have vacated the premises, prior to the termination of the tenancy, usually will exceed the amount of the security deposit. In the case of such tenants, preparation and sending of the written list of damages to be withheld from the security deposit will normally be an unnecessary exercise, since the landlord will be entitled to retain the full amount of the security deposit. In addition, these two classes of tenants that are covered by the bill may not leave a forwarding address because they may owe the landlord damages in an amount exceeding the security deposit. The bill would thus require such tenants to provide the landlord with written notice of their new address before the landlord must prepare the written list of damages and return of the security deposit less damages.

The second bill would amend RP Article Section 8-208 (Prohibited Lease Provisions) to provide that lease provisions that are void and against public policy under RP Article Section 8-105 cannot be placed in a lease. Real Property Article Section 8-105 currently provides that lease provisions seeking to exculpate a landlord from tort liability to persons injured in the common areas are void and against public policy; neither Section 8-105 nor Section 8-208, however, prohibit a lease from containing such a void provision. Even though such a clause is void under Section 8-105, it might deter a tenant from seeking redress for personal injuries if it is contained in a lease.

If I can be of further assistance to you with respect to these matters, please contact me. On behalf of the Commission, I thank you for your attention to this matter.

Sincerely yours,

Steven G. Davison

Steven G. Davison
Reporter

SGD/eg

cc: Members of the Commission
Persons on Commission Mailing List

Enclosures (2)

PROHIBITED LEASE PROVISIONS

Approved by Commission
1/13/76

AN ACT concerning

8-208

Landlord and Tenant - Prohibited Lease Provisions

FOR the purpose of prohibiting in any lease for residential premises a clause which has the effect of indemnifying, holding harmless, or precluding or exonerating any landlord from any liability to any tenant, or to any other person, for any injury, loss, damage, or liability arising from any omission fault, negligence, or other misconduct of the landlord on or about the leased premises or any elevators, stairways, hallways, or other appurtenances used in connection with them, and not within the exclusive control of the tenant.

By repealing, and re-enacting, with amendments

Article - Real Property
Section 8-208(a)
Annotated Code of Maryland
(1974 Volume and 1975 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 8-208(a) of Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1975 Supplement) be and it is hereby repealed and re-enacted, with amendments, to read as follows:

Article - Real Property

§8-208. Prohibited provisions; automatic renewal provisions; supplementary rights afforded by local law or ordinance.

(a) Prohibited provisions. - No lease shall contain any of the following provisions:

(1) A provision whereby the tenant authorizes any person to confess judgment on a claim arising out of the lease.

(2) A provision whereby the tenant agrees to waive or to forego any right or remedy provided by applicable law.

(3) A provision providing for a penalty for the late payment of rent in excess of 5% of the amount of rent due for the rental period for which the payment was delinquent. In the case of leases under which the rent is paid in weekly rental installments a penalty of $5 may be charged for the late payment of rent. However, such late penalties shall constitute, in the aggregate, no more than the $10 per month.

(4) Any provision whereby the tenant waives his right to a jury trial.

(5) Any provision whereby the tenant agrees to a period required for landlord's notice to quit less than that

AN ACT concerning

Landlord and Tenant - Prohibited Lease Provisions

FOR the purpose of repealing a provision prohibiting a lease from containing a clause whereby the tenant agrees to waive or to forego any right or remedy provided by applicable law.

By repealing, and re-enacting, with amendments

Article - Real Property
Section 8-208(a)
Annotated Code of Maryland
(1974 Volume and 1975 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 8-208(a) of Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1975 Supplement) be and it is hereby repealed and re-enacted, with amendments, to read as follows:

Article - Real Property

Section 8-208. Prohibited provisions; automatic renewal provisions; supplementary rights afforded by local law or ordinance.

(a) Prohibited provisions - No lease shall contain any of the following provisions:

(1) A provision whereby the tenant authorizes any person to confess judgment on a claim arising out of the lease.

[(2) ~~A provision whereby the tenant agrees to waive or to forego any right or remedy provided by applicable law.~~]

(2) [(3)] A provision providing for a penalty for the late payment of rent in excess of 5% of the amount of rent due for the rental period for which the payment was delinquent. In the case of leases under which the rent is paid in weekly rental installments a penalty of $5 may be charged for the late payment of rent. However, such late penalties shall constitute, in the aggregate, no more than $10 per month.

(3) [(4)] Any provision whereby the tenant waives his right to a jury trial.

(4) [(5)] Any provision whereby the tenant agrees to a period required for landlord's notice to quit less than that provided by applicable law; provided, however, that neither party is prohibited hereby from agreeing to a longer notice than that required by applicable law.

(5) [(6)] Any provision authorizing the landlord to take possession of the leased premises, or the tenant's personal property therein unless the lease has been terminated by action of the parties or by operation of law, and such personal property has been abandoned by the tenant without the benefit of formal legal process.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1977.

AN ACT concerning

Landlord and Tenant - Prohibited Lease Provisions

FOR the purpose of providing that if a lease contains a clause or provision prohibited and made unenforceable or void by law, a residential tenant may terminate such lease, without liability to the landlord, except for damages for breaches of covenants in the lease or for non-payment of rent which occurred prior to the termination of the lease by the tenant.

BY repealing and re-enacting with amendments,

Article - Real Property
Section 8-208(c)
Annotated Code of Maryland
(1974 Volume and 1975 Supplement)

Section 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 8-208(c) of Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1975 Supplement) be and it is hereby repealed and re-enacted, with amendments, to read as follows:

Article - Real Property

8-208

(c) Penalties for a violation. - (1) Any lease provision which is prohibited by terms of this section shall be unenforceable by the landlord.

(2) IF ANY LEASE CONTAINS A PROVISION WHICH IS PROHIBITED BY THIS SECTION OR BY SECTION 8-501, OR WHICH IS DEEMED TO BE VOID AND AGAINST PUBLIC POLICY BY SECTION 8-105, THE TENANT HOLDING UNDER SUCH LEASE MAY TERMINATE SUCH LEASE, WITHOUT LIABILITY TO THE LANDLORD, EXCEPT FOR DAMAGES FOR BREACHES OF COVENANTS IN THE LEASE OR FOR NON-PAYMENT OF RENT WHICH OCCURRED PRIOR TO THE TERMINATION OF THE LEASE BY THE TENANT.

(3)[(2)] If the landlord includes in any lease a provision prohibited by this section, or made unenforceable by Section [8-211] 8-105 or [8-213] 8-203, at any time subsequent to July 1, 1975, and tenders a lease containing such a provision, or attempts to enforce, and/or makes known to the tenant an intent to enforce any such provision, the tenant may recover any actual damages incurred as a reason thereof, including reasonable attorney's fees.

Section 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1977.

BALTIMORE NEIGHBORHOODS, INC.

32 West 25th Street, Baltimore, Maryland 21218 • Area Code 301 - 243-6007

George B. Laurent
Executive Director

Donald J. Miller
Associate Director

October 7, 1976

Mr. R. Bruce Campbell, Chairman
The Grievance Committee
Apartment Builders & Owners Council
Home Builders Association of Maryland
762 Fairmount Avenue
Towson, Maryland 21204

Dear Bruce,

As I said to you yesterday by telephone, I am disturbed by the fact that there are a number of leases in use today which have clauses in them prohibited by Maryland law. I have no idea how widespread this situation is but I feel that it is wide spread enough to be a significant problem. Most of the leases we see are those of large companies including members of the Apartment Builders & Owners Council. I can only presume that this situation is due to ignorance of the law or indifference to the law.

One prominent member of your group has indicated to me that most of his leases are automatically renewed each year and he sees no reason to issue new leases. He maintains that if the leases contain clauses in them that are prohibited or unenforceable in court, these clauses really don't count and therefore why should they bother anyone. To me the obvious answer to this is two-fold: (1) tenants can be deceived into believing that they lack rights when in reality they have them; and (2) many tenants are incensed over what they feel is the one-sidedness of leases. It only increases their sense of injustice to find out that they are being given leases which are in defiance of the law of Maryland.

I know that it takes a while to replace leases. I point out, however, that the basic lease law that prohibits certain clauses in leases was enacted in 1974 (Maryland Code, Real Property Article, Sec.8-208, Chapter 375, 1974, as amended by Chapter 789, 1976).

The 1976 amendment made it clear that exculpatory clauses are are prohibited.

Furthermore I want to acknowledge and commend the companies who have revised their leases. We come across a number of such leases. Some seemed to have made these corrections within a year.

In addition to being sure that prohibited clauses are not in leases, I would like to draw the attention of the apartment house industry to the fact that the security deposit law contains certain requirements that a landlord must adhere to if he wants to be able to use the security deposit to protect himself. For example either the lease or the receipt must contain language informing the tenant of his right to receive from the landlord a written list of all existing damage to the leased premises if the tenant so requests in writing within the first 15 days of his occupancy. A number of tenants have told me that they have never been given such information. On the other hand I have seen some leases that contain such information and indeed go beyond the line of duty to include information on the tenant's rights as to interest and as to the return of the security deposit.

I might add that I am the one who initiated with the Governor's Landlord-Tenant Law Study Commission the lease reform bill. I asked to have in the law a fine up to several hundred dollars for people who ignored the law. I had to accept as an initial compromise the idea that the tenant could sue for damages if he were hurt by a lease having a prohibited lease clause in it (of little practical help to the tenant). The idea was to let the industry have a chance to police itself. I have brought several of these leases to the attention of management companies who have simply ignored me. This year I asked the Governor's Commission to consider a bill that would, in the case of a lease with a prohibited clause in it, allow the tenant to break the lease at will but would hold the landlord to it. It failed in Commission by one vote. It can be introduced at a later date or the tenant group can introduce it into the General Assembly independently of the Governor's Commission.

Instead of this, however, I would propose that BNI and the tenant groups work cooperatively with the various landlord organizations of Maryland. I understand that your group operates in the Northern part of Maryland and that there are independent groups in Montgomery and Prince George's Counties.

I would suggest that:

(1) the landlord associations take the initiative to contact all their members and encourage them to examine their leases to see if there are any prohibited clauses in them

- if there are not then to so inform the association
- if there are some of these clauses in their leases to so indicate to their associations that there are and to promise that the leases will be changed as soon as possible; that the revised leases will be used for new tenants immediately; and for current leases as renewals take place.

(2) they take the requirements of the security deposit law into account as regards informing tenants of their rights under the law and even go beyond the law in indicating the conditions under which the deposit can be returned.

(3) the landlord associations contact non-member companies in their area and encourage them to cooperate.

(4) the landlord associations bring to the attention of the well known stores that sell leases that they should make sure that such leases conform to the laws of Maryland.

(5) the landlord associations keep their members, and as many non members as possible, informed of future changes in the lease law. I think that most of the major changes have taken place. If a minor change were to take place in the future I would think that the landlord could simply send out an addendum to be added to the lease.

(6) We can ask tenant groups to spot check leases and bring to the attention of the landlord associations leases that are not up to par (BNI could be a center for this in this area.

I agree with you, however that this would be a good project of the landlords. In fact maybe we could accept for a year the firm assurance of the landlord association that they will take the total responsibility for this project and will let us know how they make out. I would hate to waste a lot of time collecting and examining leases to bring to the attention of the industry when it may already know about them and be working to correct the situation.

I hope that the Apartment Builders and Owners Council of the Home Builders Association will give careful thought to this project. Perhaps you could ask the other landlord associations to join you in this project. I am sure that BNI, and I hope the various tenant associations, will cooperate in every way possible. I feel that a lot of good will can be created for a relatively little effort.

May I hear from you about this in the near future.

Sincerely yours,

George B. Laurent

George B. Laurent
Executive Director

GBL/mb

cc: Dickens Warfield, President, BNI
Robert Brown, Executive Vice Pres. Home Builders Assoc.
William Sallow, Chairman, Governor's Landlord-Tenant Law Study Commission
Lloyd Brounwell, Prince George's County Tenants Assoc.
William Cox, Baltimore County Tenants Assoc.
Ruth Lederer, Montgomery County Tenants Assoc.
Sheldon Roseman, Baltimore City Tenants Assoc.

Steven G. Davison, Reporter
Governor's Commission on
Landlord-Tenant Law Revision
3600 South 14th Street
Arlington, Virginia 22204

February 19, 1976

Delegate Joseph Owens
Chairman, Judiciary Committee
House of Delegates
Annapolis, Maryland 21404

Dear Chairman Owens:

The Governor's Commission on Landlord-Tenant Law Revision approved HB 1100 at its meeting on September 22, 1975; this bill has been sponsored by you and assigned to the House Judiciary Committee. HB 1100 would amend Section 8-208.1 of the Real Property Article of the Maryland Annotated Code, a section regulating retaliatory evictions.

HB 100, at lines 151 through 156 on page 3, would repeal Real Property Article Section 8-208.1(g), which provides: "In the event any county or Baltimore City shall have enacted an ordinance comparable in subject matter to this section, that ordinance shall supersede the provisions of this section." The effect of repeal of Section 8-208.1(g) would be to repeal the local retaliatory eviction ordinances in Baltimore City and in certain counties. At present, the Baltimore City retaliatory eviction ordinance (P.L. L. 9-10, Ch. 595 (1974)) protects a tenant who has made a complaint to the landlord or public agencies in writing, in person or by telephone. Real Property Article Section 8-208.1(a)(2)(1), however, only protects a tenant who has made a written complaint to the landlord or public agencies. The effect of lines 151 through 156 of HB 1100 would be to weaken the law with respect to retaliatory eviction in Baltimore City.

When the Governor's Commission on Landlord-Tenant Law Revision approved HB 1100 at their meeting on September 22, 1975, the members of the Commission were unaware that the effect of repeal of Real Property Article Section 8-208.1(g) would be to weaken the law with respect to retaliatory eviction in Baltimore City. Although the Commission voted to repeal Section 8-208.1(g) pursuant to a Commission policy to attempt to make landlord-tenant laws uniform in each county in Maryland, it is also Commission policy not to propose public general laws with statewide application if the effect would be to weaken public local laws and ordinances protecting tenants.

After this mistake in voting to repeal Real Property Article Section 8-208.1(g) was brought to the attention of the Commission, the Commission voted at their meeting on February 9, 1976, to rescind their vote of September 22, 1975, to repeal Real Property Article Section 8-208.1(g).

As a consequence, I am writing to you on behalf of the Commission to indicate that the Commission is opposed to lines 151-156 of HB 1100, which would repeal Real Property Article Section 8-208.1(g). I will also note the Commission's opposition to this part of HB 1100 when HB 1100 has a public hearing before the House Judiciary Committee.

I appreciate your consideration of this letter.

Sincerely yours,

Steven G. Davison

Steven G. Davison

SGD/eg

FAILURE TO PAY RENT

8-401

Steven G. Davison, Reporter
Governor's Commission on
Landlord-Tenant Law Revision
University of Baltimore Law School
1420 North Charles
Baltimore, Maryland 21201

May 3, 1976

Ms. Margaret Kostrisky
Chief Clerk
District Court of Maryland
2083 West Street
Annapolis, Maryland 21401

Dear Ms. Kostrisky:

The Governor's Commission on Landlord-Tenant Law Revision has asked me to write to you to discuss several issues that the Commission has been considering with respect to the provision of Section 8-401(e) of the Real Property Article that makes the right of redemption in a rent due and payable action inapplicable to a tenant who has received more than three summons for rent due and unpaid in the previous 12 months.

In lines 181-184 of H.B. 856, a bill reported unfavorably by the House Judiciary Committee during the 1976 Regular Session, the Commission proposed amending Section 8-401(e) to repeal this provision with respect to the inapplicability of the right of redemption. During hearings on H.B. 856, I explained to the House Judiciary Committee that the Commission's reason for this proposal was that the District Courts destroy records of rent due and payable records after 60 days from the date of judgment or from the expiration date of any stay of execution. Consequently, there would be no official records to indicate whether tenants, in previous rent due and payable actions, had raised, either in good faith or successfully, defenses such as retaliatory eviction or rent escrow. However, court records of these previous rent due and payable actions will have been destroyed after 60 days, so that there will be no official records to indicate whether a tenant raised a defense successfully to prior rent due and payable summonses. After I offered this explanation, a member of the House Judiciary Committee asked me whether a solution to this problem would be to require the District Courts to maintain rent due and payable actions for 12 months from date of judgment or from expiration of stay of execution; and, for purposes of determining whether the right to redemption is inapplicable, not to count previous rent due and payable summonses to which a tenant raised a defense in good faith or successfully.

The Commission would appreciate your comments with respect to this proposal, both in terms of whether it would be administratively and financially feasible for District Courts to maintain rent due and payable records for 12 months from date of judgment or expiration of stay of execution; and whether District Court records of rent due and payable actions indicate whether a tenant has raised a valid legal defense either in good faith or successfully.

I appreciate your attention to this matter.

Sincerely yours,

Steven G. Davison

Steven G. Davison

SGD/eg

cc: Members of Commission

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant - Tenant's Right of Redemption

FOR the purpose of providing that a tenant has a right of redemption, prior to execution in a rent due and payable case, only if the tenant tenders to the landlord or his agent, in cash, certified check or money order, at any time before actual execution of the eviction order, all past due rent and late fees, including the amount of rent awarded by the judgment and all other rent due and payable at the time of redemption (other than rent which the tenant claims, either affirmatively or defensively in a suit filed prior to actual execution of the eviction order, is not legally owing), plus all court awarded costs and fees.

BY repealing and reenacting, with amendments,

Article - Real Property
Section 8-401(e)
Annotated Code of Maryland
(1974 Volume and 1976 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 8-401(e) of Article - Real Property, of the Annotated Code of Maryland, (1974 Volume and 1976 Supplement, be and it is hereby repealed and reenacted, with amendments, to read as follows:

Article - Real Property

8-401

(e) Tenant's right to redeem leased premises prior to eviction.--In any action of summary ejectment for failure to pay rent where the landlord is awarded a judgment giving him restitution of the leased premises, the tenant, SUBTENANT, OR ASSIGNEE shall have the right to redemption of the leased premises by tendering in cash, certified check or money order to the landlord or his agent [all past due rent and late fees, plus all court awarded costs and fees], at any time before actual execution of the eviction order [.], ALL PAST DUE RENT AND LATE FEES, INCLUDING THE AMOUNT OF RENT AWARDED BY THE JUDGMENT AND ALL OTHER RENT DUE ANY PAYABLE AT THE TIME OF REDEMPTION (OTHER THAN RENT WHICH THE TENANT, SUBTENANT, OR ASSIGNEE CLAIMS, EITHER AFFIRMATIVELY OR DEFENSIVELY IN A SUIT FILED PRIOR TO ACTUAL EXECUTION OF THE EVICTION ORDER, IS NOT LEGALLY OWING PURSUANT TO SECTIONS 8-208.1 OR 8-211 OR OTHERWISE), PLUS ALL COURT AWARDED COSTS AND FEES. This subsection does not apply to any tenant who has received more than three summons containing copies of complaints filed by the landlord against the tenant for rent due and unpaid in the 12 months prior to the initiation of the action to which this subsection otherwise would apply.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1977.

H O U S E O F D E L E G A T E S

No. 856

By: Delegate Owens (Departmental - SC - Landlord Ten)
Introduced and read first time: January 16, 1976
Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant - Failure to Pay Rent

FOR the purpose of providing that a landlord shall give notice and serve process upon both a tenant and his subtenant, assignee, or person holding under them, in a suit to have again and repossess leased premises for failure to pay rent; providing that judgments for rent due and payable may be recorded under certain circumstances; repealing a certain exception; providing for an appeal in such cases; and providing that any party to an appeal from a judgment for rent due and payable may apply to have the hearing of the appeal expedited.

BY repealing and reenacting, with amendments,

Article - Real Property
Section 8-401
Annotated Code of Maryland
(1974 Volume and 1975 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 8-401 of Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1975 Supplement) be and it is hereby repealed and reenacted, with amendments, to read as follows:

Article - Real Property

8-401.

(a) Whenever the tenant under any lease of property, express or implied, verbal or written, OR HIS SUBTENANT, ASSIGNEE, OR PERSON HOLDING UNDER THEM, shall fail to pay the FULL AMOUNT OF THE rent when due and payable, it shall be lawful for the landlord to have again and repossess the premises so rented.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Numerals at right identify computer lines of text.

(b) Whenever any landlord shall desire to have again and repossess any premises to which he is entitled under the provisions of § 8-401 (a), he or his duly qualified agent or attorney, shall make his written complaint under oath or affirmation, before the District Court of the county wherein the property is situated, describing in general terms the property sought to be had again and repossessed, and also setting forth the name of the tenant to whom the property is rented, [or] AND THE NAME OF his assignee or subtenant OR PERSON HOLDING UNDER THEM, with the amount of rent thereon due and unpaid; and praying by warrant to have again and repossess the premises, together with judgment for the amount of rent due AND PAYABLE and costs. The District Court forthwith shall issue its summons, directed to any official of the county entitled to serve process, and ordering him to notify by first-class mail the tenant, AND HIS assignee, [or] subtenant OR PERSON HOLDING UNDER THEM, forthwith to appear before the District Court at the trial to be held on the fifth day after the filing of the complaint, to answer the landlord's complaint to show cause why the prayer of the landlord should not be granted, and the official shall forthwith proceed to serve the summons upon the tenant, AND UPON HIS assignee, [or] subtenant OR PERSON HOLDING UNDER THEM in the property or upon [his] THEIR known or authorized agent, but if for any reason, neither the tenant, NOR HIS assignee or subtenant, [nor his] OR PERSON HOLDING UNDER THEM, NOR THEIR agent, can be found, then the official shall affix an attested copy of the summons conspicuously upon the property, AT THE TENANT'S LAST KNOWN ADDRESS, AND AT THE PREMISES and the affixing of the summons, for purposes of this section shall be conclusively presumed to be a sufficient service upon all persons whatsoever, if in addition, the tenant, AND HIS assignee, [or] subtenant [has] OR PERSON HOLDING UNDER THEM HAVE also been notified by first-class mail.

(c)(1) If, at the trial on the fifth day indicated in subsection (b) of this section, the Court is satisfied that the interests of justice will be better served by an adjournment to enable either party to procure his necessary witnesses, he may adjourn the trial for a period not exceeding one day, except that if the consent of all parties is obtained, the trial may be adjourned for a longer period of time.

(2) If, when the trial occurs, it appears to the satisfaction of the Court, that the rent, or any part of the rent, is actually due and unpaid, the Court shall enter a judgment in favor of the landlord for the amount of rent determined to be due, together with costs of the suit.

(3) The Court, when entering the judgment, shall

also order the tenant, SUBTENANT, ASSIGNEE, OR PERSON HOLDING UNDER THEM to yield and render UP possession of the premises to the landlord, or his agent or attorney, within two days after the trial.

(4) The Court may, upon presentation of a certificate signed by a physician certifying that surrender of the premises within this two-day period would endanger the health or life of the tenant or any other occupant of the premises, extend the time for surrender of the premises as justice may require. However, the Court may not extend the time for the surrender of the premises beyond 15 days after the trial.

(5) However, if the tenant, SUBTENANT, ASSIGNEE, OR PERSON HOLDING UNDER THEM or someone for [him] THEM, at the trial, or adjournment of the trial, tenders to the landlord the rent determined by the Court to be due and unpaid, together with the costs of the suit, the complaint against the tenant, SUBTENANT, ASSIGNEE, OR PERSON HOLDING UNDER THEM shall be entered as being satisfied.

(d) If judgment is given in favor of the landlord, and the tenant [fails], SUBTENANT, ASSIGNEE, OR PERSON HOLDING UNDER THEM FAILS to comply with the requirements of the order within two days, the court shall, at any time after the expiration of the two days, issue its warrant, directed to any official of the county entitled to serve process, ordering him to cause the landlord to have again and repossess the property by putting him (or his duly qualified agent or attorney for his benefit) in possession thereof, and for that purpose to remove from the property, by force if necessary, all the furniture, implements, tools, goods, effects or other chattels of every description whatsoever belonging to the tenant, or to any person claiming or holding by or under said tenant. If the landlord does not order a warrant of restitution within sixty days from the date of judgment or from the expiration date of any stay of execution, whichever shall be the later, the case shall be considered as dismissed, UNLESS THE JUDGMENT HAS BEEN RECORDED. A JUDGMENT FOR RENT DUE AND PAYABLE MAY NOT BE RECOVERED UNLESS PROOF OF PERSONAL SERVICE TO ALL DEFENDANTS IS MADE TO THE COURT PRIOR TO ENTRY OF JUDGMENT.

(e) In any action of summary ejectment for failure to pay rent where the landlord is awarded a judgment giving him restitution of the leased premises, the tenant, SUBTENANT, ASSIGNEE, OR PERSON HOLDING UNDER THEM, shall have the right to redemption of the leased premises by tendering in cash, certified check or money order to the landlord or his agent all past due rent and late fees, plus all court awarded costs and fees, at any

time before actual execution of the eviction order. [This subsection does not apply to any tenant who has received more than three summons containing copies of complaints filed by the landlord against the tenant for rent due and unpaid in the 12 months prior to the initiation of the action to which this subsection otherwise would apply.]

(f) [The tenant] ANY AGGRIEVED PARTY TO AN ACTION UNDER THIS SECTION may appeal from the judgment of the District Court to the circuit court for any county or the Baltimore City Court, as the case may be, at any time within two days from the rendition of the judgment[; the tenant in order to stay any execution of the judgment, shall give a bond to the landlord with one or more sureties, who are owners of sufficient property in the State of Maryland, with condition to prosecute the appeal with effect, and answer to the landlord in all costs and damages mentioned in the judgment, and such other damages as shall be incurred and sustained by reason of the appeal; the bond shall not affect in any manner the right of the landlord to proceed against the tenant, assignee or subtenant for any and all rents that may become due and payable to the landlord after the rendition of the judgment]. ON APPEAL THE CASE SHALL BE TRIED DE NOVO BY THE COURT TO WHICH THE CASE WAS APPEALED, DESPITE THE AMOUNT OF RENT CLAIMED TO BE DUE AND UNPAID ON THE PREMISES SOUGHT TO BE REPOSSESSED BY THE LANDLORD. THE TENANT, INCLUDING THE SUBTENANT, ASSIGNEE OR PERSON HOLDING UNDER THEM, IN ORDER TO STAY EXECUTION OF THE JUDGMENT FROM WHICH APPEAL IS TAKEN, SHALL PAY INTO COURT AN AMOUNT EQUAL TO THE AMOUNT IN DISPUTE, TOGETHER WITH ALL COSTS MENTIONED IN THE JUDGMENT AND OTHER SUCH COSTS AS SHALL BE INCURRED AND SUSTAINED BY REASON OF THE APPEAL, UNLESS THERE IS FILED A BOND IN A LIKE AMOUNT WITH SUCH SURETY AS MAY BE APPROVED PURSUANT TO THE MARYLAND DISTRICT RULES, OR WITH OTHER SECURITY APPROVED BY THE COURT. THE BOND SHALL NOT AFFECT IN ANY MANNER THE RIGHT OF THE LANDLORD TO PROCEED AGAINST THE TENANT, ASSIGNEE, OR SUBTENANT FOR ANY AND ALL OF THE RENTS THAT MAY BECOME DUE AND PAYABLE TO THE LANDLORD AFTER THE RENDITION OF THE JUDGMENT. THE COURT MAY PROVIDE FOR A LESSER APPEAL BOND. IF THE LANDLORD APPEALS ANY JUDGMENT, THE PRINCIPAL AMOUNT OF THE APPEAL BOND REQUIRED TO STAY EXECUTION OF JUDGMENT SHALL BE AT THE DISCRETION OF THE COURT. THE APPELLATE COURT SHALL UPON APPLICATION OF ANY PARTY TO A PROCEEDING UNDER THIS SECTION, SET A DAY FOR THE HEARING OF THE APPEAL, NOT LESS THAN FIVE NOR MORE THAN 15 DAYS AFTER THE APPLICATION, AND NOTICE FOR THE ORDER FOR A HEARING SHALL BE SERVED ON THE OPPOSITE PARTY OR PARTIES OR THEIR COUNSEL AT LEAST FIVE DAYS BEFORE THE HEARING.

(G) A LANDLORD HAS NO DUTIES UNDER THIS SECTION, AND A SUBTENANT, ASSIGNEE, OR PERSON HOLDING UNDER THE

HAS NO RIGHTS UNDER THIS SECTION (1) UNLESS THE TENANT HAS GIVEN WRITTEN NOTICE TO THE LANDLORD OF HIS ASSIGNMENT OR SUBLEASING, IF THE LEASE DOES NOT REQUIRE THE LANDLORD'S PERMISSION OR CONSENT TO ASSIGNMENT OR SUBLEASING; OR (2) UNLESS THE LANDLORD HAS GIVEN WRITTEN PERMISSION OR CONSENT TO THE TENANT TO ASSIGNMENT OR SUBLEASING, IF THE LEASE REQUIRES THE PERMISSION OR CONSENT OF THE LANDLORD TO ASSIGNMENT OR SUBLEASING. WRITTEN NOTICE, PERMISSION, OR CONSENT REQUIRED BY THIS SUBSECTION SHALL BE GIVEN BY FIRST-CLASS MAIL, RETURN RECEIPT REQUESTED.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1976.

PROPOSED AMENDMENTS TO H.B. 856

Amend line 114 to read:

TENANT'S LAST KNOWN ADDRESS, AND AT THE PREMISES IF THERE ARE PREMISES ON THE PROPERTY, and the

Amend section (b) by adding the following sentence after line 117:

NO SERVICE OF PROCESS OR SUMMONS UPON A TENANT, ASSIGNEE, SUBTENANT OR PERSON HOLDING UNDER THEM IS REQUIRED UNDER THIS SECTION IF A PERSON IS NOT SUBJECT TO JURISDICTION OF THE MARYLAND COURTS UNDER COURTS AND JUDICIAL PROCEEDINGS ARTICLE, TITLE 6, SUBTITLE 1.

Steven G. Davison
Reporter, Governor's
Commission on Landlord-Tenant
Law Revision
4819 N. 16th Street
Arlington, VA 22205

Thomas J. Peddicord
Assistant Legislative Officer
Executive Department
State House
Annapolis, MD 21404

October 29, 1976

Dear Tom:

On behalf of the Governor's Commission on Landlord-Tenant Law Revision, I am enclosing seven bills that were approved by the Commission during four meetings in September and October. I have been requested by the Commission to forward these bills to the Office of the Governor for introduction to the General Assembly as Commission bills.

Although he is aware of your office's November 1 deadline for pre-filing departmental bills, Mr. Sallow, Chairman of the Commission, has asked me to inform you that the Commission may submit an additional four bills that are on the agenda for the Commission's meeting on November 9. The Commission has considered a large number of bills during the fall; despite meeting four times in the last two months for over seven total hours, the Commission was not able to consider these four bills at its October 26 meeting before adjourning at 9:45 p.m. Mr. Sallow considers these four bills to be important, and requests that you extend the date for pre-filing of these four bills if they are passed. If any or all of these four bills are passed at the Commission's meeting on November 9, I will immediately forward them to you, so that you should receive them by November 12 at the latest.

The first of the seven bills that I am enclosing would amend Section 8-402(b)(4) of the Real Property Article to require a month's notice to quit to a week-to-week tenant, instead of the week's notice to quit which is presently provided by law. This proposal was submitted to the 1976 Regular Session as HB 823. The enclosed bill would amend HB 823, however, to also require that no notice to quit is required in a forcible entry and detainer action to remove a trespasser or squatters.

The second bill that is enclosed would require landlords who rent by means of written leases to provide, upon written request and for a reasonable fee, a copy of the proposed leaseform to prospective applicants for tenancy. Section 8.203.1(a)(1) of the Real Property Article presently imposes such a duty upon "any landlord who offers more than 4 dwelling units for rent on one parcel of property or at one location and who rents by means of written leases...." The enclosed bill would also require landlords to provide tenants with an exact copy of the lease, as signed by the tenant and the landlord or agent, within 15 days of the date of occupancy by the tenant.

The third bill, which would add Section 8-203(j) to the security deposit statute in the Real Property Article, was submitted as HB 1662 to the 1976 Regular Session. Under HB 1662, in order for a landlord to be required to send an itemized list of damages and the security deposit less rightfully withheld damages to tenants who have abandoned prior to the end of the term or who have been evicted for breach of the lease, such tenants would have to provide the landlord with written notice of the

tenant's new address.

The fourth bill, which would provide for a uniform appeal procedure in all landlord-tenant actions, is an amended version of HB 855 (1976 Regular Session). The enclosed bill amends HB 855 by deleting provisions in HB 855 that would permit a court to set an appeal bond for a tenant for stay of execution in an amount less than the landlord's actual damages; and that would have established a right of appeal to the Court of Special Appeals in landlord-tenant cases. HB 855 has also been amended to provide that in appeals of rent due and payable cases under Section 8-401, a tenant is not required to deposit rent due and payable in the future for an appeal bond to stay execution of the judgment. The bill does provide, however, that a tenant in an appeal of a rent due and payable action must increase the amount of the appeal bond by the amount of rent that becomes due and payable during the pendency of the appeal, in order to continue the stay of execution.

The fifth bill enclosed would amend the retaliatory eviction statute, Section 8-208.1 of the Real Property Article. The bill would more clearly define the types of retaliatory actions by a landlord which are prohibited. The bill would prohibit a landlord, for retaliatory reasons, from evicting or ejecting a tenant, bringing or threatening to bring an action for possession against a tenant; terminating or failing to renew a written lease; increasing rent; or terminating or decreasing the services to which a tenant has been entitled. The statute presently only prohibits a landlord from evicting a tenant (term which is not further defined), increasing rent, or decreasing services, for retaliatory reasons. The bill also would amend Section 8-208.1(a)(2)(1) to protect tenants who make complaints by telephone or in person to the landlord or to public agencies; the statute at present only protects tenants who make such complaints in writing. The enclosed bill would also repeal Section 8-208.1(d), which makes the defense of retaliatory action by the landlord inapplicable to tenants who have received a certain number of summonses for rent due and payable in the previous 12 months. Finally, the bill would amend Section 8-208.1(e) to provide that action by a landlord after the expiration of six months following the determination of the merits of a tenant's complaint, by a court or an administrative agency, is prima facie evidence, subject to rebuttal by the tenant, that the landlord's action is not a retaliatory action prohibited by Section 8-208.1. At present, Section 8-208.1 does not prohibit retaliatory action by the landlord after the expiration of "6 months following the determination of the merits of the initial case by a court (or administrative agency) of competent jurisdiction."

The sixth bill that is enclosed would amend Section 11-102.1 of the Real Property Article, which regulates the conversion of residential rental buildings to condominiums. Under the existing statute, a residential rental building cannot be subjected to a condominium regime (by the filing of a declaration and plat) until at least 180 days after giving tenants in the building notice of the proposed conversion to a condominium regime. This requirement requires tenants in the building who wish to purchase their unit as a condominium to wait until the property is subjected to a condominium regime, which is at least 180 days after the notice of conversion, before they can purchase their unit as a condominium. The enclosed bill would not restrict the right of an owner of a residential rental building to subject his building to condominium regime, but would prohibit him from giving a notice to quit to any tenant in the building until at least 180 days after giving the tenants notice of the conversion. The bill would thus continue to give tenants in a residential rental building being converted to a condominium at least 180 days to vacate after receiving notice of the conversion, but would allow tenants who wish to purchase their unit as a condominium unit to do so immediately after receipt of the notice of conversion.

The last bill that is enclosed is an amended version of HB 822 (1976 Regular Session), which would amend Section 8-402(b)(2) of the Real Property Article to permit a court to stay execution of judgment against a holdover tenant for up to 30 days, provided that the court requires the holdover tenant to pay the landlord for possession of the premises during the stay of execution. The amendments to HB 822 effected by the enclosed bill are stylistic rather than substantive.

If I can be of further assistance to you with respect to these bills, please contact me. On Tuesday and Thursday afternoon, I can be reached at the University of Baltimore School of Law (727-6350 ext. 297). During the remainder of the week, I can be reached at home ((703) 525-7669). On behalf of the Commission, I thank you for your attention to these bills.

Sincerely yours,

Steven G. Davison

cc: Members of the Commission
SGD/lv

Steven G. Davison
Reporter,
Governor's Commission
on Landlord-Tenant Law Revision
4819 N. 16th Street
Arlington, VA 22205

November 10, 1976

Thomas J. Peddicord
Assistant Legislative Officer
Executive Department
State House
Annapolis, MD 21404

Dear Tom:

On behalf of the Governor's Commission on Landlord-Tenant Law Revision, I am enclosing three bills that were approved by the Commission at its meeting on November 9. I have been requested by the Commission to forward these bills to the Office of the Governor for introduction to the General Assembly as Commission bills.

The first bill would repeal Section 8-203.1 of the Real Property Article; and enact a new Section 8-213 of the Real Property Article, which would require landlords to provide prospective applicants with a copy of the leaseform and to provide tenants with a copy of the executed lease. This bill amends the second bill forwarded to you with my letter of October 29, 1976, and should be introduced instead of that latter bill. The Commission proposes to repeal Section 8-203.1(a)(2) because this section permits the landlord to include a statement in a lease that the tenant accepts the premises in a condition not permitting habitation with reasonable safety, and that the tenant agrees to repair the premises. These provisions thus conflict with the landlord's duties under the rent escrow statute, Section 8-211 of the Real Property Article, with respect to defects substantially affecting health and safety. The rent escrow statute does not authroize waiver or modification of a tenant's rights under Section 8-211; Section 8-208(a)(2), which provides that a lease may not include a provision "whereby the tenant agrees to waive or to forego any right or remedy provided by applicable law", would preclude a lease from containing a provision whereby the tenant waives or modifies any of his rights under Section 8-211. Section 8-203.1(a)(2), permitting the landlord to include lease provisions whereby the tenant agrees to accept the premises with conditions not permitting reasonably safe habitation or whereby the tenant agrees to repair defects in the premises substantially affecting health or safety, permits a landlord to include in a lease provisions which waive or modify the tenants' rights under the rent escrow statute. The Commission consequently proposes repeal of Section 8-203.1(a)(2). The Commission also proposes repealing Section 8-203.1(b) because the lease provisions which it prohibits are already prohibited by Sections 8-208(a)(2) (in conjunction with the retaliatory eviction statute, Section 8-208.1) and 8-208(a)(6). HB 421 of the 1976 Regular Session proposed repeal of Section 8-203.1(b) for these reasons.

The second bill which I am enclosing would amend Section 8-401 (rent due and payable) by adding a new Section 8-401(g) to define "rent" for summary rent due and payable suits involving residential property. The effect of this bill would be to prohibit a landlord from using the summary procedures of Section 8-401 to evict a tenant for non-payment of charges for late payment of rent, damages caused by breach of the lease, or damages to the premises. A landlord, however, could eject a tenant in a common law ejectment action if failure to pay such charges constituted a material breach of the lease, and could recover late charges and damages in a normal civil action.

The third bill which is enclosed would amend Sections 4-101(a) and 4-103 of the Real Property Article by providing that a written lease for residential property is sufficient and presumed valid, in respect to its execution and delivery by the landlord to the tenant, if executed, and where required, recorded. This section would apply to written leases for residential property whether or not executed before the effective date of the section. This bill was approved in response to an enclosed opinion of the State Attorney General which concluded that a written lease is not presumed valid under Sections 4-101(a) and 4-103 unless acknowledged.

I also wish to bring to your attention a minor error in the appeal bill, the fourth bill which I forwarded to you in my letter of October 29, 1976. On page 2 of the appeal bill, Section 8-117(c) should refer to the District Court, rather than to the Circuit Court.

If I can be of further assistance to you with respect to these bills, please contact me. On Tuesday and Thursday afternoons, I can be reached at (301) 727-6350 ext. 297. During the reaminder of the week, I can be reached at (703) 525-7669. On behalf of the Commission, I thank your attention to these bills.

Sincerely yours,

Steven G. Davison

Steven G. Davison

SGD/lv
cc: Members of the Commission

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant - Validity of Written Leases

FOR the purpose of providing that a written lease for residential property is sufficient and presumed valid, in respect to its execution and delivery by the landlord to the tenant, if executed and, where required, recorded.

BY repealing and re-enacting, with amendments

Article - Real Property
Sections 4-101(a) and 4-103
Annotated Code of Maryland
(1974 Volume and 1976 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 4-101(a) of Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1976 Supplement), be and it is hereby repealed and re-enacted, with amendments, to read as follows:

Article - Real Property

§4-101

(a) What deeds sufficient. - Any deed, OTHER THAN A WRITTEN LEASE FOR RESIDENTIAL PROPERTY, containing the names of the grantor and grantee, a description of the property sufficient to identify it with reasonable certainty, and the interest or estate intended to be granted, is sufficient if executed, acknowledged, and where required, recorded. A WRITTEN LEASE FOR RESIDENTIAL PROPERTY IS SUFFICIENT IF IT CONTAINS THE NAMES OF THE LANDLORD AND TENANT, A DESCRIPTION OF THE PREMISES SUFFICIENT TO IDENTIFY IT WITH REASONABLE CERTAINTY, AND THE TERM OF THE LEASEHOLD ESTATE, AND IS EXECUTED AND, WHERE REQUIRED, RECORDED. THIS SECTION IS APPLICABLE TO WRITTEN LEASES FOR RESIDENTIAL PROPERTY WHETHER EXECUTED BEFORE OR AFTER JULY 1, 1977.

SECTION 2. AND BE IT FURTHER ENACTED, That Section 4-103 of Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1976 Supplement), be and it is hereby repealed and re-enacted, with amendments, to read as follows:

Article - Real Property

§4-103. Presumption of validity.

If a deed, OTHER THAN A WRITTEN LEASE FOR RESIDENTIAL PROPERTY, is executed, acknowledged, and, if required, recorded, the validity of the deed in respect to its execution and delivery by the grantor to the grantee is presumed. IF A WRITTEN LEASE FOR RESIDENTIAL PROPERTY IS EXECUTED AND, IF REQUIRED, RECORDED, THE VALIDITY OF THE LEASE IN RESPECT TO ITS EXECUTION AND DELIVERY BY THE LANDLORD TO THE TENANT IS PRESUMED. THIS SECTION IS APPLICABLE TO WRITTEN LEASES FOR RESIDENTIAL PROPERTY WHETHER EXECUTED BEFORE OR AFTER JULY 1, 1977.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1977.

Approved 11/9/76

FRANCIS B. BURCH
ATTORNEY GENERAL

HENRY R. LORD
JON L. OSTER

:S - AN UNACKNOWLEDGED
; IS NOT PER SE INVALID, BUT
)ES LOSE THE PRESUMPTION
ALIDITY ACCORDED AN
)WLEDGED LEASE.

THE ATTORNEY GENERAL
ONE SOUTH CALVERT STREET
14TH FLOOR
BALTIMORE, MARYLAND 21202
301-383-3737

August 2, 1976

The Honorable Laurence Levitan
5454 Wisconsin Avenue
Chevy Chase, Maryland 20015

Dear Senator Levitan:

You have questioned whether Real Property Article, Section 4-101 (a) of the Annotated Code of Maryland (1974) applies to leases and, if so, what the effect would be if a lease were not acknowledged as is apparently required under the statute. Section 4-101 (a) provides that:

> "...Any deed containing the names of the grantor and grantee, a description of the property sufficient to identify it with reasonable certainty, and the interest or estate intended to be granted, is sufficient, if executed, acknowledged, and where required, recorded."

For purposes of the Real Property Article, the word "deed" is defined in Section 1-101, subsection (a) and (c) to include a lease "pertaining to land or property or any interest therein or appurtenant thereto", unless from the context a different meaning is apparent. Since there is nothing apparent from a reading of Section 4-101 (a) to indicate that a meaning of "deed" other than that contained in Section 1-101 (c) was intended, leases would presumably fall within the ambit of Section 4-101 (a). In so stating, we note that subsection (h) of Section 1-101 defines "lease" to be "any oral or written agreement, express or implied, creating a landlord and tenant relationship, ..." (emphasis added), and that, as applied to leases, Section 4-101 (a) must necessarily be limited to leases which are written. With that limitation in mind, however, we

see nothing from the context of Section 4-101 (a) which leads us to believe that a lease is not a "deed" for purposes of the section, 1/ and accordingly, conclude that a lease which is not acknowledged is not in compliance with the statute and is therefore insufficient under its terms.

However, we hasten to point out that the absence of an acknowledgment in a lease appears to result in nothing more than a loss of its presumed validity under Real Property Article, Section 4-103. Under that section, it is provided that:

> "If a deed is executed, acknowledged, and, if required, recorded, the validity of the deed in respect to its execution and delivery by the grantor to the grantee is presumed."

As with Section 4-101 (a), we see nothing here to indicate that a lease is not meant to be included in the definition of "deed" as used in this section, and we think the language above-quoted, when read in conjunction with that which is contained in Section 4-101 (a), clearly establishes that the sufficiency of a lease under Section 4-101 (a) means only that the lease is entitled to a presumption of validity under Section 4-103. Conversely, insufficiency of a lease resulting from noncompliance with the acknowledgment requirement of Section 4-101 (a) would amount to nothing more than a loss of that presumed validity. Such a reading of the two statutory provisions together we believe gives proper effect to their legislative purpose. See e.g. Karns v. Liquid Carbonic Corp., 275 Md. 1, 18 (1975); A. H. Smith Sand Gravel Co. v. Dept. of Water Resources, 270 Md. 652, 659 (1974); Parker v. Junior Press Printing, 266 Md. 721, 725 (1972), all asserting as a fundamental rule of statutory construction the proposition that all parts and sections of a statute are to be read and considered together in order to arrive at their true

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1/ An argument might be made that the words "grantor", "grantee" and "granted" in Section 4-101 (a) indicate that leases were not intended to be covered by the provision. We note, however, that Section 1-101 (e) defines "grant" to include "conveyance, assignment and transfer," terms which we believe are broad enough to encompass the creation of a landlord-tenant relationship by lease. Cf. Section 2-101. See Layton v. Petrick, et ux 277 Md. 421, 429-431 (1976) indicating that a lease is generally included within the Section 1-101 (c) definition of deed.

legislative intent. As a result, we conclude that a lease which is otherwise valid will still be valid absent any acknowledgment, but its presumed validity under Section 4-103 would be extinguished, leaving it entirely to the parties or those claiming through them to prove the lease's validity should the same ever be challenged.

In connection with your inquiry, you also referred us to Section 3-101 of the Real Property Article. Because of our conclusion here that an unacknowledged lease is not made invalid by Section 4-101 (a), we need not discuss the provisions of Section 3-101, other than to note that the section is only concerned with the requirement of recordation in certain instances and, to the extent it deals with leases, clearly sets forth what types of leases are required to be recorded, as well as the effect of a failure to do so where required, without any mention being made of any acknowledgment requirement. We believe that this absence of any reference to acknowledgment in Section 3-101 lends further support for the proposition that the acknowledgment requirement of Section 4-101 (a) is designed entirely to establish a presumed validity under Section 4-103, and nothing more. 2/

Very truly yours,

Francis B. Burch
Attorney General

Alexander I. Lewis III
Assistant Attorney General

FBB:AIL:mpk

2/ The acknowledgment requirement was deleted from Section 3-101 following enactment of Chapter 2 of the Laws of 1973, bolstering the view that its retention in Section 4-101 (a) is solely for purposes of establishing the presumed validity provided for under Section 4-103.

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant-Definition of Rent

FOR the purpose of defining rent for residential property which is subject to a summary suit for rent due and payable.

BY enacting

Article-Real Property
Section 8-401(g)
Annotated Code of Maryland
(1974 Volume and 1976 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That new Section 8-401(g) of Article-Real Property, of the Annotated Code of Maryland (1974 Volume and 1976 Supplement) be and it is hereby enacted to read as follows:

Article-Real Property

§ 8-401

(G) DEFINITION OF RENT.- "RENT", WITHIN THE MEANING OF THIS SECTION, IS A FIXED SUM OF CONSIDERATION, WHETHER IN MONEY, SERVICES, LABOR, OR SPECIFIC PROPERTY OR CHATTELS, AGREED BY THE LANDLORD AND TENANT TO BE PAID BY THE TENANT AS COMPENSATION FOR THE POSSESSION, USE, OCCUPATION, AND ENJOYMENT OF THE PREMISES. IN THE ABSENCE OF AN AGREEMENT BETWEEN THE LANDLORD AND TENANT AS TO THE AMOUNT OF RENT, THE TENANT IS REQUIRED TO PAY THE LANDLORD A REASONABLE SUM FOR POSSESSION, USE AND ENJOYMENT OF THE PREMISES. "RENT" WITHIN THE MEANING OF THIS SECTION DOES NOT INCLUDE CHARGES FOR THE LATE PAYMENT OF RENT OR DAMAGES TO THE PREMISES OR THE LANDLORD CAUSED BY BREACH OF THE LEASE OR ACTION OF THE TENANT, HIS FAMILY, AGENTS, EMPLOYEES, SOCIAL GUESTS, INVITEES, OR LICENSEES. THIS SECTION IS APPLICABLE ONLY TO LEASES FOR RESIDENTIAL PROPERTY.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect on July 1, 1977.

Approved 11/9/76

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant- Leases

FOR the purpose of requiring all landlords who rent by means of written leases to provide prospective applicants for a lease a copy of the leaseform, and to provide tenants who have executed a written lease a copy of the written lease; repealing provisions that permit certain landlords to waive or modify their duty under the rent escrow statute to provide reasonably safe housing; and repealing a provision prohibiting certain landlords from including certain provisions in leases, because such provision conflicts with a provision prohibiting all landlords from inserting such provisions in a lease.

BY repealing

Article-Real Property
Section 8-203.1
Annotated Code of Maryland
(1974 Volume and 1976 Supplement)

BY enacting

Article-Real Property
Section 8-213
Annotated Code of Maryland
(1974 Volume and 1976 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 8-203.1 of Article-Real Property, of the Annotated Code of Maryland(1974 Volume and 1976 Supplement) be and it is hereby repealed.

SECTION 2. AND BE IT FURTHER ENACTED, That new Section 8-213 of Article-Real Property, of the Annotated Code of Maryland (1974 Volume and 1976 Supplement) be and it is hereby enacted to read as follows:

Article- Real Property

§ 8-213. DUTY TO PROVIDE LEASEFORM AND LEASE.

(A) DUTY TO PROVIDE LEASEFORM.- ANY LANDLORD WHO RENTS BY MEANS OF WRITTEN LEASES IS REQUIRED TO PROVIDE TO ANY PROSPECTIVE APPLICANT FOR A LEASE, UPON WRITTEN REQUEST, A COPY OF THE PROPOSED FORM OF LEASE IN WRITING, COMPLETE IN EVERY MATERIAL DETAIL, EXCEPT FOR THE DATE, THE NAME AND ADDRESS OF THE TENANT, THE DESIGNATION OF THE PREMISES, AND THE RENTAL RATE, WITHOUT REQUIRING EXECUTION OF THE LEASE. A LANDLORD MAY CHARGE A PROSPECTIVE APPLICANT A REASONABLE FEE, NOT TO EXCEED A DOLLAR, FOR A COPY OF THE PROPOSED LEASEFORM.

(B) DUTY TO PROVIDE COPY OF EXECUTED LEASE.- ANY LANDLORD WHO RENTS BY MEANS OF WRITTEN LEASES IS REQUIRED TO PROVIDE EVERY TENANT AN EXACT COPY OF THE LEASE, AS SIGNED BY THE TENANT AND THE LANDLORD OR HIS AGENT.

WITHIN 15 DAYS OF THE DATE OF OCCUPANCY BY THE TENANT.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1977.

Approved 9/14/76
Amended 9/28/76, 11/9/76

CORPORATE SURETY BONDS

8-203

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Peter M. Serber
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R. Calvert Stewart
A. C. Soutzos (VA.)

Virginia Office
301 Maple Ave, West
Vienna, Virginia 22180

June 2, 1975

Mr. William Sallow
14 Leafydale Court
Pikesville, Maryland 21208

Dear Mr. Sallow:

I am working on a problem whose resolution involves the interpretation of Real Property §8-203f(4) of the Maryland Code, formerly Article 21, §8-213 f (iv). This provision deals with a landlord's refunding of security deposits to tenants, and states that if a landlord delays making such refund for more than 45 days without a reasonable basis, he may be liable for up to three times the withheld amount, plus attorney's fees.

The pertinent facts in our case are as follows: a tenant entered into a lease agreement with a landlord, our client, to rent an apartment for a term of one year. A security deposit of $100.00, representing slightly less than two weeks' rent, was charged. In accordance with the provisions of the lease, tenancy was continued after the initial term on a month-to-month basis until November 30, 1974, when said lease terminated after the tenant had given the required thirty days' notice.

Authorization for a full refund of the $100.00 security deposit, plus $4.50 accrued interest, was made by the lessor's financial department on January 3, 1975, thirty-four days after the termination of the lease. Due to administrative delay by the landlord in processing, the refund check was not received by the former tenant until January 20, 1975, which was six days beyond the forty-five day limit set out in Real Property §8-203f(4). Two months after this essentially harmless error, the former tenant brought an action under §8-203 against the landlord for three times the amount of the security deposit plus attorney's fees incurred in instigating the litigation.

Despite the insignificant nature of the delay in the security deposit refund, the lack of any actual harm suffered by the tenant, and the absence of any bad faith on the part of the landlord, the District Court of Prince George's County awarded the tenant $50.00 plus attorney's fees.

It is our belief that the purpose and legislative intent behind the passage of Article 21, §8-213f(iv), now Real Property §8-203f(4), with its punitive damage provisions, was to protect tenants by dealing with the problem of landlords deliberately seeking to delay or avoid refunding of security deposits, rather than awarding punitive damages to tenants for insignificant delays of several days beyond the statutory limits, where neither bad faith on the part of the landlord, nor actual harm on the part of the tenant has been established.

Supporting this interpretation are several other similar previous cases involving a mere technical breach of §8-203f(4), where the District Court of Prince George's County awarded the tenants nominal damages of $1.00. However, there is no appellate case law on this subject, and neither the State Department of Legislative Reference, nor the Committee to Revise the Annotated Code, have been able to locate any information or materials concerning what the legislative intent was behind the passage of Article 21, §8-213f(iv), now Real Property §8-203f(4). As a member of the Governor's Commission on Landlord-Tenant Law Revision at the time of the passage of this provision, your own personal recollection on this issue would be very helpful, whether in support of or opposition to our interpretation of §8-203f(4). In particular, any written documents, reports, notes, or other such materials made at the time of passage of the provision in question, would be especially useful.

Any assistance on this matter would be greatly appreciated. I thank you in advance for your cooperation.

Very truly yours,

PICKETT, HOULON & BERMAN

By: _____
HENRY BLINDER
Law Clerk

HB:lm

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202 347-8500

December 12, 1974

Mr. Thomas Viertel
Presidential Realty Corporation
180 South Broadway
White Plains, New York 10605

Dear Tom:

You have requested our opinion concerning the treatment of certain non-refundable fees which you receive from tenants with respect to the rental of apartments located in the State of Maryland.

As I understand the facts, a fee of $100.00 per apartment is charged to the prospective tenant at the time the apartment is leased. This fee is applied internally to cover the cost of processing the tenant's application and other administrative expenses. The fee is not denominated as a security deposit in the lease agreement and, in fact, is not refunded to the tenant at the expiration of the term of his lease without regard to the actual condition of the apartment at that time.

Section 8-203 of the Real Property Article of the Annotated Code of Maryland imposes upon landlords certain obligations with respect to security deposits. These obligations include, among other things, a limitation on the maximum amount of the security deposit which the landlord may receive, a requirement that a landlord who receives a security deposit must provide the tenant with a written list of existing damages to the apartment at the commencement of the term of the lease and a requirement that the landlord must maintain all security deposits in an escrow account and, under certain circumstances, must pay interest upon the refund of the security deposit at the expiration of the term of the tenant's lease.

Section 8-203(A) of the Real Property Article defines the term "security deposit" as meaning "any payment of money, including payment of the last month's rent in advance of the time it is due, given to a landlord by a tenant in order to protect the landlord against nonpayment of rent or damage to

the leased premises." In my opinion, the administrative fee of $100.00 per apartment now being charged is not a "security deposit" within the meaning of Section 8-203 of the Real Property Article. Since the fee is charged to cover administrative costs incurred in processing tenants' applications, and is not held as security for the performance by the tenant of his obligations under his lease, I do not believe that the fee can properly be regarded as a "security deposit." There is no obligation on the landlord to refund the fee upon the expiration of the term of the tenant's lease and, in actual practice, no refund is made regardless of the actual condition of the apartment at that time.

Since I do not believe the administrative fee is a "security deposit" as defined by the applicable law, it follows that the landlord is not obligated to comply with the provisions of Section 8-203 of the Real Property Article applicable to security deposits.

Please call me if you have any further questions.

Sincerely yours,

Joel N. Simon slc/sm

JNS/slc

March 15, 1976

Hon. Joseph E. Owens
Chairman
House Judiciary Committee
House Office Building
Annapolis, Maryland 21404

Re: H.B. 1929
Real Property - Corporate Surety Bonds

Dear Delegate Owens:

On behalf of the American Insuranee Association, I would suggest some technical and corrective amendments to this bill, particularly as it relates to certain bonding requirements. Thus, in Unit 155, "a security deposit" should be replaced by the words "depositing security deposits as prescribed in subsection E(1) of this section". In Unit 157, the word "sum" should be replaced by the words "security deposit". In Unit 159 and Unit 160, the words "at a legal rate from the time he obtained the bond" should be stricken and replaced by the words "as prescribed in subsection G(1) below".

There also appears to be an obvious mistake in Unit 171 in that the word "landlord" should be the word "tenant".

Very truly yours,

Joseph A. Schwartz, III

JAS,III/esm

March 24, 1976

STATEMENT OF JOSEPH R. SCHUBLE
EXECUTIVE VICE PRESIDENT of DREYFUSS BROTHERS, INC.
(managers of 7,850 apartments in Maryland)
regarding H. B. NO. 1929

The economic state of the rental apartment industry in Maryland can be described as being at a stagnant crossroads. Mature apartment projects, after almost five years of federal, state and local rent controls during the same time that fuel and utility costs as well as other operating costs rose at unprecedented rates, have reduced profitability for stronger projects and increased deficits for weaker projects.

As local apartment developers and owners faced the above problems in the first half of this decade, many were forced to take the following actions:

1. Mature projects were sold to absentee ownership syndicates rather than refinanced and rehabilitated.
2. Mature projects were converted to condominium and cooperative forms of ownership as rental profitability declined or disappeared.
3. New projects were foreclosed by lenders when developers could not meet operating costs and mortgage payments.
4. New projects, originally planned as rental apartments were converted to condominiums and cooperatives before they got off the drawing boards.

The only reason we do not now have a critical shortage of rental housing in some of the urbanized areas of the State is that the recent economic recession resulted in reduced formations of new households, reduced immigration of new households and increased emmigration of existing households as job opportunities leveled off and declined in government and private industry.

However the economy is now rebounding from that recession and must take steps now to lay the foundation for an adequate supply of both rental and ownership housing if we are to avoid shortages which will lead us back to cries for rent controls which in turn will only initiate the vicious downward cycle and perpetuate the previously mentioned negative results.

The strong foundation we need to get the rental industry back to a healthy, profitable and expanding state, as well as to put the thousands of unemployed construction workers back on payrolls and off the welfare rolls, can be achieved by the following steps:

1. Generate new sources of capital to finance the deficits of mature projects which can now survive as rental properties if sufficient interim capital is available.
2. Generate new sources of capital to finance the rehabilitation of older projects, which need capital improvements, but into which disenchanted investors are reluctant to make further investments.
3. Generate new sources of capital to finance land acquisition and construction of new housing.

Most financial institutions in the State of Maryland are not typical sources of debt capital for apartment projects because of their size or their lending functions. Yet we estimate conservatively that some $30,000,000 to $40,000,000 in security deposits from apartment operations are tied up in these institutions because of the limitations of the existing legislation. The intent of the present legislation is good. It wanted the funds kept within the State's legal jurisdiction so that in the event of a default on the part of the owner, the funds could be attached and returned to those tenants to whom they were due upon satisfactory completion of their occupancy.

In our opinion H. B. 1929 provides even greater security for the tenant. At this point I would like to emphasize that the only substantive change to the present law, which H. B. 1929 would achieve, is contained in lines 155 through 191. H. B. 1929 makes no deletions from the present law. It only adds an alternative method available to those owners and/or agents in a position to qualify for and use the alternative. The use of the surety bond alternative can make funds available for the generation of new capital greatly needed by the industry, without diminishing in any way the tenants' assurance of receiving the refund of security deposits where such refunds are proper.

The out-of-state financial institutions which are the primary sources of debt capital for the apartment industry, are demanding more and more compensatory balances in return for refinancing mature properties and for making permanent loans on new properties. These compensatory balances are made in the form of real estate tax escrow reserves, security deposit escrow

reserves, and capital item replacement reserves.

Maryland developers and owners have been at a distinct disadvantage over the past few years in dealing with these out-of-state lenders because of rent controls and our present restriction on where security deposits can be kept. This is especially true in those areas of the State where housing markets are shared with bordering states that do not have such restrictions. The Washington Metropolitan Area is a good example of this situation.

As businessmen operating in Maryland, we considered the effects of H. B. 1929 on Maryland financial institutions. As one of the largest customers, as a bank director, and as a stockholder of three Maryland banks, I feel there will be no adverse effects on our financial institutions if developers and owners use the alternative surety bond method authorized by H. B. 1929. This is because, under the present law, these security funds must be kept in interest bearing accounts meaning certificates of deposit, time deposits and/or savings accounts. However, by their nature, these funds are kept in short-term accounts since they turn over. This is not a highly profitable type of account for these institutions, since they must pay competitive interest rates on the funds, but do not have them available for higher yielding long term investments.

I hope you will understand the problems the apartment industry faces as I have outlined them. I hope you will agree with our recommended possible solutions to those problems. And, I hope you will agree that this addition to the present law does not, in any way, reduce the security of the tenants' position as it relates to this area. I hope you will give favorable consideration to H. B. 1929.

Thank you.

AMBLER H. MOSS
LAWRENCE PERIN
DAVID R. OWEN
NORMAN P. RAMSEY
WILLIAM A. FISHER, JR.
JOHN H. MUDD
THOMAS E. CINNAMOND
GEORGE D. HUBBARD
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JAMES D. PEACOCK
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GEOFFREY S. MITCHELL

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RIGNAL W. BALDWIN

JOHN E. SEMMES (1881-1967)

SEMMES, BOWEN & SEMMES

ATTORNEYS AT LAW

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TOWSON OFFICE:
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March 25, 1976

Mr. Steven Davison
Reporter, Governor's Commission
Landlord-Tenant Law Revision
3600 S. 14th Street
Arlington, Virginia 22204

Re: H.B. 1929

Dear Mr. Davison:

Enclosed herewith is a copy of the amendments which we worked out after the hearing on H.B. 1929.

Very truly yours,

Joseph A. Schwartz, III

JAS,III/esm

Enclosure

F(1) After the words "in lieu of" in line 155, insert "maintaining". Delete "a" in front of "security deposit". Make "security deposit" plural and after "deposits" insert "as required in subsection (e)(1) of this section".

In line 157 delete the word "sum" and insert "security deposit".

In line 159 delete everything after the word "interest" and insert "as set forth in subsection (g) of this section".

In line 171 delete "landlord" and insert "tenants and shall be posted with and enforceable by the Consumer Protection Division of the Office of the Attorney General for the benefit of the tenants."

Delete lines 173 - 183.

Renumber (6) to (5)

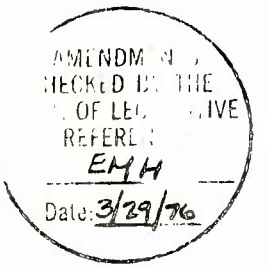
Insert the word "minimum" before "penalty" in lines 187 and 190.

In the unnumbered line after 190 delete "in accordance with" and insert "no less than".

At the end of new (5) and [old (6):]

"The liability of the surety under any bond may not exceed the aggregate amount of the bond, regardless of the number or amount of security deposits claimed from the landlord and, if the amount of security deposits claimed should exceed the amount of the bond, the surety shall pay the amount of the bond to the Consumer Protection Division of the Office of the Attorney General for distribution to claimants and the surety shall be relieved thereupon of all liability under said bond."

BY: ECONOMIC MATTERS COMMITTEE



AMENDMENTS TO HOUSE BILL NO. 1929

(FIRST READING FILE BILL)

AMENDMENT NO. 1

In line 155 on page 3 of the bill, strike "A SECURITY DEPOSIT" and substitute "MAINTAINING SECURITY DEPOSITS AS REQUIRED IN PARAGRAPH (E)(1) OF THIS SECTION,".

AMENDMENT NO. 2

In line 157 on page 3 strike "SUM" and substitute "SECURITY DEPOSIT".

AMENDMENT NO. 3

In line 159 and the unnumbered line after line 159 on page 3 strike "ON IT AT A LEGAL RATE FROM THE TIME HE OBTAINED THE BOND" and substitute "AS SET FORTH IN SUBSECTION (G) OF THIS SECTION".

AMENDMENT NO. 4

In line 171 on page 3 strike "LANDLORD" and substitute "TENANTS".

AMENDMENT NO. 5

Strike lines 173 through 183 in their entirety on page 3 and substitute

5)THE BOND SHALL BE POSTED WITH AND ENFORCEABLE BY THE CONSUMER PROTECTION DIVISION OF THE OFFICE OF THE ATTORNEY GENERAL FOR THE BENEFIT OF THE TENANTS.

AMENDMENT NO. 6

In lines 187 and 190 on page 3 insert "MINIMUM" before "PENALTY".

AMENDMENT NO. 7

In the unnumbered line after line 190 on page 3 strike "IN ACCORDANCE WITH" and substitute "NO LESS THAN".

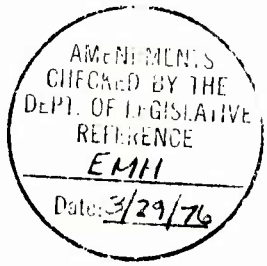
AMENDMENT NO. 8

After line 191 on page 3 insert:

"(7) THE LIABILITY OF THE SURETY UNDER ANY BOND MAY NOT EXCEED THE AGGREGATE AMOUNT OF THE BOND, REGARDLESS OF THE NUMBER OR AMOUNT OF SECURITY DEPOSITS CLAIMED FROM THE LANDLORD AND, IF THE AMOUNT OF SECURITY DEPOSITS

(OVER)

CLAIMED SHOULD EXCEED THE AMOUNT OF THE BOND, THE SURETY SHALL PAY THE AMOUNT OF THE BOND TO THE CONSUMER PROTECTION DIVISION OF THE OFFICE OF THE ATTORNEY GENERAL FOR DISTRIBUTION TO CLAIMANTS AND THE SURETY SHALL BE RELIEVED OF ALL LIABILITY UNDER THE BOND.",



H O U S E O F D E L E G A T E S

No. 1929

By: Delegates Hargreaves, Mothershead, Burgess and Nichols
Introduced and read first time: February 27, 1976
Assigned to: Judiciary

Reassigned: Economic Matters
Committee Report: Favorable with amendments
House Action: Adopted
Read second time: March 29, 1976

CHAPTER _____

AN ACT concerning

Real Property - Corporate Surety Bond

FOR the purpose of providing that landlords may obtain and maintain corporate surety bonds in lieu of security deposits and generally relating to the corporate surety bonds; defining a certain term; and renumbering and redesignating the provisions relating to security deposits.

BY repealing and reenacting, with amendments,

Article - Real Property
Section 8-203
Annotated Code of Maryland
(1974 Volume and 1975 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 8-203 of Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1975 Supplement) be and it is hereby repealed and reenacted, with amendments, to read as follows:

Article - Real Property

8-203.

[(a) In this section "security deposit" means any payment of money, including payment of the last month's rent in advance of the time it is due, given to a landlord by a tenant in order to protect the landlord

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Underlining indicates amendments to the bill.
[[Double brackets]] enclose matter stricken out of bill.
Numerals at right identify computer lines of text.

against nonpayment of rent or damage to the leased premises.]

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "BOND" MEANS A CORPORATE SURETY BOND.

(3) "SECURITY DEPOSIT" MEANS ANY PAYMENT OF MONEY INCLUDING PAYMENT OF THE LAST MONTH'S RENT IN ADVANCE OF THE TIME IT IS DUE, GIVEN TO A LANDLORD BY A TENANT IN ORDER TO PROTECT THE LANDLORD AGAINST NONPAYMENT OF RENT OR DAMAGE TO THE LEASED PREMISES.

(b)(1) A landlord may not impose a security deposit in excess of the equivalent of two months' rent, or $50, whichever is greater, per dwelling unit, regardless of the number of tenants.

(2) If a landlord charges more than the equivalent of two months' rent, or $50, whichever is greater, per dwelling unit as a security deposit, the tenant may recover up to threefold the extra amount charged, plus reasonable attorney's fees.

(3) An action under this section may be brought at any time during the tenancy or within two years after its termination.

(c)(1) The landlord shall give the tenant a receipt for the security deposit. The receipt may be included in a written lease.

(2) The landlord shall be liable to the tenant in the sum of $25 if the landlord fails to provide a written receipt for the security deposit.

(3) The receipt or lease shall contain language informing the tenant of his rights under this section to receive from the landlord a written list of all existing damages if the tenant makes a written request of the landlord within 15 days of the tenant's occupancy.

(d)(1) If the landlord imposes a security deposit, on written request, he promptly shall provide the tenant with a written list of all existing damages. The request must be made within 15 days of the tenant's occupancy.

(2) Failure to provide the tenant with this written statement renders the landlord liable to the tenant for threefold the amount of the security deposit. The total amount of damages shall be subject to a setoff for damages and unpaid rent which reasonably could be

withheld under this section.

(e)(1) The landlord shall maintain all security deposits in a banking or savings institution in the state. The account shall be devoted exclusively to security deposits and bear interest.

(2) A security deposit shall be deposited in the account within 30 days after the landlord receives it.

(3) In the event of sale or transfer of any sort, including receivership or bankruptcy, the security deposit is binding on the successor in interest to the person to whom the deposit is given. Security deposits are free from any attachment by creditors.

(4) Any successor in interest is liable to the tenant for failure to return the security deposit, together with interest, as provided in this section.

(F)(1) IN LIEU OF A [[SECURITY DEPOSIT]] MAINTAINING SECURITY DEPOSITS AS REQUIRED IN PARAGRAPH (E)(1) OF THIS SECTION, A LANDLORD MAY OBTAIN AND MAINTAIN A BOND CONDITIONED ON THE RETURN OF THE [[SUM]] SECURITY DEPOSIT TO THE TENANT IN THE EVENT THE TENANT BECOMES ENTITLED TO THE RETURN OF THE MONEY. IF THE LANDLORD RETURNS THE MONEY, HE ALSO SHALL PAY INTEREST [[ON IT AT A LEGAL RATE FROM THE TIME HE OBTAINED THE BOND]] AS SET FORTH IN SUBSECTION (G) OF THIS SECTION.

(2) THE BOND SHALL BE IN THE AMOUNT SET FORTH FOR A SECURITY DEPOSIT IN SUBSECTION (B) OF THIS SECTION.

(3) THE BOND MAY BE IN THE FORM OF AN INDIVIDUAL BOND FOR EACH DEPOSIT ACCEPTED BY A LANDLORD OR IF THE TOTAL AMOUNT OF MONEY AND DEPOSITS ACCEPTED BY THE LANDLORD EXCEEDS $10,000, IT MAY BE IN THE FORM OF A BLANKET BOND ASSURING THE RETURN OF THE DEPOSITS RECEIVED BY THE LANDLORD.

(4) THE BOND SHALL BE PAYABLE TO THE STATE FOR THE USE AND BENEFIT OF THE [[LANDLORD]] TENANTS.

[[(5) IF THE BOND IS A BLANKET BOND, THE PENALTY OF THE BOND SHALL BE IN ACCORDANCE WITH THE FOLLOWING SCHEDULE:

TOTAL AMOUNT OF DEPOSITS HELD	PENALTY OF BOND
(1) $10,000 TO $75,000	FULL AMOUNT OF DEPOSIT HELD
(2) $75,000 TO $200,000	$ 75,000
(3) $200,000 TO $500,000	$200,000
(4) OVER $500,000	$500,000]]

(5) THE BOND SHALL BE POSTED WITH AND ENFORCEABLE BY THE CONSUMER PROTECTION DIVISION OF THE OFFICE OF THE ATTORNEY GENERAL FOR THE BENEFIT OF THE TENANTS.

(6) FOR THE PURPOSE OF DETERMINING THE MINIMUM PENALTY OF ANY BLANKET BOND WHICH THE LANDLORD MAINTAINS IN ANY CALENDAR YEAR, THE TOTAL AMOUNT OF DEPOSITS CONSIDERED HELD BY A LANDLORD SHALL BE DETERMINED AS OF MAY 31 OF ANY GIVEN CALENDAR YEAR AND THE MINIMUM PENALTY OF THE BOND SHALL BE [[IN ACCORDANCE WITH]] NO LESS THAN THE AMOUNT OF DEPOSITS HELD AS OF MAY 31.

(7) THE LIABILITY OF THE SURETY UNDER ANY BOND MAY NOT EXCEED THE AGGREGATE AMOUNT OF THE BOND, REGARDLESS OF THE NUMBER OR AMOUNT OF SECURITY DEPOSITS CLAIMED FROM THE LANDLORD AND, IF THE AMOUNT OF SECURITY DEPOSITS CLAIMED SHOULD EXCEED THE AMOUNT OF THE BOND, THE SURETY SHALL PAY THE AMOUNT OF THE BOND TO THE CONSUMER PROTECTION DIVISION OF THE OFFICE OF THE ATTORNEY GENERAL FOR DISTRIBUTION TO CLAIMANTS AND THE SURETY SHALL BE RELIEVED OF ALL LIABILITY UNDER THE BOND.

[(f)](G) (1) Within 45 days after the end of the tenancy, the landlord shall return the security deposit to the tenant together with simple interest which has accrued in the amount of 3 percent per annum, less any damages rightfully withheld.

(2) Interest shall accrue at six-month intervals from the day the tenant gives the landlord the security deposit. Interest is not compounded.

(3) Interest shall be payable only on security deposits of $50 or more.

(4) If the landlord, without a reasonable basis, fails to return any part of the security deposit, plus accrued interest, within 45 days after the termination of the tenancy, the tenant has an action of up to threefold of the withheld amount, plus reasonable attorney's fees.

[(g)](H)[(i)] (1) The security deposit, or any portion thereof, may be withheld for unpaid rent, damage due to breach of lease or for damage to the leased premises by the tenant, his family, agents, employees, or social guests in excess of ordinary wear and tear. The tenant has the right to be present when the landlord or his agent inspects the premises in order to determine if any damage was done to the premises, if the tenant notifies the landlord by certified mail of his intention to move, the date of moving, and his new address. The notice to be furnished by the tenant to the landlord shall be mailed at least 15 days prior to the date of moving. Upon receipt of the notice, the landlord shall

notify the tenant by certified mail of the time and date when the premises are to be inspected. The date of inspection shall occur within five days before or five days after the date of moving as designated in the tenant's notice. The tenant shall be advised of his rights under this subsection in writing at the time of his payment of the security deposit. Failure by the landlord to comply with this requirement forfeits the right of the landlord to withhold any part of the security deposit for damages.

[(ii)] (2) The security deposit is not liquidated damages and may not be forfeited to the landlord for breach of the rental agreement, except in the amount that the landlord is actually damaged by the breach.

[(iii)] (3) In calculating damages for lost future rents any amount of rents received by the landlord for the premises during the remainder if any, of the tenant's term, shall reduce the damages by a like amount.

[(h)](I)(1) If any portion of the security deposit is withheld, the landlord shall present by first-class mail directed to the last known address of the tenant, within 30 days after the termination of the tenancy, a written list of the damages claimed under subsection [(g)(1)] (H)(1) together with a statement of the cost actually incurred.

(2) If the landlord fails to comply with this requirement, he forfeits the right to withhold any part of the security deposit for damages.

[(i)] (J) No provision of this section may be waived in any lease.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1976.

Approved:

_____
Governor.

_____
Speaker of the House of Delegates.

_____
President of the Senate.

H O U S E O F D E L E G A T E S

No. 1929

By: Delegates Hargreaves, Mot·rshead, Burgess and Nichols
Introduced and read first time: February 27, 1976
Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning

Real Property – Corporate Surety Bonds

FOR the purpose of providing that landlords may obtain and maintain corporate surety bonds in lieu of security deposits and generally relating to the corporate surety bonds; defining a certain term; and renumbering and redesignating the provisions relating to security deposits.

BY repealing and reenacting, with amendments,

Article – Real Property
Section 8–203
Annotated Code of Maryland
(1974 Volume and 1975 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 8–203 of Article – Real Property, of the Annotated Code of Maryland (1974 Volume and 1975 Supplement) be and it is hereby repealed and reenacted, with amendments, to read as follows:

Article – Real Property

8–203.

[(a) In this section "security deposit" means any payment of money, including payment of the last month's rent in advance of the time it is due, given to a landlord by a tenant in order to protect the landlord against nonpayment of rent or damage to the leased premises.]

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Numerals at right identify computer lines of text.

(2) "BOND" MEANS A CORPORATE SURETY BOND.

(3) "SECURITY DEPOSIT" MEANS ANY PAYMENT OF MONEY INCLUDING PAYMENT OF THE LAST MONTH'S RENT IN ADVANCE OF THE TIME IT IS DUE, GIVEN TO A LANDLORD BY A TENANT IN ORDER TO PROTECT THE LANDLORD AGAINST NONPAYMENT OF RENT OR DAMAGE TO THE LEASED PREMISES.

(b) (1) A landlord may not impose a security deposit in excess of the equivalent of two months' rent, or $50, whichever is greater, per dwelling unit, regardless of the number of tenants.

(2) If a landlord charges more than the equivalent of two months' rent, or $50, whichever is greater, per dwelling unit as a security deposit, the tenant may recover up to threefold the extra amount charged, plus reasonable attorney's fees.

(3) An action under this section may be brought at any time during the tenancy or within two years after its termination.

(c) (1) The landlord shall give the tenant a receipt for the security deposit. The receipt may be included in a written lease.

(2) The landlord shall be liable to the tenant in the sum of $25 if the landlord fails to provide a written receipt for the security deposit.

(3) The receipt or lease shall contain language informing the tenant of his rights under this section to receive from the landlord a written list of all existing damages if the tenant makes a written request of the landlord within 15 days of the tenant's occupancy.

(d) (1) If the landlord imposes a security deposit, on written request, he promptly shall provide the tenant with a written list of all existing damages. The request must be made within 15 days of the tenant's occupancy.

(2) Failure to provide the tenant with this written statement renders the landlord liable to the tenant for threefold the amount of the security deposit. The total amount of damages shall be subject to a setoff for damages and unpaid rent which reasonably could be withheld under this section.

(e) (1) The landlord shall maintain all security deposits in a banking or savings institution in the state. The account shall be devoted exclusively to security deposits and bear interest.

(2) A security deposit shall be deposited in the

account within 30 days after the landlord receives it.

(3) In the event of sale or transfer of any sort, including receivership or bankruptcy, the security deposit is binding on the successor in interest to the person to whom the deposit is given. Security deposits are free from any attachment by creditors.

(4) Any successor in interest is liable to the tenant for failure to return the security deposit, together with interest, as provided in this section.

(F)(1) IN LIEU OF A SECURITY DEPOSIT A LANDLORD MAY OBTAIN AND MAINTAIN A BOND CONDITIONED ON THE RETURN OF THE SUM TO THE TENANT IN THE EVENT THE TENANT BECOMES ENTITLED TO THE RETURN OF THE MONEY. IF THE LANDLORD RETURNS THE MONEY, HE ALSO SHALL PAY INTEREST ON IT AT A LEGAL RATE FROM THE TIME HE OBTAINED THE BOND.

(2) THE BOND SHALL BE IN THE AMOUNT SET FORTH FOR A SECURITY DEPOSIT IN SUBSECTION (B) OF THIS SECTION.

(3) THE BOND MAY BE IN THE FORM OF AN INDIVIDUAL BOND FOR EACH DEPOSIT ACCEPTED BY A LANDLORD OR IF THE TOTAL AMOUNT OF MONEY AND DEPOSITS ACCEPTED BY THE LANDLORD EXCEEDS $10,000, IT MAY BE IN THE FORM OF A BLANKET BOND ASSURING THE RETURN OF THE DEPOSITS RECEIVED BY THE LANDLORD.

(4) THE BOND SHALL BE PAYABLE TO THE STATE FOR THE USE AND BENEFIT OF THE LANDLORD.

(5) IF THE BOND IS A BLANKET BOND, THE PENALTY OF THE BOND SHALL BE IN ACCORDANCE WITH THE FOLLOWING SCHEDULE:

TOTAL AMOUNT OF DEPOSITS HELD		PENALTY OF BOND
(1)	$10,000 TO $75,000	FULL AMOUNT OF DEPOSIT HELD
(2)	$75,000 TO $200,000	$ 75,000
(3)	$200,000 TO $500,000	$200,000
(4)	OVER $500,000	$500,000

(6) FOR THE PURPOSE OF DETERMINING THE PENALTY OF ANY BLANKET BOND WHICH THE LANDLORD MAINTAINS IN ANY CALENDAR YEAR, THE TOTAL AMOUNT OF DEPOSITS CONSIDERED HELD BY A LANDLORD SHALL BE DETERMINED AS OF MAY 31 OF ANY GIVEN CALENDAR YEAR AND THE PENALTY OF THE BOND SHALL BE IN ACCORDANCE WITH THE AMOUNT OF DEPOSITS HELD AS OF MAY 31.

[(f)](G) (1) Within 45 days after the end of the tenancy, the landlord shall return the security deposit to the tenant together with simple interest which has

accrued in the amount of 3 percent per annum, less any damages rightfully withheld.

(2) Interest shall accrue at six-month intervals from the day the tenant gives the landlord the security deposit. Interest is not compounded.

(3) Interest shall be payable only on security deposits of $50 or more.

(4) If the landlord, without a reasonable basis, fails to return any part of the security deposit, plus accrued interest, within 45 days after the termination of the tenancy, the tenant has an action of up to threefold of the withheld amount, plus reasonable attorney's fees.

[(g)](H)[(i)] (1) The security deposit, or any portion thereof, may be withheld for unpaid rent, damage due to breach of lease or for damage to the leased premises by the tenant, his family, agents, employees, or social guests in excess of ordinary wear and tear. The tenant has the right to be present when the landlord or his agent inspects the premises in order to determine if any damage was done to the premises, if the tenant notifies the landlord by certified mail of his intention to move, the date of moving, and his new address. The notice to be furnished by the tenant to the landlord shall be mailed at least 15 days prior to the date of moving. Upon receipt of the notice, the landlord shall notify the tenant by certified mail of the time and date when the premises are to be inspected. The date of inspection shall occur within five days before or five days after the date of moving as designated in the tenant's notice. The tenant shall be advised of his rights under this subsection in writing at the time of his payment of the security deposit. Failure by the landlord to comply with this requirement forfeits the right of the landlord to withhold any part of the security deposit for damages.

[(ii)] (2) The security deposit is not liquidated damages and may not be forfeited to the landlord for breach of the rental agreement, except in the amount that the landlord is actually damaged by the breach.

[(iii)] (3) In calculating damages for lost future rents any amount of rents received by the landlord for the premises during the remainder if any, of the tenant's term, shall reduce the damages by a like amount.

[(h)](I)(1) If any portion of the security deposit is withheld, the landlord shall present by first-class mail directed to the last known address of the tenant, within 30 days after the termination of the tenancy, a written list of the damages claimed under subsection [(g)

[(1)] (H)(1) together with a statement of the cost actually incurred.

(2) If the landlord fails to comply with this requirement, he forfeits the right to withhold any part of the security deposit for damages.

[(i)] (J) No provision of this section may be waived in any lease.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1976.

SECURITY DEPOSITS
Subcommittee Draft
12/30/75
8-203(J.) 6-F

AN ACT concerning

Landlord and Tenant - Security Deposits

FOR the purpose of providing that a landlord has no duty to return a security deposit, or to provide a written list of damages to be withheld from the security deposit, to a tenant who has been evicted or ejected for breach of a condition or covenant of a lease prior to the termination of the tenancy, or who has vacated the premises prior to the termination of the tenancy, unless such tenant provides written notice to the landlord, within six months of eviction, ejectment or vacating the premises, demanding return of the security deposit and specifying the tenant's new address.

By enacting

Article - Real Property
Section 8-203(j)
Annotated Code of Maryland
(1974 Volume and 1975 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, that Section 8-203(j) be and it is hereby added to Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1975 Supplement), to read as follows:

Article - Real Property

8-203

(J) TENANTS WHO ARE EVICTED OR EJECTED FOR BREACH OF LEASE OR WHO VACATE THE PREMISES, PRIOR TO THE TERMINATION OF THE TENANCY. -

(1) {THE TECHNICAL MAILING REQUIRMENTS AND REMEDIES OF} SECTIONS (F)(1), (F)(4), (H)(1), AND (H)(2) ARE INAPPLICABLE TO:

(A) TENANTS WHO HAVE BEEN EVICTED OR EJECTED FOR BREACH OF A CONDITION OR COVENANT OF A LEASE, PRIOR TO THE TERMINATION OF THE TENANCY; OR

(B) TENANTS WHO HAVE VACATED THE PREMISES PRIOR TO THE TERMINATION OF THE TENANCY.

(2) IF A TENANT SPECIFIED BY SUBSECTION (J)(1)(A) OR (J)(1)(B) ~~DELIVERS~~ {GIVES}, WITHIN ~~SIX MONTHS~~ {45 DAYS} OF BEING EVICTED OR EJECTED OR OF VACATING THE PREMISES, {WRITTEN} NOTICE {, BY REGISTERED MAIL RETURN RECEIPT REQUESTED,} TO THE LANDLORD, DEMANDING RETURN OF THE SECURITY DEPOSIT AND SPECIFYING THE TENANT'S NEW ADDRESS, THE LANDLORD SHALL:

(A) PRESENT BY FIRST-CLASS MAIL TO THE TENANT, WITHIN 30 DAYS OF RECEIPT OF SUCH NOTICE FROM THE TENANT, A WRITTEN LIST OF THE DAMAGES CLAIMED UNDER SUBSECTION (G)(1) TOGETHER WITH A STATEMENT OF THE COSTS ACTUALLY INCURRED; AND

(B) RETURN TO THE TENANT, WITHIN 45 DAYS OF RECEIPT OF SUCH NOTICE FROM THE TENANT, THE SECURITY DEPOSIT TOGETHER WITH SIMPLE INTEREST WHICH HAS ACCRUED IN THE AMOUNT OF 3 PER CENT PER ANNUM, LESS ANY DAMAGES RIGHTFULLY WITHHELD.

(3) IF THE LANDLORD FAILS TO COMPLY WITH THE REQUIREMENT OF SUBSECTION (J)(2)(A) HE FORFEITS THE RIGHT TO WITHHOLD ANY PART OF THE SECURITY DEPOSIT FOR DAMAGES.

(4) IF THE LANDLORD FAILS TO COMPLY WITH THE REQUIREMENT OF SUBSECTION (J)(2)(B), THE TENANT HAS AN ACTION OF UP TO THREEFOLD OF THE WRONGFULLY WITHHELD AMOUNT, PLUS REASONABLE ATTORNEYS' FEES.

(5) EXCEPT TO THE EXTENT SPECIFIED, NOTHING IN SUBSECTION (J) MAY BE INTERPRETED TO ALTER THE LANDLORD'S DUTIES, UNDER SUBSECTIONS (F) AND (H), TO RETURN THE SECURITY DEPOSIT, LESS RIGHTFULLY WITHHELD DAMAGES, AND TO PRESENT A WRITTEN LIST OF DAMAGES, TO A TENANT AFTER TERMINATION OF THE TENANCY.

SECTION 2. AND BE IT FURTHER ENACTED, that this Act shall take effect July 1, 1976.

Approved by Commission
1/13/76

AN ACT concerning

Landlord and Tenant - Security Deposits

FOR the purpose of providing that a landlord has no duty to return a security deposit, or to provide a written list of damages to be withheld from the security deposit, to a tenant who has been evicted or ejected for breach of a condition or covenant of a lease prior to the termination of the tenancy, or who has vacated the premises prior to the termination of the tenancy, unless such tenant gives written notice to the landlord, within 45 days of eviction, ejectment or vacating the premises, demanding return of the security deposit and specifying the tenant's new address.

By enacting

Article - Real Property
Section 8-203(j)
Annotated Code of Maryland
(1974 Volume and 1975 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, that Section 8-203(j) be and it is hereby added to Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1975 Supplement), to read as follows:

Article - Real Property

8-203

(J) TENANTS WHO ARE EVICTED OR EJECTED FOR BREACH OF LEASE OR WHO VACATE THE PREMISES, PRIOR TO THE TERMINATION OF THE TENANCY. -

(1) THE TECHNICAL MAILING REQUIREMENTS AND REMEDIES OF SECTIONS (F)(1), (F)(4), (H)(1), and (H)(2) ARE INAPPLICABLE TO:

(A) TENANTS WHO HAVE BEEN EVICTED OR EJECTED FOR BREACH OF A CONDITION OR COVENANT OF A LEASE, PRIOR TO THE TERMINATION OF THE TENANCY; OR

(B) TENANTS WHO HAVE VACATED THE PREMISES PRIOR TO THE TERMINATION OF THE TENANCY.

(2) IF A TENANT SPECIFIED BY SUBSECTION (J)(1)(A) OR (J)(1)(B) GIVES, WITHIN 45 DAYS OF BEING EVICTED OR EJECTED OR VACATING THE PREMISES, WRITTEN NOTICE, BY CERTIFIED MAIL RETURN RECEIPT REQUESTED, TO THE LANDLORD, DEMANDING RETURN OF THE SECURITY DEPOSIT AND SPECIFYING THE TENANT'S NEW ADDRESS, THE LANDLORD SHALL:

(A) PRESENT BY FIRST-CLASS MAIL TO THE TENANT, WITHIN 30 DAYS OF RECEIPT OF SUCH NOTICE FROM THE TENANT, A WRITTEN LIST OF THE DAMAGES CLAIMED UNDER SUBSECTION (G)(1) TOGETHER WITH A STATEMENT OF THE COSTS ACTUALLY INCURRED; AND

(B) RETURN TO THE TENANT, WITHIN 45 DAYS OF RECEIPT OF SUCH NOTICE FROM THE TENANT, THE SECURITY DEPOSIT TOGETHER WITH SIMPLE INTEREST WHICH HAS ACCRUED IN THE AMOUNT OF 3 PER CENT PER ANNUM, LESS ANY DAMAGES RIGHTFULLY WITHHELD.

(3) IF THE LANDLORD FAILS TO COMPLY WITH THE REQUIREMENT OF SUBSECTION (J)(2)(A) HE FORFEITS THE RIGHT TO WITHHOLD ANY PART OF THE SECURITY DEPOSIT FOR DAMAGES.

(4) IF THE LANDLORD FAILS TO COMPLY WITH THE REQUIREMENT OF SUBSECTION (J)(2)(B), THE TENANT HAS AN ACTION OF UP TO THREEFOLD OF THE WRONGFULLY WITHHELD AMOUNT, PLUS REASONABLE ATTORNEYS' FEES.

(5) EXCEPT TO THE EXTENT SPECIFIED, NOTHING IN SUBSECTION (J) MAY BE INTERPRETED TO ALTER THE LANDLORD'S DUTIES, UNDER SUBSECTIONS (F) AND (H), TO RETURN THE SECURITY DEPOSIT, LESS RIGHTFULLY WITHHELD DAMAGES, AND TO PRESENT A WRITTEN LIST OF DAMAGES, TO A TENANT AFTER TERMINATION OF THE TENANCY.

SECTION 2. AND BE IT FURTHER ENACTED, that this Act shall take effect July 1, 1976.

Steven G. Davison
Reporter, Governor's
Commission on Landlord-
Tenant Law Revision
3600 South 14th Street
Arlington, Virginia 22204

January 20, 1976

Thomas J. Peddicord
Assistant Legislative Officer
Executive Department
State of Maryland
Annapolis, Maryland 21404

Dear Tom:

On behalf of the Governor's Commission on Landlord-Tenant Law Revision, I am forwarding two bills that the Commission approved at their meeting on January 13, 1976. I have been requested by the Commission to forward these bills to the Office of the Governor for introduction to the 1976 Regular Session of the General Assembly as Commission bills.

The first bill would add a new subsection (j) to RP Article Section 8-203 (Security Deposits). This bill would provide that a landlord has no duty to return a security deposit, as required by Section 8-203(f), or to provide a written list of damages to be withheld from the security deposit, as required by Section 8-203(h), to tenants who have been evicted or ejected for breach of a condition or covenant of a lease prior to the termination of the tenancy, or to tenants who have vacated the premises prior to the termination of the tenancy, unless such tenants give written notice to the landlord, by certified mail return receipt requested, within 45 days of eviction, ejectment, or vacating the premises, demanding return of the security deposit. This bill was adopted by the Commission because it is believed that the damages owed to a landlord, by tenants who have been evicted or ejected for breach of the lease, or who have vacated the premises, prior to the termination of the tenancy, usually will exceed the amount of the security deposit. In the case of such tenants, preparation and sending of the written list of damages to be withheld from the security deposit will normally be an unnecessary exercise, since the landlord will be entitled to retain the full amount of the security deposit. In addition, these two classes of tenants that are covered by the bill may not leave a forwarding address because they may owe the landlord damages in an amount exceeding the security deposit. The bill would thus require such tenants to provide the landlord with written notice of their new address before the landlord must prepare the written list of damages and return of the security deposit less damages.

The second bill would amend RP Article Section 8-208 (Prohibited Lease Provisions) to provide that lease provisions that are void and against public policy under RP Article Section 8-105 cannot be placed in a lease. Real Property Article Section 8-105 currently provides that lease provisions seeking to exculpate a landlord from tort liability to persons injured in the common areas are void and against public policy; neither Section 8-105 nor Section 8-208, however, prohibit a lease from containing such a void provision. Even though such a clause is void under Section 8-105, it might deter a tenant from seeking redress for personal injuries if it is contained in a lease.

If I can be of further assistance to you with respect to these matters, please contact me. On behalf of the Commission, I thank you for your attention to this matter.

Sincerely yours,

Steven G. Davison

Steven G. Davison
Reporter

SGD/eg

cc: Members of the Commission
Persons on Commission Mailing List

Enclosures (2)

REPORT

ON

CONSIDERATION OF COMMISSION BILLS BEFORE 1976 REGULAR SESSION

OF THE GENERAL ASSEMBLY

None of the 8 bills introduced by the Commission were passed by the 1976 Regular Session of the General Assembly.

HB 427 (security deposits), HB 658 (notarization of leases), HB 778 (retaliatory eviction), and HB 779 (appeals), were reported unfavorably by the House Judiciary Committee. HB 426 (month's notice to week-to-week tenants), was passed by the House of Delegates, but was reported unfavorably by the Senate Judicial Proceedings Committee. HB 552 (definition of rent) and HB 554 (duty to provide copy of leaseform and lease) were passed, with amendments, by the House of Delegates, but were reported unfavorably by the Senate Judicial Proceedings Committee. HB 553 (condominium conversion) was passed with an amendment by the House of Delegates, and was also passed, with different amendments than the House, by the Senate; the House and Senate would not accept the other's amendments in Conference Committee, and HB 553 died.

Tom Smith, legal counsel for the House Judiciary Committee, stated that the Committee defeated HB 427 (security deposits) on policy grounds. He stated that the Committee believed that the landlord should take the initiative under the security deposit statute, and that HB 427 was incompatible with the principle that a security deposit is the tenant's property.

Mr. Smith stated that he was not sure why the House Judiciary Committee defeated HB 658 (notarization of leases). He stated that the Committee may have been confused by the purpose clause of the bill when they voted on it; he suggested that the purpose clause be amended to make it clear that the purpose of the bill is to provide that a lease does not have to be notarized to have it presumed valid. Mr. Smith also stated that the Committee may have misinterpreted the bill as requiring a residential lease to be recorded, since it refers to "where required, recorded." He suggested that the bill be amended to specify that a lease only has to be recorded if another statutory provision so requires (which was the intent of the reference in HB 658 to "where required, recorded."

Mr. Smith stated that the House Judiciary defeated HB 778 (retaliatory evictions) primarily because it believed that the extension of the bill to "failure to renew" a lease, and to actions of the landlord following 6 months from a court or administrative agency determination (pursuant to the rebuttable presumption clause), would make it impossible for a landlord to evict a tenant, essentially giving tenants a "lifetime" tenancy. Mr. Smith stated that the Committee viewed HB 778 as being a "good cause" eviction bill. Mr. Smith also stated that the Committee disagreed on policy grounds with the Commission's proposal to repeal §8-208.1(d), which makes the retaliatory eviction defense inapplicable to tenants who have received a certain number of summonses for rent due and payable in the previous 12 months.

Mr. Smith stated that the House Judiciary Committee had not expressed any opposition to the stay of execution provisions of HB 779 (appeals), but had determined that the appeal provisions of HB 779 were unnecessary because of a finding that existing appeal procedures were adequate. Mr. Smith stated that the Committee had passed HB 769, which would give a landlord a right of appeal in rent due and payable cases under §8-401.

The House Judiciaty Committee amended HB 552 (definition of rent) by striking the reference to charges for late payment of rent in line 77; the effect of this amendment would be to permit collection of late charges in suits under §8-401, or, at the least, to leave it to the courts to decide whether late charges could be defined as "rent" under §8-401.

The House Judiciary Committee amended HB 553 (condominium conversion) to require tenants who wished to purchase their premises as a condominium to give notice to the owner of his intent to purchase within 90 days of notice of the conversion.

HB 554 (duty to provide copy of lease and leaseform) was amended by the House Judiciary Committee to give the landlord 30 days, instead of 15 days, after occupancy by the tenant to give the tenant a copy of his lease.

The Senate and Senate Judicial Proceedings Committee amended HB 553 (condominium conversion) by essentially redrafting it to be similar to Senator Steinberg's SB 151. SB 151 is similar to the original version of HB 553 that was approved by the Commission. The Senate Judicial Proceedings Committee stood by SB 151 in Conference Committee, and would not accept HB 553 as passed by the House Judiciary Committee.

Skip Buppert, Legal Counsel for the Senate Judicial Proceedings Committee, stated that the Senate Committee had defeated HB 426 (month's notice to week-to-week tenants) on policy grounds, on the grounds that a week's notice to quit for week-to-week tenants was sufficient.

Mr. Buppert stated the Senate Committee had been initially favorable to HB 552 (definition of rent), but that there was some feeling that the Garcia opinion might have made the HB 552 unnecessary. He also stated that the Committee had had no consensus as to whether late charges should be included in the definition of rent.

Mr. Buppert did not remember any reasons for the Senate Committee defeating HB 554 (duty to provide copy of lease and leaseform), although he stated that it might have been defeated because the Committee believed most landlords gave copies of leaseforms and leases. He stated, however, that he did not remember any strong opposition to the bill.

Approved June 28, 1977

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant - Definitions

FOR the purpose of defining landlord, tenant, residential leases and other terms within the meaning of the title governing landlord-tenant relationships.

BY repealing and re-enacting, with amendments

Article - Real Property
Sections 8-109, 8-111, 8-201, 8-204, 8-211(c), 8-401(b), 8-401(d), 8-402(a)(2)(i), (ii), 8-402(b)(5), 8-402(c), and 8-403.
Annotated Code of Maryland
(1974 Volume and 1977 Supplement)

BY adding to

Article - Real Property
Section 8-117
Annotated Code of Maryland
(1974 Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Sections 8-109, 8-111, 8-201, 8-204, 8-211(c), 8-401(b), 8-401(d), 8-402(a)(2)(i), (ii), 8-402(b)(5), 8-402(c), 8-40 , of Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1977 Supplement), be and they are hereby repealed and re-enacted, with amendments, to read as follows:

Article - Real Property

§8-109. Effect of covenant for perpetual renewal in lease.

Uninterrupted possession for 12 months after the expiration of the lease containing a covenant for perpetual renewal of all or part of the leased premises by the tenant or any person claiming under him operates as a renewal with respect to the entire premises. It conclusively is presumed in reference to the whole or any part of the leased premises, of which possession is retained, and in favor of the tenant [or of the person claiming under him], that a new lease of the whole of the leased premises was executed prior to the expiration of the lease by the landlord named in it, [or by the person rightfully claiming under the landlord], to the tenant, [or the person rightfully claiming under the tenant] for the additional term under the rent and on the covenants, conditions, and stipulations as were provided in the lease.

§8-111. Back rent on renewal of lease.

If a tenant named in a lease [or an assignee of a lease] applies to his landlord for a renewal under a covenant in the lease giving him the right to renewal, and if the tenant cannot produce vouchers or satisfactory

evidence showing payment of the rent accrued for three years next preceding his demand and application, the landlord, before executing the renewal of the lease or causing it to be executed, is entitled to demand and recover not more than three years' back rent, in addition to any renewal fine that may be provided for in the lease. The tenant may plead this section in bar of the recovery of any larger amount of rent.

§8-201. Applicability of subtitle; DEFINITIONS.

(A) APPLICABILITY. This subtitle is applicable only to leases for a dwelling unit located within this state.

(B) DEFINITIONS IN THIS TITLE,

(1) "DWELLING UNIT" MEANS A STRUCTURE, INCLUDING A SINGLE FAMILY RESIDENCE, OR MOBILE HOME, THAT IS USED AS A HOME, RESIDENCE OR SLEEPING PLACE BY ONE PERSON WHO MAINTAINS A HOUSEHOLD OR BY 2 OR MORE PERSONS WHO MAINTAIN A COMMON HOUSEHOLD. "DWELLING UNIT" DOES NOT INCLUDE THE FOLLOWING ARRANGEMENTS:

(A) RESIDENCE AT AN INSTITUTION, PUBLIC OR PRIVATE, IF INCIDENTAL TO DETENTION OR THE PROVISION OF MEDICAL,EDUCATIONAL, COUNSELING, RELIGIOUS, OR SIMILAR SERVICE;

(B) OCCUPANCY UNDER A CONTRACT OF SALE OF A DWELLING UNIT OR THE PROPERTY OF WHICH IT IS A PART, IF THE OCCUPANT IS THE PURCHASER OR A PERSON WHO SUCCEEDS TO HIS INTEREST;

(C) OCCUPANCY BY A MEMBER OF A FRATERNAL OR SOCIAL ORGANIZATION IN THE PORTION OF A STRUCTURE OPERATED FOR THE BENEFIT OF THE ORGANIZATION;

(D) TRANSIENT OCCUPANCY IN A HOTEL OR MOTEL;

(E) OCCUPANCY BY AN EMPLOYEE OF A LANDLORD WHOSE RIGHT TO OCCUPANCY IS CONDITIONAL UPON EMPLOYMENT IN AND ABOUT THE PREMISES;

(F) OCCUPANCY BY AN OWNER OF A CONDOMINIUM UNIT OR A HOLDER OF A PROPRIETARY LEASE IN A COOPERATIVE;

(G) OCCUPANCY UNDER A RENTAL AGREEMENT COVERING PREMISES USED BY THE OCCUPANT PRIMARILY FOR AGRICULTURAL PURPOSES.

(2) "HOUSING CODES" INCLUDE ANY LAW, ORDINANCE, OR GOVERNMENTAL REGULATION CONCERNING FITNESS FOR HABITATION, OR THE CONSTRUCTION, MAINTENANCE, OPERATION, OCCUPANCY, USE, OR APPEARANCE OF ANY PREMISES, OR DWELLING UNIT;

(3) "PREMISES" MEANS A DWELLING UNIT AND THE STRUCTURE OF WHICH IT IS A PART AND FACILITIES AND APPURTENANCES THEREIN; AND GROUNDS, AREAS, AND FACILITIES HELD OUT FOR THE USE OF TENANTS GENERALLY OR WHOSE USE IS PROMISED TO THE TENANT.

§8-204. Covenant of quiet enjoyment.

[(a) Applicability of section. This section is applicable only to single or multi-family dwelling units.]

(A)[(b)] Covenant of quiet enjoyment required. A landlord shall assure his tenant that the tenant, peaceably and quietly, may enter on the leased premises at the beginning of the term of any lease.

(B)[(c)] Abatement of rent for failure to deliver. If the landlord fails to provide the tenant with possession of the dwelling unit at the beginning of the term of any lease, the rent payable under the lease shall abate until possession is delivered. The tenant, on written notice to the landlord before possession is delivered, may terminate, cancel, and rescind the lease.

(C)[(d)] Liability of landlord. On termination of the lease under this section, the landlord is liable to the tenant for all money or property given as prepaid rent, deposit, or security.

(D)[(e)] Consequential damages. If the landlord fails to provide the tenant with possession of the dwelling unit at the beginning of the term of any lease whether or not the lease is terminated under this section, the landlord is liable to the tenant for consequential damages actually suffered by him subsequent to the tenant's giving notice to the landlord of his inability to enter on the leased premises.

(E)[(f)] Eviction of tenant holding over. The landlord may bring an action of eviction and damages against any tenant holding over after the end of his term even though the landlord has entered into a lease with another tenant, and he may join the new tenant as a party to the action.

§8-211. Repair of dangerous defects; rent escrow.

(c) [This section applies to residential dwelling units leased for the purpose of human habitation within the State of Maryland.] This section does not apply to farm tenancies.

§8-401. Failure to pay rent.

(b) Complaint; summons. Whenever any landlord shall desire to have again and repossess any premises to which he is entitled under the provisions of §8-401(a), he or his duly qualified agent or attorney, shall make his written complaint under oath or affirmation, before the District Court of the county wherein the property is situated, describing in general terms the property sought to be had again and repossessed, and also setting forth the name of the tenant [to whom the property is rented or his assignee or subtenant] with the amount of rent thereon due and unpaid; and praying by warrant to have again and repossess the premises, together with judgment for the amount of rent due and costs. The District Court forthwith shall issue its summons, directed to any official of the county entitled to serve process, and ordering him to notify by first-class mail the tenant [, assignee, or subtenant] forthwith to appear before the District Court at the trial to be held on the fifth day after the filing of the complaint, to answer the landlord's complaint to show cause why the prayer of the landlord should not be granted,

and the official shall forthwith proceed to serve the summons upon the tenant [,assignee or subtenant] in the property or upon his known or authorized agent, but if for any reason, neither the tenant [,assignee or subtenant,] nor his agent, can be found, then the official shall affix an attested copy of the summons conspicuously upon the property, and the affixing of the summons, for purposes of this section shall be conclusively presumed to be a sufficient service upon all persons whatsoever, if in addition, the tenant [,assignee, or subtenant] has also been notified by first-class mail.

(d) Removal of tenant for noncompliance with judgment in favor of landlord. If judgment is given in favor of the landlord, and the tenant fails to comply with the requirements of the order within two days, the court shall, at any time after the expiration of the two days, issue its warrant, directed to any official of the county entitled to serve process, ordering him to cause the landlord to have again and repossess the property by putting him [(or his duly qualified agent or attorney for his benefit)] in possession thereof, and for that purpose to remove from the property, by force if necessary, all the furniture, implements, tools, goods, effects or other chattels of every description whatsoever belonging to the tenant [,or to any person claiming or holding by or under said tenant]. If the landlord does not order a warrant of restitution within sixty days from the date of judgment or from the expiration date of any stay of execution, whichever shall be the later, the case shall be considered as dismissed.

§8-402. Holding over.

(a)(a)(2)(i) Where the leased premises are used by the tenant primarily as the residence of the tenant, or his family [or someone holding under them], then the measure of damages shall be the landlord's actual damages, but not exceeding double the rent under the lease (apportioned for the duration of the holdover).

(ii) Where the leased premises are used by the tenant [or someone holding under him] primarily for nonresidential purposes, the measure of damages shall be double the rent under the lease (apportioned for the duration of the holdover) or double the rental value of the premises (apportioned for such period), whichever is higher, provided, however, that if the landlord fails specifically to elect the latter measure when he institutes his action against the tenant, the measure shall be [doubled] DOUBLE the rent under the lease.

(b)(5) When the tenant shall give notice by parole to the landlord [or to his agent or representatives,] at least one month before the expiration of the lease or tenancy in all cases except in cases of tenancies from year to year, and at least three months' notice in all cases of tenancy from year to year (except in all cases of farm tenancy, the notice shall be six months), of the intention of the tenant to remove at the end of that year and to surrender possession of the property at that time, and the landlord[, his agent, or representative] shall prove the notice from the tenant by competent testimony, it shall not be necessary for the landlord [, his agent or representative] to provide a written notice to the tenant, but the proof of such notice from the tenant as aforesaid shall entitle his landlord to recover possession of the property hereunder. This subparagraph (5) shall not apply in Baltimore City.

(c)Ejectment where one-half year's rent in due. In all cases between landlord and tenant, where one-half year's rent shall be in arrear and the landlord has the lawful right to reenter for the nonpayment thereof, the landlord may, without any formal demand or reentry, serve a copy of a declaration in ejectment for the recovery of the property; if the declaration cannot be legally served, or no tenant be in actual possession of the property, then he shall affix it upon the door of any demised messuage, or if the action of ejectment shall not be for the recovery of any messuage, then upon some notorious place of the property described in the declaration in ejectment;such affixing shall be deemed legal service thereof, which service or affixing of such declaration in ejectment shall stand in the place and stead of a demand and reentry. If the court shall enter a verdict for the landlord, he shall have judgment and execution in the same manner as if the rent in arrear had been legally demanded and a reentry made. If the tenant [or other person claiming or deriving under the lease] shall permit a judgment to be rendered against him, and execution to be executed thereon without paying the rent and arrears, together with full costs, and without proceeding for relief in equity within six calendar months after the execution, the tenant [and all other persons claiming and deriving under the said lease] shall be barred and foreclosed from all relief or remedy in law or equity other than by appeal for reversal of such judgment, and the landlord shall thenceforth hold the property discharged from the lease. Nothing herein contained shall bar the right of any mortgagee of the lease, or any part thereof, who shall not be in possession, so as such mortgagee shall and do, within six calendar months after such judgment obtained and execution executed, pay all costs and damages sustained by the landlord and perform all the covenants and agreements which, on the part and behalf of the first tenant, are and ought to be performed.

§8-403. Payment of rents into court or administrative agency.

If the District Court in any case brought pursuant to §8-401 or §8-402 orders an adjournment of the trial for a longer period than provided for in the section under which the case has been instituted, the tenant [or anyone holding under him] shall pay all rents due and as they come due into the District Court. However, the Court may order the tenant to pay rents due and as come due into an administrative agency of any county which is empowered by local law to hold rents in escrow pending investigation and disposition of complaints by tenants; the Court also may refer that case to the administrative agency for investigation and report to the Court. A tenant shall pay into the Court the amount of rent due on or before the date to which the trial is adjourned or within seven days after adjournment if the trial is adjourned more than seven days, or to the administrative agency within seven days after the Court has ordered the rent paid into an administrative agency. If the tenant fails to pay rent due within this period,or as it comes due, the Court, on motion of the landlord, shall give judgment in favor of the landlord and issue a warrant for possession in accordance with the provisions of §8-401(c) and (d).

SECTION 2. AND BE IT FURTHER ENACTED, That new Section 8-117 be and it is hereby added to Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1977 Supplement), to read as follows:

Article - Real Property

§8-117 DEFINITIONS. IN THIS TITLE,

(A) "LANDLORD" MEANS THE OWNER, LESSOR, OR SUBLESSOR OF THE LEASED PREMISES, OR THE DWELLING UNIT OR THE BUILDING OF WHICH IT IS A PART. "LANDLORD" INCLUDES ANY PERSON RIGHTFULLY CLAIMING UNDER THE LANDLORD, AND THE LANDLORD'S AGENT OR REPRESENTATIVE.

(B) "OWNER" MEANS ONE OR MORE PERSONS, JOINTLY OR SEVERALLY, IN WHOM IS VESTED

(I) ALL OR PART OF THE LEGAL TITLE TO PROPERTY; OR

(II) ALL OR PART OF THE BENEFICIAL OWNERSHIP AND A RIGHT TO PRESENT USE AND ENJOYMENT OF THE PREMISES. THE TERM INCLUDES A MORTGAGEE IN POSSESSION.

(C) "PERSON" INCLUDES AN INDIVIDUAL OR ORGANIZATION;

(D) "TENANT" MEANS A PERSON ENTITLED UNDER A LEASE TO OCCUPY LEASED PREMISES, OR A DWELLING UNIT, AS DEFINED IN §8-201, TO THE EXCLUSION OF OTHERS. "TENANT" INCLUDES A SUBTENANT, ASSIGNEE, OR ANY PERSON RIGHTFULLY CLAIMING OR HOLDING UNDER THE TENANT, SUBTENANT, OR ASSIGNEE. "TENANT" DOES NOT INCLUDE A ROOMER.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1978.

BALTIMORE NEIGHBORHOODS, INC.

32 West 25th Street, Baltimore, Maryland 21218 • Area Code 301 - 243-6007

George B. Laurent
Executive Director

Donald J. Miller
Associate Director

November 18, 1976

Mr. William Sallow, Chairman
The Governor's Landlord-Tenant Laws
Study Commission
14 Leafydale Court
Pikesville, Maryland 21208

Dear Bill,

Among the many tenant problems we handle, one of the most pressing is where because of negligence on the part of the landlord, essential services to the tenant are interrupted. I am thinking, for example, of heat in the winter.

I know that under P.L.L. of Baltimore City, Sec. 9-15 it is a misdemeanor to interrupt an essential service (punishable by a $50 fine and/or ten days in jail) and in Baltimore County (Baltimore County Code, Title 16, Landlord & Tenant, Secs. 4 & 5) it is a misdemeanor punishable by a fine of up to $100. These are not easily enforceable laws, that is, a tenant would have to swear out a warrant and then a hearing is set which may be a month later. Meanwhile he is without heat.

But the effect of having such laws is most salutary. So far all we have had to do is to politely inform the landlord of the law and we have gotten the situation corrected.

We have complaints of interruption of essential services from Harford and Howard Counties which have no such law.

I am therefore asking Steven Davidson to draft a statewide law comparable to the laws of Baltimore City and County as soon as his heavy work load permits (which I presume will be next year).

Sincerely yours,

George B. Laurent

George B. Laurent
Executive Director

cc: Steven Davidson

BALTIMORE NEIGHBORHOODS, INC.

32 West 25th Street, Baltimore, Maryland 21218 • Area Code 301 - 243-6007

George B. Laurent
Executive Director

Donald J. Miller
Associate Director

December 28, 1976

Mr. Steven Davidson
Governor's Landlord-Tenant Laws
Study Commission
c/o University of Baltimore
North Charles & Mount Royal Avenue
Baltimore, Maryland 21202

Dear Steve,

It is my understanding that if a tenant has a lease for a year and does not vacate the rental unit at the end of the term, that the landlord at his option may:

(1) take him to court as a tenant holding over;

(2) accept him as a month to month tenant;

(3) hold him to another year's lease.

Once the landlord has elected one of these three procedures he can't change his mind.

I am bothered by item (3). Many small landlords and many tenants assume that when the lease runs out and the tenant stays on he automatically goes on a month to month basis. I, myself, thought this when I was renting and my landlord accepted the idea when I moved some time after the lease had run out. I was disturbed to find out that I could have been held to an additional year's lease. It would have cost me a considerable amount of money.

On the other hand I am dealing with a situation where the tenant has stayed on after a lease has run out, the landlord has continued to accept rent for three months, and now having sold the property, has sent a 60 day notice. In the opinion of one of our lawyers the lease has renewed for another year.

If my understanding of the situation is correct, I think that it would be a service to both landlord and tenant to make the situation absolutely clear. I would like to see a bill that would limit the situation to items (1) & (2), either you are a tenant holding over or you are on a month to month basis.

Would you let me know if you agree with my understanding of this law? If so would you when you have time draft a bill for the Commission's consideration.

Sincerely yours,

George B. Laurent
Executive Director

GBL/mb
cc: William Sallow

BALTIMORE NEIGHBORHOODS, INC.

32 West 25th Street, Baltimore, Maryland 21218 • Area Code 301 - 243-6007

George B. Laurent
Executive Director

Donald J. Miller
Associate Director

January 21, 1977

Mr. Stevan Davidson
Governor's Landlord Tenant Laws
Study Commission
c/o University of Baltimore
North Charles & Mount Royal Avenue
Baltimore, Maryland 21202

Dear Steve,

There are three items that I would like to touch base on to make sure they will be on the docket for the future:

(1) Letter of 12/28/76 regarding tenant holding over (I presume we will discuss this next time).

(2) letter of 11/18/76 interruption of an essential service.

(3) the question of "time". Your letter to Proctor is dated April 9, 1976. He promised an answer "at the very latest" by October, 1976. It is now January, 1977.

Sincerely yours,

George B. Laurent
Executive Director

GBL/mb

CHARLES AT MOUNT ROYAL • BALTIMORE, MARYLAND 21201 • (301) 727-6350

Steven G. Davison,
Reporter
Governor's Commission on
Landlord-Tenant Law Revision
4819 N. 16th St.
Arlington, VA 22205

January 27, 1977

The Honorable Joseph Owens
State Delegate
Chairman, Judiciary Committee
House of Delegates
State of Maryland
Annapolis, MD 21404

Dear Chairman Owens:

I am enclosing 30 copies of this letter, and position statements with respect to House Bills 426, 427, 552, 553, 554, 658, 778 and 779 of the Governor's Commission on Landlord-Tenant Law Revision. These bills are departmental bills drafted and approved by the Commission, and have been referred to the Judiciary Committee.

I hope that these position statements will aid members of the Judiciary Committee in their consideration of these bills. If I can be of further assistance to the Committee prior to hearings on these bills, please contact me. My telephone at work is (301) 727-6350 X. 297 and at home is (703) 525-7669.

Thank you for your consideration of these position statements.

Sincerely yours,

Steven G. Davison

SGD/lv
cc: Members of Commission (with enclosures

BALTIMORE NEIGHBORHOODS, INC.

32 West 25th Street, Baltimore, Maryland 21218 • Area Code 301 - 243-6007

George B. Laurent
Executive Director

Donald J. Miller
Associate Director

June 21, 1977

Mr. William Sallow, Chairman
Governor's Landlord Tenant Laws
Study Commission
15 Leafydale Court
Baltimore, Maryland 21208

Dear Bill,

I enclose a copy of a letter to John Ruth. He has written to Steven Davidson to offically inquire whether the Governor's Commission considered S.B. 150 and voted against it.

I am greatly concerned about this situation. I would appreciate your looking into the matter and giving the Commission a report, if possible, at the next Commission meeting.

Sincerely yours,

George B. Laurent

George B. Laurent
Executive Director

GBL/mb

I am curious as to whether any other bills were "killed" in our name.

Tom Paddison

435-0400

BALTIMORE NEIGHBORHOODS, INC.

32 West 25th Street, Baltimore, Maryland 21218 • Area Code 301 - 243-6007

George B. Laurent
Executive Director

Donald J. Miller
Associate Director

June 21, 1977

Mr. John Ruth
Assistant Attorney General
Chief, Consumer Protection Division
One South Calvert Street
Baltimore, Maryland 21202

Dear Mr. Ruth,

Thank you for sending me a copy of your letter of June 16, 1977 concerning the Governor's veto of Senate Bill 150 which was sponsored by Senator Broadwater.

I do not have a copy of the Governor's veto message which, according to your letter, stated that S.B. 150 had been presented to the Landlord-Tenant Commission and that it was rejected by our Commission.

I have served on the Governor's Landlord-Tenant Laws Study Commission since its inception in 1970. To my knowledge we have never voted on a bill that did not originate in the Commission. We didn't even consider S.B. 150 let alone pass on it.

I am greatly disturbed by this situation and I will ask our chairman, William Sallow, to investigate the matter with the proper Governor's office.

I shall also contact Senator Broadwater and inform him that* our Commission is concerned we did not consider S.B. 150. I will ask Mr. Sallow to do likewise in the name of the Commission.

Sincerely yours,

George B. Laurent

George B. Laurent
Executive Director

GBL/mb

* as far as

BALTIMORE NEIGHBORHOODS, INC.

32 West 25th Street, Baltimore, Maryland 21218 • Area Code 301 - 243-6007

George B. Laurent
Executive Director

Donald J. Miller
Associate Director

July 7, 1977

Mr. William Sallow, Chairman
Governor's Landlord Tenant Laws
Study Commission
15 Leafydale Court
Baltimore, Maryland 21208

Dear Bill,

I am sorry that I did not attend the June 28th special meeting. I hadn't it on my calender and I completely forgot about it.

I am greatly disturbed that a reminder notice was not sent out concerning this most important meeting. I realize that a "double" notice was sent out early in June in which the 28th meeting was mentioned. However I do not consider this a proper notice for June 28th (if it is, why not send out a notice the first of the Commission year that there will be so many meetings during the year and be done with it?).

As I have indicated numerous times before, I am dealing with highly responsible people on the BNI Board and Executive Committee and with similar committees in a partnership we have with the real estate industry. Even though the meetings are held at regular times, if we don't send out notices half the people will overlook the meeting.

I feel that Commission members contribute a considerable amount of time to the Commission without compensation and that the least we can expect is a proper notice to every meeting.

I understand that we have funds to pay for such notices and for the secretarial time to do this. I would like the Commission to take steps to assure that notices are sent out.

May I suggest that a form postcard notice be mimeographed pre-stamped and pre-addressed with only the date blank. Therefor in an emergency these cards can be sent out with little trouble.

I have indicated before, and I indicate again, that BNI will be willing to help on this process if such is necessary.

I would like to have this matter discussed at the September meeting of the Commission. "Unfortunately" I shall be in Europe at that time but I hope that Bill Cox and Gerald Walsh will press the issue.

Sincerely yours,

George B Laurent

George B. Laurent
Executive Director

GBL/mb
cc: Steven Davidson
Bill Cox
Gerald Walsh

OFFICES OF

FRANCIS B BURCH
ATTORNEY GENERAL

ONF OSTER
GEORGE NILSON
DEPUTY ATTORNEYS GENERAL

JOHN N RUTH JR
CHIEF CONSUMER
PROTECTION DIVISION

ELLEN HAAS
CHAIRPERSON
CONSUMER COUNCIL

THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION · CONSUMER COUNCIL

131 EAST REDWOOD
BALTIMORE, MARYLAND 21202
301-383-3700

July 15, 1977

Mr. William Sallow
Landlord Tenant Commission
301 E. Preston Street
Baltimore, Maryland 21201

Re: Rental and Advertising Practices
Dr. RichardI. Cottom, Jr.
10-D Ginger View Court
Cockeysville, Maryland 21030

Dear Mr. Sallow:

At the last meeting, Dr. Richard Cottom, Jr. brought to the attention of the Consumer Council his complaint concerning the advertising and rental policy of the Cinnamon Ridge Apartments in Baltimore County. His letter detailing his position is attached.

In the hope that your commission has examined this problem, I have suggested Dr. Cottom contact you.

For the Council's information, I would also like to inquire if this type of practice has generated other complaints, if this is general industry practice, or if this is an isolated incident.

Any help you can give this consumer will be greatly appreciated.

Sincerely,

Caroline B. Stellmann

Caroline B. Stellmann
Secretary

CBS:fk
Attachment

cc: Dr. Richard I. Cottom, Jr.

Mr. Douglas Schmenner
665 Wickham Court
Baltimore, MD 21229

258

Dr. Robert I. Cottom, Jr.
10D Ginger View Court
Cockeysville, Maryland, 21030
May 16, 1977

Mrs. Caroline Stellmann, Secretary
Consumer Council
1 South Calvert Street
Baltimore, Maryland, 21202

Dear Mrs. Stellmann:

I would like to register a complaint with the Consumer Council regarding the rental policy of Cinnamon Ridge Apartments, Cockeysville. I have been living at Cinnamon Ridge since September 1976, at a monthly rental fee of two hundred seventy-five dollars. On Saturday, May 14, I received written notice of a rent increase of twenty dollars a month to begin in September 1977 along with instructions to agree to this arrangement by the end of this month or vacate the apartment when the current lease expires. Using a sort of circular reasoning, management has insisted that I initial an important change in my lease, also by the end of the month, a change that gives them this power of coercion. On that same weekend, May 14-15, the management advertised in the Sunpapers that new apartments at Cinnamon Ridge were being let for the old fee.

This apparently widespread practice of employing a dual rent structure is, as you can well see, patently unfair. In the past, it has been my experience that new tenants paid rent increases, too, that the rents of established tenants customarily lagged below those of newcomers, and that courtesy prevented such pay-up-or-get-out demands. Furthermore, the two weeks given me in which to ratify the increase provides very little opportunity to consider a move, a fact of which I am certain the management is well aware, and moving costs would probably surpass the $240 annual increase in rent. Under the circumstances, I do not think it is too much to say that my family together with other tenants have been trapped by the threat of the added expense and inconvenience of moving. The landlord is thus free to charge different rates for identical apartments without fear of any effective means of objection from his tenants.

Legal though it may be, the landlord's conduct in this instance has been less than honorable, and corrective changes in at least two areas are in order. First, this questionable practice ought to be done away with. If it cannot be, then at the very least it must be brought to the surface. Prospective tenants should know that they may receive sudden and arbitrary rent increases

once they are settled--that in effect they are being baited for the first year. Secondly, there must be no more coercion. Two weeks is an unreasonably short time in which to insist upon a decision to stay or leave; if a rent increase is involved with the signing of a new lease, a period of perhaps three months would be more appropriate. After all, it makes little sense to write a mutual ninety day notice period into most leases if the tenant is forced to make critical decisions in two weeks.

These problems, it seems to me, arise out of an eroding sense of courtesy and consideration in the landlord-tenant relationship. With more apartment units being built every day, there is bound to be a keener competition for tenants. In the consumer's interest, that competition, however keen, should be above board. Tenants should not be hooked, they should be convinced on merit. I urge you to push for a legislative remedy, one that will include a uniform rent structure. If I can assist, inform, testify, or in any other way enlighten the Council on this matter, consider me at your service.

Respectfully,

Robert I. Cottom, Jr.

P.S. Please acknowledge receipt of this letter, and, if you will, keep me informed of the Council's decisions.

CINNAMON RIDGE
apartments
P O BOX 394 ★ COCKEYSVILLE, MARYLAND 21030 ★ TELEPHONE 628-7400

44 of notice
rec'd May 14.

May 15, 1977

Mr. and Mrs. Robert I. Cottom, Jr.
10-D Ginger View Court
Cockeysville, Maryland 21030

Dear Mr. and Mrs. Cottom:

With regard to the Rental Agreement dated July 24, 1976 between Cinnamon Ridge Apartment Company, "Owner", and Robert I. Cottom, Jr. and Barbara G. Cottom (wife) "Resident", for apartment premises located at 10-D Ginger View Court (herelnafter called "the Rental Agreement"), this is to advise you that the current term of the Rental Agreement expires on August 31, 1977.

If you desire to remain as a Resident of the premises after the expiration of the current term, the following amendments will be made to the aforementioned Rental Agreement:

1. The name of the Owner of the premises shall be Cinnamon Ridge Apartment Company.

2. The term of the Rental Agreement shall be for (1) year, beginning on the 1st day of September, 19 77, and ending on the last day of August, 19 78.

3. The rent shall be the sum of $ 3540.00 per year, payable in equal monthly installments of $295.00 on the first day of each month, in advance, at the office of the Owner.

4. Paragraph 9 of the Rental Agreement shall be deleted, and the following shall be substituted in lieu thereof:

"9. Either party may terminate this Agreement at the expiration of the original term or of any renewal term by giving the other party written notice of termination at least ninety (90) days prior thereto; but in default of such notice, this Agreement shall be renewed for a further period of one (1) year and so on from period to period upon the same terms and conditions as herein contained until terminated by either party hereto giving to the other ninety (90) days written notice of termination prior to the expiration of the then current term. If either Owner or Resident shall have given notice of termination as aforesaid, Resident, during the period of three months prior to the expiration of the term, shall admit applicants to rent the apartment at all reasonable times. If more than one person shall be Resident hereunder, notice given by any one of them shall bind all.

Resident hereby acknowledges his agreement to this automatic renewal provision.

_____ Initial here _____"

If you desire to remain as a Resident at the premises, after expiration of the current term of the Rental Agreement, all terms and conditions contained in the Rental Agreement, subject to the amendments set forth herein, shall remain in full force and effect.

We sincerely hope that you will remain with us as a Resident, and will agree to the terms and conditions set forth in this letter, including the amendments to the Rental Agreement contained herein, by (i) signing the enclosed three (3) copies of this letter in the space provided below; (ii) initialling the change in Paragraph 9 to the Rental Agreement set forth above; and (iii) return two (2) executed and initialled copies to us on or before May 31, 1977, in the enclosed self-addressed envelope. Retain one initialled copy for your records.

In the event that the executed and initialled copies of this letter are not received by us at the address of Owner on or before May 31, 1977, then this letter shall constitute Owner's notice of termination of the Rental Agreement as of the expiration of its current term, and you shall be expected to vacate your apartment on or before August 31, 1977.

Very truly yours,

Marjorie J. Kurdle
For the Owner

MJK/dso

The undersigned Resident (s) agree to the terms and conditions of this letter and the amendments to the Rental Agreement herein contained by executing this letter this day of , 19 .

Resident Robert I. Cottom, Jr.

Resident Barbara G. Cottom

UNIVERSITY of BALTIMORE
CHARLES AT MOUNT ROYAL • BALTIMORE, MARYLAND 21201 • (301) 727-6350

SCHOOL OF LAW

Steven G. Davison
Reporter,
Governor's Commission on
Landlord-Tenant Law Revision
4819 N. 16th St.
Arlington, VA 22205

August 30, 1977

Thomas J. Peddicord
Assistant Legislative Officer
Executive Department
State of Maryland
State House
Annapolis, MD 21404

Dear Tom:

I am enclosing six bills approved by the Governor's Commission on Landlord-Tenant Law Revision at its meeting on June 28, 1977. The Commission may approve a maximum of six bills at its meeting on September 20, 1977; I will forward any bills approved at the September 20 meeting as soon as possible.

The first bill would provide tenants with remedies in addition to those under the rent escrow statute (Real Property Article, §8-211) when the landlord willfully or negligently denies a tenant essential services or ingress or egress. The bill, however, only provides remedies if the denial of such essentials is due to willful or negligent action by the landlord, while the applicability of the rent escrow statute depends solely upon the condition of the premises. This bill provides criminal penalties, similar to those of Baltimore City P.L.L. 9-15 and Baltimore County Code, Title 16, Landlord & Tenant, Sections 4 and 5, for a landlord's willful denial of essentials to a tenant. The civil remedies provided under Section (A)(1)(A) of the bill are based upon Section 4.104 of the Uniform Residential Landlord and Tenant Act; the civil remedies provided under Section (A)(1)(B) of the bill are based upon Section 4.106 of the Uniform Residential Landlord and Tenant Act. The civil remedies under subsection (A)(1)(A) of the bill are not available to a tenant unless he gives written notice of the breach to the landlord by certified mail.

The second bill approved by the Commission at its June 28 meeting would amend Article 43, §427A, to provide that unpaid water and sewer service charges owed to political subdivisions do not constitute a first lien on a single family home which is rented to a tenant who has agreed under a written lease or rental agreement to pay the unpaid water and sewer service charges and all penalties

directly to the political subdivision. The owner would still be directly liable to the political subdivision for payment of water or sewer service charges, but could legally define water and sewer service charges as rent, and utilize the summary remedies of §8-401 of the Real Property Article if the tenant fails to timely reimburse the landlord for the cost of water and sewer service charges.

The third bill approved by the Commission at its June 28 meeting would provide basic definitions of "landlord", "tenant", "dwelling unit", "premises", and other terms for purposes of Title 8 of the Real Property Article. The definitions in the bill are based upon Sections 1.202 and 1.301 of the Uniform Residential Landlord and Tenant Act. The bill is not intended to effect any substantive changes in existing Maryland landlord-tenant law. The bill more specifically defines, under Section 8-201, the type of property considered to be residential rental property subject to Subtitle 2 of Title 8 of the Real Property Article. The definition of "tenant" would follow existing common law by excluding roomers from the definition of tenants. Existing sections of Title 8 of the Real Property Article would be amended by the bill to delete unnecessary language that would be included within the scope of the definitions in the bill.

The Commission also voted to re-submit HB 426 and HB 427 of the 1977 Regular Session. I am enclosing copies of these two bills. HB 426 would amend Real Property Article §8-402(b)(4) to require a landlord to give a month's notice to quit to a week-to-week tenant. The bill would also amend §8-402(b)(4) to provide that a landlord has no duty to give a trespasser or squatter notice to quit under §8-402. HB 427 would amend the security deposit statute, Real Property Article §8-203, to provide that a landlord has no duty to provide a written list of damages or to return a security deposit to a tenant who has abandoned the premises or who has been evicted for breach of the lease, unless such a tenant gives the landlord written notice of the tenant's new address.

Finally, the Commission is forwarding a bill to provide a definition of "rent" for purposes of Real Property Article §8-401. This bill amends HB 552 of the 1977 Regular Session. Unlike HB 552, the enclosed bill would define rent under §8-401 to include late charges and damages to the premises. Defining late charges as rent under §8-401 would resolve a question that was left unanswered by the Maryland Court of Appeals in University Plaza Shopping Center v. Garcia, 367 A.2d 957 (1977). The bill otherwise follows the common law definition of rent set forth in the Garcia decision. The bill, like HB 552, also would follow the common law by authorizing a court to set the amount of rent if the landlord and tenant have failed to do so.

If I can provide any further information with respect to these bills, please contact me. My home phone number is (703) 525-7669; the work number is (301) 727-6350 X. 297. Thank you for your attention to these bills.

Sincerely yours,

Steven Davison

Steven Davison

cc: Members of Governor's Commission on Landlord-Tenant Law Revision.

January 27, 1977

POSITION OF GOVERNOR'S COMMISSION

ON LANDLORD - TENANT LAW REVISION

ON

H.B. 552

H.B. 552 would amend Section 8-401 (Rent Due and Payable) of the Real Property Article by adding a new Section 8-401(g) to define "rent" for purposes of summary rent due and payable suits involving residential property. The effect of H.B. 552 would be to prohibit a landlord from using the summary procedures of Section 8-401 to collect charges for late payment of rent, damages caused by breach of the lease, damages to the premises, or attorney's fees; or to summarily evict a tenant under Section 8-401 for non-payment of charges for late payment of rent, damages caused by breach of the lease, damages to the premises, or attorney's fees. Section 8-401 does not prohibit landlords from collecting such amounts or from evicting tenants for failure to pay such amounts. H.B. 552, which applied the common law definition of rent, makes it clear that charges such as late fees, damages, or attorney's fees cannot be recovered in a suit under Section 8-401 or be used as a basis for eviction by a landlord under Section 8-401.

H.B. 552 would continue to permit a landlord to eject a tenant in a common law ejectment action if the tenant's failure to pay late fees, damages or attorney's fees constituted a material breach of the lease, and to recover late fees, damages, and attorney's fees in a normal civil action. H.B. 552 2ould also codify the common law rule that a court will set rent at a reasonable amount where landlord and tenant have not agreed on the amount of rent.

Steven G. Davison,
Reporter
Governor's Commission on
Landlord-Tenant Law Revision

March 1, 1977

H.B. 552

Definition of Rent

In University Plaza Shopping Center v. Garcia, 367 A. 2d 957 (Court of Appeals 1977), the Court of Appeals construed the definition of "rent" within the meaning of Real Property Article §8-401. The court noted that although the legislature could define "rent" for purposes of §8-401, it had not done so; consequently, the court had to resort to the common law and case law. 367 A.2d at 960.

In the Garcia case, which involved a commercial lease, the court held that the costs borne by the landlord in adopting the premises for the tenant's benefit, which costs were defined as "rent" by the lease, were "rent" within the meaning of §8-401. Consequently, the landlord could bring a summary ejectment suit under §8-401 to recover such charges and possession when they were not paid by the tenant.

The Court of Appeals held that "rent", within the contemplation of §8-401, is the "compensation paid by a tenant" for the "use, possession and enjoyment of the land." 367 A.2d at 960. H.B. 552 defines "rent" in the same manner.

The court in Garcia held that in a commercial lease situation they would determine whether charges going to the tenant's use, possession and enjoyment of rental commercial premises were "rent" within the meaning of §8-401 by determining the parties' actual intentions as expressed in the lease. The court noted that they were restricting this holding to leases for commercial purposes as opposed to residential purposes. (H.B. 552 would apply only to residential leases). The court implied in dicta, however, that it might be less likely to interpret a residential lease as liberally, because of the possibility of "successful over-reaching on the part of the landlord and of coerced adhesion on the part of the tenant, so that the final agreement would [not] fairly represent the actual intention of the parties." 367 A.2d at 961.

The court in Garcia noted that they had previously held that lease provisions requiring a tenant to pay taxes on the land, water charges, and fire insurance premiums were agreements to pay rent. H.B. 552 would not change these holdings. The court in Garcia declined, however, to decide whether late charges and attorneys fees may be rent within the contemplation of §8-401, although they noted that one circuit court judge had held that such charges were not rent. 367 A.2d at 959-960 footnote 4. H.B. 552 would follow this circuit court holding.

In Garcia, the court stated that the "matter is best left for determination on a case to case basis, depending upon the provisions of the lease, express or implied, verbal or written, and, where appropriate, the attendant circumstances." 367 A.2d at 961. H.B. 552, except for specifically excluding certain charges from the definition of "rent", would allow the courts to continue to follow this approach.

Steven G. Davison
Reporter, Governor's
Commission on
Landlord-Tenant Law Revision

A BILL ENTITLED

AN ACT concerning

Real Property - Failure to Pay Rent

FOR the purpose of defining the term "rent" for purposes of a landlord's rights upon a failure of a tenant to pay the rent under a residential lease; and requiring the payment of a reasonable sum in rent if there is no agreement as to the amount of rent.

BY adding to

Article - Real Property
Section 8-401(g)
Annotated Code of Maryland
(1974 Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That new Section 8-401(g) be and it is hereby added to Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1977 Supplement) to read as follows:

Article - Real Property

8-401.

(G)(1) AS USED IN THIS SECTION, AND AS IT APPLIES TO LEASES FOR RESIDENTIAL PROPERTY, THE WORD "RENT" MEANS A FIXED AMOUNT OF CONSIDERATION, WHETHER IN MONEY, SERVICES, LABOR, OR SPECIFIC PROPERTY OR CHATTELS, AGREED UPON BY THE LANDLORD AND TENANT TO BE PAID BY THE TENANT AS COMPENSATION FOR THE POSSESSION, USE, OCCUPATION, AND ENJOYMENT OF THE LEASED PREMISES. THE TERM INCLUDES CHARGES FOR THE LATE PAYMENT OF RENT AND DAMAGES TO THE LEASED PREMISES CAUSED BY A BREACH OF THE LEASE OR BY ACTION OF THE TENANT OF HIS FAMILY, AGENT, EMPLOYEE, SOCIAL GUEST, INVITEE, OR LICENSEE.

(2) IF THERE IS NO AGREEMENT AS TO THE AMOUNT OF RENT, THE TENANT SHALL PAY A REASONABLE SUM IN RENT.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1978.

GOOD CAUSE EVICTION
(HOLDING OVER) 8-402

MARYPIRG

MARYLAND PUBLIC INTEREST RESEARCH GROUP, INC.

500 W. Baltimore Street
University of Maryland
School of Law
Baltimore, Maryland 21201

January 10, 1977

The Maryland Governor's Commission
on Landlord-Tenant Law Changes
University of Baltimore
N. Charles and Mount Royal Streets
Baltimore, Maryland 21201

Dear Commission Members:

Enclosed is a copy of MaryPIRG's revised Good Cause Eviction bill. Our draft differs from the Commission's draft in several respects:

1) Three new good causes for eviction have been added to the PIRG bill as a result or research in New Jersey. They are paragraphs (c), (d) and (e) of Subsection (1). Paragraph (c) permits an eviction where a tenancy is conditioned on the employment of the tenant by the landlord and the employment has been terminated. This provision was added to the New Jersey Act early last year. Paragraph (d) permits an eviction where the tenant has sent a written notice to the landlord that the tenant intends to vacate the premises at a certain date but stays on after that date anyway. A tenant who "holds over" after the date he has stated he will leave can cause a serious problem when the landlord has already leased the apartment out to a replacement tenant. Although paragraph (d) is not part of the New Jersey Good Cause act, it is a good cause for eviction in New Jersey Chancery (Equity) Court. Paragraph (e) permits an eviction in certain instances where the tenant has subleased the apartment without the landlord's permission. In such a case the landlord confronts a sublessee who is a stranger.

2) We believe that it is unnecessary to create an entirely new section of landlord-tenant law as the Commission's bill does. Subsection (E) of the Commission's bill is duplicative of Section 8-402's court procedure. Accordingly we have fitted the PIRG bill into 8-402.

3) The PIRG bill does not contain a definition section as does Subsection (A) of the Commission's bill.

4) Paragraphs (1) (h) and (1) do not specify a seven day notice as do Paragraphs (B) (4) and (5) of the Commission's bill.

5) Paragraph (B) (5) of the Commission's bill is rewritten to eliminate vagueness.

6) The New Jersey act permits an eviction for habitual late payment of rent. "habitual" means that the tenant pays the rent late almost every time. This is too high a standard for a good cause eviction. However the Commission's bill, section (B)(9), permit an eviction after only three latenesses over five days during a year. We believe three latenesses are too few because it would subject a very high percentage of tenants to eviction. As a compromise figure we chose five latenesses over five days in a year. A landlord does not lose interest on his rent when he collects a late fee. Therefore the PIRG bill does not count a lateness where the landlord collects a late fee. We also believe that before a lateness may be counted for eviction, the lateness must be without legal justification. The lateness section is paragraph (1) (m) of the PIRG bill.

Sincerely yours,

David Norken

David Norken
Chairperson
Law School Chapter
MaryPIRG

8-403 (A)

PRINCE GEORGE'S COUNTY

Hampton Mall,
9171 Central Avenue,
Capitol Heights, Maryland 20027
(301) 336-8900

DEPARTMENT OF HUMAN RESOURCES & COMMUNITY DEVELOPMENT
HOUSING AND COMMUNITY DEVELOPMENT ADMINISTRATION

February 6, 1975

Delegate Nathaniel Exum
State Office Building
Annapolis, Maryland

Dear Delegate Exum:

Please find enclosed a suggested amendment which should allow landlords to exercise their right to protect properties and other tenants in a more timely manner than now provided.

The thirty (30) calendar days is the point at issue. The courts interpret one month's notice to mean one full calendar month, i.e., if a notice to vacate for lease violations is sent today, February 6, 1975, the notice must give March 31, 1975 (one full calendar month) as the date to vacate the unit. If the tenant refuses to move, it would be mid-April before the case could be heard in court. In proposed 8-403(A), if one of the parties fail to appear, another six- or ten-day continuance will be given by the court. At the hearing, the court may give another week or two before execution of judgment; this could not be until the end of April. If the tenant still fails to move, the order is sent to the Sheriff's office where another week or ten-day delay in scheduling may be met.

A troublesome tenant then, by using present procedures, could sit the entire episode out for at least three months.

If the eviction is based on harassment of other tenants by the person being evicted, the landlord often finds that the good tenants have found quarters elsewhere, and he soon finds it difficult to rent units because of the worsening reputation of his development.

Any consideration which could be shown on these suggestions would certainly be greatly appreciated.

Sincerely,

Charles J. Ross
Director of Management

Att.

Could be inserted as (B) 8-403 at line 185, and change present (B) to (C) and change present lines 188-189 to read "Subsections (A) or (B) or that the term has expired...."

If (I) any interest in property is leased for a definite term or at will, and (II) the landlord desires to repossess the property for tenant-cuased physical damage to the property or tenant actions or failures to act in accordance with lease provisions to protect the health, safety, welfare or otherwise peaceful use of lease holds by other tenant(s) or landlord in adjoining property(ies) and (III) the landlord gives written notice to vacate of thirty (30) calendar days from the date of mailing or posting or delivery by hand of such notice to vacate for such violations of the lease and (IV) the person notified refuses to comply, the landlord may make a written complaint to the District Court of the County where the property is located.

December 7, 1976

TO: Members of the New Jersey Property Owners Association

FROM: Maryland Governor's Commission on Landlord-Tenant Law Revision

SUBJECT: Research Questionnaires on New Jersey Good Cause Eviction Statute

The Maryland Governor's Commission on Landlord-Tenant Law Revision is a department of the Executive Department of the State of Maryland. It was authorized by the Maryland General Assembly to investigate problems in landlord-tenant law governing residential rental property, and to propose legislation to correct problems in residential landlord-tenant law. There are 19 members on the Commission, who are appointed by the Governor of Maryland. 8 members are tenant representatives, 8 members are landlord representatives, and 3 members of the Commission are neutral in orientation.

At the request of tenant members of the Commission, the Commission is studying a proposed good cause eviction bill that has been modeled after the New Jersey good cause eviction statute. In order to determine the potential effects upon landlord-tenant relationships and the residential rental housing supply in Maryland if Maryland enacted a statute similar to the New Jersey good cause eviction statute, the Commission, in conjunction with the Maryland Public Interest Research Group, is conducting a research project to determine the effects of the New Jersey good cause eviction statute. As part of this research project, law students from the University of Baltimore and University of Maryland Schools of Law are interviewing New Jersey landlords, tenants, judges, court administrators, and legal aid attorneys and staff, to determine their experiences with and opinion of the New Jersey good cause eviction statute.

In order to determine the economic effects of the statute upon landlords, the effects upon the residential rental housing supply in New Jersey, and the practical effects of the New Jersey good cause eviction statute upon landlords ability to evict troublesome tenants, the Commission has prepared the enclosed set of questions that seek your experiences with and opinions of the New Jersey good cause eviction statute. We would appreciate your answering these questions in as much detail as possible. These questionnaires may be answered anonymously, although we would welcome the opportunity to contact you at a later date if more information is desired. Copies of your answere to the questionnaire will be given to the Property Owners' Association.

On behalf of the Maryland Governor's Commission on Landlord-Tenant Law Revision, I thank you for your support of our research project by answering and returning the enclosed questionnaires.

Steven G. Davison
Assistant Professor of Law
Reporter, Maryland Governor's
Commission on Landlord-Tenant
Law Revision

SGD/lv
cc: Members of the Commission

ADMINISTRATIVE OFFICE OF THE COURTS

STATE HOUSE ANNEX
TRENTON, NEW JERSEY 08625

HUR J. SIMPSON, JR.
DGE, SUPERIOR COURT
PELLATE DIVISION
TING ADMINISTRATIVE DIRECTOR
THE COURTS
VIN H. STERN
RECTOR OF CRIMINAL PRACTICE

COLETTE A. COOLBAUGH
CHIEF
CIVIL COURT SERVICES
609-292-8470

December 9, 1976

Steven G. Davison
Reporter
Maryland Governor's Commission
on Landlord/Tenant Law Revision
4819 N. 16th Street
Arlington, VA 22205

RE: MARYLAND GOVERNOR'S COMMISSION ON LANDLORD/TENANT LAW REVISION.

Dear Mr. Davison:

In response to your request for personal interviews with members of the New Jersey Judiciary concerning your study commission on Landlord/Tenant law revision in Maryland, I regret to advise you that we are not able to grant permission for these interviews.

I have, however, reviewed your interview questions and believe that similar questions presented to the Chairman and other members of the New Jersey State Bar Association's Committee on Landlord/Tenant Law would be quite effective in giving you the experience of the trial bar with our New Jersey statute. I am, therefore, enclosing the pertinent section of the N.J. State Bar Directory which includes the names and addresses of the Landlord/Tenant Law Committee members.

If I can be of any further service, please do not hesitate to communicate with me.

Very truly yours,

Colette A. Coolbaugh

Colette A. Coolbaugh
Chief, Civil Court Services

CAC:pam.
Enclosure.

LANDLORD-TENANT LAW

BARTHOLOMEW A. SHEEHAN, JR., CHAIRMAN, (201-277-0388), 387 Springfield Avenue, Summit 07901

Robert B. Atkin, P. O. Box 2925, Paterson 07509
Jo Becker, 80 Garrison Place, East Windsor 08520
Noah M. Burstein, 119 Elmwood Terrace, Elmwood Park 07407

(continued on page 38)

Hilton Davis, 60 Park Place, Suite 916, Newark 07102
Louis R. DiLieto, 640 Mattison Avenue, Asbury Park 07712
Dennis A. Estis, 60 Park Place, Newark 07102
Robert S. Greenbaum, 60 Park Place, Newark 07102
Fred R. Gruen, 1150 West Chestnut Street, Union 07083
Salvatore Intintola, 400 Bloomfield Avenue, Newark 07107
Samuel Mandel, Glen Oaks Professional Building, 1405 Chews Landing, Clementon Road, Laurel Springs 08021
Aldan O. Markson, 512 Boulevard, Kenilworth 07033
Phillip L. Paley, 141 Main Street, South River 08882
Richard J. Pilch, R.D. 2, Box 130, Stockton 08559
John T. Simmons, Jr., 31 Runnymede Road, Chatham 07928
Philip Steinfeld, 213 Lake Street, Newark 07104
Peter W. Till, 362 Cedar Lane, Teaneck 07666
Patricia A. Thornton, 309 Rhode Island Avenue, East Orange 07018

Martin J. Brady, Ex-Officio, 46 Main Street, Sparta 07871

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION-ESSEX COUNTY
DOCKET NO.
March 26, 1975

CLARIDGE HOUSE TENANTS' ASSOCIATION et al,

Plaintiff,

v.

CLARIDGE ESTATES LTD.,

Defendant.

On Motion
DECISION

Before: HONORABLE IRWIN I. KIMMELMAN, J.S.C.

Appearances:

WALTER R. COHN, ESQ.,
For the Plaintiffs.

HERBERT EZOR, ESQ.,
For the Defendants.

EVELYN L. SCHWEITZER, C.S.R.
OFFICIAL COURT REPORTER.

THE COURT: Gentlemen, in this matter, Claridge House Tenants' Association, Inc., and its president filed suit against Claridge Estates, a limited partnership, seeking to restrain the defendant as landlord of a certain high rise luxury apartment building in Verona, New Jersey, from evicting one or more tenants by reason of the tenants' refusal to execute renewal leases upon the termination of thepreceding lease. Apparently, according to the complaint the tenants' refusal to execute the renewal leases was based upon an assertion that the terms tendered in the renewal lease were unreasonable, not in compliance with the rent leveling ordinance of the Borough of Verona, and sought to raise charges for an outdoor swimming pool, laundry services and parking services to the status of rents, even though such additional charges were not denominated as rent by virtue of the terms of the lease.

In addition, the landlord has sought to increase rentals by appropriate percentages as allowed by the rent leveling board of the Borough of Verona.

The tenants' association seeks to litigate in this court the issue as to whether the renewal

leases tendered by the landlord are reasonable. In that regard the Court would have to conduct a hearing as to the relative situations of the parties, and the facts involved to determine the issue of reasonableness. It is urged on behalf of the tenants' association that until such a hearing can be had the landlord ought to be restrained from tendering renewal leases and from threatening to evict tenants in the event they did not sign the renewal lease.

The tenants' association indicates before this Court that pending any court hearing the tenants will continue to pay all the charges required, even the increases, without prejudice to their ultimate rights, except for the fact that they do not want to sign their renewal lease, and in that context they contend that the landlord will not be harmed.

On the other hand, the landlord, while acknowledging that it will suffer no direct financial harm if the tenants continue to pay the increased charges, nevertheless urges that the landlord is entitled to have a written release with respect to each and every tenant, and that tenants under a written lease which has expired do not have

the legal right to convert their tenancy into a month-to-month tenancy, or a tenancy at will, at sufferance or whatever.

Now in recent years, gentlemen, there has been enacted by the Legislature various laws, all for the purposes of aiding tenants, because there existed and still exists in this state a severe housing shortage. That housing shortage had the effect of putting tenants at the mercy of "unscrupulous" landlords. That is not to imply in this case or in any otherparticular case that the landlord is or has been unscrupulous. All of those laws enacted for the benefit of tenants necessarily were in derogation of the common law. While the laws were enacted pursuant to public policy of the state, those laws being in derogation of the common law must be strictly construed with a view to the fact that they nevertheless have a remedial purpose behind them.

It was always the common law of this state that a landlord was entitled to a written lease. I see nothing in the provisions of Chapter 49 of the laws of 1944--

MR. COHN: '74.

THE COURT: Of 1974, which deprive the

landlord of the right to have a written lease with his tenant. There is nothing in the laws of 1974, Chapter 49, specifically Section 21, which would indicate that a tenant has the right to refuse to execute a renewal lease tendered to him. Of course the tenant has a right to contest the reasonableness of the terms.

Now this Court is being asked to continue a temporary restraint into a preliminary restraint to be in effect until such time as there can be a final hearing. As I indicated to you gentlemen during the course of the argument, there is no weapon in the arsenal of remedies at the hands of an equity judge more potent or powerful than an injunction, and because of that there is no weapon which should be used more delicately or more sparingly.

Where the issues are genuinely in dispute, where a Court cannot determine at the preliminary stage who will prevail ultimately, the Court should hesitate in granting such an extraordinary remedy. The one major exception is where it is necessary to maintain the status quo pending a final hearing, but the Court will grant a preliminary injunction.

With those legal principles in mind, I must

decide whether there will be irreparable harm suffered by the tenants in the event I refuse any restraint pending final hearing.

In my judgment, gentlemen, there will be no irreparable harm suffered by any tenant should the restraints in this case be dissolved. In point of fact, I will not continue the restraints temporarily issued by this Court on March 14, 1975.

I cite as authority the case of Brookchester Tenants v. Brunetti Apartments, 123 N.J.Sup., p. 341, decided by the Appellate Division in 1973, which case has been referred to during oral argument, and in addition the practical factual situation appears as follows:

Number one, the tenants' association agrees that the tenants will pay the increased charges without prejudice to their rights pending final hearing. Therefore, there is no harm to them. They have already agreed to pay the increased charges and obviously there is no harm to the landlord.

Number two, if I do not continue the restraint the tenants will be tendered leases which they have the right to sign or not to sign. If they refuse to sign, certain consequences may follow. However, I find no intent in the enactment of Chapter 49

of the laws of 1974, to deprive the landlord of his common law right to a written lease.

While a tenant has commitments, while a tenant needs living quarters, so, too, a landlord has commitments. He has mortgage commitments and other expenses and a landlord because of that is entitled to know that there will be a certain amount of continuity with respect to the tenants. He is not to hazard a situation where the tenants are month-to-month, or the tenants can leave on 30 days' notice. Tenants can't require a landlord to accept that fact if the landlord does not want to accept that fact. Certain landlords live with month-to-month tenancies, others do not, but the choice is the landlord's and not the tenants' to force on the landlord.

Number three, assuming a tenant executes a lease for a year and pays the increased charges and during that time there is a final court hearing which determines that the lease was unreasonable, then pursuant to that hearing the tenant has a right to terminate his lease if the tenant wants, so the tenant will not be bound by the full term of one year, and the tenant will have suffered no harm. Likewise, if the rental charge was

unreasonable, the landlord will refund the same. There is no charge here that the landlord is going to be insolvent and will be unable to meet any judgment of that nature.

Or, number four, supposing on final hearing the Court rules that the lease tendered was reasonable, and that the rental charges were reasonable, then likewise there is no harm to the tenants because they only would have done that which the Court ultimately found to be correct.

Consequently, gentlemen, the preliminary restraints in this case will be dissolved.

MR. COHN: Would your Honor order that any lease presented does not contain a provision such as Paragraph 30th, which permits the landlord to raise the leased rent during the term without the tenants being permitted to vitiate and move out? What your Honor has said in essence, I am not arguing your decision, but what you said in essence is the tenant now has to sign a one-year lease with a permission on the part of the landlord to increase during that term. Now if the--

THE COURT: Does the rent leveling ordinance cover that?

MR. EZOR: Yes.

THE COURT: The application will have to be made to the rent leveling board. That's an administrative agency, and the tenants' association, as any other person in this state, must exhaust their administrative remedies before they apply to a court. The Court is only a last resort. There are procedures set up to protect these tenants, and they will just have to follow those procedures. I am not going to restrain the landlord in resorting to whatever rights he has.

MR. COHN: Even if we resort to the administrative remedy, we still have the terms we are bound to, if the lease, for example, by a court order, said if the increase in rents--

THE COURT: You know, Mr. Cohn, I asked you earlier whether there were any tenants who objected to the one-year term because it was too long, and you said to me, no, they want maybe two- or three-year terms. So now you are arguing at cross purposes.

MR. COHN: No, sir. My answer still stands. But with respect to the term we did not discuss the terms which included the right of the landlord to increase.

THE COURT: You are telling me every tenant would like a term for a year or even longer. They are

going to get that, at least for a year. On the final hearing the Court will determine whether it's unreasonable to hold a tenant for a year or whether the tenant should be given an opportunity for leases of two years, three years or whatever.

MR. COHN: All right, sir.

THE COURT: Yes, Mr. Ezor?

MR. EZOR: Is my motion carried until the next motion day?

THE COURT: Your motion was filed out of time.

MR. EZOR: I agree.

THE COURT: Mr. Cohn certainly has an opportunity to answer it. That will be continued until April 18.

MR. EZOR: Thank you.

THE COURT: All right.

(End of hearing.)

I hereby certify the foregoing to be a true and accurate transcript of a portion of the stenographic notes taken by me in this matter on the date hereinbefore indicated.

EVELYN L. SCHWEITZER, C.S.R.
OFFICIAL COURT REPORTER 4/8/75.

Steven G. Davison
Reporter, Governor's
Commission on Landlord-
Tenant Law Revision
3600 South 14th Street
Arlington, Virginia 22204

September 2, 1975

Charles J. Ross
Director of Management
Department of Human Resources and
Community Development
Housing and Community Development
Administration
Prince Georges County
Hampton Mall
9171 Central Avenue
Capitol Heights, Maryland 20027

Dear Mr. Ross:

I am writing you in reference to your letter of February 6, 1975, to Delegate Nathaniel Exum, with respect to eviction of tenants.

The Governor's Commission on Landlord-Tenant Law Revision has considered your letter in conjunction with drafting a bill to amend Real Property Article §8-402 (Holding Over). The Commission's bill, which has been forwarded to the governor's office, proposes deleting the last sentence of §8-402(b)(1), which directs the court to grant a continuance if a party has failed to appear. The Commission shared your view that this provision rewards dilatory action by permitting parties to gain a delay by failing to appear. The present law hurts both tenants and landlords when the opposing party fails to appear.

The delays occasioned by the giving of notice to the tenant to vacate for breach of lease covenants are presently being considered by the Commission in its consideration of a so-called "good cause eviction" bill. This will has been on the Commission's agenda for the past few months.

The other delays mentioned in your letter relate either to matters within the discretion of the court or to matters dealing with administration and management of the courts.

On behalf of the Commission, I thank you for your interest and suggestions in this matter. If I can be of any further help to you in this matter, please contact me.

Sincerely yours,

Steven G. Davison

Steven G. Davison
Reporter

SGD/eg

cc: Delegate Nathaniel Exum
William Sallow, Chairman

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant - Holding Over Beyond Termination

FOR the purpose of repealing provisions authorizing a landlord to recover damages from a holdover tenant in a summary ejectment proceeding; repealing provisions limiting the maximum amount of damages that a landlord may recover from a holdover tenant; and providing that a landlord may recover all actual damages from a holdover tenant in a civil action separate from the summary ejectment proceeding.

BY repealing

Article - Real Property
Section 8-402(a)
Annotated Code of Maryland
(1974 Volume and 1976 Supplement)

BY adding to

Article - Real Property
Section 8-402(a)
Annotated Code of Maryland
(1974 Volume and 1976 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 8-402(a) of Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1976 Supplement), be and it is hereby repealed.

SECTION 2. AND BE IT FURTHER ENACTED, That new Section 8-402(a) be and it is hereby added to Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1976 Supplement) to read as follows:

Article - Real Property

§8-402

(A) LIABILITY OF TENANT.--(1) A TENANT UNDER ANY LEASE, OR A SUBTENANT, ASSIGNEE, OR PERSON HOLDING UNDER ANY OF THEM, WHO UNLAWFULLY HOLDS OVER BEYOND TERMINATION OF THE LEASE, IS LIABLE TO THE LANDLORD FOR ALL OF THE LAND'S ACTUAL DAMAGES CAUSED BY THE HOLDING OVER.

(2) THE DAMAGES AWARDED TO A LANDLORD AGAINST A TENANT, SUBTENANT, ASSIGNEE, OR PERSON HOLDING UNDER THEM, MAY NOT BE LESS THAN THE APPORTIONED RENT FOR THE PERIOD OF HOLDOVER AT THE RENT RATE UNDER THE LEASE.

(3) ANY ACTION TO RECOVER DAMAGES UNDER THIS SUBSECTION MUST BE BROUGHT BY SUIT SEPARATE FROM THE REMOVAL PROCEEDING UNDER SECTION 8-402(B), IN ANY COURT HAVING JURISDICTION OVER THE AMOUNT IN CONTROVERSY.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1977.

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant - Holding Over Beyond Termination

FOR the purpose of repealing provisions limiting the amount of damages to which a landlord is entitled to recover against a holdover tenant to an amount less than the actual damages caused by the holdover tenant; and providing that a landlord may recover all actual damages from a holdover tenant.

BY repealing

Article - Real Property
Section 8-402(a)
Annotated Code of Maryland
(1974 Volume and 1976 Supplement)

BY adding to

Article - Real Property
Section 8-402(a)
Annotated Code of Maryland
(1974 Volume and 1976 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 8-402(a) of Article § Real Property, of the Annotated Code of Maryland (1974 Volume and 1976 Supplement), be and it is hereby repealed.

SECTION 2. AND BE IT FURTHER EANCTED, That new Section 8-402(a) be and it is hereby added to Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1976 Supplement) to read as follows:

Article - Real Property

8-402.

(A)LIABILITY OF TENANT.--(1) A TENANT UNDER ANY LEASE, OR A SUBTENANT, ASSIGNEE, OR PERSON HOLDING UNDER ANY OF THEM, WHO UNLAWFULLY HOLDS OVER BEYOND TERMINATION OF THE LEASE, IS LIABLE TO THE LANDLORD FOR ALL OF THE LANDLORD'S ACTUAL DAMAGES CAUSED BY THE HOLDING OVER.

(2) THE DAMAGES AWARDED TO A LANDLORD AGAINST A TENANT, SUBTENANT, ASSIGNEE, OR PERSON HOLDING UNDER THEM, MAY NOT BE LESS THAN THE APPORTIONED RENT FOR THE PERIOD OF HOLDOVER AT THE RENT RATE UNDER THE LEASE.

(3) ANY ACTION TO RECOVER DAMAGES UNDER THIS SUBSECTION MAY BE BROUGHT BY SUIT SEPARATE FROM THE EVICTION OR REMOVAL PROCEEDING, OR IN THE SAME ACTION, AND IN ANY COURT HAVING JURISDICTION OVER THE AMOUNT IN CONTROVERSY.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1977.

(AREA CODE 301)
539-2370
539-4786
539-4787

WILLIAM B. DAVIDSON
STUART R. WILCOX
ATTORNEYS AT LAW
11 EAST FAYETTE STREET
BALTIMORE, MARYLAND 21202

April 8, 1975

(HB 686) - PR Geo, Balto
HB 697 - K

The Hon. Edgar P. Silver, Chairman
Governor's Commission on
Landlord-Tenant Law Revision
16 Francis Street
Annapolis, Maryland

Dear Judge Silver:

I am aware of the fact that your Commission is considering the advisability of adopting a Good Cause Eviction Bill for recommendation to the 1976 Session of the Maryland General Assembly. As a representative of the interests of various property owners in Baltimore City and Baltimore County, I have had occasion to review the February 5, 1975 draft of this Bill and trust that you will permit me to make the following comments and recommendations for the consideration of your Commission:

1. The definition of Landlord should be broadened to make it clear that owners and/or operators of single-family houses, two-family houses, and multi-family houses are intended to be included, if that is the Commission's intent.

2. The Commission should consider whether the Bill is only intended to control residential tenancies; as it is now drawn, it is my belief that it would control commercial and industrial tenants as well as residential tenants - particularly, in view of the definition of Tenant and the definition of Premises in the Definition Section.

3. In Paragraph B, after the word "premises," the following words should be deleted: "and no Landlord may fail to renew any lease." It is elemental that as the Tenant is only bound for the term of the lease and any renewal option period, so also should a Landlord only be obligated for the term of the lease and/or any renewal option period.

4. After the word "rent" in Paragraph B-1, the words "and other lawful charges" should be added.

5. Paragraph B-3 should be revised to read as follows: "The Tenant, his family or his invitees have wilfully or by reason of ordinary negligence caused or allowed destruction, damage, or injury to the premises, or to common areas for the use of all tenants.

(AREA CODE 301)
539-2370
539-4786
539-4787

WILLIAM B. DAVIDSON
STUART R. WILCOX
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11 EAST FAYETTE STREET
BALTIMORE, MARYLAND 21202

The Hon. Edgar P. Silver, (Cont'd.) April 8, 1975

6. Paragraph B-2 should be revised to read as follows: "The Tenant is committing or permitting a nuisance on the premises or is using or permitting the use of the dwelling unit for immoral or illegal purposes, or for other than living or dwelling purposes.

7. Paragraph B-4 should be revised to read as follows: "The Tenant or members of his family or his invitees have continued after five (5) days written notice to cease to violate or breach any of the obligations of his tenancy or any of the Landlord's reasonable and material rules and regulations governing conduct within and out of the said premises, providing such rules and regulations have been accepted by the Tenant by incorporation as part of the lease agreement.

8. In Paragraph B-5, five (5) days written notice to cease should be provided and the word "substantially" should be deleted.

9. In Paragraph B-6, after the words "County housing" add the words "or health." In the same paragraph, delete all of the language after the word "Tenants" in the 4th Line. It does not seem fair to require an owner to justify the economic feasibility of boarding up the property rather than eliminating the violations. Put another way, it seems highly improbable that an owner would board up or demolish the property unless it was economically feasible to do so.

10. With respect to Paragraph B-7, I don't know how it is possible for an owner to show that he is "permanently" retiring the building from the rental housing market. How would this be done, other than by destruction of the building or by the recordation of a restrictive covenant?

11. In Paragraph B-9, I would think that the word "habitually" should be defined. Possibly, reference should be made to continuous or repeated delinquency which could be construed to mean any case where a tenant has received more than three (3) summons containing copies of complaints filed by the landlord against the tenant for rent due and unpaid during the then term of said lease.

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539-2370
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539-4787

WILLIAM B. DAVIDSON
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ATTORNEYS AT LAW
11 EAST FAYETTE STREET
BALTIMORE, MARYLAND 21202

12. In Paragraph B-10, there is a reference to an unlawful holdover. It is my impression that every holdover is unlawful, and therefore that this paragraph is meaningless.

13. I believe that additional provisions are required to be added to the following effect:

> (11) The Landlord seeks to increase the rental of said property, as such increase may be permitted by law.
>
> (12) The Tenant's lease or other rental agreement has expired or otherwise terminated, and at the time of termination the occupants of the housing accommodations are subtenants or other persons who occupied under authority from the Tenant, and without the consent or approval of the Landlord.
>
> (13) The Landlord seeks in good faith to recover possession thereof for his immediate and personal use and occupancy as housing accommodations or for the immediate and personal use and occupancy as housing accommodations by a member or members of his immediate family.
>
> (14) The Landlord seeks in good faith to recover possession for the immediate purpose of substantially altering or remodeling the housing accommodations for continued use as housing accommodations in a manner which cannot practically be done with the Tenant in possession, or for the immediate purpose of demolishing them, provided that the Landlord has obtained approval for the proposed alterations or remodeling or demolition as may be required under the law.
>
> (15) The Landlord seeks in good faith to recover possession of the housing accommodations for the immediate purpose of (a) making a permanent conversion to commercial use by substantially altering or remodeling them, or (b) personally making a permanent use of them for non-housing purposes, or (c) permanently withdrawing them from housing or non-housing rental markets.

(AREA CODE 301)
539-2370
539-4786
539-4787

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The Hon. Edgar P. Silver (Cont'd.) April 8, 1975

(16) The Landlord has contracted in good faith and in writing to sell the rental accommodation for immediate personal use and occupancy as a dwelling by the purchaser.

I also have some decided feelings that the nature of service, as referred to in E-1, E-2, E-3, and E-4, should be somewhat more clearly delineated.

In E-3, it occurs to me that the Health and Building Authorities might not, in a given instance, be willing to wait a period of three (3) months for the removal of the Tenant.

In Paragraph F, there is a provision for mailing to the Tenant at the premises. Suppose the Tenant resides elsewhere?

Finally, in Paragraph G, a reference to Baltimore City must be added in several appropriate places. Also the case should not be automatically continued if a party fails to appear. By failing to appear, a Tenant could thereby delay legal process indefinitely.

I have additional and further comments with respect to various sections of this proposed Bill, which I will make available to you either orally or in writing upon your further request.

Thank you for your thoughtful consideration of my observations.

Sincerely yours,

Stuart R. Wilcox

SRW:K

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant - Holding Over Beyond Termination

For the purpose of repealing provisions that permit a landlord to recover actual damages, but not exceeding double the rent under the lease or double the rental value of the premises (apportioned for the duration of the holdover period), from a tenant or someone holding under the tenant; providing that a landlord may repossess a property from a tenant, subtenant, assignee, or someone holding under them who is in actual possession of the premises and who unlawfully holds over beyond termination of the lease; providing that a court may stay execution of judgment for restitution of possession against a holdover tenant, or any person holding under a tenant, for up to 30 days from the date of judgment, subject to the payment by the landlord of all rent in arrears and payment for possession of the premises during the stay of execution; providing that a sheriff or constable, in delivering possession of the premises to a landlord, shall remove from the property, by force if necessary, all chattels of every description, not belonging to the landlord, found on the premises; requiring a landlord to give written notice to quit to monthly or weekly tenants at least one month before the expiration of the term of tenancy; and generally restructuring and clarifying the law relating to holding over beyond the termination of certain leases.

By repealing

Article - Real Property
Section 8-402
Annotated Code of Maryland
(1974 Volume and 1975 Supplement)

By adding to

Article - Real Property
Section 8-402 and 8-402.1
Annotated Code of Maryland
(1974 Volume and 1975 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 8-402 of Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1975 Supplement) be and it is hereby repealed.

SECTION 2. AND BE IT FURTHER ENACTED, That new Sections 8-402 and 8-402.1 be and they are hereby added to Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1975 Supplement) to read as follows:

Article - Real Property

8-402.

(A) IF ANY INTEREST IN PROPERTY IS LEASED FOR A DEFINITE TERM OR AT WILL, AND IF THE LANDLORD DESIRES TO REPOSSESS THE PROPERTY AFTER THE EXPIRATION OF THE TERM, AND IF HE GIVES WRITTEN NOTICE ONE MONTH BEFORE THE EXPIRATION OF THE TERM TO THE TENANT, AND TO THE SUBTENANT, ASSIGNEE, OR PERSON HOLDING UNDER THEM, WHO IS IN ACTUAL POSSESSION, TO REMOVE FROM THE PROPERTY AT THE END OF THE TERM, AND IF THE PERSON NOTIFIED REFUSES TO COMPLY, THE LANDLORD MAY MAKE A WRITTEN COMPLAINT TO THE DISTRICT COURT OF THE COUNTY WHERE THE PROPERTY IS LOCATED. THE COURT SHALL ISSUE A SUMMONS TO THE TENANT, SUBTENANT, ASSIGNEE, OR PERSON HOLDING UNDER THEM, WHO IS IN ACTUAL POSSESSION, TO APPEAR ON THE DAY STATED IN THE SUMMONS TO SHOW CAUSE WHY RESTITUTION OF THE POSSESSION OF THE PROPERTY SHOULD NOT BE MADE TO THE LANDLORD.

(B)(1) IF THE TENANT, SUBTENANT, ASSIGNEE, OR PERSON HOLDING UNDER THEM, WHO IS IN ACTUAL POSSESSION, FAILS TO APPEAR AFTER THE SUMMONS AND CONTINUANCE, OR IF THE COURT FINDS THAT THE LANDLORD HAS FULLY COMPLIED WITH SUBSECTION (A) AND THAT THE TERM HAS EXPIRED, THE COURT SHALL ORDER RESTITUTION OF THE POSSESSION OF THE PROPERTY AND SHALL ISSUE A WARRANT TO THE SHERIFF OR CONSTABLE OF THE SUBDIVISION COMMANDING HIM TO DELIVER POSSESSION TO THE LANDLORD. EXECUTION OF THE JUDGMENT FOR RESTITUTION OF THE POSSESSION OF THE PROPERTY SHALL BE ORDERED AT A DATE WITHIN THE COURT'S DISCRETION, FROM TWO TO 30 DAYS FROM THE DATE OF JUDGMENT. THE WARRANT SHALL ORDER THE SHERIFF OR CONSTABLE TO REMOVE FROM THE PROPERTY, BY FORCE IF NECESSARY, ALL THE FURNITURE, IMPLEMENTS, TOOLS, GOODS, EFFECTS, OR OTHER CHATTELS OF EVERY DESCRIPTION, NOT BELONGING TO THE LANDLORD, FOUND ON THE PREMISES. THE COURT SHALL GIVE JUDGMENT FOR COSTS AGAINST THE TENANT, SUBTENANT, ASSIGNEE, OR SOMEONE HOLDING UNDER THEM, WHO IS IN ACTUAL POSSESSION AND HOLDING OVER. IF THE COURT DECIDES TO STAY EXECUTION OF THE JUDGMENT FOR MORE THAN TWO DAYS, THE TENANT, SUBTENANT, ASSIGNEE, OR PERSON HOLDING UNDER THEM, WHO IS IN ACTUAL POSSESSION, SHALL MAKE PAYMENT TO THE LANDLORD FOR POSSESSION OF THE PREMISES WHILE EXECUTION IS STAYED, IN SUCH AMOUNT AND AT SUCH TIMES AND UNDER SUCH CONDITIONS, AS SPECIFIED BY THE COURT. BEFORE EXERCISING ITS DISCRETION TO STAY EXECUTION UNDER THIS SECTION, THE COURT SHALL REQUIRE THE TENANT, SUBTENANT, ASSIGNEE, OR PERSON HOLDING UNDER THEM, WHO IS IN ACTUAL POSSESSION, TO PAY TO THE LANDLORD OR HIS AGENT, PRIOR TO ISSUANCE OF THE STAY, ALL RENT IN ARREARS, AND AN INITIAL PAYMENT FOR POSSESSION OF THE PREMISES WHILE EXECUTION IS STAYED. THE INITIAL PAYMENT FOR POSSESSION MAY NOT EXCEED THE AMOUNT OF AN INDIVIDUAL RENT PAYMENT UNDER THE LEASE OR AGREEMENT OF TENANCY UNDER WHICH THE TENANT OBTAINED POSSESSION OF THE PREMISES.

(2) ANY PARTY MAY APPEAL TO THE CIRCUIT COURT FOR THE COUNTY WITHIN TEN DAYS FROM THE RENDITION OF THE JUDGMENT. ON APPEAL THE CASE SHALL BE TRIED DE NOVO. IF THE TENANT, OR PERSON HOLDING UNDER HIM, APPEALS, HE SHALL PAY INTO COURT AS A DEPOSIT, IN ORDER TO STAY EXECUTION OF THE JUDGMENT, THE AMOUNT OF THE JUDGMENT

RENDERED BY THE COURT, TOGETHER WITH ALL COSTS MENTIONED IN THE JUDGMENT, AND ANY OTHER COSTS WHICH MAY BE INCURRED BY REASON OF THE APPEAL, OR HE MAY FILE A BOND IN THIS AMOUNT WITH A SURETY APPROVED PURSUANT TO THE MARYLAND DISTRICT RULES OR BY THE COURT. THE DEPOSIT OR BOND DOES NOT AFFECT THE LANDLORD'S RIGHT TO PROCEED AGAINST THE TENANT, ASSIGNEE, SUBTENANT, OR PERSON HOLDING UNDER THEM FOR ANY AND ALL RENTS WHICH MAY BECOME DUE AND PAYABLE TO THE LANDLORD AFTER THE RENDITION OF THE JUDGMENT. THE COURT MAY PROVIDE FOR A LESSER DEPOSIT OR APPEAL BOND. IF THE LANDLORD APPEALS, THE PRINCIPAL AMOUNT OF THE DEPOSIT OR APPEAL BOND REQUIRED TO STAY THE EXECUTION OF THE JUDGMENT IS IN THE DISCRETION OF THE COURT. UPON APPLICATION BY ANY PARTY, THE APPELLATE COURT SHALL SET A DAY FOR THE HEARING OF THE APPEAL NOT LESS THAN FIVE NOR MORE THAN 15 DAYS AFTER APPLICATION. NOTICE OF THE HEARING SHALL BE SERVED ON THE OPPOSITE PARTY OR PARTIES OR THEIR COUNSEL AT LEAST FIVE DAYS BEFORE THE HEARING.

(3) IF A JUDGMENT OF THE DISTRICT COURT IN FAVOR OF THE LANDLORD IS AFFIRMED, A WARRANT SHALL BE ISSUED TO THE SHERIFF WHO SHALL EXECUTE IT.

(C) IF THE TENANT, SUBTENANT, ASSIGNEE, OR PERSON HOLDING UNDER THEM, ALLEGES THAT THE TITLE OF THE LEASED PROPERTY IS CLAIMED BY SOME OTHER PERSON BY VIRTUE OF A RIGHT ACCRUING SINCE THE COMMENCEMENT OF THE LEASE, BY DESCENT OR DEED FROM OR BY DEVISE UNDER THE LAST WILL AND TESTAMENT OF THE LANDLORD, THE TENANT SHALL NOTIFY THE DISTRICT COURT OF THE NAME OF THAT PERSON, AND THAT PERSON MAY APPEAR IN COURT. THE COURT MAY ALSO SUMMON THE PERSON TO APPEAR WITHIN SIX DAYS FROM THE DATE OF ISSUANCE OF THE SUMMONS. IF THE PERSON APPEARS AND DECLARES, UNDER OATH, THAT HE BELIEVES HE IS ENTITLED TO THE LEASED PROPERTY, AND IF HE ENTERS INTO BOND TO THE PLAINTIFF OR PARTIES IN INTEREST, IN A SUM IN THE DISCRETION OF THE COURT, TO PROSECUTE HIS CLAIM AT THE NEXT TERM OF THE CIRCUIT COURT, THE DISTRICT COURT SHALL WITHHOLD ANY JUDGMENT FOR RESTITUTION AND COSTS. IF THE PERSON DOES NOT APPEAR, THE COURT SHALL GIVE JUDGMENT FOR RESTITUTION AND COSTS AND ISSUE A WARRANT WITHIN TEN DAYS AFTER THE END OF THE TERM OF COURT.

(D) THE PROVISIONS OF THIS SUBSECTION APPLY TO ALL CASES OF TENANCIES FROM YEAR TO YEAR, TENANCIES BY THE MONTH, AND TENANCIES BY THE WEEK. IN CASES OF TENANCIES FROM YEAR TO YEAR, INCLUDING TOBACCO FARM TENANCIES, THE LANDLORD SHALL GIVE WRITTEN NOTICE THREE MONTHS BEFORE THE EXPIRATION OF THE CURRENT YEAR OF THE TENANCY. IN CASES OF ALL OTHER FARM TENANCIES, THE NOTICE SHALL BE GIVEN SIX MONTHS BEFORE EXPIRATION OF THE CURRENT YEAR. IN MONTHLY OR WEEKLY TENANCIES, THE NOTICE SHALL BE GIVEN ONE MONTH BEFORE EXPIRATION. THE SAME PROVISIONS SHALL APPLY TO CASES OF FORCIBLE ENTRY AND DETAINER. THIS PARAGRAPH DOES NOT APPLY IN BALTIMORE CITY.

(E) THE TENANT, SUBTENANT, ASSIGNEE, OR PERSON HOLDING UNDER THEM, WHO IS IN ACTUAL POSSESSION OF THE PREMISES, MAY GIVE WRITTEN OR ORAL NOTICE TO THE LANDLORD OR HIS AGENT OF HIS INTENTION TO REMOVE AT THE END OF THE TERM AND SURRENDER POSSESSION OF THE PROPERTY AT THAT TIME. IF THE LANDLORD OR HIS AGENT PROVES RECEIPT OF SUCH NOTICE BY COMPETENT TESTIMONY, IT IS NOT NECESSARY FOR THE LANDLORD TO GIVE THE WRITTEN NOTICE REQUIRED IN SUBSECTION (D), AND HE MAY RECOVER POSSESSION OF THE PROPERTY BASED ON THE TENANT'S NOTICE. THE NOTICE REQUIRED TO BE GIVEN BY THE TENANT IN ORDER TO SATISFY THIS SUBSECTION IS TO BE GIVEN AT LEAST ONE MONTH BEFORE THE EXPIRATION OF THE LEASE OR TENANCY IN ALL CASES EXCEPT TENANCIES FROM YEAR TO YEAR. AT LEAST THREE MONTHS' NOTICE SHALL BE GIVEN IN ALL CASES OF TENANCIES FROM YEAR TO YEAR, EXCEPT IN CASES OF FARM TENANCIES WHICH REQUIRE SIX MONTHS NOTICE.

(F) THIS SECTION DOES NOT APPLY IN BALTIMORE CITY.

(G) A LANDLORD HAS NO DUTIES UNDER THIS SECTION, AND A SUBTENANT, ASSIGNEE, OR PERSON HOLDING UNDER THEM HAS NO RIGHTS UNDER THIS SECTION (1) UNLESS THE TENANT HAS GIVEN WRITTEN NOTICE TO THE LANDLORD OF HIS ASSIGNMENT OR SUBLEASING, IF THE LEASE DOES NOT REQUIRE THE LANDLORD'S PERMISSION OR CONSENT TO THE TENANT TO ASSIGNMENT OR SUBLEASING; OR (2) UNLESS THE LANDLORD HAS GIVEN HIS CONSENT TO SUBLEASING OR ASSIGNMENT IF SUCH CONSENT IS REQUIRED BY THE LEASE. THE PERMISSION OR CONSENT REQUIRED BY THIS SECTION SHALL BE GIVEN BY REGISTERED MAIL, RETURN RECEIPT REQUESTED.

8-402.1

(A) IN ALL CASES BETWEEN LANDLORD AND TENANT, IF ONE-HALF YEAR'S RENT IS IN ARREARS, AND THE LANDLORD HAS THE RIGHT TO REENTER THE PREMISES FOR NONPAYMENT, THE LANDLORD, WITHOUT A FORMAL DEMAND OF REENTRY, MAY SERVE A COPY OF A DECLARATION IN EJECTMENT FOR THE RECOVERY OF THE PROPERTY. IF THE DECLARATION CANNOT BE SERVED IN ACCORDANCE WITH THE NORMAL LAWS AND RULES CONCERNING SERVICE OF PROCESS, OR IF THE TENANT, SUBTENANT, ASSIGNEE, OR PERSON HOLDING UNDER THEM IS NOT IN ACTUAL POSSESSION OF THE PROPERTY, THE LANDLORD MAY AFFIX THE DECLARATION ON THE DOOR OF THE BUILDING, AND THIS SHALL CONSTITUTE LEGAL SERVICE AND SHALL BE IN LIEU OF A DEMAND AND REENTRY. IF THE ACTION OF EJECTMENT IS NOT FOR THE RECOVERY OF THE BUILDING AND THE DECLARATION CANNOT BE SERVED IN ACCORDANCE WITH THE NORMAL LAWS AND RULES CONCERNING SERVICE OF PROCESS, THE LANDLORD MAY AFFIX IT TO THE PROPERTY WHICH IS DESCRIBED IN THE DECLARATION, AND THIS SHALL CONSTITUTE LEGAL SERVICE. IF THE COURT

ENTERS A VERDICT FOR THE LANDLORD, HE SHALL HAVE JUDGMENT AND EXECUTION IN THE SAME MANNER AS IF THE RENT IN ARREARS HAD BEEN LEGALLY DEMANDED AND A REENTRY MADE.

(B) ANY PARTY MAY APPEAL TO THE CIRCUIT COURT FOR THE COUNTY OR THE BALTIMORE CITY COURT AT ANY TIME WITHIN TWO DAYS FROM THE RENDITION OF THE JUDGMENT. ON APPEAL THE CASE SHALL BE TRIED DE NOVO. IF THE TENANT, ASSIGNEE, SUBTENANT, OR PERSON HOLDING UNDER THEM, APPEALS, HE SHALL PAY INTO COURT, AS A DEPOSIT, IN ORDER TO STAY EXECUTION OF THE JUDGMENT, THE AMOUNT OF THE JUDGMENT RENDERED BY THE COURT, TOGETHER WITH ALL COSTS WHICH MAY BE INCURRED BY REASON OF THE APPEAL, OR HE MAY FILE A BOND IN THIS AMOUNT WITH A SURETY APPROVED PURSUANT TO THE MARYLAND DISTRICT RULES OR BY THE COURT. THE DEPOSIT OR BOND DOES NOT AFFECT THE LANDLORD'S RIGHT TO PROCEED AGAINST THE TENANT, ASSIGNEE, OR SUBTENANT FOR ANY AND ALL RENTS WHICH MAY BECOME DUE AND PAYABLE TO THE LANDLORD AFTER THE RENDITION OF THE JUDGMENT. THE COURT MAY PROVIDE FOR A LESSER DEPOSIT OR APPEAL BOND. IF THE LANDLORD APPEALS, THE PRINCIPAL AMOUNT OF THE DEPOSIT OR APPEAL BOND REQUIRED TO STAY THE EXECUTION OF THE JUDGMENT IS IN THE DISCRETION OF THE COURT.

(C) ANY MORTGAGEE OF A GROUND RENT LEASE, OR ANY PART OF IT, WHO IS NOT IN ACTUAL POSSESSION OF THE PROPERTY, MAY PAY ALL COSTS AND DAMAGES SUSTAINED BY THE LANDLORD WITHIN SIX MONTHS AFTER THE JUDGMENT WAS OBTAINED AND EXECUTED UPON, AND PERFORM ALL THE COVENANTS AND AGREEMENTS WHICH ARE TO BE PERFORMED BY THE FIRST TENANT.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1974.

PROPOSED AMENDMENT
TO HOLDING OVER BEYOND TERMINATION BILL

Add at end of Section 8-402(A):

NO SERVICE OF PROCESS OR SUMMONS UPON A TENANT, ASSIGNEE, SUB-TENANT, OR PERSON HOLDING UNDER THEM IS REQUIRED UNDER THIS SECTION IF A PERSON IS NOT SUBJECT TO THE JURISDICTION OF MARYLAND COURTS UNDER COURTS AND JUDICIAL PROCEEDINGS ARTICLE, TITLE 6, SUBTITLE 1.

Approved 4/8/75 by
Landlord-Tenant
Commission

X

AN ACT concerning

Landlord and Tenant Holding Over beyond Termination

FOR the purpose of repealing provisions that permit a landlord to recover actual damages, but not exceeding double the rent under the lease or double the rental value of the premises (apportioned for the duration of the holdover period), from a tenant or someone holding under the tenant; providing that a landlord may repossess a property from a tenant, subtenant, assignee, or someone holding under them who is in actual possession of the premises and who unlawfully holds over beyond termination of the lease; providing that a sheriff or constable, in delivering possession of the premises to a landlord, shall remove from the property, by force if necessary, all chattels of every description, not belonging to the landlord, found on the premises; providing notice provisions; providing an appeal procedure; and generally restructuring and clarifying the law relating to holding over beyond the termination of certain leases.

By repealing

Article - Real Property
Section 8-402
Annotated Code of Maryland
(1974 Volume and 1975 Supplement)

By adding to

Article - Real Property
Section 8-402 and 8-403.
Annotated Code of Maryland
(1974 Volume and 1975 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 8-402 of Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1975 Supplement) be and it is hereby repealed.

SECTION 2. AND BE IT FURTHER ENACTED, That new Sections 8-402 and 8-403 be and they are hereby added to Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1975 Supplement) to read as follows:

(A) IF (I) ANY INTEREST IN PROPERTY IS LEASED FOR A DEFINITE TERM OR AT WILL, AND (II) THE LANDLORD DESIRES TO REPOSSESS THE PROPERTY AFTER THE EXPIRATION OF THE TERM, AND (III) HE GIVES WRITTEN NOTICE ONE MONTH BEFORE THE EXPIRATION OF THE TERM TO THE TENANT, AND TO THE SUBTENANT, ASSIGNEE, OR PERSON HOLDING UNDER THEM, WHO IS IN ACTUAL POSSESSION, TO REMOVE FROM THE PROPERTY AT THE END OF THE TERM, AND (IV) THE PERSON NOTIFIED REFUSES TO COMPLY, THE LANDLORD MAY MAKE A WRITTEN COMPLAINT TO THE DISTRICT COURT OF THE COUNTY WHERE THE PROPERTY IS LOCATED. THE COURT SHALL ISSUE A SUMMONS TO THE TENANT,

SUBTENANT, ASSIGNEE, OR PERSON HOLDING UNDER THEM, WHO IS IN ACTUAL POSSESSION, THAT HE APPEAR ON THE DAY STATED IN THE SUMMONS TO SHOW CAUSE WHY RESTITUTION OF THE POSSESSION OF THE PROPERTY SHOULD NOT BE MADE TO THE LANDLORD.

(B) (1) IF THE TENANT, SUBTENANT, ASSIGNEE, OR PERSON HOLDING UNDER THEM, WHO IS IN ACTUAL POSSESSION, FAILS TO APPEAR AFTER THE SUMMONS, OR IF THE COURT FINDS THAT THE LANDLORD HAS FULLY COMPLIED WITH SUBSECTION (A) AND THAT THE TERM HAS EXPIRED, THE COURT SHALL ORDER RESTITUTION OF THE POSSESSION OF THE PROPERTY AND SHALL ISSUE A WARRANT TO THE SHERIFF OR CONSTABLE IN THE RESPECTIVE COUNTIES COMMANDI HIM TO DELIVER POSSESSION TO THE LANDLORD. FOR THAT PURPOSE, THE WARRA SHALL ORDER THE SHERIFF OR CONSTABLE TO REMOVE FROM THE PROPERTY, BY FORCE IF NECESSARY, ALL THE FURNITURE, IMPLEMENTS, TOOLS, GOODS, EFFECT OR OTHER CHATTELS OF EVERY DESCRIPTION, NOT BELONGING TO THE LANDLORD, FOUND ON THE PREMISES. THE COURT SHALL GIVE JUDGMENT FOR COSTS AGAINST THE TENANT, SUBTENANT, ASSIGNEE, OR SOMEONE HOLDING UNDER THEM, WHO IS IN ACTUAL POSSESSION AND HOLDING OVER.

(2) ANY PARTY MAY APPEAL TO THE CIRCUIT COURT FOR THE COUNTY WITHIN TEN DAYS FROM THE RENDITION OF THE JUDGMENT. ON APPEAL THE CASE SHALL BE TRIED DE NOVO. IF THE TENANT, OR SOMEONE HOLDING UNDER HIM, APPEALS, HE SHALL PAY INTO COURT AS A DEPOSIT, IN ORDER TO STAY EXECUTION OF THE JUDGMENT, THE AMOUNT OF THE JUDGMENT RENDERED BY THE COURT, TOGETHER WITH ALL COSTS MENTIONED IN THE JUDGMENT, AND ANY OTHER COSTS WHICH MAY BE INCURRED BY REASON OF THE APPEAL, OR HE MAY FILE A BOND IN THIS AMOUNT WITH A SURETY APPROVED PURSUANT TO THE MARYLAND DISTRICT RULES OR BY THE COURT. THE DEPOSIT OR BOND DOES NOT AFFECT THE LANDLORD'S RIGHT TO PROCEED AGAINST THE TENANT, ASSIGNEE, SUBTENANT, OR PERSON HOLDING UNDER THEM FOR ANY AND ALL RENTS WHICH MAY BECOME DUE AND PAYABLE TO THE LANDLORD AFTER THE RENDITION OF THE JUDGMENT. THE COURT MAY PROVIDE FOR A LESSER DEPOSIT OR APPEAL BOND. IF THE LANDLORD APPEALS, THE PRINCIPAL AMOUNT OF THE DEPOSIT OR APPEAL BOND REQUIRED TO STAY THE EXECUTION OF THE JUDGMENT IS IN THE DISCRETION OF THE COURT. UPON APPLICATION BY ANY PARTY, THE APPELLATE COURT SHALL SET A DAY FOR THE HEARING OF THE APPEAL NOT LESS THAN FIVE NOR MORE THAN 15 DAYS AFTER APPLICATION. NOTICE OF THE HEARING SHALL BE SERVED ON THE OPPOSITE PARTY OR PARTIES OR THEIR COUNSEL AT LEAST FIVE DAYS BEFORE THE HEARING.

(3) IF A JUDGMENT OF THE DISTRICT COURT IN FAVOR OF THE LANDLORD IS AFFIRMED, A WARRANT SHALL BE ISSUED TO THE SHERIFF WHO SHALL EXECUTE IT.

(C) IF THE TENANT, SUBTENANT, ASSIGNEE, OR PERSON HOLDING UNDER THEM, ALLEGES THAT THE TITLE OF THE LEASED PROPERTY IS CLAIMED BY SOME OTHER PERSON BY VIRTUE OF A RIGHT ACCRUING SINCE THE COMMENCEMENT OF THE LEASE, BY DESCENT OR DEED FROM OR BY DEVISE UNDER THE LAST WILL AND TESTAMENT OF THE LANDLORD, THE TENANT SHALL NOTIFY THE DISTRICT COURT OF THE NAME OF THAT PERSON, AND THAT PERSON MAY APPEAR IN COURT. THE COURT MAY ALSO SUMMON THE PERSON TO APPEAR WITHIN SIX DAYS FROM THE DATE OF ISSUANCE OF THE SUMMONS. IF THE PERSON APPEAR AND DECLARES, UNDER OATH, THAT HE BELIEVES HE IS ENTITLED TO THE LEASED PROPERTY; AND IF HE ENTERS INTO BOND TO THE PLAINTIFF OR PARTIES IN INTEREST, IN A SUM IN THE DISCRETION OF THE COURT, TO PROSECUTE HIS CLAIM AT THE

NOTICE TO QUIT

8-402(b)(4)

Steven G. Davison, Reporter
Governor's Commission on
Landlord-Tenant Law Revision
University of Baltimore
School of Law
Charles and Mount Royal
Baltimore, Maryland 21201

April 9, 1976

The Honorable Kenneth Proctor
Chairman, Rules Committee
Circuit Court of
Baltimore County
Court House
Towson, Maryland 21404

Dear Judge Proctor:

The Governor's Commission on Landlord-Tenant Law Revision has requested that I contact the Rules Committee with respect to the issue of the commencement and measurement of notice periods under Section 8-402 of the Maryland Annotated Code, Real Property Article.

The Commission has been concerned with the question of when a tenant is required to vacate the premises following the giving of notice to quit by a landlord pursuant to Section 8-402 of the Real Property Article of the Maryland Annotated Code. Section 8-402(b)(1) specifies that a landlord, in order to utilize summary proceedings of Section 8-402(b) to recover possession from a holdover tenant, must give a tenant for a definite term or a tenant at will written notice to quit one month before the expiration of the term. Section 8-402(b)(4) specifies that a landlord, in order to utilize the summary proceedings under Section 8-402(b), must give written notice to quit to a year to year tenant three months before the expiration of the current year of the tenancy, "and in monthly or weekly tenancies, a notice in writing of one month or one week, as the case may be, shall be so given...." The Commission believes that the intent of Section 8-402(b)(4) is that notice to quit shall be given to a month to month tenant at least one month before the expiration of the current month of the tenancy; and to a week to week tenant at least one week before the expiration of the current week of the term.

The Commission understands that the Maryland courts, in interpreting these provisions of Section 8-402(b)(4) with respect to notice to quit, determine the date at which the tenant must quit by measuring the specified notice period from the next date at which rent is due and payable following receipt by the tenant of notice to quit. Thus, if a month to month tenant, who pays rent on the first of the month, receives a notice to quit on the 15th of March, he will not be required to quit the premises until the end of April - after the expiration of the current month of the tenancy. As far as I and the members

of the Commission have been able to determine, however, there is no appellate decision affirming such an interpretation of Section 8-402 (B)(4). The Commission would appreciate the comments of the Rules Committee with respect to this question.

The Commission would also appreciate the opinion of the Rules Committee as to whether the day on which a tenant receives a notice to quit may be counted for purposes of determining the date on which the tenant must quit the premises. This question arises when a tenant receives a notice to quit on the date on which rent is due and payable. As an example, if a month to month tenant, who pays rent on the first of the month, receives a notice to quit on March 1st, the question arises as to whether he is required to quit the premises at the end of March or at the end of April. Section 8-402(b) does not appear to provide an answer to this question, although it would seem that receipt of the notice to quit by the tenant, rather than the sending of notice by the landlord, is controlling under Section 8-402(b), since Section 8-402(b) requires that notice be given.

Section 8-402(b) is also unclear with respect to the question of the amount of notice which must be given by a tenant in order to terminate a periodic tenancy.

Section 8-402(b)(5) provides that when a tenant

> "shall give notice by parole to the landlord or to his agent or representatives, at least one month before the expiration of the lease or tenancy in all cases except in cases of tenancies from year to year, and at least three months' notice in all cases of tenancy from year to year (except in all cases of farm tenancy, the notice shall be six months), of the intention of the tenant to remove at the end of that year and to surrender possession of the property at that time, and the landlord, his agent, or representative shall prove the notice from the tenant by competent testimony, it shall not be necessary for the landlord, his agent or representative to provide a written notice to the tenant, but the proof of such notice from the tenant as aforesaid shall entitle his landlord to recover possession of the property hereunder. This subparagraph (5) shall not apply in Baltimore City."

On its face, Section 8-402(b)(5) only indicates that when a tenant gives the specified notice of intent to terminate a tenancy, a landlord need not give to the tenant written notice to quit in order to bring a summary proceeding against such tenant to recover possession if the tenant holds over after expiration of the term. But because of the way Section 8-402(b)(5) is worded, it is unclear whether Section 8-402(b)(5) also regulates the amount of notice that a periodic tenant must give in order to terminate a periodic tenancy. Under the common law in Maryland, a periodic tenant must give a landlord prior notice in order to terminate a periodic tenancy. Hall v. Myers, 43 Md. 446 (1876). The Commission would appreciate

the opinion of the Rules Committee as to whether Section 8-402(b)(5) governs the amount of notice that a tenant must give to a landlord in order to terminate a periodic tenancy.

On behalf of the Governor's Commission on Landlord-Tenant Law Revision, I thank you for consideration of the questions raised with respect to the interpretation of Section 8-402(b) of the Real Property Article. The Commission will appreciate any assistance that the Rules Committee can provide with respect to the questions discussed in this letter. Thank you for your help.

Sincerely yours,

Steven G. Davison

Steven G. Davison
Reporter

SGD/eg

cc: Wilbur B. Preston, Jr.
Jeffrey B. Smith

January 27, 1977

POSITION OF GOVERNOR'S COMMISSION

ON LANDLORD - TENANT LAW REVISION

ON

H. B. 426

H.B. 426 would require landlords to give week-to-week tenants a month's notice to quit. This bill would amend Section 8-402(b)(4), which presently requires a landlord to give week-to-week tenants only a week's notice to quit. The Commission believes that a week is insufficient time for a tenant to find new housing. H.B. 426 substantively amends Section 8-402(b)(4) by deleting the phrase "or one week, as the case may be," in the third and fourth lines from the bottom of the section.

This bill also stylistically revises Section 8-402(b)(4), and therefore is drafted as a complete revision rather than as an amendment to Section 8-402(b)(4).

This bill was introduced in the 1976 Session as H.B. 823.

Steven G. Davison,
Reporter
Governor's Commission on
Landlord-Tenant Law Revision

Everyone - H/h Doyle z/c

agree

71r1515

H O U S E O F D E L E G A T E S

No. 426
(PRE-FILED)

By: Delegate Owens (Departmental - SC - Landlord Ten)
Requested: November 15, 1976
Introduced and read first time: January 12, 1977
Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant - Notice to Quit

FOR the purpose of requiring a landlord to give written notice to quit to monthly or weekly tenants at least one month before the expiration of the term of tenancy; providing an exception for certain cases of forcible entry and detainer; and providing that this notice provision is not applicable in Baltimore City.

BY repealing

Article - Real Property
Section 8-402(b)(4)
Annotated Code of Maryland
(1974 Volume and 1976 Supplement)

BY adding to

Article - Real Property
Section 8-402(b)(4)
Annotated Code of Maryland
(1974 Volume and 1976 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 8-402(b)(4) of Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1976 Supplement) be and it is hereby repealed.

SECTION 2. AND BE IT FURTHER ENACTED, That new Section 8-402(b)(4) be and it is hereby added to Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1976 Supplement) to read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Numerals at right identify computer lines of text.

1-402. 91

(B) (4) THE PROVISIONS OF THIS SUBSECTION APPLY 93
TO ALL CASES OF TENANCIES FROM YEAR TO YEAR, TENANCIES BY 94
THE MONTH, AND TENANCIES BY THE WEEK. IN CASES OF 95
TENANCIES FROM YEAR TO YEAR, INCLUDING TOBACCO FARM
TENANCIES, THE LANDLORD SHALL GIVE WRITTEN NOTICE THREE 96
MONTHS BEFORE THE EXPIRATION OF THE CUPRENT YEAR OF THE 97
TENANCY. IN CASES OF ALL OTHER FARM TENANCIES, THE 98
NOTICE SHALL BE GIVEN SIX MONTHS BEFORE EXPIRATION OF THE
CURRENT YEAR. IN MONTHLY OR WEEKLY TENANCIES, THE NOTICE 99
SHALL BE GIVEN ONE MONTH BEFORE EXPIRATION. THE SAME 100
NOTICE PROVISIONS APPLY TO CASES OF FORCIBLE ENTRY AND 101
DETAINER, EXCEPT THOSE INVOLVING A TRESPASSER OR
SQUATTER. THIS PARAGRAPH DOES NOT APPLY IN BALTIMORE 102
CITY.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act 106
shall take effect July 1, 1977. 108

CONVERSION OF RENTAL PROPERTY TO CONDOMINIUMS

Steven G. Davison, Reporter
Governor's Commission on Landlord-
Tenant Law Revision
3600 South 14th Street
Arlington, Virginia 22204 11-102.1

February 5, 1976

Delegate Martin Becker, Chairman
Economic Matters Committee
House of Delegates
State of Maryland
Annapolis, Maryland 21404

Dear Chairman Becker:

At the hearing before the House Economic Matters Committee on January 28th, a number of questions were raised with respect to H.B. 322, sponsored by the Governor's Commission on Landlord-Tenant Law Revision.

H.B. 322 would apply the provisions of Title 10, Subtitle 2, of the Real Property Article, which creates express and implied warranties for newly constructed dwelling units (which would include newly constructed condominiums), to condominiums which are converted from residential rental buildings. Although the effect of H.B. 322 generally would make the express and implied warranties of Sections 10-202 and 10-203 of the Real Property Article applicable to converted condominiums, a developer of a conversion condominium could exclude or modify the statutorily defined express and implied warranties pursuant to Sections 10-203(c) and 10-203(d) of the Real Property Article. In addition, there would be no implied warranties with respect to any conditions of a unit of a conversion condominium "that an inspection of the premises would reveal to a reasonably diligent purchaser at the time the contract is signed." R.P. Article, Section 10-203(b): H.B. 322 would apply the express and implied warranties of Title 10, Subtitle 2, both to the structures and fixtures (except appliances) of units of the condominium and to the common elements of a conversion condominium. ("Unit" is defined by Section 11-101(j), and "common elements" are defined by Section 11-101(b), of the Real Property Article (Supp. 1975)). These warranties would apply only to the initial sale of the conversion condominium by the developer.

The Governor's Commission on Landlord-Tenant Law Revision sponsored a bill, H.B. 142, in the 1975 Regular Session, that would have created implied warranties with respect to the units and common elements of a conversion condominium. Lines 261-303 of H.B. 142 are the pertinent sections with respect to these warranties; a copy of H.B. 142 is enclosed. The implied warranties provided in H.B. 142 were identical to the implied warranties applicable to new constructed dwelling units pursuant to Section 10-203(a) of the Real Property

Article. There were, however, no provisions in H.B. 142, as there are in H.B. 322, that would except from these warranties any conditions that would be revealed to a purchaser by reasonable and diligent inspection; or that would allow a developer to exclude or modify these specified warranties. Warranties identical to those provided in H.B. 142 were included as amendments to H.B. 1330 (Ch. 786) of the 1975 Regular Session at lines 635-679, but these provisions were deleted in conference. H.B. 1330, however, did amend Section 11-102.1 of the Real Property Article with respect to notice to tenants when a residential rental building is converted to a condominium.

The Governor's Commission on Landlord-Tenant Law Revision, after further consideration of H.B. 142, decided that a developer of a conversion condominium should have the right to exclude or modify the implied warranties applicable to new housing. Rental buildings converted to condominiums are old buildings, for which express and implied warranties pursuant to Title 10, Subtitle 2, would have expired after 1 year, after the initial sale, unless an express warranty specifies a longer period of time. R.P. Article, Section 10-204(b). Conversion condominiums will have been subject to normal wear and tear, and possibly vandalism, and may be unable to comply with such warranties at the time of conversion. The Commission, however, decided that application of the new housing warranties of Title 10, Subtitle 2, of the Real Property Article, to conversion condominiums, subject to exception, modification or exclusion as therein provided, would have the effect of requiring developers of conversion condominiums to either warrant the soundness and habitabil of a conversion condominium pursuant to Title 10, Subtitle 2, or to disclose to prospective purchasers of units of conversion condominium the existing defects and faults of the building.

If I can be of further assistance to you or the Economic Matters Committee with respect to H.B. 322, please contact me. Thank you for consideration of this letter.

Sincerely yours,

Steven G. Davison

Steven G. Davison

SGD/eg

cc: Members of Commission

Enclosures (2)

HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21404

MARTIN S. BECKER
MONTGOMERY COUNTY
DISTRICT 20
CHAIRMAN
CONOMIC MATTERS COMMITTEE

HOME ADDRESS:
9511 BRUCE DRIVE
SILVER SPRING, MD. 20901

February 10, 1976

Steven G. Davison, Esq.
Reporter
Governor's Commission on Landlord-
Tenant Law Revision
3600 South 14th Street
Arlington, Virginia 22204

Dear Mr. Davison:

Thank you for your letter of February 5, 1976, concerning House Bill 322.

The Economic Matters Committee gave House Bill 322 an unfavorable report. The Committee was of the opinion that Section 11-124 of the Real Property Article dealing with disclosure requirements, paragraph (a)(11) substantially covered the same subject matter, although admittedly not in the form of a warranty.

If you would like to discuss this matter with me further, please contact me.

Kindest regards.

Very truly yours,

Martin S. Becker

MSB:jb

LAW OFFICES
POHORYLES, GOLDBERG, REPETTI & HARRIS
1150 SEVENTEENTH STREET, N.W.
WASHINGTON, D. C. 20036
(202) 785-2940

OUIS POHORYLES
LFRED M. GOLDBERG
REDERICK F. REPETTI
ILLIAM H. HARRIS, JR.

March 16, 1976

Hon. Thomas V. Mike Miller
State Senator
Senate Office Building
Annapolis, Maryland

Dear Senator Miller:

In accordance with your and Senator Melvin A. Steinberg's request, I am writing to confirm the oral explanation of the suggested corrective amendments to Senate Bill 995.

Section 11-102(a) should be amended by the deletion of line 107 in SB 995 which presently reads:

"(a) At least 180 days before property is subjected"

and substitution therefor of the following new language:

"(a) At least ~~150~~ 180 days before any tenant is given notice to vacate a residence in a property subjected within the preceding six (6) months or to be subjected"

Also, a corresponding amendment should be made to revise Section 11-102.1(f) to read as follows:

"(f) The notice referred to in subsection (a) shall be sufficient for the purposes of this section if it is in substantially the following form:

NOTICE OF INTENTION TO
[CREATE A] SELL CONDOMINIUM UNIT

.....(Date)

This is to inform you that the premises known as .... may be [subjected] sold as a condominium unit subject to a condominium regime in accordance with the Maryland Condominium Act following the expiration of 180 days from the date of this notice[.] or sooner if it is voluntarily vacated or an existing tenant desires to purchase it.

If you are a tenant in these premises, you are entitled to remain in your leased premises until the expiration of the term of your lease or the 180 day period, whichever is longer, unless you breach a covenant in your lease, or fail to pay your rent. If the term of your lease expires during the 180 day period, you may have it extended, on the same terms and conditions, until the expiration of the 180 day period.

If you are a tenant in these premises, you may terminate your lease upon at least 30 days' prior written notice to your landlord."

The principal operative difficulty with existing Sections 102.1(a) and 102.1(f) is that the developer of a proposed condominium project is inordinately delayed in effecting his condominium plan even as to empty and tenant purchased units. Because the Condominium Law precludes the developer from subjecting the property to a condominium regime until the 180 day notice period has passed there is undue and unnecessary delay in conveying vacant units and units purchased by tenants. This delay is not necessary for the protection of tenants, creates a financial hardship burden on the developer, and delays anxious purchasers in obtaining title to their homes.

As the law presently works, a developer gives his tenants the requisite 180 day notice. Thereafter, tenants may on 30 days notice to the developer unilaterally cancel their leases and vacate their units. The developer is still required to wait for the entire 180 day notice period before he can record the Declaration and Condominium Plat to create the condominium regime.

With the proposed amendments a developer would still be required to give tenants a minimum of 180 days notice by giving them at least 150 days prior notice of the possibility of termination of occupancy and the usual 30 days statutory notice to vacate.

With the amendments a developer would be free to record his Declaration and Condominium Plat when the first notice (150 days) is given and early purchasers (either existing tenants or those persons who purchase vacant units) can go to settlement while tenants who elect not to purchase may hold over for the entire term of both notice periods.

Thus, the legislative intent of Section 102.1 - that tenants be given adequate notice - is retained by the amendments and severe hardships to developers, tenant purchasers and early purchasers of vacant units are avoided.

Your consideration of the suggested corrective amendments is appreciated.

Sincerely yours,

Louis Pohoryles

LP/mf
cc: Hon. Melvin A. Steinberg
Prince George's County Senators

BY: ECONOMIC MATTERS COMMITTEE

AMENDMENTS TO HOUSE BILL NO. 1929

(FIRST READING FILE BILL)

AMENDMENT NO. 1

In line 155 on page 3 of the bill, strike "A SECURITY DEPOSIT" and substitute "MAINTAINING SECURITY DEPOSITS AS REQUIRED IN PARAGRAPH (E)(1) OF THIS SECTION,".

AMENDMENT NO. 2

In line 157 on page 3 strike "SUM" and substitute "SECURITY DEPOSIT".

AMENDMENT NO. 3

In line 159 and the unnumbered line after line 159 on page 3 strike "ON IT AT A LEGAL RATE FROM THE TIME HE OBTAINED THE BOND" and substitute "AS SET FORTH IN SUBSECTION (G) OF THIS SECTION".

AMENDMENT NO. 4

In line 171 on page 3 strike "LANDLORD" and substitute "TENANTS".

AMENDMENT NO. 5

Strike lines 173 through 183 in their entirety on page 3 and substitute "THE BOND SHALL BE POSTED WITH AND ENFORCEABLE BY THE CONSUMER PROTECTION DIVISION OF THE OFFICE OF THE ATTORNEY GENERAL FOR THE BENEFIT OF THE TENANTS.

AMENDMENT NO. 6

In lines 187 and 190 on page 3 insert "MINIMUM" before "PENALTY".

AMENDMENT NO. 7

In the unnumbered line after line 190 on page 3 strike "IN ACCORDANCE WITH" and substitute "NO LESS THAN".

AMENDMENT NO. 8

After line 191 on page 3 insert:

"(7) THE LIABILITY OF THE SURETY UNDER ANY BOND MAY NOT EXCEED THE AGGREGATE AMOUNT OF THE BOND, REGARDLESS OF THE NUMBER OR AMOUNT OF SECURITY DEPOSITS CLAIMED FROM THE LANDLORD AND, IF THE AMOUNT OF SECURITY DEPOSITS

(OVER)

CLAIMED SHOULD EXCEED THE AMOUNT OF THE BOND, THE SURETY SHALL PAY THE AMOUNT OF THE BOND TO THE CONSUMER PROTECTION DIVISION OF THE OFFICE OF THE ATTORNEY GENERAL FOR DISTRIBUTION TO CLAIMANTS AND THE SURETY SHALL BE RELIEVED OF ALL LIABILITY UNDER THE BOND.",

Condominium Conversion bill

12b. SC#8

BILL ORDER - REPEAL & RE-ENACT

Revised by Governor's Office

Sponsor _____ (Dept. SC-Landlord Tenant) Drafted by TP
Requested by _____ Date 11/16/76
Date _____

(1b) AN ACT concerning

Condominiums - Notice of Conversion

FOR the purpose of requiring the owner of any property which is subjected to a condominium regime to give notice of such conversion and intention to sell, as a condominium, to the tenants occupying any portion of the property as a residence, and to certain other persons; specifying the form of the notice; authorizing each tenant to select certain options with respect to his residence within a certain period of time; repealing a certain provision relating to the former notice of intention to convert; and generally relating to the notice of a conversion of property to a condominium regime and the duties and rights of the owner and tenants of such property.

(rr) BY repealing and re-enacting, with amendments,

Article - Real Property
(title/Article name)
Section 11-102.1(a), (d), (e), (f), (g) and (h)

Annotated Code of Maryland

(1974 ~~Replacement~~ Volume and 1976 Supplement)

Circle as appropriate

(ed) - July 1 effective date
(eed) - emergency effective date
(aed) - abnormal effective date
(ril) - repeal of inconsistent laws
(sev) - severability clause
(sii) - salary increase not to affect incumbent

11-102.1

(a) [At least 180 days before property is subjected to a condominium regime,] IF ANY PROPERTY IS SUBJECTED TO A CONDOMINIUM REGIME IN ACCORDANCE WITH §11-102, the owner and the landlord of each tenant then occupying any portion of the property as his residence, if other than the owner, shall give the tenant a notice in the form specified in subsection (f) and shall deliver a copy of the notice prior to entering into a lease to each tenant who thereafter leases any portion of the property for his residence.

(d) Any tenant leasing any portion of the property as his residence at the time the notice referred to in subsection (a) is given to him and whose lease term would ordinarily terminate during the 180-day period is entitled to have the term extended on the same terms and conditions until the expiration of the 180-day period. NOTICE TO VACATE THE PROPERTY MAY NOT BE GIVEN TO A TENANT PRIOR TO THE EXPIRATION OF THE 180-DAY PERIOD, EXCEPT AS PROVIDED IN SUBSECTION (C).

(e) Any tenant leasing any portion of the property as his residence at the time the notice referred to in subsection (a) is given to him may terminate his lease, without panalty for termination upon at least 30 days' written notice to his landlord. ANY TENANT MAY PURCHASE, AS A CONDOMINIUM UNIT, THE PROPERTY WHICH HE IS LEASING AS HIS RESIDENCE AT ANY TIME AFTER RECEIVING THE NOTICE REFERRED TO IN SUBSECTION (A).

(f) The notice referred to in subsection (a) shall be sufficient for the purposes of this section if it is in substantially the following form:

NOTICE OF INTENTION TO [CREATE] SELL A CONDOMINIUM UNIT

. . . . . .(Date)

This is to inform you that the premises known as .....

..... [may be] HAVE BEEN subjected to a condominium regime in accordance with the Maryland Condominium Act AND WILL BE SOLD AS A CONDOMINIUM UNIT following the expiration of 180 days from the date of this notice, OR DURING THAT 180-DAY PERIOD AS PROVIDED BELOW.

If you are a tenant in these premises, you are entitled to remain in your leased premises until the expiration of the term of your lease or the 180 day period, whichever is longer, unless you breach a covenant in your lease, or fail to pay your rent. If the term of your lease expires during the 180 day period, you may have it extended, on the same terms and conditions, until the expiration of the 180 day period.

If you are a tenant in these premises, you may terminate your lease upon at least 30 days' prior written notice to your landlord. IF YOU ARE A TENANT YOU MAY PURCHASE, AS A CONDOMINIUM UNIT, THE PREMISES KNOWN AS ..... AT ANY TIME AFTER THE DATE OF THIS NOTICE.

(g) [A declaration may not be received for record unless there is attached thereto an affirmation of the developer in substantially the following form:

I hereby affirm under penalty of perjury that the notice requirements of section 11-102.1 of the Real Property Article, if applicable, have been fulfilled.

Developer

By . . . . . .

(h)] Failure to fulfill the provisions of this section does not affect the validity of a condominium regime otherwise established in accordance with the provisions of this title.

January 27, 1977

POSITION OF GOVERNOR'S COMMISSION

ON LANDLORD - TENANT LAW REVISION

ON

H.B. 553

H.B. 553 would amend Section 11-102.1 of the Real Property Article, which regulates the conversion of residential rental buildings to condominiums. The purpose of H.B. 553 is the same as H.B. 388 (Delegate Sheehan) and S.B. 151 (Senator Steinberg), although H.B. 553 is drafted differently than H.B. 388 and S.B. 151.

Under Section 11-102.1, a residential rental building cannot be subjected to a condominium regime (by the filing of a declaration and plat) until at least 180 days after giving tenants in the building notice of the proposed conversion to a condominium regime. This provision thus requires tenants residing in the building who wish to purchase their unit as a condominium to wait until the property is subjected to a condominium regime, which is at least 180 days after the notice of conversion, before they can purchase their unit as a condominium. During this period, they continue to pay rent.

H.B. 553 would amend Section 11-102.1 to permit owners of a residential rental building to convert the building to a condominium (by filing of a declaration and plat) at any time they choose. Tenants in the building thereafter could immediately purchase their premises as a condominium, and thus could begin to gain equity in their unit at least 180 days earlier than is presently permitted under Section 11-102.1.

H.B. 553 2ould continue to give tenants in a residential rental building which is scheduled for conversion to a condominium at least 180 days after notice of conversion before they can be served with a notice to quit. H.B. 553 would amend Section 11-102.1 to provide that notice to quit cannot be given until at least 180 days after the owner gives the tenant notice that the building has been converted to a condominium, in the form required by Section 11-102.1(f). Section 11-102.1 presently provides that the landlord may not subject the property to a condominium regime, or give a tenant notice to vacate, until at least 180 days after giving the tenants notice of his intent to convert to a condominium regime. H.B. 553 thus will continue to give tenants at least 180 days before they can be given notice to vacate from a residential rental building which is being converted to a condominium regime.

H.B. 553 would also amend the notice requirements of Section 11-102.1(f) to inform tenants that they may purchase their unit as a condominium, rather than vacate at the end if the 180 day period after notice.

H.B. 553 would thus continue to give tenants in a residential building which is being converted to a condominium at least 180 days to vacate the premises after receiving notice of the conversion but would allow tenants in the building who

wish to purchase their unit as a condominium to do so immediately after recipet of the notice of conversion.

Steven G. Davison,
Reporter
Governor's Commission on
Landlord-Tenant Law Revision

H O U S E O F D E L E G A T E S

No. 553

By: Delegate Owens (Departmental - SC - Landlord Ten)
Introduced and read first time: January 14, 1977
Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning

Condominiums - Notice of Conversion

FOR the purpose of requiring the owner of any property which is subjected to a condominium regime to give notice of such conversion and intention to sell, as a condominium, to the tenants occupying any portion of the property as a residence, and to certain other persons; specifying the form of the notice; authorizing each tenant to select certain options with respect to his residence within a certain period of time; repealing a certain provision relating to the former notice of intention to convert; and generally relating to the notice of a conversion of property to a condominium regime and the duties and rights of the owner and tenants of such property.

BY repealing and reenacting, with amendments,

Article - Real Property
Section 11-102.1(a), (d), (e), (f), (g) and (h)
Annotated Code of Maryland
(1974 Volume and 1976 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Sections 11-102.1(a), (d), (e), (f), (g) and (h) of Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1976 Supplement) be and they are hereby repealed and reenacted, with amendments, to read as follows:

Article - Real Property

11-102.1.

(a) [At least 180 days before property is

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Numerals at right identify computer lines of text.

subjected to a condominium regime,] IF ANY PROPERTY IS SUBJECTED TO A CONDOMINIUM REGIME IN ACCORDANCE WITH §11-102, the owner and the landlord of each tenant then occupying any portion of the property as his residence, if other than the owner, shall give the tenant a notice in the form specified in subsection (f) and shall deliver a copy of the notice prior to entering into a lease to each tenant who thereafter leases any portion of the property for his residence.

(d) Any tenant leasing any portion of the property as his residence at the time the notice referred to in subsection (a) is given to him and whose lease term would ordinarily terminate during the 180-day period is entitled to have the term extended on the same terms and conditions until the expiration of the 180-day period. NOTICE TO VACATE THE PROPERTY MAY NOT BE GIVEN TO A TENANT PRIOR TO THE EXPIRATION OF THE 180-DAY PERIOD, EXCEPT AS PROVIDED IN SUBSECTION (C).

(e) Any tenant leasing any portion of the property as his residence at the time the notice referred to in subsection (a) is given to him may terminate his lease, without penalty for termination upon at least 30 days' written notice to his landlord. ANY TENANT MAY PURCHASE, AS A CONDOMINIUM UNIT, THE PROPERTY WHICH HE IS LEASING AS HIS RESIDENCE AT ANY TIME AFTER RECEIVING THE NOTICE REFERRED TO IN SUBSECTION (A).

(f) The notice referred to in subsection (a) shall be sufficient for the purposes of this section if it is in substantially the following form:

NOTICE OF INTENTION TO [CREATE]
SELL A CONDOMINIUM

..... (Date)

This is to inform you that the premises known as....
.....
.....
[may be] HAVE BEEN subjected to a condominium regime in accordance with the Maryland Condominium Act AND WILL BE SOLD AS A CONDOMINIUM UNIT following the expiration of 180 days from the date of this notice, OR DURING THAT 180-DAY PERIOD AS PROVIDED BELOW.

If you are a tenant in these premises, you are entitled to remain in your leased premises until the expiration of the term of your lease or the 180 day period, whichever is longer, unless you breach a covenant in your lease, or fail to pay your rent. If the term of your lease expires during the 180 day period, you may have it extended, on the same terms and conditions, until the expiration of the 180 day period.

If you are a tenant in these premises, you may terminate your lease upon at least 30 days' prior written notice to your landlord. IF YOUR ARE A TENANT YOU MAY PURCHASE, AS A CONDOMINIUM UNIT, THE PREMISES KNOWN AS ..... AT ANY TIME AFTER THE DATE OF THIS NOTICE.

(g) [A declaration may not be received for record unless there is attached thereto an affirmation of the developer in substantially the following form:

I hereby affirm under penalty of perjury that the notice requirements of section 11-102.1 of the Real Property Article, if applicable, have been fulfilled.

Developer

By .....

(h)] Failure to fulfill the provisions of this section does not affect the validity of a condominiun regime otherwise established in accordance with the provisions of this title.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1977.

H O U S E O F D E L E G A T E S

No. 553

By: Delegate Owens (Departmental - SC - Landlord Ten)
Introduced and read first time: January 14, 1977
Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning

Condominiums - Notice of Conversion

FOR the purpose of requiring the owner of any property which is subjected to a condominium regime to give notice of such conversion and intention to sell, as a condominium, to the tenants occupying any portion of the property as a residence, and to certain other persons; specifying the form of the notice; authorizing each tenant to select certain options with respect to his residence within a certain period of time; repealing a certain provision relating to the former notice of intention to convert; and generally relating to the notice of a conversion of property to a condominium regime and the duties and rights of the owner and tenants of such property.

BY repealing and reenacting, with amendments,

Article - Real Property
Section 11-102.1(a), (d), (e), (f), (g) and (h)
Annotated Code of Maryland
(1974 Volume and 1976 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Sections 11-102.1(a), (d), (e), (f), (g) and (h) of Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1976 Supplement) be and they are hereby repealed and reenacted, with amendments, to read as follows:

Article - Real Property

11-102.1.

(a) [At least 180 days before property is

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Numerals at right identify computer lines of text.

subjected to a condominium regime,] IF ANY PROPERTY IS SUBJECTED TO A CONDOMINIUM REGIME IN ACCORDANCE WITH §11-102, the owner and the landlord of each tenant then occupying any portion of the property as his residence, if other than the owner, shall give the tenant a notice in the form specified in subsection (f) and shall deliver a copy of the notice prior to entering into a lease to each tenant who thereafter leases any portion of the property for his residence.

(d) Any tenant leasing any portion of the property as his residence at the time the notice referred to in subsection (a) is given to him and whose lease term would ordinarily terminate during the 180-day period is entitled to have the term extended on the same terms and conditions until the expiration of the 180-day period. NOTICE TO VACATE THE PROPERTY MAY NOT BE GIVEN TO A TENANT PRIOR TO THE EXPIRATION OF THE 180-DAY PERIOD, EXCEPT AS PROVIDED IN SUBSECTION (C).

(e) Any tenant leasing any portion of the property as his residence at the time the notice referred to in subsection (a) is given to him may terminate his lease, without penalty for termination upon at least 30 days' written notice to his landlord. ANY TENANT MAY PURCHASE, AS A CONDOMINIUM UNIT, THE PROPERTY WHICH HE IS LEASING AS HIS RESIDENCE AT ANY TIME AFTER RECEIVING THE NOTICE REFERRED TO IN SUBSECTION (A).

(f) The notice referred to in subsection (a) shall be sufficient for the purposes of this section if it is in substantially the following form:

NOTICE OF INTENTION TO [CREATE]
SELL A CONDOMINIUM

..... (Date)

This is to inform you that the premises known as....
.....
.....
[may be] HAVE BEEN subjected to a condominium regime in accordance with the Maryland Condominium Act AND WILL BE SOLD AS A CONDOMINIUM UNIT following the expiration of 180 days from the date of this notice, OR DURING THAT 180-DAY PERIOD AS PROVIDED BELOW.

If you are a tenant in these premises, you are entitled to remain in your leased premises until the expiration of the term of your lease or the 180 day period, whichever is longer, unless you breach a covenant in your lease, or fail to pay your rent. If the term of your lease expires during the 180 day period, you may have it extended, on the same terms and conditions, until the expiration of the 180 day period.

If you are a tenant in these premises, you may terminate your lease upon at least 30 days' prior written notice to your landlord. IF YOUR ARE A TENANT YOU MAY PURCHASE, AS A CONDOMINIUM UNIT, THE PREMISES KNOWN AS ..... AT ANY TIME AFTER THE DATE OF THIS NOTICE.

(g) [A declaration may not be received for record unless there is attached thereto an affirmation of the developer in substantially the following form:

I hereby affirm under penalty of perjury that the notice requirements of section 11-102.1 of the Real Property Article, if applicable, have been fulfilled.

Developer

By .....

(h)] Failure to fulfill the provisions of this section does not affect the validity of a condominiun regime otherwise established in accordance with the provisions of this title.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1977.

41r0298

MOBILE HOMES PARKS

HOUSE OF DELEGATES

No. 141
(PRE-FILED)

By: Delegates Long, Burkhead, Matthews and Greer
Requested: July 30, 1973.
Introduced and read first time: January 9, 1974.
Assigned to: Economic Matters

Read second time: March 7, 1974.
Committee Report: Favorable with amendments
House Action: Adopted with Floor amendments, March 12, 1974.

CHAPTER _____

AN ACT concerning

Mobile Home Parks — Owners, Operators and Dwellers

FOR the purpose of stating the rights, duties and obligations of mobile home park owners and operators and mobile home [[dwellers.]] residents; to define mobile home, to prohibit discrimination in the leasing and operating of mobile home lots, and to provide penalties.

BY adding

New Article 65A — Mobile Homes
Sections 1, 2, 3, 4, 5 [[and 6]], 6, and 7
Annotated Code of Maryland
(1972 Replacement Volume and 1973 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That new Article 65A — Mobile Homes, Sections 1, 2, 3, 4, 5 [[and 6]] , 6, and 7 be and it is hereby added to the Annotated Code of Maryland (1972 Replacement Volume and 1973 Supplement) to read as follows:

ARTICLE 65A — MOBILE HOMES

1.

(A) "MOBILE HOME" IS A HOME INCLUDING HOUSE TRAILER BUT EXCLUDING CAMPING TRAILER, TRAVEL TRAILER,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Underlining indicates amendments to the bill.
[[Double brackets]] enclose matter stricken out of bill.
Numerals at right identify computer units of text.
Slashes indicate the beginning of a computer unit.

TRUCK CAMPER, AND MOTOR HOME, WHICH IS A MOVABLE OR PORTABLE UNIT, DESIGNED AND CONSTRUCTED TO BE TOWED ON ITS OWN FRAME AND WHEELS AND CONNECTED TO UTILITIES FOR YEAR-ROUND OCCUPANCY. THE TERM INCLUDES: (1) A UNIT CONTAINING PARTS THAT MAY BE FOLDED, COLLAPSED OR TELESCOPED WHEN TOWED AND IS EXPANDABLE TO PROVIDE ADDITIONAL CUBIC CAPACITY; AND (2) A UNIT COMPOSED OF TWO OR MORE SEPARATELY TOWABLE COMPONENTS DESIGNED TO BE JOINTED INTO ONE INTEGRAL UNIT CAPABLE OF BEING AGAIN SEPARATED INTO THE COMPONENTS FOR REPEATED TOWING.

(B) NO MOBILE HOME PARK OWNER OR OPERATOR MAY EVICT A MOBILE HOME DWELLER OTHER THAN FOR THE FOLLOWING REASONS:

[[(A) NONPAYMENT OF RENT;

(B) VIOLATION OF A FEDERAL OR STATE LAW OR LOCAL ORDINANCE WHICH IS DETRIMENTAL TO THE SAFETY AND WELFARE OF OTHER DWELLERS IN THE MOBILE HOME PARK;

(C) CONTINUED VIOLATION OF ANY RULE OR REGULATION ESTABLISHED BY THE PARK OWNER OR OPERATOR. HOWEVER, THE MOBILE HOME OWNER SHALL RECEIVE WRITTEN NOTICE OF THE VIOLATION AT LEAST 30 DAYS PRIOR TO THE DATE HE IS REQUIRED TO VACATE AND SHALL HAVE CONTINUED TO VIOLATE THE RULE OR VIOLATION. A COPY OF ALL RULES AND REGULATIONS SHALL BE DELIVERED BY THE PARK OWNER OR OPERATOR TO THE MOBILE HOME OWNER PRIOR TO HIS SIGNING THE LEASE OR ENTERING INTO A RENTAL AGREEMENT. A COPY OF THE RULES AND REGULATIONS ALSO SHALL BE POSTED IN THE RECREATION HALL, IF ANY, OR IN SOME OTHER CONSPICUOUS PLACE IN THE PARK.]]

(1) NONPAYMENT OF RENT OR CONTINUOUS LATE PAYMENT OF RENT;

(2) VIOLATION OF A FEDERAL OR STATE LAW OR LOCAL ORDINANCE WHICH IS DETRIMENTAL TO THE SAFETY AND WELFARE OF OTHER DWELLERS IN THE MOBILE HOME PARK;

(3) VIOLATION OF ANY RULE OR REGULATION ESTABLISHED BY THE PARK OWNER OR OPERATOR IF THE MOBILE HOME OWNER RECEIVES WRITTEN NOTICE OF THE VIOLATION AT LEAST 30 DAYS PRIOR TO THE DATE HE IS REQUIRED TO VACATE, AND A COPY OF ALL RULES AND REGULATIONS HAS BEEN DELIVERED TO THE MOBILE HOME OWNER PRIOR TO HIS SIGNING THE LEASE OR RENTAL AGREEMENT AND POSTED IN THE RECREATION HALL OR OTHER CONSPICUOUS PLACE IN THE PARK;

(4) THE TENANT HOLDS OVER OR CONTINUES IN POSSESSION AFTER THE EXPIRATION OF THE TERM OF THE LEASE AND AFTER 30 DAYS WRITTEN DEMAND HAS BEEN MADE BY THE PARK OWNER OR OPERATOR FOR POSSESSION.

2.

(A) NO MOBILE HOME PARK OWNER OR OPERATOR MAY REQUIRE ANY TENANT OR OTHER PERSON SEEKING SPACE IN THE MOBILE HOME PARK TO PURCHASE A MOBILE HOME FROM ANY PARTICULAR PERSON, PARTNERSHIP, CORPORATION OR OTHER LEGAL ENTITY.

(B) NO MOBILE HOME PARK OWNER OR OPERATOR MAY REQUIRE A RESIDENT OF THE PARK TO PURCHASE FROM THE OWNER OR OPERATOR OR HIS DESIGNEE UNDER-SKIRTING, EQUIPMENT FOR TYING DOWN MOBILE HOMES, OR ANY OTHER EQUIPMENT REQUIRED BY LAW, LOCAL ORDINANCE OR REGULATIONS OF THE MOBILE HOME PARK.

(C) NO MOBILE HOME PARK OWNER OR OPERATOR MAY CHARGE ANY RESIDENT WHO CHOOSES TO INSTALL AN ELECTRIC OR GAS APPLIANCE IN HIS MOBILE HOME AN ADDITIONAL FEE, UNLESS THAT FEE REFLECTS THE COST TO THE MOBILE HOME PARK OF THE INSTALLATION OR ITS USE, OR TO RESTRICT THE INSTALLATION, SERVICE OR MAINTENANCE OF ANY SUCH APPLIANCE, OR TO RESTRICT THE MAKING OF ANY INTERIOR [[OR EXTERIOR]] IMPROVEMENTS IN THE MOBILE HOME, SO LONG AS THE INSTALLATION OR IMPROVEMENT IS IN COMPLIANCE WITH APPLICABLE BUILDING CODES AND OTHER PROVISIONS OF LAW.

(D) A MOBILE HOME PARK OWNER OR OPERATOR SHALL FULLY DISCLOSE, IN WRITING ALL FEES, CHARGES, ASSESSMENTS, RULES AND REGULATIONS PRIOR TO THE ASSUMPTION OF OCCUPANCY IN THE PARK OF A MOBILE HOME DWELLER. NO FEES, CHARGES OR ASSESSMENTS SO DISCLOSED MAY BE INCREASED OR RULES AND REGULATIONS CHANGED BY THE PARK OWNER OR OPERATOR WITH OUT SPECIFYING THE DATE OF IMPLEMENTATION OF THE FEES, CHARGES, ASSESSMENTS OR RULES AND REGULATIONS. THIS DATE SHALL BE NO LESS THAN 30 DAYS AFTER WRITTEN NOTICE WAS GIVEN TO ALL TENANTS.

(E) FAILURE ON THE PART OF THE MOBILE HOME PARK OWNER OR OPERATOR TO FULLY DISCLOSE ALL FEES, CHARGES OR ASSESSMENTS SHALL PREVENT THE PARK OWNER OR OPERATOR FROM COLLECTING THAT FEE, CHARGE OR ASSESSMENT. REFUSAL BY THE DWELLER TO PAY ANY UNDISCLOSED CHARGES MAY NOT BE USED BY THE OWNER OR OPERATOR AS A CAUSE FOR EVICTION IN ANY COURT OF LAW.

(F) ANY MOBILE HOME PARK OWNER OR OPERATOR WHO, DIRECTLY OR INDIRECTLY, RECEIVES, COLLECTS OR ACCEPTS FROM ANOTHER ANY DONATION, GRATUITY, BONUS OR GIFT, IN ADDITION TO LAWFUL CHARGES, UPON THE REPRESENTATION, UNDERSTANDING OR STATEMENT THAT COMPLIANCE WITH THE REQUEST OR DEMAND THEREFOR WILL FACILITATE, INFLUENCE OR PROCURE AN ADVANTAGE OVER OTHERS IN ENTERING INTO AN AGREEMENT, EITHER ORAL OR WRITTEN, FOR THE LEASE OR RENTAL OF REAL PROPERTY FOR ANY TERM OR FOR THE USE OR OCCUPATION THEREOF, OR ANY OWNER OR OPERATOR WHO REFUSES TO ENTER INTO AN AGREEMENT UNLESS HE

RECEIVES, DIRECTLY, OR INDIRECTLY, ANY SUCH DONATION, GRATUITY, BONUS OR GIFT, OR ANY OWNER OR OPERATOR, WHO, DIRECTLY OR INDIRECTLY, AIDS, ABETS, REQUESTS OR AUTHORIZES ANY OTHER PERSON TO VIOLATE ANY OF THE PROVISIONS OF THIS SECTION, SHALL, UPON CONVICTION, BE SUBJECT TO THE PENALTIES SET FORTH IN SECTION 5 FOR EACH OCCURRENCE.

3.

[[NO MOBILE PARK HOME OWNER OR OPERATOR MAY DENY ANY RESIDENT OF HIS MOBILE HOME PARK THE RIGHT TO SELL OR LEASE THE RESIDENT'S MOBILE HOME WITHIN THE PARK OR REQUIRE THE RESIDENT TO REMOVE THE MOBILE HOME FROM THE PARK SOLELY ON THE BASIS OF ITS SALE. THE PARK MAY RESERVE THE RIGHT TO APPROVE THE PURCHASER OF THE MOBILE HOME AS A TENANT, BUT THAT PERMISSION MAY NOT BE UNREASONABLY WITHHELD AND THE PARK MAY NOT EXACT A COMMISSION OR FEE WITH RESPECT TO THE PRICE REALIZED BY THE SELLER UNLESS THE PARK OWNER OR OPERATOR HAS ACTED AS AGENT FOR THE MOBILE HOME OWNER IN THE SALE PURSUANT TO A WRITTEN CONTRACT.]]

NO MOBILE HOME PARK OWNER OR OPERATOR MAY DENY ANY RESIDENT OF HIS MOBILE HOME PARK THE RIGHT TO SELL THE RESIDENT'S MOBILE HOME WITHIN THE PARK. THE PARK MAY RESERVE THE RIGHT TO APPROVE THE PURCHASER OF THE MOBILE HOME AS A TENANT, OR REQUIRE THE REMOVAL OF THE MOBILE HOME FROM THE PARK WITHIN 30 DAYS OF COMPLETION OF THE SALE, IF THE PURCHASER IS DISAPPROVED BY THE PARK OWNER. IN THE EVENT OF DISAPPROVAL, LIABILITY OF THE SELLER OF THE MOBILE HOME FOR THE REMAINDER OF THE LEASE TERM SHALL TERMINATE UPON THE REMOVAL OF THE MOBILE HOME FROM THE PARK. THE PARK MAY NOT EXACT A COMMISSION OR FEE WITH RESPECT TO THE PRICE REALIZED BY THE SELLER UNLESS THE PARK OWNER OR OPERATOR HAS ACTED AS AGENT FOR THE MOBILE HOME OWNER IN THE SALE PURSUANT TO A WRITTEN CONTRACT.

4. A MOBILE HOME PARK OWNER OR OPERATOR SHALL BE REQUIRED TO OFFER A PERMANENT OR PROSPECTIVE PERMANENT YEAR-ROUND RESIDENT OF HIS MOBILE HOME PARK:

(A) BY SEPTEMBER 1, 1974, [[TO OFFER]] A WRITTEN LEASE [[OR WRITTEN RENTAL AGREEMENT]] FOR A PERIOD NOT LESS THAN 12 MONTHS, TO MOBILE HOME [[DWELLERS]] RESIDENTS WITHIN THE PARK;

(B) WITHIN 30 DAYS OF A MOBILE HOME [[DWELLER]] RESIDENT ASSUMING OCCUPANCY IN THE PARK BY VIRTUE OF THE PURCHASE OF A MOBILE HOME IN THE PARK [[THE MOBILE HOME PARK OWNER OR OPERATOR SHALL OFFER THE DWELLER]] A WRITTEN LEASE [[OR WRITTEN RENTAL AGREEMENT]] FOR A PERIOD OF NOT LESS THAN 12 MONTHS;

(C) WITHIN 30 DAYS OF THE SALE OF A MOBILE HOME TO THE PROSPECTIVE PERMANENT YEAR-ROUND RESIDENT, AS PROVIDED IN SECTION 3 [[HEREOF, TO OFFER TO THE PURCHASER]] THE REMAINDER OF THE WRITTEN LEASE [[OR WRITTEN RENTAL AGREEMENT]] THEN IN EFFECT, BUT IN NO EVENT FOR A PERIOD OF LESS THAN 6 MONTHS.

5.

[[(A) ANY PERSON, PARTNERSHIP, CORPORATION OR OTHER LEGAL ENTITY WHO VIOLATES ANY PROVISION OF THIS ARTICLE OR WHO WILLFULLY AND WITHOUT REASONABLE CAUSE FILES A COMPLAINT UNJUSTIFIABLY ALLEGING A VIOLATION OF ANY PROVISION SHALL BE FINED NOT MORE THAN $1,000.00 FOR EACH OFFENSE. EACH DAY IN WHICH A VIOLATION OF SECTION 2(A) OCCURS SHALL CONSTITUTE A SEPARATE OFFENSE.]]

[[(B)]] (A) IN ANY ACTION BY ANY PERSON TO RECOVER ANY DONATION, GRATUITY, BONUS OR GIFT ACQUIRED BY ANOTHER IN VIOLATION OF THE PROVISIONS OF THIS ACT, THE COURT, UPON FINDING FOR THAT PERSON, [[SHALL]] MAY AWARD RECOVERY OF DOUBLE THE VALUE OF THAT DONATION, GRATUITY, BONUS OR GIFT, TOGETHER WITH THE COSTS OF THE ACTION.

[[(C) ANY POLICE DEPARTMENT OR AGENCY, OR THE CONSUMER PROTECTION DIVISION OF THE ATTORNEY GENERAL'S OFFICE, MAY BRING AN ACTION TO ENFORCE THE PROVISIONS OF THIS ARTICLE.]]

[[(D)]] (B) ANY VIOLATION OF THE PROVISIONS OF SECTION 2(A) SHALL ALSO CONSTITUTE AN UNFAIR TRADE PRACTICE [[WHETHER ACTIONABLE AT COMMON-LAW OR UNDER OTHER STATUTES OF THIS STATE.]] AND IS A VIOLATION OF ARTICLE 83, SECTION 38 OF THE ANNOTATED CODE.

6.

[[ANY PROVISION OF A LEASE OR OTHER AGREEMENT WHEREBY ANY PROVISION OF THIS ACT IS WAIVED SHALL BE DEEMED AGAINST PUBLIC POLICY AND SHALL BE VOID.]] ANY PROVISION OF A LEASE OR OTHER AGREEMENT EXECUTED AFTER THE EFFECTIVE DATE OF THIS ACT WAIVING ANY PROVISION OF THIS ACT IS VOID AS AGAINST PUBLIC POLICY.

7.

IT IS UNLAWFUL FOR AN OWNER OR OPERATOR OF A MOBILE HOME PARK OR HIS AGENT OR EMPLOYEE TO REFUSE, WITHHOLD FROM, OR DENY TO ANY PERSON ANY OF THE ACCOMMODATIONS, ADVANTAGES, FACILITIES, OR PRIVILEGES OF THE MOBILE HOME PARK OR LEASES TO THE LOTS IN THE PARK BECAUSE OF RACE, CREED, COLOR, SEX, OR NATIONAL ORIGIN OF THAT PERSON.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act being necessary for the welfare of the State and its inhabitants, it shall be liberally construed to effectuate the purposes thereof.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1974.

Approved:

_____
Governor.

_____
Speaker of the House of Delegates.

_____
President of the Senate.

MOBILE HOME PARK LANDLORD - TENANT LAW REVISIONS

I. Current Legal Status of Mobile Home Owner in Mobile Home Parks

A. Few parks require or use written leases.

B. Where no written lease, law generally considers mobile home owner to be a tenant at will on mobile home site. (In some states he is a "mere licensee.")

C. Unique position of mobile home park resident in owning his own home while renting land on which it is placed - different from normal landlord - tenant relationship.

D. Most mobile home owners must reside in mobile home park because of local laws prohibiting living in mobile home outside of a mobile home park.

1. Prince George's County Ordinance Sec. 79-13.
2. Montgomery County Code Sec. 54-57 (exception for farm tenants under certain circumstances.)

II. Problems of Mobile Home Owners Residing in Mobile Home Park

A. Because local ordinances in effect require mobile home owner to rent land in mobile home park, park owner has preeminent position.

B. Because park owner has high capital costs and receives low rent, he may also operate a mobile home sales dealership.

1. Park owner may require prospective resident to buy mobile home from him or from a dealer from whom park owner receives a kickback.

C. Some park owners charge an entry fee (usually $400, but may vary from $300 to $2500), which may not be refunded even when there is short occupancy by mobile home owner.

D. Park owner may evict residents with old mobile homes to make room for new homes which he may be selling.

E. Park owner may evict "troublemakers" who have attempted to organize other residents or who have taken their grievances to public officials.

F. Problems faced by evicted mobile home owners

1. Expensive to move mobile homes
2. Difficult to find properly zoned lot or rental space in another park.
3. Another park may require purchase of new mobile home from park owner.

G. Park rules

1. Hypothetically, park rules could be considered conditions of the tenancy, taking effect at beginning of rental period subsequent to notice.
2. In practice, rules that are unreasonable or undisclosed prior to tenancy or period in question may be imposed and enforced immediately upon threat of eviction.
3. Park residents may desire rules that create a controlled environment (i.e., park rules may prohibit pets, families with children, immoral or disorderly conduct).
4. Park rules may prohibit alterations to mobile homes or require residents to make certain repairs.
5. Residents may be required to deal exclusively with a company designated by owner for necessary fuel, home accessories, and other supplies and goods. (Owner may receive a rebate or kickback from designated dealer.)
6. Park owner is final interpreter of rules and ultimate judge of violations.

H. Sale of mobile home by park resident

1. Because of expense of moving mobile home and difficulty in finding another park allowing used homes, mobile home owner is usually forced to sell mobile home if he has to move.
2. Park owner may impose a resale fee ($100-$700 or usually 10%-25% of sales price) if mobile home owner wishes to sell his mobile home.
3. Park owner may require removal of mobile home from park because he does not approve of prospective buyer.
4. Buyer may not be permitted to move into home until payment of commission to park owner, even though park owner has not contributed to sale.

I. Parks may charge "head" taxes for guests and children.

J. Parks may charge fees for non-existent social clubs.

K. Parks may charge "exit" fees when mobile home is removed from park.

III. Legal Regulation

A. Problems with applying landlord - tenant laws to mobile home parks.

1. References to buildings, dwellings, etc. - terminology problems (cf. Florida Stat. Ann. Sec. 83-40 et seg.), which makes landlord - tenant law generally applicable to mobile home residents in mobile home parks.
2. Inapplicability of landlord's duty to repair

B. Comprehensive Mobile Home Park Landlord Tenant Laws

1. Cal. Ann. Civ. Code Secs. 789.5-789.11 (West Supp. 1974) (enclosed)
2. Fla. Stat. Ann. Secs. 83.68-83173 (West Supp. 1974-75), as amended by Chs. 74-12 and 74-160, 1974 Reg. Sess. (enclosed)
3. McKinney's New York Real Property Sec. 233 (Ch. 973, 1974 Reg. Sess.) (enclosed)
4. Mass. Ann Laws Ch. 140, Secs 32J-32P. (enclosed)
5. Maryland H.B. No. 141, 1974 Reg. Sess. (passed House of Delegates, but failed in Senate (enclosed)
6. Requirements found in these comprehensive statutes and bills
   a. Written lease required
   b. Charges limited to rent, utilities, or reasonableness service charges that may be levied prior to entry into park
   c. Limit reasons for evictions, with park owner's reasons for eviction subject to judicial review
      (1) Park resident allowed opportunity to correct or cease (substantial) violations of park rules or to pay overdue rent before being evicted for violation of park rule or failure to pay rent
      (2) Notice required prior to eviction
         (a) Cal. Ann. Civ. Code Sec. 789.5 (West Supp. 1972) (90 day delay of execution in certain evictions)
   d. Entry fee may be required to be prorated and returned to park resident where tenancy terminated before a certain period of time for reasons other than nonpayment of rent. (i.e., Fla. Stat. Ann. Sec. 83.70 (Ch. 74-160, 1974 Reg. Sess.)
   e. Entry charges, transfer and selling fees may be prohibited (i.e., Cal. Ann. Civ. Code Sec. 789.8 (West Supp. 1974).
   f. Limitations on park owner's control of sale and purchase of mobile homes in park.

August 8, 1977

REGULATION OF MOBILE HOME PARKS IN MARYLAND UNDER THE MARYLAND MOBILE HOME PARK ACT

Mobile Home Parks and Park Residents

The resident of a mobile home park is not in the same position as a tenant of a residential multi-unit rental apartment building or of a single family home, because the mobile home park tenant usually owns his mobile home but rents the land upon which his mobile home sits in the park. In addition, the references in landlord-tenant statutes to buildings and dwellings may make them inapplicable to mobile home residents in mobile home parks.

A report by Ms. Jennifer Russell for Baltimore Neighborhoods, Inc. in February, 1975, indicated that there were 55,000 residents of mobile home parks in the State of Maryland. Russell, The Mobile Home Park Tenant (copy enclosed).

This report also indicated that there are 25,000 mobile home residents in the Baltimore area, although the report does not state whether all of these persons live in mobile home parks. According to the report, approximately 80% of mobile home residents have not moved their unit from its original site.

Mobile homes ranged in cost from $4000-$15000 in 1972, and probably are higher today. A mobile home depreciates rapidly in value, often 50% during the first five years. Mobile home park rents are low, averaging $30-$60 in 1969.

Most mobile home owners must reside in mobile home parks because of local ordinances prohibiting residence in a mobile home except in a mobile home park. E.g., Prince George's County Ordinance Sec. 79-13; Montgomery County Code Sec. 54-57 (exception for farm tenants under certain circumstances).

Vacant spaces in mobile home parks are usually scarce, however, because local governments ban mobile home parks, limit the number of parks permitted within their jurisdiction, or prohibit expansion of existing mobile home parks. See Note, The Community and the Park Owner Versus the Mobile Home Park Resident: Reforming the Landlord-Tenant Relationship, 52 Boston Univ. L. Rev. 810, 811-812 (1972) (copy enclosed).

Because of the scarcity of spaces in mobile home parks, mobile home park owners have often imposed unreasonable conditions and restrictions upon mobile home park residents. See Note, supra, 52 Boston Univ. L. Rev. 810, 812-816; Russell, The Mobile Home Park Tenant. A prospective park resident may not be allowed to move a mobile home which he already owns into a park. A mobile home park owner may require prospective park residents to buy a mobile home from him (many park owners also operate a mobile home sales dealership because of high capital costs of the park and low rents from park residents) or from a designated dealer from whom the park owner receives a kickback. Many park owners charge new residents an entry fee (in Florida, such fees reportedly have averaged $300 or $400, but have been reported to be as high as $2500); such entrance fees are usually not refunded when the park resident leaves, even after short occupancy. Many park owners prohibit mobile homes over a certain age to remain in their park; park residents who own homes older than a specified age either are evicted or are required to sell or dispose of their home and purchase a new home. Some park owners evict residents with old mobile homes to make room for persons who have purchased new homes from him.

Mobile home park rules and regulations are often unreasonable or restrictive. It should be noted, however, that park residents may desire restrictive rules that create a controlled environment by prohibiting pets, families with children, or overnight guests. Theoretically, park rules could be considered to be conditions of the tenancy, taking effect at the beginning of the tenancy after notice to the tenant of the applicable rules and regulations. (If a mobile home park owner does not use written leases, residents of the park are generally considered to be tenants at will or a periodic month-to-month tenant (in some states, the resident is considered to be a licensee)). In actual practice, park owners often impose new rules and regulations upon park residents after the resident has moved in, and enforce these new rules and regulations by threatening eviction for their breach. Park rules often prohibit certain alterations to mobile homes, or require certain repairs or alterations to mobile homes to be made. Residents may be required by park rules to purchase fuel, mobile home accessories, or other supplies and goods exclusively from a dealer designated by the park owner, with the park owner receiving a rebate or kickback from the designated dealer.

Several leases for mobile home parks in Maryland are attached to this report. These leaseforms were submitted to the Commission in 1975; it is not known whether the same leaseforms are still in use by these parks. These leases include many of the provisions previously mentioned, including detailed maintenance requirements for residents' mobile homes and rented land and restrictions on the activities of children.

Mobile home park regulations may adversely affect park residents that have to move. Moving a mobile home park is difficult and expensive, and new parks may not let a resident move his trailer in, so that a mobile home owner usually is forced to sell his mobile home if he has to move. Mobile home park owners, however, may require a mobile home to be removed from the park if the park owner does not approve of the home's buyer. In addition, some park owners impose a resale fee ($100-$700 or 10-25% of the sales price in Florida) when a park resident sells his home; the buyer of the home is not permitted to move into his park in the home until the resale fee has been paid to the park owner. This resale fee has been charged even though the park owner has not contributed to the sale in any way.

Some park owners charge exit fees when a mobile home is removed from the park; extra "head" fees for guests and children; and fees for non-existent social clubs.

Maryland Mobile Home Park Act

The Maryland Mobile Home Park Act, Chapter 479 of the 1976 Session, Title 8A of the Real Property Article, has addressed some of these problems faced by mobile home park residents (copy attached).

The Maryland statute permits a mobile home park owner to promulgate rules with respect to "(1) the size, quality, or construction standards for any mobile home to be placed or retained after resale in the park; or (2) the maintenance standards for any mobile home in the park or immediate area surrounding the mobile home, in accordance with the state or county health laws or regulations". Section 8A-102(a). The wording of this subsection appears to permit the park owner to promulgate regulations governing either the size, quality, construction standards, or maintenance standards of mobile homes in his park, but not two or more of these four categories. A Court might find, however, that the legislature intended to permit a park owner to regulate all four areas if he so chooses; this ambiguity could be resolved, however, if the two "or" 's in subsection 8A-102(a) were changed to "and" 's (which would permit a park owner to regulate each of the four categories); or if each of the four categories were listed separately and followed by an "or" (which would permit a park owner to regulate only one of the four categories). It might be argued that by implication, the park owner does not have authority to prescribe rules or regulations governing such areas as conduct of park residents; activities of children; utilities; or pets. This conclusion is uncertain, however, because Section 8A-102 states that the park owner "may prescribe" rules with respect to the specified areas, but does not say specifically that the landlord may not

prescribe rules governing other areas. In addition, Section 8A-106 permits a parkowner to restrict the installation, service, or maintenance of any electric or gas appliance in a resident's mobile home or any interior or exterior improvement in or to the mobile home if it is in violation of applicable law or a rule established by the owner. Section 8A-106. Section 8A-106 thus gives park owners unlimited control over interior or exterior changes to a resident's mobile home; there is no requirement that such rules must be reasonable. A park owner's authority under Section 8A-106 is not limited by Section 8A-102(a)(1), because that section allows park owners to prescribe rules with respect to the "quality" of mobile homes in his park.

Section 8A-102 also appears to permit a park owner to apply a new rule to all residents of the park, even if a park resident signed a written lease whose term has not expired and which does not contain the new rule. This conclusion would also apply with respect to rules governing areas not specified by Section 8A-102, if a park owner has authority to prescribe rules governing areas not specified by Section 8A-102. This interpretation is reinforced by Section 8A-108(a), which provides that a park owner may increase a park fee or change any rule if he delivers a notice in writing of the increase or change to every park resident at least 30 days before the effective date of the increased park fee or changed rule. Section 8A-108(b) provides that a park owner may not collect the increased amount of a park fee from residents whom he has failed to notify of the proposed increase as required by Section 8A-108(a). The statute, however, does not make a new rule inapplicable to park residents whom the park owner has failed to give the notice required by Section 8A-108(a). A park owner is also required to disclose park fees to a prospective resident prior to the time that he signs the lease or occupies the premises.

A park owner is also required to post copies of any rule in a conspicuous place in the park, Section 8A-102(c), but is not required to give written copies of rules to park residents except prior to the time that a prospective resident signs a written lease or occupies the premises. Section 8A-103(a).

A park owner or operator is prohibited by Section 8A-102.1 from discriminating against any person on the basis of race, creed, color, sex or national origin by refusing, withholding, or denying accommodations, advantages, facilities or privileges in a mobile home park.

After September 1, 1976, a park owner must offer a prospective year-round resident a written lease with a period of not less than one year. Section 8A-103(b). This section does not indicate whether a park owner must make this offer to existing residents prior to the expiration of the term of their leases; the section refers only to prospective

residents, not persons actually residing in a mobile home park on September 1, 1976. This uncertainty should be clarified.

A similar uncertainty exists under Section 8A-103(b) with respect to the question of whether a landlord must offer existing park residents a new written lease for a period of at least a year prior to the expiration of the term of an existing lease.

This latter question is further complicated by Section 8A-107, which provides that a park owner may only "evict" a resident for non-payment of rent; "violation of a federal, state, or local law that is detrimental to the safety and welfare of other residents in the park;" or repeated violation of any rule or provision of the lease. If "evict" under Section 8A-107 is interpreted as including failure to renew a lease of a park resident or ejectment under Section 8-402 (holdover tenants) after the expiration of the term under a resident's existing lease, Section 8A-107 is a "good cause" eviction statute permitting mobile home park residents to remain in the park as long as they do not commit one of the three violations listed as grounds for eviction under Section 8A-107. This section also makes it unclear whether a park owner may order residents to remove mobile homes over a certain age, or fail to renew a resident's lease when the resident's mobile home reaches a certain age. Section 8A-102(a)(1) would appear to permit a park owner to do this, since it permits a park owner to prescribe rules with respect to the "quality" of mobile homes in the park. However, if "evict" under Section 8A-107 is interpreted as including failure to renew the lease of a park resident, or as including an order by a park owner to remove a mobile home from the park (without ordering residents themselves to leave), a park owner could not order the removal of older mobile homes or fail to renew the leases of residents with mobile homes of a certain age.

Section 8A-107(b), by requiring a park owner to give a resident notice of the violation at least 30 days before the date the resident is required to vacate, appears to deny a mobile home park owner initial resort to the summary remedies of Section 8-401(rent due and payable) and Section 8-402 (holdover tenants). It is unclear under Section 8A-107(b), however, whether a park owner may resort to the summary remedies of Sections 8-401 and 8-402 after he has given the 30 days notice required by Section 8A-107. In addition, Section 8A-107, unlike Section 8-401, does not permit a mobile home park resident to cure his failure to pay rent and prevent eviction. This conflict presents a further obstacle to the use of Section 8-401 by mobile home park owners. These conflicts between Section 8A-107 and Sections 8-401 and 8-402 were analyzed, and alternative proposed amendments were discussed, in the proposed amendments to the definition bill which were previously distributed.

The Maryland statute prohibits a park owner from collecting any gratuity from any prospective resident which is designed "... to facilitate, influence, or procure any advantage over other prospective residents in connection with the lease, use, or occupation of the premises." Section 8A-104(b). A person charged such an illegal gratuity may obtain a court judgment for double the amount of the gratuity and court costs. Section 8A-104(c).

Section 8A-104, however, does not appear to prohibit park owners from charging entrance fees, since entrance fees are not charged for the purpose of allowing one prospective resident to obtain an advantage over another prospective resident.

The Maryland mobile home park statute provides some protection to a mobile home park resident who sells his mobile home. A park owner is not permitted to prevent a park resident from selling his mobile home in the park, or to require a resident who has sold his mobile home in the park to remove the mobile home from the park because of the sale of the mobile home. Section 8A-110(b). The Maryland statute, however, does not appear to prohibit a park owner from charging a resident an exit fee, unless such a fee is interpreted as a means of preventing a park resident from leaving the park. Section 8A-105 requires a park owner to offer a resident who has purchased a mobile home from another park resident "... a new written lease for the remainder of the lease then in existence, but in no event, for a period of less than one year." Neither Section 8A-110(b) nor Section 8A-105, however, requires a park owner to offer a lease in the park to a non-resident of the park who has purchased a mobile home from a resident of the park. In addition, Subsection 8A-102(b) authorizes a park owner to promulgate a rule requiring his approval of the buyer of a park resident's mobile home when the mobile home is to be retained in the park; the park owner, however, must act reasonably under such a rule. Section 8A-102(b)(2).

The Maryland statute limits certain fees and commissions that a park owner may collect. A park owner may collect a commission in connection with the sale of a mobile home only if he has acted as an agent for either party to the sale. Section 8A-110(c). The amount of commission which may be charged is not regulated, however, by the Maryland statute. It is unclear, however, whether this section prohibits a park owner from requiring payment of a selling fee or transfer fee by a resident or prospective resident with respect to sale of a mobile home. A park owner may not charge a late payment fee in excess of 5 percent of the rent due or $5, whichever is higher, and may not charge any late payment fee if the rent is paid within 5 days of the due date. Section 8A-109. The Maryland statute, however, does not regulate "head" fees for guests and children or fees for recreational facilities or social clubs.

Maryland prohibits a park owner from requiring any resident or prospective resident to purchase a mobile home or material or equipment (including equipment required by applicable law which is necessary for installation of the mobile home) from any particular person. Section 8A-110(a).

The Maryland statute prohibits a lease from waiving any provision of the mobile home park act, Section 8A-111, but does not prohibit a waiver of a park resident's rights in a receipt for a security deposit or other written document.

A mobile home park owner who violates any provision of the statute is guilty of a misdemeanor and is subject to a fine of up to $500. Section 8A-113. A landlord is not required to have acted willfully or intentionally in violating provisions of the Act in order to be subject to this criminal penalty; the statute appears to impose strict criminal liability on park owners who violate the statute.

The Maryland statute, however, except under Section 8A-104 (charging of gratutities to prospective residents to obtain an advantage over other prospective residents) does not provide a civil remedy to park residents or prospective park residents against a park owner for injuries suffered as a result of a parkowner's violation of provisions of the Maryland Mobile Home Park Act.

Mobile Home Park Statutes of Other States

A number of states, including California, Colorado, Florida, Massachusetts and New York, have enacted mobile home park statutes which regulate areas not addressed by the Maryland statute. See enclosed copies of these statutes. California prohibits a park owner from terminating a resident's tenancy for the purpose of making the tenant's space in the park available to a person who has purchased a mobile home from the park owner or his agents. California, Colorado and Massachusetts prohibit a park owner from charging entry fees. Florida requires park owners to return a pro rata amount of an entrance fee if a park resident leaves before 2 years have passed from the date on which the fee was charged unless the resident is lawfully evicted or abandons. Massachusetts, California, New York and Colorado also prohibit a park owner from requiring payment of any type of selling fee or transfer fee by a resident or prospective resident with respect to the sale of a resident's mobile home. Florida prohibits park owners from charging exit fees. California prohibits charges for pets, guests staying less than 14 days in a month, or "head" fees for members of a resident's family. New York and Massachusetts provide that there is a rebuttable presumption that any rules or changes in rent

which do not apply uniformly to all park residents in a similar class are illegal. New York, Florida and Massachusetts authorize the courts to declare invalid rules that they find to be unconscionable or unreasonable. Florida also authorizes a court to declare invalid lease provisions that it finds to be unconscionable. California permits mobile home park owners to require removal of mobile homes that are more than 25 years old if manufactured after September 15, 1971, or that are in a rundown condition or in disrepair.

Steven G. Davison
Reporter

GOVERNOR'S COMMISSION ON
LANDLORD - TENANT LAW REVISION

16 Francis Street
Annapolis, Maryland

January 31, 1975

Enclosed are copies of the six bills passed by the Commission since July 1, 1974, and forwarded to the 1975 Session of the General Assembly. These bills will be handled initially through the Economic Matters Committee of the House of Delegates; after the House takes final action on the bills, they will proceed to the Senate. Bill Numbers have been assigned to five of the six bills as follows:

Amendments to 8-402 (H.B. 138)
Rent Escrow (H.B. 150)
Condominium Conversion (H.B. 142)
Appeal Bill (H.B. 251)
Retaliatory Evictions (H.B. 252)

Copies of the enrolled versions of five of the bills are also enclosed. Hearings on H.B. 138, H.B. 150, and H.B. 142 will be held by the House Economic Matters Committee on Thursday, February 6, at 11:30 A.M in the hearing room at the New Delegate Building, College Avenue and Bladens Street, Annapolis.

Steven G. Davison
Reporter

Bill
just for your
info.
Jim

March 21, 1975

Mr. Steven G. Davidson
3600 South 14th Street
Arlington, Virginia 22204

Dear Steven,

I want to indicate to you my appreciation for the interest you show, and for the hard work you put in on behalf of the Governor's Landlord-Tenant Laws Study Commission. I have no criticism of your work and have not heard any. In fact what ever comment I have had is to the effect that you are doing a good job and know your stuff.

Being new to the Commission and coming in at a time when the committee was kind of worn out it is no doubt hard for you to fully appreciate the situation. The Commission has been a creative battlefield since the beginning. This has been its most peaceful year since most of the material has been battled over for three years. The Commission is an emotional battle field as well as an intellectual one so at times we have been sharp with each other and there has always been an underlying feeling of tension. The sharpness, however, is not personal and is soon forgotten.

The struggle to get the laws through the General Assembly has been just intense.

The hardest fought battle has been the one over retaliatory eviction and this has extended over a three year period. The focus of the battle has been over the lease renewal section. You may be absolutely right over the fact that it makes no difference whether that clause which we wanted to take out is left in or is left out. You have to

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appreciate my discomfort of this being stated to me in John Byrnes' office, At the moment we were trying to figure out how to save the bills, and my not accepting this with our protest. I am not a lawyer but I can't help wondering what we have been arguing about for three years!

In relation to the possibility of extending the 30 day notice of charges against the security deposit to 45 days as a compromise or help to the landlord, I am sorry to have jumped on you but I did feel that it was out of place for you as resource person for the Commission to make such a proposal. I really felt there was no need for this since nothing was to be gained by it i.e. we weren't trying to save anything. The proposed bill 1073 was dead. Furthermore if it is a good idea to synchronize the time period for such notice to the time by which the security deposit should be returned then let the 45 day period be reduced to 30 days. I honestly don't understand why a landlord should be able to keep a tenant's money as long as 45 days after the tenant has vacated the apartment. Neigher do many tenants who are pressed for cash during the moving period.

I did talk with a couple of the landlord representatives before the hearing. They stated that they didn't like the 30 day notice requirement but that they could live with it.

I don't pretend to be anything but partisan towards tenant rights (though I would not want to do anything to unfairly hurt a landlord). I do, however, agree with Judge Silver's comments when the Commission was formed. He said to the landlords that the Commission was formed to help balance the legal rights between landlord and tenant which were now in favor of the landlord and that it could not be tolerated that the Commission would do nothing but maintain the status quo. I am sure that all of us who are tenant orientated agree and the uphill battle we continually have to engage in makes us quite aggresive.

So again please don't take my strong reactions to things personally. I do appreciate what you are doing and I do realize that we have given you hardly any guidelines on how to operate since the Commission has not thgught this through. We should probably give this more thogght in the future.

Sincerely yours,

George B. Laurent
Executive Director

GBL/mb

appreciate my discomfort of this being stated to me in John Byrnes' office, at the moment we were trying to figure out how to save the bills, and my not accepting this with out protest. I am not a lawyer but I can't help wondering what we have been arguing about for three years!

In relation to the possibility of extending the 30 day notice of charges against the security deposit to 45 days as a compromise or help to the landlord, I am sorry to have jumped on you but I did feel that it was out of place for you as resource person for the Commission to make such a proposal. I really felt there was no need for this since nothing was to be gained by it i.e. we weren't trying to save anything. The proposed bill 1073 was dead. Furthermore if it is a good idea to synchronize the time period for such notice to the time by which the security deposit should be returned then let the 45 day period be reduced to 30 days. I honestly don't understand why a landlord should be able to keep a tenant's money as long as 45 days after the tenant has vacated the apartment. Neigher do many tenants who are pressed for cash during the moving period.

I did talk with a couple of the landlord representatives before the hearing. They stated that they didn't like the 30 day notice requirement but that they could live with it.

I don't pretend to be anything but partisan towards tenant rights (though I would not want to do anything to unfairly hurt a landlord). I do, however, agree with Judge Silver's comments when the Commission was formed. He said to the landlords that the Commission was formed to help balance the legal rights between landlord and tenant which were now in favor of the landlord and that it could not be tolerated that the Commission would do nothing but maintain the status quo. I am sure that all of us who are tenant orientated agree and the uphill battle we continually have to engage in makes us quite aggressive.

So again please don't take my strong reactions to things personally. I do appreciate what you are doing and I do realize that we have given you hardly any guidelines on how to operate since the Commission has not thought this through. We should probably give this more thought in the future.

Sincerely yours,

George B. Laurent
Executive Director

gbl/mb

Baltimore Neighborhoods, Inc.
32 West 25th Street
Baltimore, Maryland 21218
243-6007

MEMBERSHIP BLAN

My check for $_____covering one year dues in Baltimore Neighborhoods, Inc. is enclosed.

Name: _____

Address: _____

City & State: _____Zip Code_____

Phone No.: _____Business Phone: _____

$10	Individual	$50	Sustaining
$15	Family	$100	or over Founding
$25	Supporting		Other

All Contributions are Tax Deductible

Baltimore Neighborhoods Inc. 32 West 25th Street
Baltimore, Maryland 21218
243 - 6007

A Private Non Profit Civil Rights Agency Working For Fair Housing and Tenants' Rights In The Baltimore Metropolitan Area

A United Fund Agency

What are BNI's Goals

1. To maintain viable interracial communities
2. To create an open housing market
3. To fight prejudice and discrimination
4. To expand the rights of tenants and improve tenant-landlord relations

How does BNI help Integrated Communities?

By fighting blockbusting, racial steering, racial harassment. For example, BNI stands ready to help in cases where the coming of integration is causing racial tension and or harassment of the newcomers. A member of the BNI staff will visit the neighborhood, explain the law, help calm fears, and help protect the rights of the newcomers.

For neighborhoods already integrated or integrating BNI has published a manual "Neighborhoods and Integration" on how to maintain stability.

How does BNI work for an Open Housing Market?

The Federal and Maryland Fair Housing laws forbid discrimination in the sale or rental of housing on the basis of race, color, creed, national origin or sex. State law also forbids discrimination on the basis of marital status or physical or mental handicap.

BNI monitors the practices of the housing industry in this area and has published a number of studies showing the extent of non-compliance.

BNI tries to work with the industry to eliminate discriminatory practices and also to inform the Black community of its rights under the law.

BNI also works with and monitors the activities of federal and state agencies which have a responsibility to end discrimination in housing and to help create an open housing market.

How does BNI handle Complaints of Discrimination?

The complainant will be asked to provide a written statement. Through testing and other means BNI tries to confirm or disprove the allegations. If confirmed, BNI will help the complainant file a complaint with an appropriate agency or find him a volunteer lawyer who will file a civil suit. BNI on its own initiative also files complaints.

What is BNI doing in the field of Tenant-Landlord Relations?

BNI receives hundreds of calls each year from tenants with problems. Some complaints involve advice, information, or the use of volunteer lawyers. Those qualified for Legal Aid are referred to that agency. BNI publishes for Baltimore City "A Guide To Laws Covering Tenant-Landlord Relations in the City and the State", and similar guides for the surrounding counties.

In the area of legislation BNI's Executive Director serves on the Governor's Landlord-Tenant Laws Study Commission. BNI has helped to coordinate support for laws improving the rights of tenants drafted by the Commission.

BNI helps to organize individual tenant associations and is also working to set up a metropolitan tenant movement.

What Geographic Area does BNI Serve?

BNI works in the whole Baltimore metropolitan area — Baltimore City, Baltimore County, and adjacent areas of Anne Arundel, Howard, Carroll and Harford counties. BNI members and volunteers come from all parts of this area.

What kind of work do BNI Volunteers do?

- Testing complaints of housing discrimination
- Research and monitoring
- Helping with newsletters and other mailings, clerical help
- Working at the BNI booth at community fairs
- Speakers Bureau
- Serving on BNI Committees:
  - Black Communications
  - Integrated Neighborhoods
  - Financial Practices
  - Legislative Committee
  - Tenant-Landlord
  - HUD Committee (Specializing in Federal Government programs related to housing)

Where does BNI get its money?

About half comes from the United Fund of Central Maryland and BNI has a small service contract with the City. The rest comes from the general public, churches, etc.

How do people join BNI?

Just fill in and mail the form over-leaf. It is worthwhile joining even if you are too busy to do much work for BNI. The more members BNI can speak for, the more effective its voice will be.

BALTIMORE NEIGHBORHOODS, INC.

32 West 25th Street, Baltimore, Maryland 21218 • Area Code 301 - 243-6007

George B. Laurent
Executive Director

Donald J. Miller
Associate Director

August 13, 1975

Mr. William Sallow, Chairman
Governor's Landlord Tenant Laws Study Commission
c/o Department of Housing & Community Development
222 E. Saratoga Street
Baltimore, Maryland 21202

Dear Bill,

This is a follow up to my letter of August 8, 1975 in which I requested that the Commission draft legislation that would require that a landlord asking a tenant to sign a written lease must give him a copy of that lease within a reasonable time.

Today a complainant reported to me that he had contemplated signing a lease with one of the largest management companies in this area. He asked for a copy of the lease that he was to sign in order to first show it to his lawyer and to study it himself. The company refused to give him a copy but said that he could have his lawyer present at the signing and that the lawyer could examine it at that time. This obviously would involve at least two hours of a lawyer's time and a $50 to $100 legal fee.

This is not the only such complaint of this type I have received. It seems to be a general practice to not allow the tenant to take home a copy of the lease to study it.

I would think that it should be a basic principle of consumerism and fair business practices that anyone being asked to sign a written lease should be given such a lease several days before the signing of the lease with the opportunity both to study it and to have a lawyer to examine it. Furthermore I believe that the copy given to him for examination should be the copy he signs.

I see no reason for leases to be guarded by management as if they were secret documents.

Sincerely yours,

George B. Laurent
Executive Director

GBL/mb
Copy to: Steven G. Davidson


AUG 15 1975
NEIGHBORHOOD
DEVELOP
AND COMMUNITY

BALTIMORE NEIGHBORHOODS, INC.

32 West 25th Street, Baltimore, Maryland 21218 • Area Code 301 - 243-6007

George B. Laurent
Executive Director

Donald J. Miller
Associate Director

August 15, 1975

Mr. William Sallow, Chairman
Governor's Landlord Tenant Laws Study Commission
c/o Department of Housing & Community Development
222 E. Saratoga Street
Baltimore, Maryland 21202

Dear Bill,

It is my understanding that in weekly renewable tenancies outside of Baltimore City the tenant has to give the landlord a months' written notice if he desires to vacate the premises. The landlord, on the other hand, can give a week's notice in writing.

I am sure it is quite difficult for the average tenant to relocate in a week.

Ken Pilla of Legal Aid and I feel that the notice to the tenant should be lengthened to one month.

Actually this can be done in the rewrite of 8-401 or 8-402 (?)

Sincerely yours,

George B. Laurent
Executive Director

GBL/mb
Copy to: Steven G. Davidson
Kenneth Pilla


AUG 1 3 1975
NEIGHBORHOOD DEVELOPMENT
AND COMMUNITY DEVELOPMENT

Steven G. Davison
Reporter, Governor's
Commission on Landlord-
Tenant Law Revision
3600 South 14th Street
Arlington, Virginia 22204

August 27, 1975

Ms. Margaret Kostritsky
Chief Clerk
District Court of Maryland
2083 West Street
Annapolis, Maryland 21401

Dear Ms. Kostritsky:

I am replying to your letter of February 14, 1975, with respect to bills before the Commission to authorize the District Court to handle declaratory judgments. I apologize for the long delay in replying to your letter, but it did not reach me until July because it used an incorrect address for the University of Baltimore; and I was working on a manuscript with an August 1st deadline, subsequent to which I was on vacation.

The Landlord-Tenant Commission has considered, and rejected, proposals to give the District Court power to render declaratory judgments in landlord-tenant cases. The Commission decided that such a proposal was politically not feasible and difficult to implement. In lieu of these proposals, the Commission will consider, at its September 9th meeting, proposed bills to authorize District Courts, in actions under RP 8-401 and 8-402, to stay execution of judgments up to 30 days from the date of judgment, subject to the tenant paying the landlord for possession of the premises while execution is stayed. You should receive copies of these bills with the notice of the September 9th meeting, which should reach you shortly. Your comments on these bills would be appreciated.

If I can be of further assistance to you with respect to this matter, please contact me. Thank you for your interest in the Commission.

Sincerely yours,

Steven G. Davison (eg)

Steven G. Davison
Reporter

SGD/eg

cc: William Sallow
Chairman

Steven G. Davison
Reporter, Governor's
Commission on Landlord-
Tenant Law Revision
3600 South 14th Street
Arlington, Virginia 22204

August 27, 1975

Mr. Henry Blinder
Law Clerk
Pickett, Houton and Berman
Suburban Trust Building
Suite 206
7515 Annapolis Road
Hyattsville, Maryland 20784

Dear Mr. Blinder:

In response to your letter of July 10, 1975, I would suggest that you contact Mr. Minor Carter, a member of the Commission, who I believe was acting as Secretary-Reporter of the Commission in 1971. Mr. Carter can be reached at Post Office Box 1228, Baltimore, Maryland 21203 (Phone: 266-1000, Ext. 305). Unfortunately, I do not have any records of the Commission for that period, since I have been Reporter only since July, 1974.

If I can be of any further assistance to you with respect to this matter, please contact me.

Sincerely yours,

Steven G. Davison (e.g.)

Steven G. Davison
Reporter

SGD/eg

cc: William Sallow
Chairman

EXECUTIVE DEPARTMENT
ANNAPOLIS, MARYLAND 21404

September 3, 1975

Mr. William S. Braverman
7512 Lisburne Road
Baltimore, Maryland 21208

Dear Mr. Braverman:

Pursuant to House Joint Resolution 63 of the 1970 session of the General Assembly, it is my pleasure to appoint you to a special commission to study current State and local laws, ordinances and regulations in the areas of Landord-Tenant Law and to formulate an all-encompassing revision and consolidation of Landlord-Tenant Law in Maryland.

Mr. William Sallow has agreed to serve as Chairman of the Commission and I am sure he will be in touch with you shortly as to the time and place of the next meeting. Your Commission and a list of the membership is enclosed for your information.

Thank you for your willingness to accept this important assignment.

Sincerely,

Marvin Mandel

Governor

MM:MSS:rrl

cc: Mr. William Sallow

BALTIMORE NEIGHBORHOODS, INC.

32 West 25th Street, Baltimore, Maryland 21218 • Area Code 301 - 243-6007

George B. Laurent
Executive Director

Donald J. Miller
Associate Director

September 4, 1975

Mr. William Sallow, Chairman
Governor's Landlord Tenant Laws Study Commission
c/o Department of Housing & Community Development
222 E. Saratoga Street
Baltimore, Maryland 21202

Dear Bill,

Mark Reutter of the Sunday Sun asked me if the Governor's Landlord Tenant Laws Study Commission was going to take up any legislative proposals that would be of benefit to mobile park tenants. He knows we discussed this early last spring.

I told him that our former chairman, Judge Silver had intended to bring the commission to a decision at a future meeting but then resigned.

I also told him that it seemed to be a hugh problem, something we could get bogged down in, and could be distracted from legislation that would benefit more tenants. I felt that perhaps a special commission should be set up.

He felt that this would never happen, that trailer park tenants desparately need help, and that our Commission is their only chance for this. He suggested that perhaps the Commission could take up some of the bills that failed passage last year and re-introduce them as Commission bills. For example he suggests the bill by Delegate Joseph J. Long from Wicomico County.

Reutter is not being critical of our work. He is the reporter that did a series of articles on mobile park problems. Can we discuss that at the next meeting.

I hope we can also outline our legislative schedule i.e. what bills we hope to handle from now until the General Assembly. In part the docket for September 9th indicates this. Maybel this is all we can handle. I am hoping however we can take up the issue of a tenant's right to the ~~Sanctity~~ of his house i.e. the landlord should not have the unlimited right of entry, and a way of making the lease more of a two way contract. This is taken up in part in the uniform landlord tenant code. These two items are the items of greatest concern to most of the tenants I come in contact with (followed by retailiation eviction for those interested in complaining or organizing).

Hopefully we can discuss this on the 9th.

Sincerely yours,

George B. Laurent
Executive Director

GBL/mb
Copy to: Stephen G. Davidson

MONTGOMERY COUNTY TENANTS ASSOCIATION
PO BOX 30312
BETHESDA, MD 20014

September 9, 1975

Steven G. Davison
Governor's Commission on Landlord Tenant Laws Study
University of Baltimore
Mount Royal Street
Baltimore, MD 21201

Dear Mr. Davison:

This is to advise you that Robert W. Franquet no longer represents Montgomery County Tenants Association on the Governor's Commission on Landlord Tenant Laws Study.

As soon as his replacement is appointed, we will let you know.

Sincerely,

Ruth Lederer

Ruth Lederer, President
Montgomery County Tenants Association

January 27, 1977

POSITION OF GOVERNOR'S COMMISSION

ON LANDLORD - TENANT LAW REVISION

ON

H.B. 554

H.B. 554 2ould repeal Section 8-203.1 of the Real Property Article; and would enact a new Section 8-213 of the Real Property Article. New Section 8-213 would require landlords to provide prospective applicants with a copy of the leaseform, and to provide tenants who have executed a lease a copy of the lease within 15 days of occupancy by the tenant.

Section 8-203.1(a)(1) of the Real Property Article presently imposes a duty upon a landlord who rents by means of written leases and "who offers more than 4 dwelling units for rent" on one parcel or at one location, to provide, upon written request, a copy of the proposed leaseform to prospective tenants. The proposed bill would extend this duty to all landlords who rent by means of written leases. The bill would also amend Section 8-203.1(a)(1) to specifically allow a landlord to charge a prospective applicant for tenancy a reasonable fee, not to exceed a dollar, for a copy of the proposed leaseform. The bill proposes including these requirements in a new section because it also proposes requiring a landlord to provide a tenant with a copy of the lease, as signed by the tenant and the landlord or his agent, within 15 days of occupancy by the tenant; and because the Commission also proposes to repeal other subsections of Section 8-203.1.

The Commission decided not to specify any penalties against landlords who breach this duty to provide copies of a leaseform or a lease, and not to specify any remedies for a tenant or applicant who aggrieved by a landlord's breach of these duties. The Commission anticipates that the courts can provide,on a case-by-case basis, appropriate remedies for tenants or applicants who are aggrieved by a landlord's breach of these duties.

This bill also proposes to repeal Section 8-203.1(a)(2) because this section permits a landlord to include in a lease a statement that the tenant accepts the premises in a condition not permitting habitation with reasonable safety, §8-203.1(a)(2)(i); or a statement that the tenant agrees to repair defects which make the premises unsafe for habitation, §8-203.1(a)(2)(ii). This provision conflicts with the landlord's duties under the rent escrow statute, Section 8-211 of the Real Property Article, with respect to defects substantially affecting health or safety. The rent escrow statute does not authorize waiver or modification of a landlord's duties or a tenant's remedies under the statute. In addition, Section 8-208(a)(2) of the Real Property Article, which provides that a lease may not include a provision "whereby the tenant agrees to waive or forego any right or remedy provided by applicable 'aw," would preclude a lease from containing a provision whereby the tenant waives or modifies any of his rights under the rent excrow statute (Section 8-211). Section 8-203.1(a)(2) should be repealed because

it conflicts with Sections 8-211 and 8-209(a)(2) by permitting a landlord to include in a lease provisions which waive or modify the tenant's rights under the rent escrow statute. The repeal of Section 8-203.1(a)(2) would not affect the right of the landlord and tenant to agree that the tenant, as part of his rent, will repair defects in the premises that do not seriously and substantially affect life, health or safety (defects which are not within the scope of the rent escrow statute).

The Commission also proposes repealing Section 8-203.1(b) because it is in conflict with Sections 8-208(a)(2) and 8-208(a)(6) of the Real Property Article. Section 8-208(a)(6) prohibits provisions in any residential lease that authorize the aldnlord to take possession of the premises or the tenant's personal property except pursuant to law. Section 8-208(a)(2) prohibits any provision in a residential lease whereby a tenant waives any of his rights under law; Section 8-208(a)(2), in conjunction with the prohibitions against retaliatory evictions (Real Property Article Section 8-208.1), prohibits provisions in residential leases authorizing the landlord to evict for retaliatory reasons. Section 8-203.1(b) also prohibits such lease provisions, but unlike Section 8-208, which applies to all residential leases, Section 8-203.1(b) applies only to landlords who offer "more than 4 residential dwelling units for rent on one parcel of property or at one location" and rent "by means of written leases." Section 8-203.1(b) thus directly conflicts with Sections 8-208(a)(2) and 8-208(a)(6) with respect to scope of coverage, and consequently should be repealed. H.B. 421 of the 1976 Regular Session proposed repeal of Section 8-203.1(b) for these reasons.

If Sections 8-203.1(a) and (b) are repealed, Section 8-203.1(c) should also be repealed, because it is a "savings" clause that is meaningless if the other two subsections are repealed.

Steven G. Davison,
Reporter
Governor's Commission on
Landlord-Tenant Law Revision

H O U S E O F D E L E G A T E S

No. 554

By: Delegate Owens (Departmental - SC - Landlord Ten)
Introduced and read first time: January 14, 1977
Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant - Leases

FOR the purpose of repealing certain provisions dealing with the duty of certain landlords to provide lease forms to prospective applicants, and prohibiting certain lease provisions; and enacting a new Section requiring certain landlords to provide a certain lease form in certain cases to a prospective tenant; authorizing a landlord to charge a certain fee for such a form; and requiring the tenant to be given a copy of an executed lease within a certain time after occupancy.

BY repealing

Article - Real Property
Section 8-203.1
Annotated Code of Maryland
(1974 Volume and 1976 Supplement)

BY adding to

Article - Real Property
Section 8-213
Annotated Code of Maryland
(1974 Volume and 1976 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 8-203.1 of Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1976 Supplement) be and it is hereby repealed.

SECTION 2. AND BE IT FURTHER ENACTED, That new Section 8-213 be and it is hereby added to Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1976 Supplement) to read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Numerals at right identify computer lines of text.

213. 91

(A) UPON WRITTEN REQUEST, A LANDLORD WHO RENTS BY 94
INS OF WRITTEN LEASES SHALL PROVIDE A PROSPECTIVE 95
NANT WITH A COPY OF THE PROPOSED LEASE FORM. THE FORM 96
LL BE COMPLETE EXCEPT FOR THE DATE, NAME OF TENANT, 97
SIGNATION OF THE LEASED PREMISES, AND RENTAL RATE. A 98
DLORD MAY IMPOSE A CHARGE, NOT TO EXCEED $1, FOR EACH 99
PY OF THE FORM.

(B) WITHIN 15 DAYS OF THE DATE OF OCCUPANCY BY A 101
NANT, THE LANDLORD SHALL PROVIDE THE TENANT WITH A COPY 102
THE LEASE AS EXECUTED BY THE PARTIES. 103

SECTION 3. AND BE IT FURTHER ENACTED, That this Act 107
ll take effect July 1, 1977. 108

71r1247

S E N A T E O F M A R Y L A N D

No. 150
(PRE-FILED)

By: Senator Broadwater
Requested: November 12, 1976
Introduced and read first time: January 12, 1977
Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments
Senate Action: Adopted
Read second time: February 16, 1977

CHAPTER _____

AN ACT concerning

Deposits - Landlord

FOR the purpose of requiring a landlord to return, within a certain time, moneys deposited ~~to place a tenant's name on a waiting list~~ by a prospective tenant and subject to a certain deduction; and providing for civil damages for failure to comply.

BY adding to

Article - Real Property
Section 8-213
Annotated Code of Maryland
(1974 Volume and 1976 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That new Section 8-213 be and it is hereby added to Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1976 Supplement) to read as follows:

Article - Real Property

8-213.

~~IF A LANDLORD REQUIRES A DEPOSIT FROM A PROSPECTIVE TENANT, HE SHALL RETURN THE DEPOSIT WITHIN FIVE DAYS OF A WRITTEN DEMAND MADE ANYTIME PRIOR TO THE SIGNING OF THE~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Underlining indicates amendments to the bill.
~~Strike-out~~ indicates matter stricken from bill.
Numerals at right identify computer lines of text.

~~LAGE OR BE LIABLE FOR TWICE THE AMOUNT OF THE DEPOSIT IN DAMAGES.~~

(A) IF A LANDLORD REQUIRES FROM A PROSPECTIVE TENANT ANY FEES OTHER THAN A SECURITY DEPOSIT AS DEFINED BY SECTION 8-203(A) OF THIS SUBTITLE, THE LANDLORD SHALL RETURN THE FEES OR BE LIABLE FOR TWICE THE AMOUNT OF THE FEES IN DAMAGES. THE RETURN SHALL BE MADE NOT LATER THAN 15 DAYS FOLLOWING THE DATE OF OCCUPANCY OR THE COMMUNICATION, BY EITHER PARTY TO THE OTHER, OF A DECISION THAT NO TENANCY SHALL OCCUR.

(B) THE LANDLORD MAY RETAIN UP TO $25 FOR A CREDIT CHECK ON THE APPLICANT AND OTHER INCIDENTAL EXPENSES ARISING OUT OF THE APPLICATION. HOWEVER, THE LANDLORD SHALL RETURN ALL THAT PORTION OF THE FEES NOT ACTUALLY EXPENDED ON BEHALF OF THE TENANT MAKING APPLICATION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1977.

FAILURE TO PROVIDE ESSENTIAL SERVICES

WILLIAM J. COX
7415 E. Alvah Avenue
Dundalk, Maryland 21222
Phone: 282-1518

8-213

December 15, 1976

Mr. Steven Davidson
C/O Governor's Landlord-Tenant Laws Study Commission
University of Baltimore Law School
Charles & Mt. Royal Streets
Baltimore, Maryland 21201.

Dear Steve:

Quite a few landlords make a practice of setting rules of behavior that tenants are required to abide by and then turn around and make exceptions in certain cases which lead to hard feelings in quite a few cases. In my own case, I readily accepted the rule set down by my former landlord to the effect that no pets were permitted inasmuch as my wife is asthmetic and is allergic to dog hair. Shortly after moving in we noted quite a few dogs in the area and upon inquiry were informed that this rule was waived in many cases when a tenant was willing to pay an extra fee for the concession. The situation became desperite when our next door neighbor purchased a male and a female dog, the latter producing a liter of seven puppies shortly there after. When my wife suffered an asthmetic siezure and was confined to City Hospital for a full week, we determined that we would have to move at the earliest possible opportunity. We were expressly adamant when we inquired about the complex that we now live in and were assured that their no pet rule was adherred to very strictly.

I am of the opinion that when people are quartered as closely as they are in an apartment project, there should be provisions to protect people such as my wife and there should be some guarantee that they can be assurred that the agreement they enter with their landlord will be observed by the people in at least the same building that they live in. This would also include restrictions on children being permitted in certain buildings for the protection of those people suffering with nervous disorders or the like. In other words, I fully believe that a law is now necessary to compel landlords to hold all tenants in at least the same building to the same set of rules that are imposed on one, and to prohibit them from granting waivers from the printed set of rules to anyone for any reason.

I would appreciate it very much if you would draft a proposed Bill to cover these circumstances for consideration by the full Commission.

Very truly yours,

William J. Cox.

CC: William Sallow
George Laurent

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant - Rules and Regulations

FOR the purpose of providing that a landlord must uniformly apply and enforce rules and regulations against all tenants and may not fail to enforce or waive the applicability of a rule and regulation against any tenant without the written consent of each tenant occupying the premises; and providing a remedy to any tenant aggrieved by a landlord's failure to uniformly apply rules and regulations to all tenants, a landlord's failure to enforce a rule or regulation against any tenant, or a landlord's waiver of the applicability of a rule or regulation to any tenant.

BY adding to

Article - Real Property
Section 8-213
Annotated Code of Maryland
(1974 Volume and 1976 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That new Section 8-213 be and it is hereby added to Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1976 Supplement), to read as follows:

Article - Real Property

8-213. UNFIROM APPLICATION AND ENFORCEMENT OF RULES AND REGULATIONS.

(A). UNIFORM APPLICATION. RULES AND REGULATIONS CONCERNING TENANTS' USE AND OCCUPANCY OF THE PREMISES AND COMMON AREAS MUST BE UNIFORMLY APPLIED TO AND ENFORCED AGAINST ALL TENANTS OCCUPYING PREMISES.

(B). WAIVERS PROHIBITED. A LANDLORD MAY NOT WAIVE THE APPLICABILITY OF A RULE OR REGULATION TO ANY TENANT, OR FAIL TO ENFORCE A RULE OR REGULATION AGAINST ANY TENANT, WITHOUT THE WRITTEN CONSENT OF EACH TENANT OCCUPYING PREMISES.

(C). REMEDIES. A TENANT AGGRIEVED BY A LANDLORD'S BREACH OF SUBSECTION (A) OR (B) MAY, AT THE TENANT'S OPTION, EITHER ENJOIN THE LANDLORD FROM WAIVING THE APPLICABILITY OF THE RULE OR REGULATION TO ANY TENANT OR FROM FAILING TO ENFORCE A RULE OR REGULATION AGAINST ANY TENANT; RECOVER DAMAGES CAUSED BY THE LANDLORD'S BREACH; OR TERMINATE THE RENTAL AGREEMENT, AS WELL AS RECOVER COSTS AND REASONABLE ATTORNEY'S FEES.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1977.

Approved June 28, 1977

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant - Failure to Provide Essential Services

FOR the purpose of providing remedies to a tenant where his landlord willfully or negligently fails to supply heat, running water, hot water, electricity, gas, or other essential service; and providing that a landlord is guilty of a misdemeanor if he willfully fails to supply such an essential service.

BY adding to

Article - Real Property
Section 8-213
Annotated Code of Maryland
(1974 Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That new Section 8-213 be and it is hereby added to Article - Real Property of the Annotated Code of Maryland (1974 Volume and 1977 Supplement), to read as follows:

Article - Real Property

8-213. FAILURE TO SUPPLY ESSENTIAL SERVICES.

(A) CIVIL REMEDY. (1)(A) IF THE LANDLORD WILLFULLY OR NEGLIGENTLY FAILS TO SUPPLY HEAT, RUNNING WATER, HOT WATER, ELECTRICITY, GAS, OR OTHER ESSENTIAL SERVICE, OR WILLFULLY OR NEGLIGENTLY DENIES INGRESS OR EGRESS TO THE PREMISES TO A TENANT OR HIS FAMILY, THE TENANT MAY GIVE WRITTEN NOTICE BY CERTIFIED MAIL TO THE LANDLORD SPECIFYING THE BREACH AND MAY:

(I) PROCURE REASONABLE AMOUNTS OF HEAT, RUNNING WATER, HOT WATER, ELECTRICITY, GAS AND OTHER ESSENTIAL SERVICE DURING THE PERIOD OF THE LANDLORD'S NONCOMPLIANCE AND DEDUCT THEIR ACTUAL AND REASONABLE COST FROM THE RENT; OR

(II) RECOVER DAMAGES BASED UPON THE DIMINUTION IN THE FAIR RENTAL VALUE OF THE DWELLING UNIT; OR

(III) PROCURE REASONABLE SUBSTITUTE HOUSING DURING THE PERIOD OF THE LANDLORD'S NONCOMPLIANCE, IN WHICH CASE THE TENANT IS EXCUSED FROM PAYING RENT FOR THE PERIOD OF THE LANDLORD'S NONCOMPLIANCE.

(B)(I) IN ADDITION TO THE REMEDY PROVIDED IN SUBSECTION (A)(1)(A)(III), THE TENANT MAY RECOVER THE ACTUAL AND REASONABLE COST OR FAIR AND REASONABLE VALUE OF THE SUBSTITUTE HOUSING NOT IN EXCESS OF AN AMOUNT EQUAL TO PERIODIC RENT.

(II) IN ANY CASE, UNDER SUBSECTION (A)(1)(A), THE TENANT MAY RECOVER REASONABLE ATTORNEY'S FEES.

(2) IN ADDITION TO THE REMEDY PROVIDED UNDER SUBSECTION (A)(1), IF A LANDLORD WILLFULLY DIMINISHES SERVICES TO THE TENANT BY INTERRUPTING OR CAUSING THE INTERRUPTION OF HEAT, RUNNING WATER, HOT WATER, ELECTRICITY, GAS OR OTHER ESSENTIAL SERVICE,OR WILLFULLY DENIES INGRESS OR EGRESS TO THE PREMISES TO THE TENANT OR HIS FAMILY, THE TENANT MAY RECOVER POSSESSION OR

TERMINATE THE RENTAL AGREEMENT AND, IN EITHER CASE, RECOVER AN AMOUNT OF NOT MORE THAN 3 MONTH'S PERIODIC RENT OR THREEFOLD THE ACTUAL DAMAGES SUSTAINED BY HIM, WHICHEVER IS GREATER, AND REASONABLE ATTORNEY'S FEES. IF THE RENTAL AGREEMENT IS TERMINATED, THE LANDLORD MUST RETURN ALL SECURITY RECOVERABLE UNDER SECTION 8-203 AND ALL PRE-PAID RENT.

[(A)](3) RIGHTS OF THE TENANT UNDER SUBSECTION (A) DO NOT ARISE UNTIL HE HAS GIVEN WRITTEN NOTICE BY CERTIFIED MAIL TO THE LANDLORD OR IF THE CONDITION WAS CAUSED BY THE DELIBERATE OR NEGLIGENT ACT OR OMISSION OF THE TENANT, A MEMBER OF HIS FAMILY, OR OTHER PERSON ON THE PREMISES WITH HIS CONSENT.

(B) CRIMINAL PENALTY. A LANDLORD WHO WILLFULLY FAILS TO SUPPLY, OR WILLFULLY DIMINISHES BY INTERRUPTING OR CAUSING THE INTERRUPTION OF, HEAT, RUNNING WATER, HOT WATER, ELECTRICITY, GAS OR OTHER ESSENTIAL SERVICES TO ANY OF HIS TENANTS, OR WILLFULLY DENIES INGRESS OR EGRESS TO THE PREMISES TO A TENANT OR HIS FAMILY, IS GUILTY OF A MISDEMEANOR, AND MAY BE PUNISHED BY A MAXIMUM FINE OF $100 AND/OR A MAXIMUM TERM IN JAIL OF TEN DAYS.

(C) TENANT'S FAILURE TO PAY. A LANDLORD DOES NOT ACT WILLFULLY OR NEGLIGENTLY WITHIN THE MEANING OF SUBSECTIONS (A) OR (B) IF THE DENIAL OF ESSENTIAL SERVICES TO A TENANT IS DUE TO THE TENANT'S FAILURE TO PAY FOR ESSENTIAL SERVICES FOR WHICH THE TENANT IS RESPONSIBLE UNDER HIS LEASE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act takes effect July 1, 1978.

January 27, 1977

POSITION OF GOVERNOR'S COMMISSION

ON LANDLORD - TENANT LAW REVISION

ON

H.B. 778

H.B. 778 would amend the retaliatory eviction statute, Section 8-208.1 of the Real Property Article.

H.B. 778 would more clearly define the types of retaliatory actions by a landlord which are prohibited. It would prohibit a landlord, for retaliatory reasons, from evicting or ejecting a tenant; bringing or threatening to bring an action for possession against a tenant; terminating or failing to renew a written lease; increasing rent; or terminating or decreasing the services to which a tenant has been entitled. Section 8-208.1 presently only prohibits a landlord from evicting a tenant (a term which is not further defined), increasing rent, or decreasing services, for retaliatory reasons.

In Addition, H.B. 778 would amend Section 8-208.1(a)(2)(1) to protect tenants who make complaints by telephone or in person to the landlord or to public agencies. Section 8-208.1 at present only protects tenants who make written complaints to landlords or to public agencies. This amendment would make Section 8-208.1 consistent with Baltimore City Public Local Law.

H.B. 778 also would repeal Section 8-208.1(d), which makes the defense of retaliatory action by the landlord inapplicable to tenants who have received a certain number of summonses for rent due and payable in the previous 12 months. The Commission believes that this provision unfairly, in possible violation of due process rights under the Constitution, makes the retaliatory action defense inapplicable to tenants who have lawfully withheld a retaliatory rent increase or lawfully withheld rent pursuant to the rent escrow statute (Section 8-211 of the Real Property Article), in rent due and payable actions brought by the landlord in the previous 12 months.

In addition, H.B. 778 would amend Section 8-208.1(e) to provide that action by a landlord after the expiration of the merits of a tenant's complaint, by a court or administrative agency, is prima facie evidence, subject to rebuttal by the tenant, that the landlord's action is not a retaliatory action prohibited by Section 8-208.1. At present, Section 8-208.1 does not prohibit retaliatory action by a landlord after the expiration of "6 months following the determination of the merits of the initial case by a court (or administrative agency) of competent jurisdiction."

Steven G. Davison,
Reporter
Governor's Commission on
Landlord-Tenant Law Revision

H O U S E O F D E L E G A T E S

No. 778

By: Delegate Owens (Departmental - SC - Landlord Ten)
Introduced and read first time: January 26, 1977
Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant - Retaliatory Evictions

FOR the purpose of prohibiting certain actions by a landlord, defined as retaliatory evictions, against a tenant in certain cases; providing an evidentiary presumption in certain cases involving certain actions by a landlord; repealing a certain defense available to a landlord in certain cases; correcting language; and generally relating to the respective rights of landlords and tenants of residential property.

BY repealing and reenacting, with amendments,

Article - Real Property
Section 8-208.1
Annotated Code of Maryland
(1974 Volume and 1976 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 8-208.1 of Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1976 Supplement) be and it is hereby repealed and reenacted, with amendments, to read as follows:

Article - Real Property

8-208.1.

(a) (1) Definitions:

(i) "Mobile home" is a home including house trailer but excluding camping trailer, travel trailer, truck camper, and motor home, which is a movable or portable unit, designed and constructed to be towed on its own frame and wheels and connected to utilities for

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Numerals at right identify computer lines of text.

ear-round occupancy. The term includes: (1) a unit ontaining parts that may be folded, collapsed or elescoped when towed and is expandable to provide dditional cubic capacity; and (2) a unit composed of two r more separately towable components designed to be oined into one integral unit capable of being again eparated into the components for repeated towing.

(ii) "Landlord" includes a mobile home ark owner or operator.

(iii) "Tenant" includes mobile home weller.

(2) [No landlord shall evict a tenant of any esidential property or arbitrarily increase the rent or decrease the services to which the tenant has been ntitled for any of the following reasons:]

A LANDLORD MAY NOT EVICT OR EJECT A TENANT OF ANY RESIDENTIAL PROPERTY; BRING OR THREATEN TO BRING AN ACTION FOR POSSESSION AGAINST A TENANT OF ANY RESIDENTIAL PROPERTY; TERMINATE OR FAIL TO RENEW A WRITTEN LEASE OF A TENANT OF ANY RESIDENTIAL PROPERTY; INCREASE THE RENT; OR TERMINATE OR DECREASE THE SERVICES TO WHICH A TENANT OF ANY RESIDENTIAL PROPERTY HAS BEEN ENTITLED, FOR ANY OF THE FOLLOWING REASONS:

(1) Solely because the tenant or his agent has filed a [written] complaint, or complaints, with the landlord or with any public agency or agencies against the landlord; or

(2) Solely because the tenant or his agent has filed a law suit, or law suits, against the landlord; or

(3) Solely because the tenant is a member or organizer of any tenants' organization.

(b) [Evictions] ACTIONS OF A LANDLORD described in subsection (a) of this section shall be called "retaliatory evictions."

(c) If in any eviction OR EJECTMENT proceeding the judgment be in favor of the tenant for any of the aforementioned defenses, the court may enter judgment for reasonable attorney fees and court costs against the landlord.

[(d) The relief provided under this section is conditioned upon:

(i) In the case of tenancies measured by a period of one month or more, the tenant having not received more than 3 summonses containing copies of

complaints filed by the landlord against the tenant for rent due and unpaid in the 12 month period immediately prior to the initiation of the action by the tenant or by the landlord.

(ii) In the case of periodic tenancies measured by the weekly payment of rent, the tenant having not received more than 5 summonses containing copies of complaints filed by the landlord against the tenant for rent due and unpaid in the 12 month period immediately prior to the initiation of the action by the tenant or by the landlord, or, if the tenant has lived on the premises 6 months or less, having not received 3 summonses with copies of complaints for rent due and unpaid.

(e) No eviction shall be deemed to be a "retaliatory eviction" for purposes of this section upon the expiration of a period of 6 months following the determination of the merits of the initial case by a court (or administrative agency) of competent jurisdiction.]

(D) THE EXPIRATION OF SIX MONTHS FOLLOWING A DETERMINATION BY A COURT OR ADMINISTRATIVE AGENCY OF THE MERITS OF A PROCEEDING INITIATED BY A TENANT SHALL BE PRIMA FACIE EVIDENCE, SUBJECT TO REBUTTAL BY THE TENANT, THAT AN ACTION OF THE LANDLORD FOLLOWING THAT PERIOD OF TIME IS NOT A RETALIATORY EVICTION.

[(f)] (E) Nothing in this section may be interpreted to alter the landlord's or the tenant's rights arising from breach of any provision of a lease, or either party's right, NOT INCONSISTENT WITH THIS SECTION, to terminate or not renew a lease pursuant to the terms of the lease or the provisions of other applicable law.

[(g)] (F) In the event any county or Baltimore City shall have enacted an ordinance comparable in subject matter to this section, that ordinance shall supercede the provisions of this section.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1977.

VALIDITY OF WRITTEN LEASES

January 27, 1977

4-101(a)
4-103

POSITION OF GOVERNOR'S COMMISSION

ON LANDLORD - TENANT LAW REVISION

ON

H.B. 658

This bill would amend Sections 4-101(a) and 4-103 of the Real Property Article. The bill would provide that a written lease for residential property is sufficient and presumed valid, in respect to its execution and delivery by the landlord to the tenant, if executed, and, where required, recorded. This provision would apply to written leases for residential property, whether or not executed before the effective date of the bill.

This bill was approved by the Commission in response to the attached opinion of the State Attorney General, in which he concluded that a written lease is not presumed valid under Sections 4-101(a) and 4-103 unless acknowledged. This bill would be retroactive so as to remove the cloud on the validity of existing unacknowledged residential leases caused by the Attorney General's opinion.

Steven G. Davison,
Reporter
Governor's Commission on
Landlord-Tenant Law Revision

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ES - AN UNACKNOWLEDGED
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OES LOSE THE PRESUMPTION
ALIDITY ACCORDED AN
OWLEDGED LEASE.

August 2, 1976

The Honorable Laurence Levitan
5454 Wisconsin Avenue
Chevy Chase, Maryland 20015

Dear Senator Levitan:

You have questioned whether Real Property Article, Section 4-101 (a) of the Annotated Code of Maryland (1974) applies to leases and, if so, what the effect would be if a lease were not acknowledged as is apparently required under the statute. Section 4-101 (a) provides that:

> "...Any deed containing the names of the grantor and grantee, a description of the property sufficient to identify it with reasonable certainty, and the interest or estate intended to be granted, is sufficient, if executed, acknowledged, and where required, recorded."

For purposes of the Real Property Article, the word "deed" is defined in Section 1-101, subsection (a) and (c) to include a lease "pertaining to land or property or any interest therein or appurtenant thereto", unless from the context a different meaning is apparent. Since there is nothing apparent from a reading of Section 4-101 (a) to indicate that a meaning of "deed" other than that contained in Section 1-101 (c) was intended, leases would presumably fall within the ambit of Section 4-101 (a). In so stating, we note that subsection (h) of Section 1-101 defines "lease" to be "any oral or written agreement, express or implied, creating a landlord and tenant relationship, ..." (emphasis added), and that, as applied to leases, Section 4-101 (a) must necessarily be limited to leases which are written. With that limitation in min', however, we

see nothing from the context of Section 4-101 (a) which leads us to believe that a lease is not a "deed" for purposes of the section, 1/ and accordingly, conclude that a lease which is not acknowledged is not in compliance with the statute and is therefore insufficient under its terms.

However, we hasten to point out that the absence of an acknowledgment in a lease appears to result in nothing more than a loss of its presumed validity under Real Property Article, Section 4-103. Under that section, it is provided that:

> "If a deed is executed, acknowledged, and, if required, recorded, the validity of the deed in respect to its execution and delivery by the grantor to the grantee is presumed."

As with Section 4-101 (a), we see nothing here to indicate that a lease is not meant to be included in the definition of "deed" as used in this section, and we think the language above-quoted, when read in conjunction with that which is contained in Section 4-101 (a), clearly establishes that the sufficiency of a lease under Section 4-101 (a) means only that the lease is entitled to a presumption of validity under Section 4-103. Conversely, insufficiency of a lease resulting from noncompliance with the acknowledgment requirement of Section 4-101 (a) would amount to nothing more than a loss of that presumed validity. Such a reading of the two statutory provisions together we believe gives proper effect to their legislative purpose. See e.g. Karns v. Liquid Carbonic Corp., 275 Md. 1, 18 (1975); A. H. Smith Sand Gravel Co. v. Dept. of Water Resources, 270 Md. 652, 659 (1974); Parker v. Junior Press Printing, 266 Md. 721, 725 (1972), all asserting as a fundamental rule of statutory construction the proposition that all parts and sections of a statute are to be read and considered together in order to arrive at their true

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1/ An argument might be made that the words "grantor", "grantee" and "granted" in Section 4-101 (a) indicate that leases were not intended to be covered by the provision. We note, however, that Section 1-101 (e) defines "grant" to include "conveyance, assignment and transfer," terms which we believe are broad enough to encompass the creation of a landlord-tenant relationship by lease. Cf. Section 2-101. Lee Layton v. Petrick, et ux 277 Md. 421, 429-431 (1976) indicating that a lease is generally included within the Section 1-101 (c) definition of deed.

legislative intent. As a result, we conclude that a lease, which is otherwise valid, will still be valid absent any acknowledgment, but its presumed validity under Section 4-103 would be extinguished, leaving it entirely to the parties or those claiming through them to prove the lease's validity should the same ever be challenged.

In connection with your inquiry, you also referred us to Section 3-101 of the Real Property Article. Because of our conclusion here that an unacknowledged lease is not made invalid by Section 4-101 (a), we need not discuss the provisions of Section 3-101, other than to note that the section is only concerned with the requirement of recordation in certain instances and, to the extent it deals with leases, clearly sets forth what types of leases are required to be recorded, as well as the effect of a failure to do so where required, without any mention being made of any acknowledgment requirement. We believe that this absence of any reference to acknowledgment in Section 3-101 lends further support for the proposition that the acknowledgment requirement of Section 4-101 (a) is designed entirely to establish a presumed validity under Section 4-103, and nothing more. 2/

Very truly yours,

Francis B. Burch
Attorney General

Alexander I. Lewis III
Assistant Attorney General

FBB:AIL:mpk

2/ The acknowledgment requirement was deleted from Section 3-101 following enactment of Chapter 2 of the Laws of 1973, bolstering the view that its retention in Section 4-101 (a) is solely for purposes of establishing the presumed validity provided for under Section 4-103.

H O U S E O F D E L E G A T E S

No. 658

By: Delegates Owens (Departmental - SC - Landlord Ten)
Introduced and read first time: January 19, 1977
Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant - Validity of Written Leases

FOR the purpose of specifying the requirements of a written lease for residential property and providing that such a lease is presumed valid, in respect to its execution and delivery by the landlord to the tenant, if it is executed and, if required, recorded; and providing for the prospective and retroactive application of this Act.

BY repealing and reenacting, with amendments,

Article - Real Property
Section 4-101(a) and 4-103
Annotated Code of Maryland
(1974 Volume and 1976 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Sections 4-101(a) and 4-103 of Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1976 Supplement) be and they are hereby repealed and reenacted, with amendments, to read as follows:

Article - Real Property

4-101.

(a) (1) Any deed containing the names of the grantor and grantee, a description of the property sufficient to identify it with reasonable certainty, and the interest or estate intended to be granted, is sufficient, if executed, acknowledged, and, where required, recorded.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Numerals at right identify computer lines of text.

(2) A WRITTEN LEASE FOR RESIDENTIAL PROPERTY IS SUFFICIENT (I) IF IT CONTAINS THE NAMES OF THE LANDLORD AND TENANT, A DESCRIPTION OF THE LEASED PREMISES SUFFICIENT TO IDENTIFY IT WITH REASONABLE CERTAINTY, AND THE TERM OF THE LEASEHOLD ESTATE, (II) IF IT IS EXECUTED, AND (III) IF REQUIRED, IT IS RECORDED.

4-103.

If a deed is executed, acknowledged, and, if required, recorded, the validity of the deed in respect to its execution and delivery by the grantor to the grantee is presumed. IF A WRITTEN LEASE FOR RESIDENTIAL PROPERTY IS EXECUTED AND, IF REQUIRED, RECORDED, THE VALIDITY OF THE LEASE IN RESPECT TO ITS EXECUTION AND DELIVERY BY THE LANDLORD TO THE TENANT IS PRESUMED.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1977 and shall apply both prospectively and retroactively to leases executed prior to July 1, 1977.

LANDLORD - TENANT : APPEALS

8-117
8-332
401(f)
402(b)(2)(c)

HOUSE OF DELEGATES

No. 779

By: Delegate Owens (Departmental - SC - Landlord Ten)
Introduced and read first time: January 26, 1977
Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning

Landlord Tenant - Appeals

FOR the purpose of providing a right of appeal from the District Court in all landlord-tenant proceedings; providing for an appeal bond or a deposit with the court to stay the execution of the judgment; providing for the amount of the bond or deposit; correcting language; amending certain sections dealing with appeals in certain landlord-tenant actions in order to make a cross-reference to the new appeal procedure applicable to all landlord-tenant proceedings; and providing that a court may stay execution of a judgment for restitution of possession against a holdover tenant for up to 30 days from the date of judgment, subject to the payment by the holdover tenant to the landlord of all rent in arrears and payment for possession of the premises during the stay of execution.

BY repealing and reenacting, with amendments,

Article - Real Property
Section 8-332, 8-401(f) and 8-402(b)(2) and (c)
Annotated Code of Maryland
(1974 Volume and 1976 Supplement)

BY adding to

Article - Real Property
Section 8-117
Annotated Code of Maryland
(1974 Volume and 1976 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Numerals at right identify computer lines of text.

MARYLAND, That Sections 8-332, 8-401(f) and 8-402(b)(2) and (c) of Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1976 Supplement) be and they are hereby repealed and reenacted, with amendments, to read as follows:

Article - Real Property

8-332.

(a) Any aggrieved party may appeal from any final order or judgment in an action of distress [to the Circuit court of the county or the Baltimore City Court, as the case may be. The appeal shall be taken within 14 days from the date of the order or judgment.] IN ACCORDANCE WITH SECTION 8-117.

(b) [On appeal the case shall be tried de novo.] On the application of any party to the action for a prompt hearing of the appeal, it shall be set for trial as soon as possible. Any party has the right to a jury trial on application in accordance with the rules adopted by the appellate court.

(c) An appeal does not stay or prevent a subsequent distress for rent falling due after the original petition for distress. However, the court may order a stay of all further proceedings, including those for subsequent rent, if the tenant files an appeal bond approved by the court.

[(d) An appeal does not stay execution of a judgment or order unless an approved appeal bond is filed.]

8-401.

(f) [The tenant may appeal from the judgment of the District Court to the circuit court for any county or the Baltimore City Court, as the case may be, at any time within two days from the rendition of the judgment; the tenant in order to stay any execution of the judgment, shall give a bond to the landlord with one or more sureties, who are owners of sufficient property in the State of Maryland, with condition to prosecute the appeal with effect, and answer to the landlord in all costs and damages mentioned in the judgment, and such other damages as shall be incurred and sustained by reason of the appeal; the bond shall not affect in any manner the right of the landlord to proceed against the tenant, assignee or subtenant for any and all rents that may become due and payable to the landlord after the rendition of the judgment.] ANY PARTY MAY APPEAL FROM A JUDGMENT OF THE DISTRICT COURT IN ACCORDANCE WITH SECTION 8-117. UPON APPLICATION OF A PARTY, THE APPELLATE COURT SHALL SET A

DATE FOR THE HEARING OF THE APPEAL NOT LESS THAN FIVE NOR MORE THAN 15 DAYS AFTER THE APPLICATION FOR THE HEARING SHALL BE SERVED ON THE OPPOSING PARTIES OR THEIR COUNSEL AT LEAST FIVE DAYS BEFORE THE HEARING DATE.

8-402.

(b) (2) [If upon hearing the parties, or in case the tenant or person in possession shall neglect to appear after the summons and continuance the court shall find that the landlord had been in possession of the leased property, that the said lease or estate is fully ended and expired, that due notice to quit as aforesaid had been given to the tenant or person in possession and that he had refused so to do, the court shall thereupon give judgment for the restitution of the possession of said premises and shall forthwith issue its warrant to the sheriff or a constable in the respective counties commanding him forthwith to deliver to the landlord possession thereof in as full and ample manner as the landlord was possessed of the same at the time when the leasing was made, and shall give judgment for costs against the tenant or person in possession so holding over. Either party shall have the right to appeal therefrom to the circuit court for the county, or the Baltimore City Court within ten days from the judgment. If the tenant appeals and files with the District Court an affidavit that the appeal is not taken for delay, and also a good and sufficient bond with one or more securities conditioned that he will prosecute the appeal with effect and well and truly pay all rent in arrear and all costs in the case before the District Court and in the appellate court and all loss or damage which the landlord may suffer by reason of the tenant's holding over, including the value of the premises during the time he shall so hold over, then the tenant or person in possession of said premises may retain possession thereof until the determination of said appeal. The appellate court shall, upon application of either party, set a day for the hearing of the appeal, not less than five nor more than 15 days after the application, and notice for the order for a hearing shall be served on the opposite party or his counsel at least five days before the hearing. If the judgment of the District Court shall be in favor of the landlord, a warrant shall be issued by the appellate court to the sheriff, who shall proceed forthwith to execute the warrant.]

IF THE TENANT, OR ANYONE HOLDING UNDER HIM, WHO IS IN ACTUAL POSSESSION, FAILS TO APPEAR AFTER THE SUMMONS AND CONTINUANCE, OR IF THE COURT FINDS THAT THE LANDLORD HAS FULLY COMPLIED WITH SUBSECTION (A) AND THAT THE TERM HAS EXPIRED, THE COURT SHALL ORDER RESTITUTION OF THE POSSESSION OF THE PROPERTY AND SHALL ISSUE A WARRANT TO

THE SHERIFF OR CONSTABLE OF THE SUBDIVISION
SIN TO DELIVER POSSESSION TO THE LANDLORD. E
THE JUDGMENT AS REST
PROPERTY SHALL BE ORDERED
DISCRETION, NOT TWO
JUDGMENT. THE WARRANT
CONSTABLE TO REMOVE
NECESSARY, ALL THE FURNITURE,
EFFECTS, OR OTHER CHATTELS
BELONGING TO THE LANDLORD, FOUND ON THE PREMISES. THE
COURT SHALL GIVE JUDGMENT FOR COSTS AGAINST THE TENANT OR
PERSON HOLDING UNDER HIM WHO IS IN ACTUAL POSSESSION AND
HOLDING OVER. A HOLDOVER TENANT MAY NOT REMAIN ON THE
PREMISES FOR MORE THAN TWO
UNLESS THE COURT ISSUES AN
REQUIRING THE HOLDOVER TENANT
REMAINING ON THE PREMISES
THE COURT DECIDES TO STAY
MORE THAN TWO DAYS, THE
HIM WHO IS IN ACTUAL POSSESSION, SHALL MAKE PAYMENT TO
THE LANDLORD FOR POSSESSION OF THE PREMISES WHILE
EXECUTION IS STAYED, IN SUCH AMOUNT AND AT SUCH TIMES AND
UNDER SUCH CONDITIONS, AS SPECIFIED BY THE COURT. BEFORE
EXERCISING ITS DISCRETION TO STAY EXECUTION UNDER THIS
SECTION, THE COURT SHALL REQUIRE THE TENANT, OR PERSON
HOLDING UNDER HIM WHO IS IN ACTUAL POSSESSION, TO PAY
THE LANDLORD OR HIS AGENT, PRIOR TO ISSUANCE OF THE STAY,
ALL RENT IN ARREARS, AND AN INITIAL PAYMENT FOR
POSSESSION OF THE PREMISES WHILE EXECUTION IS STAYED.
THE INITIAL PAYMENT FOR POSSESSION DURING STAY OF
EXECUTION MAY NOT EXCEED THE AMOUNT OF AN INDIVIDUAL RENT
PAYMENT UNDER THE LEASE OR AGREEMENT OF TENANCY UNDER
WHICH THE HOLDOVER TENANT OR PERSON HOLDING UNDER HIM
HELD POSSESSION OF THE PREMISES.

ANY PARTY MAY APPEAL IN ACCORDANCE WITH §8-117.
APPELLATE COURT, UPON APPLICATION OF ANY PARTY, SHALL SET
A DAY FOR THE HEARING OF THE APPEAL, NOT LESS THAN
NOR MORE THAN 15 DAYS AFTER THE APPLICATION, AND NOTICE
FOR THE ORDER FOR A HEARING SHALL BE SERVED ON THE
OPPOSITE PARTY OR PARTIES OR THEIR COUNSEL AT LEAST FIVE
DAYS BEFORE THE HEARING. IF THE JUDGMENT OF THE DISTRICT
COURT IN FAVOR OF THE LANDLORD IS AFFIRMED, A WARRANT
SHALL BE ISSUED BY THE APPELLATE COURT TO THE SHERIFF,
WHO SHALL PROCEED TO EXECUTE THE WARRANT.

(c) In all cases between landlord and tenant [where] IF one-half year's rent [shall be] IS in arrears and the landlord has the lawful right to reenter for nonpayment thereof, the landlord may, without any formal demand or reentry, serve a copy of a declaration in ejectment for the recovery of the property; and if the declaration cannot be legally served, or the tenant [is] IS in actual possession of the property, then he shall affix it upon the door of any demised [messuage]

HOUSE BILL 6

PROPERTY, or of the action of ejectment
NOW, THE ... of ...
upon some conspicuous part of the ...
the declaration in ejectment [and] ... shall
be deemed ... service ...
affixing of such declaration ... and
the place and stead of a ...
court [shall either] ENTER a verdict, ...
shall have judgment and execution ... manner as
if the rent in arrear had been ... and
reentry made; AND the tenant or ... claiming or
deriving under the lease, shall permit a judgment to be
rendered against him, and execution to be executed
thereon, without paying the rent and arrears, together
with full costs, and without proceeding for relief in
equity within six calendar months after the execution,
the tenant, and all other persons claiming and deriving
under the [said] lease shall be barred and foreclosed
from all relief or remedy in law or equity other than an
appeal for reversal of such judgment, and the landlord
shall thenceforth hold the property discharged from the
lease. AND PROVIDED, THAT IN AN ACTION UNDER THIS SUBSECTION
APPEAL FROM THE JUDGMENT OF THE DISTRICT COURT IS
ACCORDANCE WITH SECTION 8-117. Nothing herein contained
shall bar the right of any mortgagee of the lease, or any
part thereof, who shall not be in possession, so as such
mortgagee shall and do, within six calendar months after
such judgment obtained and execution executed, pay all
costs and damages sustained by the landlord ... perform
all the covenants and agreements which, ... by the part ...
bound, ... the first tenant, are and ought to be
performed.

SECTION 2. AND BE IT FURTHER ENACTED, That new
Section 8-117 be and it is hereby added to Article - Real
Property, of the Annotated Code of Maryland (1974 Volume
and 1976 Supplement) to read as follows.

Article - Real Property

8-117.

(A) IN ANY ACTION BETWEEN LANDLORD AND TENANT,
INCLUDING AN ASSIGNEE, SUBLESSEE, OR A PERSON HOLDING
UNDER THEM, ANY PARTY MAY APPEAL THE JUDGMENT OF THE
DISTRICT COURT TO THE CIRCUIT COURT FOR THE COUNTY OR THE
BALTIMORE CITY COURT, AS THE CASE MAY BE, WITHIN TEN
DAYS FROM THE RENDITION OF THE JUDGMENT. ON APPEAL, THE
CASE SHALL BE TRIED DE NOVO, REGARDLESS OF THE AMOUNT IN
CONTROVERSY.

(B) IN THE EVENT OF AN APPEAL [FROM A DISTRICT
APPEALS, THEN IN ORDER TO STAY EXECUTION OF THE
JUDGMENT, THE TENANT SHALL PAY INTO THE CLERK'S OFFICE
A DEPOSIT, THE AMOUNT OF THE JUDGMENT RENDERED IN THE

[illegible]

[illegible] AND PAYABLE [illegible]

[illegible] SUBSEQUENT FOR ANY [illegible] PAYABLE TO THE LANDLORD [illegible] JURISDICTION OF THE JUDGMENT.

[illegible] THE LANDLORD [illegible] THE DISTRICT OF APPEAL [illegible] STAY [illegible] JURISDICTION OF THE JUDGMENT IS [illegible] THE DISCRETION OF THE [illegible] COURT.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1977.

8-332 provides that an appeal in a distraint for rent case must be filed within 14 days. An appeal in a holdover tenant case must be filed within ten days of the judgment of the district court. Real Prop. Art. §8-402(b)(2). The Commission believes that five days is a reasonable and fair amount of time in which to file an appeal in any landlord-tenant action.

H.B. 779 would also require a tenant to post a bond to stay execution of judgment on appeal to the Circuit Court or Baltimore City Court. H.B. 779 is based on the bond requirements presently appearing in Real Property Article Sections 8-401(f) and 8-402(b)(2). The bill provides that in an appeal by a tenant of a rent due and payable case under Section 8-401, the tenant is not required to deposit rent due and payable in the future in order to stay execution of the judgment. The bill does provide, however, that a tenant in an appeal of a rent due and payable action must increase the amount of the appeal bond by the amount of rent that becomes due and payable during the pendency of the appeal, in order to continue the stay of execution.

H.B. 779 also would allow a Circuit Court or Baltimore City Court to require a landlord who appeals to post an appeal bond in an amount within the discretion of the court in order to stay execution of the District Court judgment. H.B. 779 would repeal and re-enact, with amendments, Section 8-401(f), (Rent Due and Payable), Section 8-402(b)(2) and Section 8-402(c) (Holding Over), and Section 8-332 (Distress for Rent), to provide appeals from judgments under these sections in accordance with the appeal provisions of proposed Section 8-117. The provision for expedited appeals in these three types of cases would be retained by H.B. 779. The provisions of H.B. 779 would repeal any similar or inconsistent appeal provisions in existing versions of Sections 8-401(f), 8-402(b)(2), 8-402(c), and 8-332.

H.B. 779 also would amend Section 8-402(b)(2) of the Real Property Article to permit a court to stay execution of judgment against a holdover tenant for up to 30 days, provided that the court requires the holdover tenant to pay the landlord for possession of the premises during the stay of execution. At present, Section 8-402(b)(2) specifically authorizes stay of execution of judgment for only two days but many district court judges, in order to permit the tenant adequate time to find new housing, nevertheless stay execution for up to thirty days. H.B. 779 would thus validate current practices, but would protect the rights of landlords where execution is stayed for more than two days. Under H.B. 779, if a judge stays execution of judgment for more than two days, a tenant must be required to pay all rent in arrear; and to pay the landlord for remaining on the premises after the termination of the lease, in an amount equivalent to a proportion of the tenant's rent under the now-terminated lease. The tenant, before stay of execution could be issued, would have to pay the landlord all rent in arrear and an initial payment for possession, in an amount not to exceed the amount of an individual rent payment made by the tenant under the now-terminated lease. As an example, if a landlord was seeking to ejcet a holdover week-to-week tenant who paid $60 per week rent (in advance) and the court entered a two week stay of execution, the tenant would have to pay the landlord $60 at the time of entry of judgment (in addition to any rent in arrear). The tenant would then make another payment of $60 to the landlord prior to the tenant's second week of remaining in possession pursuant to the stay of execution. The Commission believes that stays of execution beyond two days are often necessary in order for tenants to find new housing, particularly in situations where landlords give notices to quit to periodic week-to-week or month-to-month tenants. Courts, in their discretion, could enter stays of execution for up to thirty days where necessary for the tenant to find new housing, but the tenant would be required to pay the landlord for remaining in possession. (The bill does not refer to such payments for possession as "rent," since technically a holdover tenant is a tenant sufferance, whose

legal status is only slightly above that of a trespasser.

Steven G. Davison,
Reporter
Governor's Commission on
Landlord-Tenant Law Revision

PROPOSED AMENDMENTS TO HB 779

1. Line following Line 273 on p. 6:

   Change "CIRCUIT COURT" to "DISTRICT COURT"

2. Line following Line 265 through Line 267 on p. 6:

   Delete the following sentence: "IN AN APPEAL UNDER §8-401, THE DEPOSIT OR BOND INCLUDES RENT DUE AND PAYABLE AS SUCH AMOUNTS BECOME DUE AND PAYABLE."

   This sentence is recommended for deletion because it may violate a tenant's constitutional right of due process by conditioning stay of execution of an eviction order in a rent case upon the payment of future rent, which was not the subject of the suit being appealed by the tenant. The tenant may have a legal right to withhold such rent under the retaliatory eviction statute, rent escrow statute, or other statute; the tenant should not be required to deposit these funds in court until he has had a due process hearing to determine whether he is legally entitled to withhold part or all of his rent. H.B. 779 makes no provision for such a hearing prior to the tenant being required to increase his stay of execution bond by the amount of future rent that becomes due.

   This sentence can also be criticized for failure to specify whether such future rent payments should be held by the court or paid to the landlord; landlords will suffer if the court holds future rent payments pending disposition of an appeal in a rent case involving a prior rental payment.

   The Governor's Commission on Landlord-Tenant Law Revision has not formally voted to delete this sentence from H.B. 779, although this item is on the agenda for its March 8 meeting. This recommendation at this time is only the personal recommendation of the Commission's Reporter.

Steven G. Davison,
Reporter, Governor's
Commission on Landlord-Tenant Law
Revision

AN ACT concerning

Landlord and Tenant - Security Deposits

FOR the purposes of providing that a landlord has no duty to return a security deposit, or to provide a written list of damages to be withheld from the security deposit, to a tenant who has abandoned the premises or who has been evicted or ejected for breach of a condition or covenant of the lease, prior to the termination of the tenancy, unless the tenant notifies the landlord in writing, within 15 days of eviction, ejectment, or abandonment, of the tenant's new address; and providing that the landlord may direct the written list of damages to be withheld from the security deposit, and the security deposit less rightfully withheld damages, to the premises, unless the tenant notifies the landlord in writing, prior to the termination of the tenancy, of the tenant's new address after vacating the premises, in which case they must be directed to such new address.

By repealing, and re-enacting, with amendments

Article - Real Property
Sections 8-203(f) and (h)
Annotated Code of Maryland
(1974 Volume and 1975 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Sections 8-203(f) and (h) of Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1975 Supplement) be and they are hereby repealed and re-enacted, with amendments, to read as follows:

Article - Real Property

8-203

(f) Return of deposit to tenant; interest.

(1) Within 45 days after the end of the tenancy, the landlord shall return the security deposit to the tenant together with simple interest which has accrued in the amount of 3 percent per annum, less any damages rightfully withheld.

(2) Interest shall accrue at six month intervals from the day the tenant gives the landlord the security deposit. Interest is not compounded.

(3) Interest shall be payable only on security deposits of $50 or more.

(4) If the landlord, without a reasonable basis, fails to return any part of the security deposit plus accrued interest, within 45 days after the termination of the tenancy, the tenant has an action of up to threefold of the withheld amount,

plus reasonable attorney's fees. THE SECURITY DEPOSIT, LESS RIGHTFULLY WITHHELD DAMAGES, MAY BE DIRECTED TO THE PREMISES, UNLESS THE TENANT NOTIFIES THE LANDLORD IN WRITING, PRIOR TO THE TERMINATION OF THE TENANCY, OF THE TENANT'S NEW ADDRESS AFTER VACATING THE PREMISES, IN WHICH CASE IT MUST BE DIRECTED TO SUCH NEW ADDRESS.

(5) IF A TENANT IS EVICTED OR EJECTED FOR BREACH OF A CONDITION OR COVENANT OF A LEASE PRIOR TO THE TERMINATION OF THE TENANCY, THE LANDLORD HAS NO DUTY TO RETURN THE SECURITY DEPOSIT TO THE TENANT, AND THE LANDLORD IS NOT LIABLE TO THE TENANT UNDER SUBSECTION (F)(4), UNLESS THE TENANT NOTIFIES THE LANDLORD IN WRITING, WITHIN 15 DAYS OF EVICTION, EJECTMENT, OR ABANDONMENT, OF THE TENANT'S NEW ADDRESS. WHERE THE TENANT HAS GIVEN SUCH NOTICE, THE LANDLORD SHALL DIRECT THE SECURITY DEPOSIT, LESS RIGHTFULLY WITHHELD DAMAGES, TO SUCH NEW ADDRESS, WITHIN 45 DAYS OF THE LANDLORD'S RECEIPT OF SUCH NOTICE.

(h) Same - Notice to tenant.

(1) If any portion of the security deposit is withheld, the landlord shall present by first-class mail directed to [the last known address of] the tenant, within 30 days after the termination of the tenancy, a written list of the damages claimed under subsection (g)(1) together with a statement of the costs actually incurred. THE WRITTEN LIST OF DAMAGES MAY BE DIRECTED TO THE PREMISES, UNLESS THE TENANT NOTIFIES THE LANDLORD IN WRITING, PRIOR TO THE TERMINATION OF THE TENANCY, OF THE TENANT'S NEW ADDRESS AFTER VACATING THE PREMISES, IN WHICH CASE IT MUST BE DIRECTED TO SUCH NEW ADDRESS.

(2) If the landlord fails to comply with this requirement, he forfeits the right to withhold any part of the security deposit for damages.

(3) IF A TENANT IS EVICTED OR EJECTED FOR BREACH OF A CONDITION OR COVENANT OF A LEASE PRIOR TO THE TERMINATION OF THE TENANCY, OR IF A TENANT ABANDONS THE PREMISES PRIOR TO THE TERMINATION OF THE TENANCY, THE LANDLORD HAS NO DUTY TO PRESENT THE TENANT WITH A WRITTEN LIST OF DAMAGES, AND THE LANDLORD DOES NOT FORFEIT HIS RIGHT TO WITHHOLD ANY PART OF THE SECURITY DEPOSIT FOR DAMAGES UNDER SUBSECTION (H)(2), UNLESS THE TENANT NOTIFIES THE LANDLORD IN WRITING, WITHIN 15 DAYS OF EVICTION, EJECTMENT OR ABANDONMENT, OF THE TENANT'S NEW ADDRESS. WHERE THE TENANT HAS GIVEN SUCH NOTICE, THE LANDLORD SHALL DIRECT THE WRITTEN LIST OF DAMAGES TO SUCH NEW ADDRESS, WITHIN 30 DAYS OF THE LANDLORD'S RECEIPT OF SUCH NOTICE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1976.

71r1516

H O U S E O F D E L E G A T E S

No. 427
(PRE-FILED)

By: Delegate Owens (Departmental - SC - Landlord Ten)
Requested: November 15, 1976
Introduced and read first time: January 12, 1977
Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant - Security Deposits

FOR the purpose of providing that a landlord has no duty to return a security deposit, or to provide a written list of damages to be withheld from the security deposit, to certain tenants under certain conditions; providing a method for such tenants to receive a list of damages and return of a security deposit; and relating generally to security deposits held by landlords.

BY adding to

Article - Real Property
Section 8-203(j)
Annotated Code of Maryland
(1974 Volume and 1976 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That new Section 8-203(j) be and it is hereby added to Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1976 Supplement) to read as follows:

Article - Real Property

8-203.

(J) (1) THE PROVISIONS OF SUBSECTIONS (F)(1), (F)(4), (H)(1), AND (H)(2) ARE INAPPLICABLE TO A TENANT WHO HAS BEEN EVICTED OR EJECTED FOR BREACH OF A CONDITION OR COVENANT OF A LEASE PRIOR TO THE TERMINATION OF THE TENANCY OR WHO HAS VACATED THE PREMISES PRIOR TO THE TERMINATION OF THE TENANCY.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Numerals at right identify computer lines of text.

(2) A TENANT SPECIFIED IN PARAGRAPH (1) MAY DEMAND RETURN OF THE SECURITY DEPOSIT BY GIVING WRITTEN NOTICE TO THE LANDLORD WITHIN 45 DAYS OF BEING EVICTED OR EJECTED OR OF VACATING THE PREMISES, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED. THE NOTICE SHALL SPECIFY THE TENANT'S NEW ADDRESS. THE LANDLORD, WITHIN 30 DAYS OF RECEIPT OF SUCH NOTICE, SHALL PRESENT, BY FIRST-CLASS MAIL TO THE TENANT, A WRITTEN LIST OF THE DAMAGES CLAIMED UNDER SUBSECTION (G) (1) TOGETHER WITH A STATEMENT OF THE COSTS ACTUALLY INCURRED. WITHIN 45 DAYS OF RECEIPT OF THE NOTICE, THE LANDLORD SHALL RETURN TO THE TENANT THE SECURITY DEPOSIT TOGETHER WITH SIMPLE INTEREST WHICH HAS ACCRUED IN THE AMOUNT OF 3 PERCENT PER ANNUM, LESS ANY DAMAGES RIGHTFULLY WITHHELD.

(3) IF A LANDLORD FAILS TO SEND THE LIST OF DAMAGES REQUIRED BY PARAGRAPH (2), THE RIGHT TO WITHHOLD ANY PART OF THE SECURITY DEPOSIT FOR DAMAGES IS FORFEITED. IF A LANDLORD FAILS TO RETURN THE SECURITY DEPOSIT AS REQUIRED BY PARAGRAPH (2), THE TENANT HAS AN ACTION OF UP TO THREEFOLD OF THE WITHHELD AMOUNT, PLUS REASONABLE ATTORNEY'S FEES.

(4) EXCEPT TO THE EXTENT SPECIFIED, THIS SUBSECTION MAY NOT BE INTERPRETED TO ALTER THE LANDLORD'S DUTIES UNDER SUBSECTIONS (F) AND (H).

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1977.

January 27, 1977

POSITION OF GOVERNOR'S COMMISSION

ON LANDLORD - TENANT LAW REVISION

ON

H.B. 427

H.B. 427, which would add Section 8-203(j) to the security deposit statute in the Real Property Article, was submitted as H.B. 1662 to the 1976 Regular Session.

H.B. 427 would provide that a landlord has no duty to return a security deposit, as required by Section 8-203(f), or to provide a written list of damages to be withheld from the security deposit, as required by Section 8-203(h), to tenants who have been evicted or ejected for breach of a condition or covenant of a lease, or to tenants who have abandoned the premises prior to the termination of the tenancy, unless such tenants give written notice to the landlord, by certified mail, return receipt requested, within 45 days of eviction, ejectment or abandonment, providing the landlord with the tenant's new address and demanding return of the security deposit.

H.B. 427 was approved by the Commission because damages owed to a landlord by tenants who have been evicted or ejected for breach of the lease, or by tenants who have abandoned the premises, usually will exceed the amount of the security deposit. In the case of such tenants, preparation and sending of the written list of damages to be withheld from the security deposit is usually a futile exercise because such tenants usually do not leave a forwarding address because they owe damages exceeding the amount of the security deposit. In addition, preparation of an itemized list of damages for such tenants will usually be an unnecessary exercise, because the landlord will usually be entitled to retain the full amount of the security deposit.

H.B. 427 would give tenants who have been evicted or ejected for breach of the lease, or who have abandoned the premises, the same rights as other tenants under the security deposit statute if they give the landlord written notice of their new address, by certified mail, return receipt requested, within 45 days of eviction, ejectment or abandonment.

Doyle agrees
Apt Assoc "
Koons "
Welcome "
Md Apt Assn "

Apple - opp.
Mrs Wollet - opp.
(Mgt (by)
Md Apt Assn + mgts assn

Steven G. Davison,
Reporter
Governor's Commission on
Landlord-Tenant Law Revision

CHARLES AT MOUNT ROYAL • BALTIMORE, MARYLAND 21201 • (301) 727-6350

SCHOOL OF LAW

Steven G. Davison
Reporter,
Governor's Commission on
Landlord-Tenant Law Revision
4819 N. 16th St.
Arlington, VA 22205

August 30, 1977

Thomas J. Peddicord
Assistant Legislative Officer
Executive Department
State of Maryland
State House
Annapolis, MD 21404

Dear Tom:

I am enclosing six bills approved by the Governor's Commission on Landlord-Tenant Law Revision at its meeting on June 28, 1977. The Commission may approve a maximum of six bills at its meeting on September 20, 1977; I will forward any bills approved at the September 20 meeting as soon as possible.

The first bill would provide tenants with remedies in addition to those under the rent escrow statute (Real Property Article, §8-211) when the landlord willfully or negligently denies a tenant essential services or ingress or egress. The bill, however, only provides remedies if the denial of such essentials is due to willful or negligent action by the landlord, while the applicability of the rent escrow statute depends solely upon the condition of the premises. This bill provides criminal penalties, similar to those of Baltimore City P.L.L. 9-15 and Baltimore County Code, Title 16, Landlord & Tenant, Sections 4 and 5, for a landlord's willful denial of essentials to a tenant. The civil remedies provided under Section (A)(1)(A) of the bill are based upon Section 4.104 of the Uniform Residential Landlord and Tenant Act; the civil remedies provided under Section (A)(1)(B) of the bill are based upon Section 4.106 of the Uniform Residential Landlord and Tenant Act. The civil remedies under subsection (A)(1)(A) of the bill are not available to a tenant unless he gives written notice of the breach to the landlord by certified mail.

The second bill approved by the Commission at its June 28 meeting would amend Article 43, §427A, to provide that unpaid water and sewer service charges owed to political subdivisions do not constitute a first lien on a single family home which is rented to a tenant who has agreed under a written lease or rental agreement to pay the unpaid water and sewer service charges and all penalties

directly to the political subdivision. The owner would still be directly liable to the political subdivision for payment of water or sewer service charges, but could legally define water and sewer service charges as rent, and utilize the summary remedies of §8-401 of the Real Property Article if the tenant fails to timely reimburse the landlord for the cost of water and sewer service charges.

The third bill approved by the Commission at its June 28 meeting would provide basic definitions of "landlord", "tenant", "dwelling unit", "premises", and other terms for purposes of Title 8 of the Real Property Article. The definitions in the bill are based upon Sections 1.202 and 1.301 of the Uniform Residential Landlord and Tenant Act. The bill is not intended to effect any substantive changes in existing Maryland landlord-tenant law. The bill more specifically defines, under Section 8-201, the type of property considered to be residential rental property subject to Subtitle 2 of Title 8 of the Real Property Article. The definition of "tenant" would follow existing common law by excluding roomers from the definition of tenants. Existing sections of Title 8 of the Real Property Article would be amended by the bill to delete unnecessary language that would be included within the scope of the definitions in the bill.

The Commission also voted to re-submit HB 426 and HB 427 of the 1977 Regular Session. I am enclosing copies of these two bills. HB 426 would amend Real Property Article §8-402(b)(4) to require a landlord to give a month's notice to quit to a week-to-week tenant. The bill would also amend §8-402(b)(4) to provide that a landlord has no duty to give a trespasser or squatter notice to quit under §8-402. HB 427 would amend the security deposit statute, Real Property Article §8-203, to provide that a landlord has no duty to provide a written list of damages or to return a security deposit to a tenant who has abandoned the premises or who has been evicted for breach of the lease, unless such a tenant gives the landlord written notice of the tenant's new address.

Finally, the Commission is forwarding a bill to provide a definition of "rent" for purposes of Real Property Article §8-401. This bill amends HB 552 of the 1977 Regular Session. Unlike HB 552, the enclosed bill would define rent under §8-401 to include late charges and damages to the premises. Defining late charges as rent under §8-401 would resolve a question that was left unanswered by the Maryland Court of Appeals in University Plaza Shopping Center v. Garcia, 367 A.2d 957 (1977). The bill otherwise follows the common law definition of rent set forth in the Garcia decision. The bill, like HB 552, also would follow the common law by authorizing a court to set the amount of rent if the landlord and tenant have failed to do so.

If I can provide any further information with respect to these bills, please contact me. My home phone number is (703) 525-7669; the work number is (301) 727-6350 X. 297. Thank you for your attention to these bills.

Sincerely yours,

Steven Davison

Steven Davison

cc: Members of Governor's Commission on Landlord-Tenant Law Revision.

71r1515

H O U S E O F D E L E G A T E S

No. 426
(PRE-FILED)

By: Delegate Owens (Departmental - SC - Landlord Ten)
Requested: November 15, 1976
Introduced and read first time: January 12, 1977
Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant - Notice to Quit

FOR the purpose of requiring a landlord to give written notice to quit to monthly or weekly tenants at least one month before the expiration of the term of tenancy; providing an exception for certain cases of forcible entry and detainer; and providing that this notice provision is not applicable in Baltimore City.

BY repealing

Article - Real Property
Section 8-402(b)(4)
Annotated Code of Maryland
(1974 Volume and 1976 Supplement)

BY adding to

Article - Real Property
Section 8-402(b)(4)
Annotated Code of Maryland
(1974 Volume and 1976 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 8-402(b)(4) of Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1976 Supplement) be and it is hereby repealed.

SECTION 2. AND BE IT FURTHER ENACTED, That new Section 8-402(b)(4) be and it is hereby added to Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1976 Supplement) to read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Numerals at right identify computer lines of text.

Article - Real Property

8-402.

(B) (4) THE PROVISIONS OF THIS SUBSECTION APPLY TO ALL CASES OF TENANCIES FROM YEAR TO YEAR, TENANCIES BY THE MONTH, AND TENANCIES BY THE WEEK. IN CASES OF TENANCIES FROM YEAR TO YEAR, INCLUDING TOBACCO FARM TENANCIES, THE LANDLORD SHALL GIVE WRITTEN NOTICE THREE MONTHS BEFORE THE EXPIRATION OF THE CURRENT YEAR OF THE TENANCY. IN CASES OF ALL OTHER FARM TENANCIES, THE NOTICE SHALL BE GIVEN SIX MONTHS BEFORE EXPIRATION OF THE CURRENT YEAR. IN MONTHLY OR WEEKLY TENANCIES, THE NOTICE SHALL BE GIVEN ONE MONTH BEFORE EXPIRATION. THE SAME NOTICE PROVISIONS APPLY TO CASES OF FORCIBLE ENTRY AND DETAINER, EXCEPT THOSE INVOLVING A TRESPASSER OR SQUATTER. THIS PARAGRAPH DOES NOT APPLY IN BALTIMORE CITY.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1977.

71r1516

H O U S E O F D E L E G A T E S

No. 427
(PRE-FILED)

By: Delegate Owens (Departmental - SC - Landlord Ten)
Requested: November 15, 1976
Introduced and read first time: January 12, 1977
Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant - Security Deposits

FOR the purpose of providing that a landlord has no duty to return a security deposit, or to provide a written list of damages to be withheld from the security deposit, to certain tenants under certain conditions; providing a method for such tenants to receive a list of damages and return of a security deposit; and relating generally to security deposits held by landlords.

BY adding to

Article - Real Property
Section 8-203(j)
Annotated Code of Maryland
(1974 Volume and 1976 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That new Section 8-203(j) be and it is hereby added to Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1976 Supplement) to read as follows:

Article - Real Property

8-203.

(J) (1) THE PROVISIONS OF SUBSECTIONS (F)(1), (F)(4), (H)(1), AND (H)(2) ARE INAPPLICABLE TO A TENANT WHO HAS BEEN EVICTED OR EJECTED FOR BREACH OF A CONDITION OR COVENANT OF A LEASE PRIOR TO THE TERMINATION OF THE TENANCY OR WHO HAS VACATED THE PREMISES PRIOR TO THE TERMINATION OF THE TENANCY.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Numerals at right identify computer lines of text.

(2) A TENANT SPECIFIED IN PARAGRAPH (1) MAY DEMAND RETURN OF THE SECURITY DEPOSIT BY GIVING WRITTEN NOTICE TO THE LANDLORD WITHIN 45 DAYS OF BEING EVICTED OR EJECTED OR OF VACATING THE PREMISES, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED. THE NOTICE SHALL SPECIFY THE TENANT'S NEW ADDRESS. THE LANDLORD, WITHIN 30 DAYS OF RECEIPT OF SUCH NOTICE, SHALL PRESENT, BY FIRST-CLASS MAIL TO THE TENANT, A WRITTEN LIST OF THE DAMAGES CLAIMED UNDER SUBSECTION (G)(1) TOGETHER WITH A STATEMENT OF THE COSTS ACTUALLY INCURRED. WITHIN 45 DAYS OF RECEIPT OF THE NOTICE, THE LANDLORD SHALL RETURN TO THE TENANT THE SECURITY DEPOSIT TOGETHER WITH SIMPLE INTEREST WHICH HAS ACCRUED IN THE AMOUNT OF 3 PERCENT PER ANNUM, LESS ANY DAMAGES RIGHTFULLY WITHHELD.

(3) IF A LANDLORD FAILS TO SEND THE LIST OF DAMAGES REQUIRED BY PARAGRAPH (2), THE RIGHT TO WITHHOLD ANY PART OF THE SECURITY DEPOSIT FOR DAMAGES IS FORFEITED. IF A LANDLORD FAILS TO RETURN THE SECURITY DEPOSIT AS REQUIRED BY PARAGRAPH (2), THE TENANT HAS AN ACTION OF UP TO THREEFOLD OF THE WITHHELD AMOUNT, PLUS REASONABLE ATTORNEY'S FEES.

(4) EXCEPT TO THE EXTENT SPECIFIED, THIS SUBSECTION MAY NOT BE INTERPRETED TO ALTER THE LANDLORD'S DUTIES UNDER SUBSECTIONS (F) AND (H).

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1977.

Approved June 28, 1977

A BILL ENTITLED

AN ACT concerning

Local Government - Water and Sewerage Service Assessments, Rates and Charges

FOR the purpose of providing that unpaid water and sewer service charges of political subdivisions shall not constitute a first lien on a single family home which is rented for residential purposes by the owner to a tenant who agrees pursuant to a written lease or agreement to pay water and sewer upkeep and service charges and all penalties directly to the political subdivision.

BY repealing and re-enacting, with amendments,

Article 43
Section 427A(d), (e) and (f)
Annotated Code of Maryland
(1957 Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Sections 427A(d), (e), and (f) of Article 43 of the Annotated Code of Maryland (1957 Volume and 1977 Supplement) be and they are hereby repealed and re-enacted, with amendments, to read as follows:

Article 43

427A. Assessments, rates and charges for water and sewerage service.

(d) The rates for water service shall consist of a minimum or ready-to-serve charge, which shall be based upon the size of the meter on the water connection leading to the property, and of a charge for water used, which shall be based upon the amount of water passing through the meter during the period between the last two readings. The meter is required to be placed on each water connection by and at the sole expense of the political subdivision. If the political subdivision at any time does not have meters available to install in all the properties in a given locality that are connected to the system, then flat rates shall be charges all properties in which meters have not yet been installed. These rates, subject to the provisions of this section, shall be uniform in each water or sewerage district and based upon estimates of the amount of water used by the types of users specified in such rates. Bills for the amount of the charges as above specified shall be sent quarterly or semiannually, as the political subdivision may determine, to each property served, and shall be thereupon payable at the office of the political subdivision. If any bill remains unpaid after 30 days from date of sending, the political subdivision shall, after written notice left upon the premises or mailed to the last known address of the owner, turn off water from the property in question, and the water shall not be turned on again until the bill has been paid, including a penalty of five dollars ($5.00). If any bill remains unpaid for 60 days after being sent by the political subdivision, it shall be collectible, together with a penalty of $5.00, from the owner of the property served in the same manner, and subject to the same interest, as taxes are collectible in the county or counties in which the water or sewerage systems lie. [and] The water service charges, other service charges and all penalties shall be a first lien against the property[.], EXCEPT AGAINST A SINGLE FAMILY HOME, INCLUDING A DWELLING UNIT SHARING ONE OR MORE WALLS WITH ANOTHER DWELLING UNIT IF IT HAS DIRECT ACCESS TO THE STREET AND DOES NOT SHARE WATER

SERVICE EQUIPMENT WITH ANY OTHER DWELLING UNIT, WHICH IS RENTED FOR RESIDENTIAL PURPOSES BY THE OWNER TO A TENANT WHO AGREES PURSUANT TO A WRITTEN LEASE OR AGREEMENT TO PAY WATER SERVICE CHARGES, OTHER SERVICE CHARGES AND ALL PENALTIES DIRECTLY TO THE POLITICAL SUBDIVISION.

(e) The charge for the upkeep on sewers shall be reasonable and collected annually; and shall be a first lien against all property having a connection with any sewer pipe under the supervision of, or owned by, the political subdivision[.], EXCEPT AGAINST A SINGLE FAMILY HOME, INCLUDING A DWELLING UNIT SHARING ONE OR MORE WALLS WITH ANOTHER DWELLING UNIT IF IT HAS DIRECT ACCESS TO THE STREET AND DOES NOT SHARE SEWER SERVICE EQUIPMENT WITH ANY OTHER DWELLING UNIT, WHICH IS RENTED FOR RESIDENTIAL PURPOSES BY THE OWNER TO A TENANT WHO AGREES PURSUANT TO A WRITTEN LEASE OR AGREEMENT TO PAY THE CHARGE FOR THE UPKEEP ON SEWERS DIRECTLY TO THE POLITICAL SUBDIVISION.

(f) The sewer service charge shall be made on whatever reasonable basis the political subdivision selects and may be collected on an annual, semiannual, or quarterly basis. If any bill for sewer service charge remains unpaid for 60 days after being sent by the political subdivision, it shall be collectible from the owner of the property served in the same manner, and subject to the same interest as taxes are collectible in the county or counties in which the water or sewerage systems lie[; and]. The sewer service charge shall be a first lien against the property[.], EXCEPT AGAINST A SINGLE FAMILY HOME, INCLUDING A DWELLING UNIT SHARING ONE OR MORE WALLS WITH ANOTHER DWELLING UNIT IF IT HAS DIRECT ACCESS TO THE STREET AND DOES NOT SHARE SEWER SERVICE EQUIPMENT WITH ANY OTHER DWELLING UNIT, WHICH IS RENTED FOR RESIDENTIAL PURPOSES BY THE OWNER TO A TENANT WHO AGREES PURSUANT TO A WRITTEN LEASE OR AGREEMENT TO PAY THE SEWER SERVICE CHARGE DIRECTLY TO THE POLITICAL SUBDIVISION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act takes effect July 1, 1978.

Approved June 28, 1977

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant - Failure to Provide Essential Services

FOR the purpose of providing remedies to a tenant where his landlord willfully or negligently fails to supply heat, running water, hot water, electricity, gas, or other essential service; and providing that a landlord is guilty of a misdemeanor if he willfully fails to supply such an essential service.

BY adding to

Article - Real Property
Section 8-213
Annotated Code of Maryland
(1974 Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That new Section 8-213 be and it is hereby added to Article - Real Property of the Annotated Code of Maryland (1974 Volume and 1977 Supplement), to read as follows:

Article - Real Property

8-213. FAILURE TO SUPPLY ESSENTIAL SERVICES.

(A) CIVIL REMEDY. (1)(A) IF THE LANDLORD WILLFULLY OR NEGLIGENTLY FAILS TO SUPPLY HEAT, RUNNING WATER, HOT WATER, ELECTRICITY, GAS, OR OTHER ESSENTIAL SERVICE, OR WILLFULLY OR NEGLIGENTLY DENIES INGRESS OR EGRESS TO THE PREMISES TO A TENANT OR HIS FAMILY, THE TENANT MAY GIVE WRITTEN NOTICE BY CERTIFIED MAIL TO THE LANDLORD SPECIFYING THE BREACH AND MAY:

(I) PROCURE REASONABLE AMOUNTS OF HEAT, RUNNING WATER, HOT WATER, ELECTRICITY, GAS AND OTHER ESSENTIAL SERVICE DURING THE PERIOD OF THE LANDLORD'S NONCOMPLIANCE AND DEDUCT THEIR ACTUAL AND REASONABLE COST FROM THE RENT; OR

(II) RECOVER DAMAGES BASED UPON THE DIMINUTION IN THE FAIR RENTAL VALUE OF THE DWELLING UNIT; OR

(III) PROCURE REASONABLE SUBSTITUTE HOUSING DURING THE PERIOD OF THE LANDLORD'S NONCOMPLIANCE, IN WHICH CASE THE TENANT IS EXCUSED FROM PAYING RENT FOR THE PERIOD OF THE LANDLORD'S NONCOMPLIANCE.

(B)(I) IN ADDITION TO THE REMEDY PROVIDED IN SUBSECTION (A)(1)(A)(III), THE TENANT MAY RECOVER THE ACTUAL AND REASONABLE COST OR FAIR AND REASONABLE VALUE OF THE SUBSTITUTE HOUSING NOT IN EXCESS OF AN AMOUNT EQUAL TO PERIODIC RENT.

(II) IN ANY CASE, UNDER SUBSECTION (A)(1)(A), THE TENANT MAY RECOVER REASONABLE ATTORNEY'S FEES.

(2) IN ADDITION TO THE REMEDY PROVIDED UNDER SUBSECTION (A)(1), IF A LANDLORD WILLFULLY DIMINISHES SERVICES TO THE TENANT BY INTERRUPTING OR CAUSING THE INTERRUPTION OF HEAT, RUNNING WATER, HOT WATER, ELECTRICITY, GAS OR OTHER ESSENTIAL SERVICE,OR WILLFULLY DENIES INGRESS OR EGRESS TO THE PREMISES TO THE TENANT OR HIS FAMILY, THE TENANT MAY RECOVER POSSESSION OR

TERMINATE THE RENTAL AGREEMENT AND, IN EITHER CASE, RECOVER AN AMOUNT OF NOT MORE THAN 3 MONTH'S PERIODIC RENT OR THREEFOLD THE ACTUAL DAMAGES SUSTAINED BY HIM, WHICHEVER IS GREATER, AND REASONABLE ATTORNEY'S FEES. IF THE RENTAL AGREEMENT IS TERMINATED, THE LANDLORD MUST RETURN ALL SECURITY RECOVERABLE UNDER SECTION 8-203 AND ALL PRE-PAID RENT.

[(A)](3) RIGHTS OF THE TENANT UNDER SUBSECTION (A) DO NOT ARISE UNTIL HE HAS GIVEN WRITTEN NOTICE BY CERTIFIED MAIL TO THE LANDLORD OR IF THE CONDITION WAS CAUSED BY THE DELIBERATE OR NEGLIGENT ACT OR OMISSION OF THE TENANT, A MEMBER OF HIS FAMILY, OR OTHER PERSON ON THE PREMISES WITH HIS CONSENT.

(B) CRIMINAL PENALTY. A LANDLORD WHO WILLFULLY FAILS TO SUPPLY, OR WILLFULLY DIMINISHES BY INTERRUPTING OR CAUSING THE INTERRUPTION OF, HEAT, RUNNING WATER, HOT WATER, ELECTRICITY, GAS OR OTHER ESSENTIAL SERVICES TO ANY OF HIS TENANTS, OR WILLFULLY DENIES INGRESS OR EGRESS TO THE PREMISES TO A TENANT OR HIS FAMILY, IS GUILTY OF A MISDEMEANOR, AND MAY BE PUNISHED BY A MAXIMUM FINE OF $100 AND/OR A MAXIMUM TERM IN JAIL OF TEN DAYS.

(C) TENANT'S FAILURE TO PAY. A LANDLORD DOES NOT ACT WILLFULLY OR NEGLIGENTLY WITHIN THE MEANING OF SUBSECTIONS (A) OR (B) IF THE DENIAL OF ESSENTIAL SERVICES TO A TENANT IS DUE TO THE TENANT'S FAILURE TO PAY FOR ESSENTIAL SERVICES FOR WHICH THE TENANT IS RESPONSIBLE UNDER HIS LEASE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act takes effect July 1, 1978.

A BILL ENTITLED

AN ACT concerning

Real Property - Failure to Pay Rent

FOR the purpose of defining the term "rent" for purposes of a landlord's rights upon a failure of a tenant to pay the rent under a residential lease; and requiring the payment of a reasonable sum in rent if there is no agreement as to the amount of rent.

BY adding to

Article - Real Property
Section 8-401(g)
Annotated Code of Maryland
(1974 Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That new Section 8-401(g) be and it is hereby added to Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1977 Supplement) to read as follows:

Article - Real Property

8-401.

(G)(1) AS USED IN THIS SECTION, AND AS IT APPLIES TO LEASES FOR RESIDENTIAL PROPERTY, THE WORD "RENT" MEANS A FIXED AMOUNT OF CONSIDERATION, WHETHER IN MONEY, SERVICES, LABOR, OR SPECIFIC PROPERTY OR CHATTELS, AGREED UPON BY THE LANDLORD AND TENANT TO BE PAID BY THE TENANT AS COMPENSATION FOR THE POSSESSION, USE, OCCUPATION, AND ENJOYMENT OF THE LEASED PREMISES. THE TERM INCLUDES CHARGES FOR THE LATE PAYMENT OF RENT AND DAMAGES TO THE LEASED PREMISES CAUSED BY A BREACH OF THE LEASE OR BY ACTION OF THE TENANT OF HIS FAMILY, AGENT, EMPLOYEE, SOCIAL GUEST, INVITEE, OR LICENSEE.

(2) IF THERE IS NO AGREEMENT AS TO THE AMOUNT OF RENT, THE TENANT SHALL PAY A REASONABLE SUM IN RENT.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1978.

Approved June 28, 1977

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant - Definitions

FOR the purpose of defining landlord, tenant, residential leases and other terms within the meaning of the title governing landlord-tenant relationships.

BY repealing and re-enacting, with amendments

Article - Real Property
Sections 8-109, 8-111, 8-201, 8-204, 8-211(c), 8-401(b), 8-401(d), 8-402(a)(2)(i), (ii), 8-402(b)(5), 8-402(c), and 8-403.
Annotated Code of Maryland
(1974 Volume and 1977 Supplement)

BY adding to

Article - Real Property
Section 8-117
Annotated Code of Maryland
(1974 Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Sections 8-109, 8-111, 8-201, 8-204, 8-211(c), 8-401(b), 8-401(d), 8-402(a)(2)(i), (ii), 8-402(b)(5), 8-402(c), 8-40 , of Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1977 Supplement), be and they are hereby repealed and re-enacted, with amendments, to read as follows:

Article - Real Property

§8-109. Effect of covenant for perpetual renewal in lease.

Uninterrupted possession for 12 months after the expiration of the lease containing a covenant for perpetual renewal of all or part of the leased premises by the tenant or any person claiming under him operates as a renewal with respect to the entire premises. It conclusively is presumed in reference to the whole or any part of the leased premises, of which possession is retained, and in favor of the tenant [or of the person claiming under him], that a new lease of the whole of the leased premises was executed prior to the expiration of the lease by the landlord named in it, [or by the person rightfully claiming under the landlord], to the tenant, [or the person rightfully claiming under the tenant] for the additional term under the rent and on the covenants, conditions, and stipulations as were provided in the lease.

§8-111. Back rent on renewal of lease.

If a tenant named in a lease [or an assignee of a lease] applies to his landlord for a renewal under a covenant in the lease giving him the right to renewal, and if the tenant cannot produce vouchers or satisfactory

evidence showing payment of the rent accrued for three years next preceding his demand and application, the landlord, before executing the renewal of the lease or causing it to be executed, is entitled to demand and recover not more than three years' back rent, in addition to any renewal fine that may be provided for in the lease. The tenant may plead this section in bar of the recovery of any larger amount of rent.

§8-201. Applicability of subtitle; DEFINITIONS.

(A) APPLICABILITY. This subtitle is applicable only to leases for a dwelling unit located within this state.

(B) DEFINITIONS IN THIS TITLE,

(1) "DWELLING UNIT" MEANS A STRUCTURE, INCLUDING A SINGLE FAMILY RESIDENCE, OR MOBILE HOME, THAT IS USED AS A HOME, RESIDENCE OR SLEEPING PLACE BY ONE PERSON WHO MAINTAINS A HOUSEHOLD OR BY 2 OR MORE PERSONS WHO MAINTAIN A COMMON HOUSEHOLD. "DWELLING UNIT" DOES NOT INCLUDE THE FOLLOWING ARRANGEMENTS:

(A) RESIDENCE AT AN INSTITUTION, PUBLIC OR PRIVATE, IF INCIDENTAL TO DETENTION OR THE PROVISION OF MEDICAL,EDUCATIONAL, COUNSELING, RELIGIOUS, OR SIMILAR SERVICE;

(B) OCCUPANCY UNDER A CONTRACT OF SALE OF A DWELLING UNIT OR THE PROPERTY OF WHICH IT IS A PART, IF THE OCCUPANT IS THE PURCHASER OR A PERSON WHO SUCCEEDS TO HIS INTEREST;

(C) OCCUPANCY BY A MEMBER OF A FRATERNAL OR SOCIAL ORGANIZATION IN THE PORTION OF A STRUCTURE OPERATED FOR THE BENEFIT OF THE ORGANIZATION;

(D) TRANSIENT OCCUPANCY IN A HOTEL OR MOTEL;

(E) OCCUPANCY BY AN EMPLOYEE OF A LANDLORD WHOSE RIGHT TO OCCUPANCY IS CONDITIONAL UPON EMPLOYMENT IN AND ABOUT THE PREMISES;

(F) OCCUPANCY BY AN OWNER OF A CONDOMINIUM UNIT OR A HOLDER OF A PROPRIETARY LEASE IN A COOPERATIVE;

(G) OCCUPANCY UNDER A RENTAL AGREEMENT COVERING PREMISES USED BY THE OCCUPANT PRIMARILY FOR AGRICULTURAL PURPOSES.

(2) "HOUSING CODES" INCLUDE ANY LAW, ORDINANCE, OR GOVERNMENTAL REGULATION CONCERNING FITNESS FOR HABITATION, OR THE CONSTRUCTION, MAINTENANCE, OPERATION, OCCUPANCY, USE, OR APPEARANCE OF ANY PREMISES, OR DWELLING UNIT;

(3) "PREMISES" MEANS A DWELLING UNIT AND THE STRUCTURE OF WHICH IT IS A PART AND FACILITIES AND APPURTENANCES THEREIN; AND GROUNDS, AREAS, AND FACILITIES HELD OUT FOR THE USE OF TENANTS GENERALLY OR WHOSE USE IS PROMISED TO THE TENANT.

§8-204. Covenant of quiet enjoyment.

[(a) Applicability of section. This section is applicable only to single or multi-family dwelling units.]

(A)[(b)] Covenant of quiet enjoyment required. A landlord shall assure his tenant that the tenant, peaceably and quietly, may enter on the leased premises at the beginning of the term of any lease.

(B)[(c)] Abatement of rent for failure to deliver. If the landlord fails to provide the tenant with possession of the dwelling unit at the beginning of the term of any lease, the rent payable under the lease shall abate until possession is delivered. The tenant, on written notice to the landlord before possession is delivered, may terminate, cancel, and rescind the lease.

(C)[(d)] Liability of landlord. On termination of the lease under this section, the landlord is liable to the tenant for all money or property given as prepaid rent, deposit, or security.

(D)[(e)] Consequential damages. If the landlord fails to provide the tenant with possession of the dwelling unit at the beginning of the term of any lease whether or not the lease is terminated under this section, the landlord is liable to the tenant for consequential damages actually suffered by him subsequent to the tenant's giving notice to the landlord of his inability to enter on the leased premises.

(E)[(f)] Eviction of tenant holding over. The landlord may bring an action of eviction and damages against any tenant holding over after the end of his term even though the landlord has entered into a lease with another tenant, and he may join the new tenant as a party to the action.--

§8-211. Repair of dangerous defects; rent escrow.

(c) [This section applies to residential dwelling units leased for the purpose of human habitation within the State of Maryland.] This section does not apply to farm tenancies.

§8-401. Failure to pay rent.

(b) Complaint; summons. Whenever any landlord shall desire to have again and repossess any premises to which he is entitled under the provisions of §8-401(a), he or his duly qualified agent or attorney, shall make his written complaint under oath or affirmation, before the District Court of the county wherein the property is situated, describing in general terms the property sought to be had again and repossessed, and also setting forth the name of the tenant [to whom the property is rented or his assignee or subtenant] with the amount of rent thereon due and unpaid; and praying by warrant to have again and repossess the premises, together with judgment for the amount of rent due and costs. The District Court forthwith shall issue its summons, directed to any official of the county entitled to serve process, and ordering him to notify by first-class mail the tenant [, assignee, or subtenant] forthwith to appear before the District Court at the trial to be held on the fifth day after the filing of the complaint, to answer the landlord's complaint to show cause why the prayer of the landlord should not be granted,

and the official shall forthwith proceed to serve the summons upon the tenant [,assignee or subtenant] in the property or upon his known or authorized agent, but if for any reason, neither the tenant [,assignee or subtenant,] nor his agent, can be found, then the official shall affix an attested copy of the summons conspicuously upon the property, and the affixing of the summons, for purposes of this section shall be conclusively presumed to be a sufficient service upon all persons whatsoever, if in addition, the tenant [,assignee, or subtenant] has also been notified by first-class mail.

(d) Removal of tenant for noncompliance with judgment in favor of landlord. If judgment is given in favor of the landlord, and the tenant fails to comply with the requirements of the order within two days, the court shall, at any time after the expiration of the two days, issue its warrant, directed to any official of the county entitled to serve process, ordering him to cause the landlord to have again and repossess the property by putting him [(or his duly qualified agent or attorney for his benefit)] in possession thereof, and for that purpose to remove from the property, by force if necessary, all the furniture, implements, tools, goods, effects or other chattels of every description whatsoever belonging to the tenant [,or to any person claiming or holding by or under said tenant]. If the landlord does not order a warrant of restitution within sixty days from the date of judgment or from the expiration date of any stay of execution, whichever shall be the later, the case shall be considered as dismissed.

§8-402. Holding over.

(a)(a)(2)(i) Where the leased premises are used by the tenant primarily as the residence of the tenant, or his family [or someone holding under them], then the measure of damages shall be the landlord's actual damages, but not exceeding double the rent under the lease (apportioned for the duration of the holdover).

(ii) Where the leased premises are used by the tenant [or someone holding under him] primarily for nonresidential purposes, the measure of damages shall be double the rent under the lease (apportioned for the duration of the holdover) or double the rental value of the premises (apportioned for such period), whichever is higher, provided, however, that if the landlord fails specifically to elect the latter measure when he institutes his action against the tenant, the measure shall be [doubled] DOUBLE the rent under the lease.

(b)(5) When the tenant shall give notice by parole to the landlord [or to his agent or representatives,] at least one month before the expiration of the lease or tenancy in all cases except in cases of tenancies from year to year, and at least three months' notice in all cases of tenancy from year to year (except in all cases of farm tenancy, the notice shall be six months), of the intention of the tenant to remove at the end of that year and to surrender possession of the property at that time, and the landlord[, his agent, or representative] shall prove the notice from the tenant by competent testimony, it shall not be necessary for the landlord [, his agent or representative] to provide a written notice to the tenant, but the proof of such notice from the tenant as aforesaid shall entitle his landlord to recover possession of the property hereunder. This subparagraph (5) shall not apply in Baltimore City.

(c)Ejectment where one-half year's rent in due. In all cases between landlord and tenant, where one-half year's rent shall be in arrear and the landlord has the lawful right to reenter for the nonpayment thereof, the landlord may, without any formal demand or reentry, serve a copy of a declaration in ejectment for the recovery of the property; if the declaration cannot be legally served, or no tenant be in actual possession of the property, then he shall affix it upon the door of any demised messuage, or if the action of ejectment shall not be for the recovery of any messuage, then upon some notorious place of the property described in the declaration in ejectment;such affixing shall be deemed legal service thereof, which service or affixing of such declaration in ejectment shall stand in the place and stead of a demand and reentry. If the court shall enter a verdict for the landlord, he shall have judgment and execution in the same manner as if the rent in arrear had been legally demanded and a reentry made If the tenant [or other person claiming or deriving under the lease] shall permit a judgment to be rendered against him, and execution to be executed thereo without paying the rent and arrears, together with full costs, and without proceeding for relief in equity within six calendar months after the execution, the tenant [and all other persons claiming and deriving under the said lease] shall be barred and foreclosed from all relief or remedy in law or equity other than by appeal for reversal of such judgment, and the landlord shall thenceforth hold the property discharged from the lease. Nothing herein contained shall bar the right of any mortgagee of the lease, or any part thereof, who shall not be in possession, so as such mortgagee shall and do, within six calendar months after such judgment obtained and execution executed, pay all costs and damages sustained by the landlord and perform all the covenants and agreements which, on the part and behalf of the first tenant, are and ought to be performed.

§8-403. Payment of rents into court or administrative agency.

If the District Court in any case brought pursuant to §8-401 or §8-402 orders an adjournment of the trial for a longer period than provided for in the section under which the case has been instituted, the tenant [or anyone holding under him] shall pay all rents due and as they come due into the District Court. However, the Court may order the tenant to pay rents due and as come due into an administrative agency of any county which is empowered by local law to hold rents in escrow pending investigation and disposition of complaints by tenants; the Court also may refer that case to the administrative agency for investigation and report to the Court. A tenant shall pay into the Court the amount of rent due on or before the date to which the trial is adjourned or within seven days after adjournment if the trial is adjourned more than seven days, or to the administrative agency within seven days after the Court has ordered the rent paid into an administrative agency. If the tenant fails to pay rent due within this period,or as it comes due, the Court, on motion of the landlord, shall give judgment in favor of the landlord and issue a warrant for possession in accordance with the provisions of §8-401(c) and (d).

SECTION 2. AND BE IT FURTHER ENACTED, That new Section 8-117 be and it is hereby added to Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1977 Supplement), to read as follows:

Article - Real Property

§8-117 DEFINITIONS. IN THIS TITLE,

(A) "LANDLORD" MEANS THE OWNER, LESSOR, OR SUBLESSOR OF THE LEASED PREMISES, OR THE DWELLING UNIT OR THE BUILDING OF WHICH IT IS A PART. "LANDLORD" INCLUDES ANY PERSON RIGHTFULLY CLAIMING UNDER THE LANDLORD, AND THE LANDLORD'S AGENT OR REPRESENTATIVE.

(B) "OWNER" MEANS ONE OR MORE PERSONS, JOINTLY OR SEVERALLY, IN WHOM IS VESTED

(I) ALL OR PART OF THE LEGAL TITLE TO PROPERTY; OR

(II) ALL OR PART OF THE BENEFICIAL OWNERSHIP AND A RIGHT TO PRESENT USE AND ENJOYMENT OF THE PREMISES. THE TERM INCLUDES A MORTGAGEE IN POSSESSION.

(C) "PERSON" INCLUDES AN INDIVIDUAL OR ORGANIZATION;

(D) "TENANT" MEANS A PERSON ENTITLED UNDER A LEASE TO OCCUPY LEASED PREMISES, OR A DWELLING UNIT, AS DEFINED IN §8-201, TO THE EXCLUSION OF OTHERS. "TENANT" INCLUDES A SUBTENANT, ASSIGNEE, OR ANY PERSON RIGHTFULLY CLAIMING OR HOLDING UNDER THE TENANT, SUBTENANT, OR ASSIGNEE. "TENANT" DOES NOT INCLUDE A ROOMER.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1978.

Steven G. Davison
Reporter,
Governor's Commission on
Landlord-Tenant Law Revision
4819 N. 16th St.
Arlington, VA 22205

October 24, 1977

Thomas J. Peddicord
Assistant Legislative Officer
Executive Department
State of Maryland
State House
Annapolis, MD 21404

Dear Tom:

The Governor's Commission on Landlord-Tenant Law Revision, at a meeting on October 11, 1977, by a vote of 8-0, voted to re-call and withdraw the definition of rent bill which the Commission had approved at its meeting on June 28, 1977, and which was the sixth bill that I forwarded to you in my letter of August 30, 1977. The reason for the Commission's decision to withdraw this bill is that the bill's definition of rent to include damages may be unconstitutional because §8-401 of the Real Property Article permits service of process by mail or by posting, whereas the Maryland courts require personal service of process in a suit seeking damages.

At its October 11 meeting, the Commission also unanimously approved four bills; I am submitting copies of these bills for introduction to the General Assembly as departmental bills.

The first bill approved by the Commission at its Ocotber 11 meeting is an amended version of HB 553 of the 1977 Regular Session. The Commission approved HB 553 as it was amended by the House of Delegates on third reader. The bill would amend §11-102.1 of the Real Property Article to permit a landlord to convert his rental building to a condominium at any time without restriction, but would prohibit the landlord from giving a notice to quit to his tenants until at least 180 days from the date he gives his tenants written notice of conversion. Section 11-102.1 of the Real Property Article presently prohibits a landlord from converting a rental building to a condominium (by filing a declaration and plat) until 180 days after he has given notice of his intention to convert to a condominium. Under the present law, a tenant in the building must wait until the building is converted to a condominium (which is at least 180 days after he receives the notice of the landlord's intent to convert) before he can purchase his unit as a condominium. The enclosed bill would amend §11-102.1 to permit a landlord to convert the building to a condominium at any time, and thus would enable a tenant in the

building to immediately purchase his unit as a condominium and to make mortgage payments (equity) rather than pay rent, at least 180 days earlier than under existing law. The bill, however, would continue to give tenants in a residential building being converted to a condominium at least 180 days to vacate after notice of conversion if they do not wish to purchase their unit as a condominium. The enclosed bill would also amend §11-102.1 by giving a tenant in a rental building that is converted to a condominium the right to purchase his rental unit as a condominium, if he gives the landlord notice of his intent to purchase within 90 days of receiving the notice of conversion from the landlord.

The second bill approved by the Commission is an amended version of HB 554 of the 1977 Regular Session. The bill would require a landlord, upon written request, to give a prospective tenant a copy of his written leaseform (if he uses a written lease); and to give a tenant, within 30 days of occupancy by the tenant, a copy of the written lease executed by the landlord and tenant. Section 8-203.1(a)(1) of the Real Property Article presently imposes a duty upon a landlord who offers more than 4 dwelling units at one location to give, upon written request, a copy of his written leaseform to prospective tenants. The enclosed bill would extend this duty to all landlords. The enclosed bill, however, would repeal Section 8-203.1 of the Real Property Article, not just Section 8-203.1(a)(1). The reason for repealing Section 8-203.1 in its entirety, rather than just Section 8-203.1(a)(1), is that other subsections of §8-203.1 conflict with other sections of Title 8 of the Real Property Article. The Commission also proposes to repeal Section 8-203.1(a)(2) because this section permits the landlord to include a statement in a lease specifying that the tenant accepts the premises in a condition not permitting habitation with reasonable safety, and that the tenant agrees to repair the premises. The subsection conflicts with the rent escrow statute (Section 8-211 of the Real Property Article), which makes the landlord responsible for defects on the premises that substantially affect the health and safety of tenants. Although Section 8-211 is silent as to whether a landlord may require a tenant to waive his rights under Section 8-211 in a lease, Section 8-208(a)(2) of the Real Property Article, which provides that a lease may not include a provision "whereby the tenant agrees to waive or to forego any right or remedy provided by applicable law," precludes a lease from containing a provision whereby the tenant waives or modifies any of his rights under Section 8-211. Section 8-203.1(a)(2) directly conflicts with Sections 8-211 and 8-208(a)(2) by permitting a landlord to require a tenant to waive his rights under Section 8-211. The Commission also proposes repealing Section 8-203.1(b) because the lease provisions which it prohibits are already prohibited by Sections 8-208(a)(2) (in conjunction with the retaliatory eviction statute, Section 8-208.1) and 8-208(a)(6), although Section 8-203.1(b) only applies to landlords who rent four or more dwelling units at one location.

The third bill that I am forwarding is an amended version of HB 658 of the 1977 Regular Session. This bill is in response to an opinion of the Maryland Attorney General (a copy is enclosed) which concluded that a lease which is not notarized is not presumed valid with respect to execution and delivery. The bill would provide that a written lease for residential property is presumed valid with respect to its execution and delivery if it is executed and, if required by other statutory provision, it is recorded.

The bill also would amend existing law by providing that a written lease for residential property is sufficient if it contains the names of the landlord and tenant, a description of the leased premises, the rent, and the term of the tenancy.

The fourth bill that I am enclosing would amend Section 8-402(a) of the Real Property Article to permit a landlord to recover all actual damages that he suffers due to a tenant illegally holding over. Under existing §8-402(a), the maximum amount of damages that a landlord may recover from a holdover tenant is limited to double the rent or double the rental value. The bill requires the landlord to give the holdover tenant personal service of process. Under the bill, the suit would be brought as a normal civil suit; if the damage suit was joined with a suit for summary ejectment under Section 8-402(b), Maryland case law provides that the tenant would be entitled to personal service of process and a jury trial with respect to both counts. The bill would designate amended Section 8-402(a) as new Section 8-402.1, and would renumber Sections 8-402(b) and (c) as Sections 8-402(a) and (b), respectively.

If I can provide any further information with respect to these bills, please contact me. My home phone number is (703) 525-7669; my work phone number is (301) 727-6350 X. 297. Thank you for your attention to these bills.

Sincerely yours,

Steven G. Davison

Steven G. Davison

cc: Members of Governor's Commission on Landlord-Tenant Law Revision

H O U S E O F D E L E G A T E S

No. 553

By: ~~Delegate~~ Delegates Owens and Sheehan
(Departmental - SC - Landlord Ten)
Introduced and read first time: January 14, 1977
Assigned to: Judiciary

Committee Report: Favorable with amendments
House Action: Adopted
Read second time: March 16, 1977

CHAPTER _____

AN ACT concerning

Condominiums - Notice of Conversion

FOR the purpose of requiring the owner of any property which is subjected to a condominium regime to give notice of such conversion and intention to sell, as a condominium, to the tenants occupying any portion of the property as a residence, and to certain other persons; specifying the form of the notice; authorizing each tenant to select certain options with respect to his residence within a certain period of time; repealing a certain provision relating to the former notice of intention to convert; and generally relating to the notice of a conversion of property to a condominium regime and the duties and rights of the owner and tenants of such property.

BY repealing and reenacting, with amendments,

Article - Real Property
Section 11-102.1(a), (d), (e), (f), (g) and (h)
Annotated Code of Maryland
(1974 Volume and 1976 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Sections 11-102.1(a), (d), (e), (f), (g) and (h) of Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1976 Supplement) be and they are hereby repealed and reenacted, with amendments, to

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Underlining indicates amendments to the bill.
~~Strike-out~~ indicates matter stricken from bill.
Numerals at right identify computer lines of text.

read as follows:

Article - Real Property

11-102.1.

(a) [At least 180 days before property is subjected to a condominium regime,] IF ANY PROPERTY IS SUBJECTED TO A CONDOMINIUM REGIME IN ACCORDANCE WITH §11-102, the owner and the landlord of each tenant then occupying any portion of the property as his residence, if other than the owner, shall give the tenant a notice in the form specified in subsection (f) and shall deliver a copy of the notice prior to entering into a lease to each tenant who thereafter leases any portion of the property for his residence.

(d) Any tenant leasing any portion of the property as his residence at the time the notice referred to in subsection (a) is given to him and whose lease term would ordinarily terminate during the 180-day period is entitled to have the term extended on the same terms and conditions until the expiration of the 180-day period. NOTICE TO VACATE THE PROPERTY MAY NOT BE GIVEN TO A TENANT PRIOR TO THE EXPIRATION OF THE 180-DAY PERIOD, EXCEPT AS PROVIDED IN SUBSECTION (C).

(e) Any tenant leasing any portion of the property as his residence at the time the notice referred to in subsection (a) is given to him may terminate his lease, without penalty for termination upon at least 30 days' written notice to his landlord. ANY TENANT MAY PURCHASE, AS A CONDOMINIUM UNIT, THE PROPERTY WHICH HE IS LEASING AS HIS RESIDENCE AT ANY TIME AFTER RECEIVING THE NOTICE REFERRED TO IN SUBSECTION (A) , IF THE TENANT GIVES NOTICE TO THE OWNER AND THE LANDLORD OF HIS INTENTION TO PURCHASE THE PROPERTY. HOWEVER, THE TENANT SHALL GIVE THIS NOTICE WITHIN 90 DAYS AFTER HAVING RECEIVED THE NOTICE FROM THE OWNER AND THE LANDLORD REFERRED TO IN SUBSECTION (A).

(f) The notice referred to in subsection (a) shall be sufficient for the purposes of this section if it is in substantially the following form:

NOTICE OF INTENTION TO [CREATE]
SELL A CONDOMINIUM

..... (Date)

This is to inform you that the premises known as....
.....
.....
[may be] HAVE BEEN subjected to a condominium regime in accordance with the Maryland Condominium Act AND WILL BE

SOLD AS A CONDOMINIUM UNIT following the expiration of 180 days from the date of this notice, OR DURING THAT 180-DAY PERIOD AS PROVIDED BELOW.

If you are a tenant in these premises, you are entitled to remain in your leased premises until the expiration of the term of your lease or the 180 day period, whichever is longer, unless you breach a covenant in your lease, or fail to pay your rent. If the term of your lease expires during the 180 day period, you may have it extended, on the same terms and conditions, until the expiration of the 180 day period.

If you are a tenant in these premises, you may terminate your lease upon at least 30 days' prior written notice to your landlord. IF ~~YOUR~~ YOU ARE A TENANT YOU MAY PURCHASE, AS A CONDOMINIUM UNIT, THE PREMISES KNOWN AS ..... AT ANY TIME AFTER THE DATE OF THIS NOTICE , IF YOU GIVE NOTICE TO THE OWNER AND THE LANDLORD OF YOUR INTENTION TO PURCHASE THE PREMISES. HOWEVER, YOU MUST GIVE THAT NOTICE WITHIN 90 DAYS OF RECEIVING THIS NOTICE.

(g) [A declaration may not be received for record unless there is attached thereto an affirmation of the developer in substantially the following form:

I hereby affirm under penalty of perjury that the notice requirements of section 11-102.1 of the Real Property Article, if applicable, have been fulfilled.

Developer

By .....

(h)] Failure to fulfill the provisions of this section does not affect the validity of a condominiun regime otherwise established in accordance with the provisions of this title.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1977.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant - Leases

FOR the purpose of repealing certain provisions dealing with the duty of certain landlords to provide lease forms to prospective applicants, and prohibiting certain lease provisions; and enacting a new Section requiring certain landlords to provide a certain lease form in certain cases to a prospective tenant and requiring the tenant to be given a copy of an executed lease within a certain time after occupancy.

BY repealing

Article - Real Property
Section 8-203.1
Annotated Code of Maryland
(1974 Volume and 1977 Supplement)

BY adding to

Article - Real Property
Section 8-213
Annotated Code of Maryland
(1974 Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 8-203.1 of Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1977 Supplement) be and it is hereby repealed.

SECTION 2. AND BE IT FURTHER ENACTED, That new Section 8-213 be and it is hereby added to Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1977 Supplement) to read as follows:

Article - Real Property

8-213.

(A) UPON WRITTEN REQUEST, A LANDLORD WHO RENTS BY MEANS OF WRITTEN LEASES SHALL PROVIDE A PROSPECTIVE TENANT WITH A COPY OF THE PROPOSED LEASE FORM. THE FORM SHALL BE COMPLETE EXCEPT FOR THE DATE, NAME OF TENANT, DESIGNATION OF THE LEASED PREMISES, AND RENTAL RATE.

(B) WITHIN 30 DAYS OF THE DATE OF OCCUPANCY BY A TENANT, THE LANDLORD SHALL PROVIDE THE TENANT WITH A COPY OF THE LEASE AS EXECUTED BY THE PARTIES.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1978.

Approved Oct. 11, 1977

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant - Validity of Written Leases

FOR the purpose of specifying the requirements of a written lease for residential property and providing that such a lease is presumed valid, in respect to its execution and delivery by the landlord to the tenant, if it is executed and, if required, recorded; and providing for the prospective and retroactive application of this Act.

BY repealing and re-enacting, with amendments,

Article - Real Property
Section 4-101(a) and 4-103

Annotated Code of Maryland
(1974 Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 4-101(a) and 4-103 of Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1977 Supplement) be and they are hereby repealed and reenacted, with amendments, to read as follows:

Article - Real Property

4-101.

(a)(1) Any deed containing the names of the grantor and grantee, a description of the property sufficient to identify it with reasonable certainty, and the interest or estate intended to be granted, is sufficient, if executed, acknowledged, and, where required, recorded.

(2) A WRITTEN LEASE FOR RESIDENTIAL PROPERTY IS SUFFICIENT (I) IF IT CONTAINS THE NAMES OF THE LANDLORD AND TENANT, A DESCRIPTION OF THE LEASED PREMISES SUFFICIENT TO IDENTIFY IT WITH REASONABLE CERTAINTY, THE RENT AND THE TERM OF THE LEASEHOLD ESTATE, (II) IF IT IS EXECUTED, AND (III) IF REQUIRED, IT IS RECORDED.

4-103.

If a deed is executed, acknowledged, and, if required, recorded, the validity of the deed in respect to its execution and delivery by the grantor to the grantee is presumed. IF A WRITTEN LEASE FOR RESIDENTIAL PROPERTY IS EXECUTED AND, IF REQUIRED, RECORDED, THE VALIDITY OF THE LEASE IN RESPECT TO ITS EXECUTION AND DELIVERY BY THE LANDLORD TO THE TENANT IS PRESUMED.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1,

1977 and shall apply both prospectively and retroactively to leases executed prior to July 1, 1977.

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant - Holding Over Beyond Termination

FOR the purpose of repealing provisions authorizing a landlord to recover damages from a holdover tenant in a summary ejectment proceeding; repealing provisions limiting the maximum amount of damages that a landlord may recover from a holdover tenant; providing that a landlord may recover all actual damages from a holdover tenant; and providing for personal delivery of process in a suit to recover damages from a holdover tenant.

BY repealing

Article - Real Property
Section 8-402(a)
Annotated Code of Maryland
(1974 Volume and 1977 Supplement)

BY adding to

Article - Real Property
Section 8-402.1
Annotated Code of Maryland
(1974 Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 8-402(a) of Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1977 Supplement), be and it is hereby repealed, and that Sections 8-402(b) and (c) of Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1977 Supplement) be and they are hereby renumbered, respectively, as Sections 8-402(a) and (b) of Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1977 Supplement).

SECTION 2. AND BE IT FURTHER ENACTED, That new Section 8-402.1 be and it is hereby added to Article - Real Property, of the Annotated Code of Maryland (1974 Volume and 1977 Supplement) to read as follows:

Article - Real Property

§8-402.1

(A) LIABILITY OF TENANT. - (1) A TENANT UNDER ANY LEASE, OR A SUBTENANT, ASSIGNEE, OR PERSON HOLDING UNDER ANY OF THEM, WHO UNLAWFULLY HOLDS OVER BEYOND TERMINATION OF THE LEASE, IS LIABLE TO THE LANDLORD FOR ALL OF THE LANDLORD'S ACTUAL DAMAGES CAUSED BY THE HOLDING OVER.

(2) THE DAMAGES AWARDED TO A LANDLORD AGAINST A TENANT, SUBTENANT, ASSIGNEE, OR PERSON HOLDING UNDER THEM, MAY NOT BE LESS THAN THE APPORTIONED RENT FOR THE PERIOD OF HOLDOVER AT THE RENT RATE UNDER THE LEASE.

(3) ANY ACTION TO RECOVER DAMAGES UNDER THIS SUBSECTION MAY BE BROUGHT BY SUIT SEPARATE FROM THE REMOVAL PROCEEDING OR AN ACTION FOR POSSESSION UNDER SECTION 8-402, IN ANY COURT HAVING JURISDICTION OVER THE AMOUNT IN CONTROVERSY.

(4) SERVICE OF PROCESS UPON A HOLDOVER TENANT, SUBTENANT OR ASSIGNEE IN A SUIT TO RECOVER DAMAGES CAUSED BY THE HOLDING OVER SHALL BE BY PERSONAL DELIVERY IN ACCORDANCE WITH THE MARYLAND DISTRICT RULES. SERVICE OF PROCESS BY PERSONAL DELIVERY IS NOT REQUIRED IN A SUIT PURSUANT TO SECTION 8-402 TO RECOVER POSSESSION OF THE PREMISES.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1978.

Steven G. Davison
Reporter
Governor's Commission on
Landlord-Tenant Law Revision
4819 N. 16th St.
Arlington, VA 22205

August 31, 1978

Thomas Peddicord
Assistant Legislative Officer
Executive Department
State of Maryland
State House
Annapolis, MD 21404

Dear Tom:

The Governor's Commission on Landlord-Tenant Law Revision voted at its June 13th meeting to resubmit HB 310, 311 and 343 of the 1978 Session of the General Assembly to the 1979 Session. I am enclosing copies of these three bills.

HB 310, which was also submitted as HB 426 of the 1977 Session, would amend §8-402 of the Real Property Article to require a month's notice to quit to be given to a week-to-week tenant, and to specify that no notice to quit is required in a forcible entry and detainer action to remove a trespasser or squatter.

HB 311, which was also submitted as HB 427 of the 1977 Session,would amend §8-203 of the Real Property Article, the security deposit statute, to provide that a landlord has no duty to provide a written list of damages or to return a security deposit to a tenant who has been evicted for breach of the lease or who has vacated the premises prior to the termination of the tenancy, unless the tenant gives the landlord written notice of his new address by certified mail.

HB 343, which is an amended version of HB 554 of the 1977 Session, would repeal §8-203.1 of the Real Property Article ; and would enact a new section that would require a landlord, upon written request, to give a prospective tenant a copy of his written leaseform (if he uses a written lease), and to give a tenant, within 30 days of occupancy by the tenant, a copy of the written lease as executed by the landlord and tenant. My letter to you dated October 24, 1977, explains why the Commission is proposing the repeal of §8-203.1 of the Real Property Article.

The Commission's next meeting will be on September 12. The Commission will be considering four additional bills at its September meeting; if these

bills are approved, I will forward them to you as soon as possible.

If I can provide you with any further information on these three bills, please contact me. Please note that my home address will change on July 1st to 3806 N. Stafford Street, Arlington, VA 22207. My home phone number should continue to be (703) 525-7669; my phone number at work in Baltimore is 727-6350 X. 297. Thank you for your support of the Commission's work.

Sincerely yours,

Steven G. Davison

Steven G. Davison

SGD/lv
cc: Members of Governor's Commission on Landlord-Tenant Law Revision

HOUSE OF DELEGATES

81r1464

No. 310
(PRE-FILED)

By: Delegate Owens (Departmental - SC - Landlord Ten)
Requested: November 1, 1977
Introduced and read first time: January 11, 1978
Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant - Notice to Quit

FOR the purpose of requiring a landlord to give written notice to quit to monthly and weekly tenants at least one month before the expiration of the term of tenancy; and providing an exception for certain cases of forcible entry and detainer.

BY repealing and reenacting, with amendments,

Article - Real Property
Section 8-402(b)(4)
Annotated Code of Maryland
(1974 Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

Article - Real Property

8-402.

(b) (4) (i) The provisions of § 8-402 (b) shall apply to all cases of tenancies from year to year, tenancies of the month and by the week. In case of tenancies from year to year (including tobacco farm tenancies), notice in writing shall be given three months before the expiration of the current year of the tenancy, except that in case of all other farm tenancies, the notice shall be given six months before the expiration of the current year of the tenancy; and in monthly or weekly tenancies, [a] notice in writing [of] SHALL BE GIVEN one month [or one week, as the case may be, shall be so given] BEFORE EXPIRATION OF THE TERM OF TENANCY; and the same proceeding shall apply, so far as may be, to cases of forcible entry and detainer EXCEPT THOSE CASES INVOLVING A TRESPASSER OR SQUATTER.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Numerals at right identify computer lines of text.

(ii) This subsection (4), so far as it relates to notices, does not apply in Baltimore City.

(iii) In Montgomery County, except in the case of single family dwellings, the notice by the landlord shall be two months in the case of residential tenancies with a term of at least month to month but less than from year to year.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1978.

HOUSE OF DELEGATES

81r1465 No. 311
(PRE-FILED)

By: Delegate Owens (Departmental - SC - Landlord Ten)
Requested: November 1, 1977
Introduced and read first time: January 11, 1978
Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant - Security Deposits

FOR the purpose of providing that a landlord has no duty to return a security deposit, or to provide a written list of damages to be withheld from the security deposit to certain tenants under certain conditions; providing a method for such tenants to receive a list of damages and return of a security deposit; relating generally to security deposits held by landlords; and relettering a provision.

BY renumbering

Article - Real Property
Section 8-203(i)
to be Section 8-203(j)
Annotated Code of Maryland
(1974 Volume and 1977 Supplement)

BY adding to

Article - Real Property
Section 8-203(i)
Annotated Code of Maryland
(1974 Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 8-203(i) of Article - Real Property, of the Annotated Code of Maryland be renumbered to be Section(s) 8-203(j).

SECTION 2. AND BE IT FURTHER ENACTED, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Numerals at right identify computer lines of text.

Article - Real Property

8-203.

(I) (1) THE PROVISIONS OF SUBSECTIONS (F)(1), (F)(4), (H)(1), AND (H)(2) ARE INAPPLICABLE TO A TENANT WHO HAS BEEN EVICTED OR EJECTED FOR BREACH OF A CONDITION OR COVENANT OF A LEASE PRIOR TO THE TERMINATION OF THE TENANCY OR WHO HAS VACATED THE PREMISES PRIOR TO THE TERMINATION OF THE TENANCY.

(2) A TENANT SPECIFIED IN PARAGRAPH (1) MAY DEMAND RETURN OF THE SECURITY DEPOSIT BY GIVING WRITTEN NOTICE BY CERTIFIED MAIL TO THE LANDLORD WITHIN 45 DAYS OF BEING EVICTED OR EJECTED OR OF VACATING THE PREMISES. THE NOTICE SHALL SPECIFY THE TENANT'S NEW ADDRESS. THE LANDLORD, WITHIN 30 DAYS OF RECEIPT OF SUCH NOTICE, SHALL PRESENT, BY FIRST-CLASS MAIL TO THE TENANT, A WRITTEN LIST OF THE DAMAGES CLAIMED UNDER SUBSECTION (G)(1) TOGETHER WITH A STATEMENT OF THE COSTS ACTUALLY INCURRED. WITHIN 45 DAYS OF RECEIPT OF THE NOTICE, THE LANDLORD SHALL RETURN TO THE TENANT THE SECURITY DEPOSIT TOGETHER WITH SIMPLE INTEREST WHICH HAS ACCRUED IN THE AMOUNT OF 3 PERCENT PER ANNUM, LESS ANY DAMAGES RIGHTFULLY WITHHELD.

(3) IF A LANDLORD FAILS TO SEND THE LIST OF DAMAGES REQUIRED BY PARAGRAPH (2), THE RIGHT TO WITHHOLD ANY PART OF THE SECURITY DEPOSIT FOR DAMAGES IS FORFEITED. IF A LANDLORD FAILS TO RETURN THE SECURITY DEPOSIT AS REQUIRED BY PARAGRAPH (2), THE TENANT HAS AN ACTION OF UP TO THREEFOLD OF THE WITHHELD AMOUNT, PLUS REASONABLE ATTORNEY'S FEES.

(4) EXCEPT TO THE EXTENT SPECIFIED, THIS SUBSECTION MAY NOT BE INTERPRETED TO ALTER THE LANDLORD'S DUTIES UNDER SUBSECTIONS (F) AND (H).

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1978.

H O U S E O F D E L E G A T E S

81r1590

No. 343
(PRE-FILED)

By: Delegate Owens (Departmental - SC - Landlord Ten)
Requested: November 7, 1977
Introduced and read first time: January 11, 1978
Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant - Leases

FOR the purpose of repealing certain provisions relating to the duty of certain landlords to provide lease forms to prospective tenants, and repealing certain provisions prohibiting certain lease terms; requiring a landlord who rents by means of written leases to provide lease forms, upon written request, to prospective tenants; and requiring a landlord within a certain time after occupancy to provide a tenant with a copy of the executed lease.

BY repealing

Article - Real Property
Section 8-203.1
Annotated Code of Maryland
(1974 Volume and 1977 Supplement)

BY adding to

Article - Real Property
Section 8-203.1
Annotated Code of Maryland
(1974 Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 8-203.1 of Article - Real Property, of the Annotated Code of Maryland be repealed.

SECTION 2. AND BE IT FURTHER ENACTED, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

Article - Real Property

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Numerals at right identify computer lines of text.

8-203.1.

(A) UPON WRITTEN REQUEST, A LANDLORD WHO RENTS BY MEANS OF WRITTEN LEASES SHALL PROVIDE ANY PROSPECTIVE APPLICANT FOR A LEASE WITH A COPY OF THE PROPOSED LEASE FORM IN WRITING. THE LEASE FORM SHALL BE COMPLETE IN EVERY MATERIAL DETAIL, EXCEPT FOR THE DATE, THE NAME AND ADDRESS OF THE TENANT, THE DESIGNATION OF THE PREMISES, AND THE RENTAL RATE.

(B) WITHIN 30 DAYS OF THE DATE OF OCCUPANCY BY THE TENANT, THE LANDLORD SHALL PROVIDE THE TENANT WITH A COPY OF THE LEASE AS EXECUTED BY THE PARTIES.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1978.

Steven G. Davison
Reporter,
Governor's Commission on
Landlord-Tenant Law Revision
3806 N. Stafford St.
Arlington, VA 22207

November 1, 1978

Thomas Peddicord
Assistant Legislative Officer
Executive Department
State House
Annapolis, MD 21404

Dear Tom:

I am enclosing five bills which were approved on October 24 by the Governor's Commission on Landlord-Tenant Law Revision for submission to the 1979 Session of the Maryland General Assembly. Copies of these bills were earlier submitted to Rob Smith. These bills are the last bills which will be submitted by the Commission to the 1979 Session of the General Assembly.

The first bill in an amended version of HB 1135 and HB 1136 of the 1978 Session. Unlike HB 1135 and HB 1136, this bill provides only for a criminal fine, not imprisonment or civil remedies on behalf of injured tenants as did HB 1135 and HB 1136, against a landlord who willfully denies a tenant essential services or ingress or egress. This bill is similar to Baltimore City and Baltimore County housing code provisions, although Baltimore City provides for a possible punishment of imprisonment for a willful denial of essential services. The bill provides that it does not preempt public local laws or ordinances of a similar nature, so that these Baltimore City and Baltimore County public local laws would not be pre-empted.

The second bill that was approved is HB 779 of the 1977 Session of the General Assembly, (a copy is enclosed) with two amendments as described below. The bill would establish uniform appeal procedures for landlord-tenant actions under Title 8 of the Real Property Article; at present, Title 8 explicitly governs appeals only in distress for rent (§8-332), rent due and payable (§8-401) and holdover tenant (§8-402) actions, with appeals in other landlord-tenant actions being governed by the Court and Judicial Proceedings Article. The appeal procedures under §§8-332, 8-401, and 8-402 and the Court and Judicial Proceedings Article are inconsistent, however; this bill would uniformize the appeal procedures for all landlord-tenant actions. Secondly, this second bill would amend section 8-402 (holdover tenants) to authorize courts to stay execution against a holdover tenant for 2 to 30 days, provided the holdover tenant pays all rent due; and a payment equivalent to rent that would have been due under the prior lease, apportioned

for the period of the holdover and the stay of execution. The intent of the Commission is that the requirement that a holdover tenant pay "rent due under the lease" and "rent that would have been due under the prior lease" would not require a holdover tenant to pay a part of rent that is lawfully abated under a rent escrow implied warranty of habitability (Baltimore City), or other statute, public local law, or ordinance. The Commission voted to amend HB 770 of the 1977 Regular Session as follows:

a. Amend the sentence on page 4 beginning with "BEFORE" at line 184, and ending on line 192, to read as follows: "BEFORE EXERCISING ITS DISCRETION TO STAY EXECUTION UNDER THIS SECTION, THE COURT SHALL REQUIRE THE HOLDOVER TENANT, OR PERSON HOLDING UNDER HIM WHO IS IN ACTUAL POSSESSION, TO PAY TO THE LANDLORD OR HIS AGENT, PRIOR TO ISSUANCE OF THE STAY, ALL RENT DUE, AND A PAYMENT FOR POSSESSION OF THE PREMISES DURING THE PERIOD OF THE STAY IN AN AMOUNT EQUIVALENT TO RENT THAT WOULD HAVE BEEN DUE UNDER THE PRIOR LEASE, APPORTIONED FOR THE PERIOD OF THE HOLDOVER AND THE PERIOD OF THE STAY OF EXECUTION."

b. Delete from lines 265-267 on p. 6 the following sentence: "IN AN APPEAL UNDER §8-401, THE DEPOSIT OR BOND INCLUDES RENT DUE AND PAYABLE AS SUCH AMOUNTS BECOME DUE AND PAYABLE."

The third bill passed by the Commission would repeal section 8-212 of the Real Property Article, which limits the actual amount of damages a landlord can recover from a tenant in Anne Arundel County and Baltimore City, and which prohibits liquidated damages clauses in leases in Anne Arundel County and Baltimore City. The Commission proposes repeal of the limitation on actual damages that a landlord can recover because it believes that it is a taking of property without just compensation to preclude a landlord from recovering all actual damages; a judge in Baltimore City has held that this limitation would be consistent with the bill enacted by the General Assembly in the 1978 session that amends §8-402(a) (holdover tenants) to allow a landlord to recover all actual damages from a holdover tenant. The Commission is also proposing to repeal the prohibition in section 8-212 against liquidated damages clauses on the grounds that liquidated damages may be desired by tenants because it allows them to know the exact amount of damages they must pay their landlord if they want to break their lease prior to the end of the term, which a tenant might want to do when he is purchasing a home. Under the common law, courts invalidate liquidated damages clauses as penalties when the amount of damages specified is unreasonable or when the amount of damages caused by the tenant's breach is easily ascertainable, as might be the case when there is a low vacancy rate.

The fourth bill passed by the Commission is intended to clarify the type of exculpatory clauses which are prohibited by section 8-105 of the Real Property Article. The bill would make it clear that section 8-105 prohibits lease clauses seeking to exculpate a landlord's liability for intentional or negligent acts or acts of omission in common areas or the tenant's premises. The wording of section 8-105 makes it unclear what types of conduct by a landlord can be exculpated, and where such conduct must occur in order for section 8-105 to be applicable.

The final bill passed by the Commission would specify the period of the tenancy when a lease without a renewal clause, or a lease with a renewal clause that doesn't specify the term or period of the new tenancy is renewed with the consent of landlord and tenant. In such a case, the new tenancy would be a periodic month-to-month tenancy. Secondly, this bill also would provide that when a landlord consents to a holdover tenant remaining on the premises, the holdover tenant becomes a periodic week-to-week tenant prior to his holding over, and a periodic month-to-month tenant in all other cases. This latter part of the bill would address an area which is, as explained in the attached memorandum, somewhat contradictory under Maryland common law.

If I can answer any questions about these bills, please contact me. I can be reached on Tuesdays and Thursdays in Baltimore at 727-6350 ext. 297, and on other days at my home at (703) 525-7669.

Sincerely yours,

Steven G. Davison

Steven G. Davison

SGD/lv
cc: Members of Governor's Landlord-Tenant Commission (with enclosures)

April 6, 1979

DUTY TO REPAIR PREMISES

DURING TERM OR PERIOD OF TENANCY

Maryland continues to follow the common law position that, except as modified by the rent escrow statute, that during the term or period of tenancy, the landlord is not responsible for repair of the leased premises, no matter how serious the defects in the premises.

In Gluck v. Mayor & City Council of Baltimore, 81 Md. 315, 32 A. 515 (1895), Baltimore City had condemned part of the leased premises, resulting in the taking of the front wall of the leased building, making it unihabitable. The tenant appealed the amount of damages awarded to him in the condemnation action by the city.

In addressing the amount of damages to be awarded, the court said:

> "The lessor is under no covenant to make repairs; and the lessee is confronted with the alternative of either abandoning the premises for which he must, notwithstanding its untentable condition, pay full rent during the continuance of the term, or restoring [the premises] at his own cost and expense to make the premises habitable and available.
>
> "Now, the common law has always thrown the burden of repairs upon the tenant, though it imposes no obligation on him to make them unless he covenants to do so...A covenant is never implied that a lessor will make them...So unvarying is this doctrine that even a Court of Equity will not compel the landlord to expend in making repairs the money received by him upon fire insurance policies after the destruction of the demised premises; unless he has expressly agreed to so apply the proceeds. Nor will a Court of Equity, when the premises have burned down and the landlord has collected the insurance, prevent him from suing for the rent, if he be under no covenant to repair." 81 Md. at 326.

The absoluteness of this common law rule, which absolves the landlord of a duty to repair the premises during the term or period of tenancy, regardless of how serious the defect in the premises, and makes the tenant responsible for

payment of rent regardless of how unihabitable the premises become, is further illustrated in Whitcomb v. Mason, 102 Md. 275, 62 A. 749 (1905). In Whitcomb, the tenant sued the landlord for damages to the tenant's personal property that was destroyed in a fire that destroyed the leased premises; the tenant alleged that he was unable to remove his property from the leased premises before the fire, because the landlord had failed to make necessary repairs to the premises that would have allowed him safely to remove his property. The court dismissed the suit saying:

> "'There is no implied covenant requiring the landlord to make repairs'..."There is no implied warranty in a lease of a house or land that it shall be reasonable fit for habitation or cultivation...When a lease contains no express contract of warranty that the property is or shall be fit for the purpose for which it may be rented, there is no implied warranty to that effect, and in case the property falls down in consequence of some inherent defect the lessor is not bound to repair and yet the lessee will be compelled to pay the rent."

Hess v. Newcomer and Emmert, 7 Md. 325 (1855), similarly said:

> "Under a covenant to pay rent, the tenant is bound to pay, even where the premises are destroyed by fire, flood, tempest, lightning, or the violence of a mob, unless the lease contains an express clause of exoneration on account of such injuries.
>
> "...When a lease contains no express contract of warranty that the property is or shall be fit for the purpose for which it may be rented, there is no implied warranty to that effect, and in case the property falls down in consequence of some inherent defect, the lessor is not bound to repair, and yet the lessee will be compelled to pay the rent..." 7 Md. at 336-337.

Mylander v. Beismschla, 102 Md. 689 (1906), said that the landlord is not obliged to make repairs during the tenancy, unless he has agreed to do so, and that the common law has always thrown the burden of repairs upon the tenants, although it imposes no obligation on the tenant to make the repairs unless the tenants agrees to do so.

This principle has also been applied to minor defects in the premises.

In Bonaparte v. Thayer, 95 Md. 548, 52 A. 496 (1902), a distraint for rent suit, the tenant attempted to deduct his cost of repairing a spigot. The court held that the tenant had no right to do so, saying that in the absence of an agreement between the landlord and the tenant as to the payment for repairs that become necessary during the tenancy, it is not the duty of the landlord to make repairs after the commencement of the tenancy.

Similarly, in Woodcock v. Pope, 154 Md. 135, 140 A. 76 (1928), a suit to collect unpaid rent, the court held that a tenant cannot deduct from the amount of rent owed, the cost of repairs that the tenant makes, in the absence of an express agreement between the landlord and the tenant permitting the tenant to do so. The court said that the landlord is not bound to make repairs during the term unless he expressly agrees to do so, because the law does not imply a covenant for the landlord to repair; and that the tenant has no right, in the absence of agreement, to deduct the cost of necessary repairs from the rent.

The tenant's only remedy under the common law when the premises are defective is provided by the constructive eviction doctrine. Under the constructive eviction doctrine, if an act by the landlord intentionally deprives the tenant of the use and enjoyment of the leased premises, the tenant may terminate the lease and be absolved of his obligation to pay rent if he abandons the premises as a result of the landlord's act and if he does so within a reasonable period of time. McNally v. Moser, 210 Md. 127, 122 A.2d 555 (1956). But constructive eviction does not apply if the deprivation of the tenant's beneficial use of the premises is not caused by an act of the landlord; in such a case, the tenant remains liable for the rent. Wagner v. White, 4 H. & J. 564 (Md. 1815). In addition, the constructive eviction doctrine only allows a tenant to abandon the premises and terminate the lease; it does not give the tenant a cause of action to force the landlord to repair the premises.

The rent escrow statute, Real Prop. Art., §8-212, of course, has amended the common law to make the landlord responsible for defects in the premises seriously affecting health and safety that occur during the tenancy. In addition, a landlord who rents more than 4 or more dwelling units at one location must provide a warranty in a written lease that the premises are in a reasonably safe condition, unless he provides otherwise, which might imply a duty to repair during the tenancy. Md. Real Prop. Code Ann. §8-203.1.

Otherwise, however, the common law remains applicable in Maryland.

Steven G. Davison,
Reporter

April 9, 1979

COMMON LAW WITH RESPECT

TO LODGERS, ROOMERS AND BOARDERS

This memorandum is based primarily upon Note, Tenant, Lodger, and Guest: Questionable Categories for Modern Rental Occupants, 64 Yale L.J. 391 (1955); and 40 American Jurisprudence 2d HOTELS, MOTELS AND RESTAURANTS. Supporting case citations for doctrines discussed in this memorandum can be found in these two sources. This memorandum will otherwise only cite Maryland cases and statutes on point.

The only material difference between a boarding house and a lodging or rooming house is that the former furnishes meals to its occupants. The legal rights and duties of occupants of boarding houses, lodging house, and rooming houses are; however, the same. In this memorandum, "lodger" will be used to refer to occupants of boarding houses, lodging houses, and rooming houses. Lodging houses, rooming houses, and boarding houses are to be distinguished from inns, hotels, and motels, although a particular building simultaneously can be a boarding or rooming house and an inn or hotel with respect to different premises and occupants.

In order for an occupant of premises to be a tenant, he must have been granted exclusive possession of the property by the owner for a specified term or period; the grant to the tenant is considered a lease and gives the tenant an estate or interest in the leased property. If the owner of the premises does not transfer exclusive possession to the occupant, the occupant is held to be a lodger. A lodger only resides on the premises under a license; his right to occupy the premises is only a contractual right, not an estate or interest in the property.

The courts examine a number of factors in determining whether an occupant of premises has exclusive possession and is thus a tenant rather than a lodger. An occupant is considered to have exclusive possession if the owner has not retained a right to enter the premises during the term or period of occupancy. But it is unclear whether an occupant has "exclusive possession" when the owner has retained a right of entry but has never exercised it; a few courts have said that an occupant does not have exclusive possession if the owner retains a right of entry even though he has never exercised the right. On the other hand, some courts have said that right of entry that is exercised by the owner does not preclude a finding that the occupant is a tenant. Of course, the modern trend is for the landlord to reserve in the lease a right to enter the premises; consequently, courts are not giving the presence or absence of a right of entry as much importance as in the past in determining whether an occupant is a tenant or a lodger. Similarly, courts in the past have found that an occupant is a lodger if the owner retains a key to the premises, or provides electricity, heat and water, although modern courts do not give this fact much significance because most landlords retain a key to rented premises and provide utilities, the cost of which is included in the rent.

Common law courts have found that an occupant is a lodger if one or more of the following factors are present:

1. the owner lives in the same building as the occupant;

2. the owner has the responsibility for cleaning hallways and windows;

3. the owner has the right to enter the premises to make repairs;

4. the occupant shares a bath or kitchen with the owner;

5. the occupant's premises are furnished or are only a single room;

6. the owner provides towels or linens;

7. the owner has access to or exercises general supervision and control over the occupant's premises.

On the otherhand, an occupant who prepares food in his room has been ehdl to be a tenant in the absence of any of these factors.

The Uniform Residential Landlord and Tenant Act defines "roomer" as a "person occupying a dwelling unit that does not include a toilet and either a bathtub or shower and a refrigerator, stove, and kitchen sink, all provided by the landlord, and where one or more of the facilities are used in common by occupants in the structure." URLTA 1.301 (12).

The only Maryland case that defines "tenant" as opposed to "lodger" is Green v. Shoemaker, 111 Md. 69, 73 A. 688 (1909). Green was a suit by an occupant of premises for injuries to the premises due to blasting activities by the defendant. The plaintiff-occupant rented 3 rooms in the owner's house, in which the owner also lived; the occupant paid rent monthly and has resided in the premises for over 5 years; the owner of the home prepared the occupant's meals, which the occupant ate in the owner's part of the house; and the occupant had paid the rent for the last several years by taking care of the owner's children while the owner was working and by doing housework. The court, without supporting analysis or explanation, held that the occupant was a tenant, not a lodger, who was entitled to exclusive possession and control of the premises she occupied and therefore could maintain a nuisance cause of action against the defendant.

A "lodger" also must be distinguished from a "guest" of a hotel or motel. A guest stays at a place for an uncertain but temporary period while traveling, without any prior or express agreement as to the duration of stay; a lodger stays for a longer and more definite period and makes the premises his present home. A lodger usually has a contractual agreement of some sort with the owner either as to the rate or length of stay. On the other hand, the length of the occupant's stay does not make a guest a lodger; but if a person remains on the premises without a special agreement as to the length of stay, he may be a lodger if he stays on the premises for an extended period of time paying a weekly or monthly rent. In determining whether an occupant is a transient and therefore a guest, the courts follow two different approaches. Some courts hold that an occupant is not a guest if he has a contract with the owner with respect to the rate or length of stay, while other courts hold that such a contract is only evidence that an occupant is a lodger. Under the latter test, courts also consider whether the premises are in a hotel or private home, whether the occupant has a home, or another residence;

and whether the owner treats the occupant the same as short-term guests. The modern approach that courts follow in determining whether an occupant is a guest (transient) or lodger (more permanent resident) is to examine the occupant's length of stay, the length of the rental period, and whether the occupant has another residence.

The common law rights and duties of hotel and motel owners (innkeepers) and lodging house owners differ. An innkeeper has a duty to accept any person as a guest if the person is in a receivable condition and will pay the going rate. An innkeeper has an absolute duty to protect the goods of his guests, although he is not liable for the loss of a guest's property if the loss is due to an act of God, an act of a public enemy, or the guest's negligence. An innkeeper has a lien on the goods of a guest for unpaid charges. A lodging house owner, on the other hand, has a right to select his lodgers. A lodging house owner is not an insurer of the goods of a lodger; the owner is liable only if his negligence causes the loss of a lodger's goods. A lodging house owner, however, has no common law lien on a lodger's goods for unpaid charges, although Maryland has given an owner of a boarding or lodging house a lien on the personal goods of a boarder or lodger for unpaid boarding or rooming charges. MD. COMM. LAW ART ANN. §16-503. Maryland also makes it a misdemeanor to fail to pay for lodging, food, or credit at a hotel, boarding house, or inn. MD. ANN. CODE, Art. 27, §342(e).

Under the common law, only a tenant may maintain a possessory action for ejectment if he is unlawfully evicted or a nuisance or trespass action if his rights of possession are interfered with. An owner must give a tenant notice to quit and must resort to legal process, in order to evict or eject a tenant, but he does not have to give a lodger or guest a notice to quit. An owner can evict a lodger or guest for good cause without resort to legal process; he may use as much force as is reasonably necessary under the circumstances. Judge Rhynhart, in Notes on the Law of Landlord and Tenant, 20 Maryland Law Review 1, 3 (1960), says that "...if the owner orders the boarder or lodger out of the premises and the latter refuses to go, the owner may call on public authority and have the police eject the erstwhile boarder as a trespasser." But a lodging house owner may be liable to a lodger for damages if he evicts a lodger without good cause or uses unreasonable force.

A landlord may sue a tenant for rent, but a lodging house owner can sue a lodger or guest who has failed to pay charges only for breach of contract. A lodging house owner consequently has a common law duty to mitigate damages, a duty which Maryland has imposed upon landlords by statute. MD. REAL PROP. CODE ANN. §8-207.

Under the common law, an innkeeper and lodging house owner, but not a landlord, impliedly warrant that the premises are habitable. A lodging house owner and an innkeeper are under a duty to exercise reasonable care to keep the premises in repair during the term or period of occupancy, and retain a right to enter the premises for this purpose. A landlord, of course, is under no duty to repair the premises during the term or period of tenancy. A lodger and guest can recover from the owner the costs they expend on making necessary repairs to the premises if the owner fails to do so. Lodging house owners and hotel owners are liable to lodgers and guests for personal injuries caused by defects in the premises, subject to the defense of the occupant's contributory negligence.

Steven G. Davison, Reporter

Steven G. Davison
Reporter, Governor's
Landlord-Tenant Laws
Study Commission
University of Baltimore
School of Law
1420 N. Charles Street
Baltimore, Maryland 21201

September 13, 1979

Judson P. Garrett, Jr.
Chief Legislative Officer
Executive Department
State of Maryland
Room 202
State House
Annapolis, Maryland 21404

Dear Mr. Garrett:

At its meeting on September 11, 1979, the Governor's Landlord-Tenant Laws Study Commission unanimously approved, without amendments, bill number 80-5 which I forwarded to you in my letter of August 31, 1979. The Commission, however, unanimously approved amended versions of bills numbered 80-5 and 80-6 which I forwarded to you previously. I am enclosing amended versions of bills 80-5 and 80-6, and amended Explanations and Justifications of bills 80-5 and 80-6 in accordance with your memorandum of July 23, 1979. These replace the previously submitted bills and Explanations and Justifications numbered 80-5 and 80-6. The Commission did not take action on bill number 80-8 which I submitted with my letter of August 31, 1979; the Commission appointed a subcommittee to draft an amended version of the bill for final third reader consideration at its next meeting on October 2, 1979. At its October 2 meeting, the Commission also has on its agenda two other bills that may receive final third reader consideration. I will attempt to forward copies of these bills on the Commission's October 2 agenda and explanations and justifications for them, prior to your October 1 filing deadline. I will notify you of the Commission's actions on these three bills as soon as possible after the Commission's October 2 meeting.

If you have any questions with respect to the Commission's proposed legislation, you can contact me at the University of Baltimore(727-6350) or at home((703) 525-7669).

Sincerely Yours,

Steven G. Davison

Steven G. Davison

cc : Members of Governor's Landlord-Tenant Laws Study Commission
Ms. Margaret Kostrisky

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant - **Holdover Tenants**

FOR the purpose of providing that in an action against a holdover tenant, a court, in addition to ordering restitution of the property to the landlord, shall order the holdover tenant to pay the landlord all rent due, a payment for possession of the premises during the period of the holdover, and any other damages which the landlord has claimed and is entitled to; and providing that a court may stay execution of a judgment for restitution of possession against a holdover tenant for 2 to not more than 30 days, subject to payment by the holdover tenant to the landlord of all rent due, a payment for possession of the premises during the period of the holdover, and any other damages which the landlord has claimed and is entitled to; and making a technical amendment.

BY repealing and reenacting, with amendments,

Article - Real Property
Section 8-402(b)(2)
Annotated Code of Maryland
(1974 Volume and 1979 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows :

Article - Real Property

8-402

(b)(2) [If upon hearing the parties, or in case the tenant or person in possession shall neglect to appear after the summons and continuance the court shall find that the landlord had been in possession of the leased property, that the said lease or estate is fully ended and expired, that due notice to quit as aforesaid has been given to the tenant or person in possession and that he had refused to do so, the court shall thereupon give judgment for restitution of the possession of said premises and shall forthwith issue its warrant to the sheriff or a constable in the respective counties commanding him forthwith to deliver to the landlord possession thereof in as full and ample manner as the landlord was possessed of the same at the time when the leasing was made, and shall give judgment for costs against the tenant or person in possession so holding over.] IF THE TENANT, OR ANYONE HOLDING UNDER HIM, WHO IS IN ACTUAL POSSESSION, FAILS TO APPEAR AFTER THE SUMMONS AND CONTINUANCE, OR IF THE COURT FINDS THAT THE LANDLORD HAS FULLY COMPLIED

WITH SUBSECTION (A) AND THAT THE TERM HAS EXPIRED, THE COURT SHALL ORDER RESTITUTION OF THE POSSESSION OF THE PROPERTY AND SHALL ISSUE A WARRANT TO THE SHERIFF OR CONSTABLE OF THE SUBDIVISION COMMANDING HIM TO DELIVER POSSESSION TO THE LANDLORD, AND SHALL ORDER THE HOLDOVER TENANT TO PAY THE LANDLORD COSTS, ALL RENT DUE, A PAYMENT FOR POSSESSION OF THE PREMISES DURING THE PERIOD OF THE HOLDOVER IN AN AMOUNT EQUIVALENT TO RENT THAT WOULD HAVE BEEN DUE UNDER THE PRIOR LEASE APPORTIONED FOR THE PERIOD OF THE HOLDOVER, AND ANY DAMAGES WHICH THE LANDLORD HAS CLAIMED UNDER SECTION (A) AND IS ENTITLED TO. EXECUTION OF THE JUDGMENT FOR RESTITUTION OF THE POSSESSION OF THE PROPERTY SHALL BE ORDERED AT A DATE WITHIN THE COURT'S DISCRETION, FROM 2 TO NOT MORE THAN 30 DAYS FROM THE DATE OF JUDGMENT. THE WARRANT SHALL ORDER THE SHERIFF OR CONSTABLE TO REMOVE FROM THE PROPERTY, BY FORCE IF NECESSARY, ALL THE FURNITURE, IMPLEMENTS, TOOLS, GOODS, EFFECTS, OR OTHER CHATTELS OF EVERY DESCRIPTION, NOT BELONGING TO THE LANDLORD, FOUND ON THE PREMISES. A HOLDOVER TENANT MAY NOT REMAIN ON THE PREMISES FOR MORE THAN 2 DAYS AFTER ENTRY OF JUDGMENT UNLESS THE COURT ISSUES AN ORDER IN COMPLIANCE WITH THIS SECTION AND THE HOLDOVER TENANT COMPLIES WITH THE ORDER. BEFORE EXERCISING ITS DISCRETION TO STAY EXECUTION FOR MORE THAN 2 DAYS FROM THE DATE OF JUDGMENT, THE COURT SHALL REQUIRE THE TENANT, OR PERSON HOLDING UNDER HIM WHO IS IN ACTUAL POSSESSION, TO PAY TO THE LANDLORD, PRIOR TO ISSUANCE OF THE STAY, COSTS, ALL RENT DUE, A PAYMENT FOR POSSESSION OF THE PREMISES DURING THE PERIOD OF THE HOLDOVER AND THE STAY IN AN AMOUNT EQUIVALENT TO RENT THAT WOULD HAVE BEEN DUE UNDER THE PRIOR LEASE APPORTIONED FOR THE PERIOD OF THE HOLDOVER AND THE PERIOD OF THE STAY OF EXECUTION, AND ANY DAMAGES WHICH THE LANDLORD HAS CLAIMED UNDER SECTION (A) AND IS ENTITLED TO. Either party shall have the right to appeal therefrom to the circuit court for the county, or the Baltimore City Court within ten days from the judgment. If the tenant appeals and files with the District Court an affidavit that the appeal is not taken for delay, and also a good and sufficient bond with one or more securities conditioned that he will prosecute the appeal with effect and well and truly pay all rent in arrear and all costs in the case before the District Court and in the appellate court and all loss or damage which the landlord may suffer by reason of the tenant's holding over, including the value of the premises during the time he shall so hold over, then the tenant or person in possession of said premises may retain possession thereof until the determination of said appeal. The appellate court shall, upon application of either party, set a day for the hearing of the appeal, not less than five nor more than 15 days after the application, and notice for the order for a hearing shall be served on the opposite party or his counsel at least five days before the hearing. If the judgment of the [District] Court shall be in favor of the landlord, a warrant shall be issued by the appellate court to the sheriff, who shall proceed forthwith to execute the warrant.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1980.

1. Explanation and Justification. This bill would make 3 amendmenta to section 8-402 (Holding over) of the Real Property Article. The first amendment is essentially a stylistic change in section 8-402(b), that would change subsection (b) to explicitly authorize the court, in action against a holdover tenant, to order the holdover tenant to pay the landlord all rent due, a payment for possession of the premises during the period of the holdover in an amount equivalent to rent that would have been due under the prior lease apportioned for the period of the holdover, and any damages which the landlord has claimed under section 8-402(a) and is entitled to. The authority to enter such an order is provided by section 8-402(a), and is implied in the third sentence from the end of section 8-402(b) (with respect to the amount of a bond to stay execution pending appeal), but is not explicitly stated in section 8-402(b). This authority would be in addition to the present authority stated in section 8-402(b) to order restitution and to order the tenant to pay costs to the landlord.

The second amendment would delete the word "District" in the last sentence of section 8-402(b); the sentence is referring to action by the appellate court after there is a judgment for the landlord, which indicates that "District Court" should be changed to "appellate court" or "court".

The third amendment to section 8-402(b) would authorize courts to stay execution of judgment against a holdover tenant for 2 to not more than 30 days, provided that the holdover tenant pays to the landlord all rent due, costs, a payment for possession of the premises during the period of the holdover and the stay of execution in an amount equivalent to rent that would have been due under the prior lease apportioned for the period of the holdover and the period of the stay of execution, and any damages which the landlord has claimed under section 8-402(a) and is entitled to. At present, many district court judges stay execution of judgment against holdover tenants for up to 30 days in suits under section 8-402, without requiring the holdover tenant to pay the landlord an amount equivalent to rent under the prior lease apportioned for the period of the holdover and stay of execution. (The bill does not refer to such payments as rent, because technically a holdover tenant is not a tenant but a tenant at sufferance who is only slightly above the status of a trespasser.) The Commission believes that such stays of execution are often necessary in order for a holdover tenant to find new housing and to move from the premises, but that a holdover tenant should pay the landlord for this privilege to the same exetent as if he was a tenant under the prior lease.

The intent of the Commission is that the requirement, that the holdover tenant pay "all rent due" and an amount equivalent to rent that would have been due under the prior lease, would not require a holdover tenant to pay a part of rent that lawfully is not due under a rent escrow, implied warranty of habitability, or other statute, public local law, or ordinance.

2. Legal Approval. No Assistant Attorney General is assigned to the Commission.

3. Legislative History. This bill is an amended version of HB 486 of the 1979 Regular Session and HB 779 of the 1977 Regular Session, which were reported unfavorably by the House Judiciary Committee.

4. Fiscal Note. See attached DFS Form 31.

5. Environmental Effects. None.

Governor's Landlord-Tenant Laws Study Commission

September 12, 1979

Landlord and Tenant - Holdover Tenants

Steven G. Davison ..... Reporter ..... (301) 727-6350

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant - Late Charges

FOR the purpose of decreasing the penalty that a landlord can charge a week-to-week tenant for late payment of rent from $5 to $3, and repealing the limitation on the maximum amount of late charges that a landlord can collect per month from a tenant for late payment of rent.

BY repealing and reenacting, with amendments,

Article - Real Property
Section 8-208(a)
Annotated Code of Maryland
(1974 Volume and 1979 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows :

Article - Real Property

8-208

(a)A lease may not contain any of the following provisions :

(1) A provision whereby the tenant authorizes any person to confess judgment on a claim arising out of the lease.

(2) A provision whereby the tenant agrees to waive or forego any right or remedy provided by applicable law.

(3) A provision providing for a penalty for the late payment of rent in excess of 5% of the amount of rent due for the rental period for which the payment was delinquent. In the case of leases under which the rent is paid in weekly rental installments a penalty of $3 [$5] may be charged for the late payment of rent.[However, such late penalties shall constitute, in the aggregate, no more than $10 per month.]

(4) Any provision whereby the tenant waives his right to a jury trial.

(5) Any provision whereby the tenant agrees to a period required for landlord's notice to quit less than that provided by applicable law; provided, however, that neither party is prohibited hereby from agreeing to a longer notice period than that required by applicable law.

(6) Any provision authorizing the landlord to take possession of the leased premises, or the tenant's personal property therein unless the lease has been terminated by action of the parties or by operation of law, and such personal property has been abandoned by the tenant without the benefit of formal legal process.

(7) Any provision that is deemed to be against public policy and void pursuant to 8-105.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1980.

1. Explanation and Justification. This bill would amend section 8-208(a)(3) (Prohibited Lease Provisions) of the Real Property Article by lowering the maximum amount that a landlord can charge a week to week tenant as a penalty for late payment of rent from $5 to $3; and by removing the limitation on the maximum amount of penalties for late payment of rent that a landlord can charge a tenant in one month. At present, section 8-208(a)(3) provides that a landlord can charge a week to week tenant a $5 penalty for late payment of rent and can charge all other tenants a late payment penalty of 5% of the rent due for the rental period for which the payment was delinquent. The section however, specifies that $10 is the maximum aggregate amount of late payment penalties that a landlord can charge a tenant in one month. The Commission proposes repeal of this limitation on the amount of late payment penalties that a landlord can charge a tenant per month because the Commission was advised that the landlord's costs in collecting rent that is past due in most cases exceeds the amount of late payment penalties permitted to be charged by section 8-208(a)(3) per month. Where a week to week tenant is late in paying rent each time rent is due (which is 4 or 5 times a month), the landlord's expenses in collecting all of the rent payments due that month will almost always exceed the $10 maximum limit on late payment penalties which a landlord can charge in one month. The Commission, on the other hand, recognizes that the rent paid by week to tenants in many cases ranges from $25 to $40; under present law, if a week to week tenant is late paying rent each time it is due in a month, the total amount of late charges would be $20-$25 in the absence of the $10 limitation on late penalties that can be charged per month. Many week to week tenants have low and undependable incomes and tight budgets and would be unable to pay $20-$25 in late payment penalties each month. In this bill, the Commission has attempted a compromise of these competing concerns in the case of week to week tenants. Under this bill, the maximum amount of late payment penalties that a landlord could charge a week to week tenant in one month would be $12 or $15(the $3 penalty multiplied by the 4 or 5 times that rent is due each month).

2. Legal Approval. No Assistant Attorney General is assigned to the Commission.

3. Legislative History. This bill has not been previously submitted by the Commission.

4. Fiscal Note. See attached DFS Form 31.

5. Environmental Effects. None.

Steven G. Davison
Reporter, Governor's
Landlord-Tenant Laws
Study Commission
University of Baltimore
School of Law
1420 N. Charles St.
Baltimore, Maryland 21201

October 4, 1979

Judson P. Garrett, Jr.
Chief Legislative Officer
Executive Department
State of Maryland
Room 202
State House
Annapolis, Maryland 21404

Dear Mr. Garrett :

At its meeting on October 2, 1979, the Governor's Landlord-Tenant Laws Study Commission unanimously approved two bills which I am enclosing, along with Explanations and Justifications for these two bills. The bill numbered 80-8 replaces bill number 80-8 that I sent you in my letter dated August 31, 1979. The Commission has one remaining bill on its agenda for its November 13 meeting. This bill would allow landlords to use tenants' security deposits to make repairs and capital improvements to the tenants' complex if the landlord obtains a letter of credit or corporate surety bond in the amount of tenants' security bonds removed from a savings account for this purpose. Because of the present high interest rates charged by banks and the tightness of credit, many landlords in Maryland are presently unable to finance needed repairs and capital improvements for their residential rental properties. Because of the importance of this bill, the Commission requests a waiver of the October 1 filing deadline for this bill. I can send you the present draft of the bill and its Explanation and Justification prior to the Commission's November meeting, if you so desire.

Thank you for your consideration of this request.

Sincerely Yours,

Steven G. Davison

cc : Members of Governor's Landlord-Tenant Laws Study Commission
Ms. Margaret Kostrisky

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant - Essential Services

FOR the purpose of making it a misdemeanor, punishable by a fine, for any landlord, owner, or manager of a residential leased premises to knowingly and willfully fail to supply or interrupt the supply of essential services to the premises, or fail to restore essential services after knowledge of interruption of such services and after having reasonable time to restore such services; defining the term essential services; making it also a misdemeanor for a landlord, owner, or manager of a residential leased premises knowingly and willfully to deny ingress or egress to leased premises to any person entitled by the lease, sublease, or assignment to use the premises; and providing certain exceptions.

BY adding to

Article 27 - Crimes and Punishment
Section 303
Annotated Code of Maryland
(1976 Replacement Volume and 1979 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of The Annotated Code of Maryland be repealed, amended or enacted to read as follows :

Article 27 - Crimes and Punishments

303.

(A) FOR THE PURPOSE OF THIS SECTION "ESSENTIAL SERVICES" MEANS AND IS LIMITED TO HEAT, RUNNING WATER, HOT WATER, ELECTRICITY, GAS, REFRIGERATOR, OR STOVE, TO WHICH A TENANT IS ENTITLED UNDER THE EXPRESS OR IMPLIED TERMS OF HIS LEASE OR AMENDED LEASE.

(B) IT IS A MISDEMEANOR FOR ANY LANDLORD, OWNER, OR MANAGER OF A RESIDENTIAL LEASED PREMISES TO KNOWINGLY AND WILLFULLY :

(1) FAIL TO SUPPLY OR INTERRUPT THE SUPPLY OF ESSENTIAL SERVICES TO THE LEASED PREMISES;

(2) FAIL TO RESTORE ESSENTIAL SERVICES TO THE LEASED PREMISES, AFTER HAVING KNOWLEDGE OF ANY INTERRUPTION AND AFTER HAVING REASONABLE TIME TO RESTORE SUCH SERVICES: OR

(3) DENY INGRESS OR EGRESS TO THE LEASED PREMISES TO A TENANT, SUBTENANT, ASSIGNEE, OR OTHER PERSON WHO IS ENTITLED BY THE LEASE, SUBLEASE, OR ASSIGNMENT TO USE THE PREMISES.

(C) UPON CONVICTION, THE LANDLORD, OWNER, OR MANAGER SHALL BE SUBJECT TO A FINE OF NOT MORE THAN $100.

(D) THIS SECTION DOES NOT APPLY TO ANY INTERRUPTION OF ESSENTIAL SERVICES CAUSED BY :

(1) A DELIBERATE OR NEGLIGENT ACTION OF THE TENANT, A MEMBER OF HIS FAMILY, OR A PERSON ON THE LEASED PREMISES WITH THE TENANT'S CONSENT: OR

(2) THE FAILURE OF THE TENANT TO PAY A UTILITY BILL FOR THE INTERRUPTED SERVICE, WHERE SUCH BILL IS THE TENANT'S RESPONSIBILITY BY THE TERMS OF THE LEASE.

(E) THIS SECTION SHALL NOT EFFECT ANY SIMILAR PUBLIC LOCAL LAW OR ORDINANCE ENACTED BY ANY COUNTY OR BALTIMORE CITY.

SECTION 2. AND BE IT FURTHER PROVIDED, That this Act shall take effect July 1, 1980.

1. Explanation and Justification. This bill would add a new section to Article 27 (Crimes and Punishments) of the Annotated Code of Maryland. This new section would provide for conviction of a misdemeanor and imposition of a fine of up to $100 (but not imprisonment), of any landlord, owner, or manager of residential leased premises who knowingly and willfully fails to supply or interrupts the supply of "essential services" (defined as heat, running water, hot water, electricity, gas, refrigerator, or stove, to which a tenant is entitled under the terms of the lease or amended lease) to the leased premises; who knowingly and willfully fails to restore essential services to the leased premises after having knowledge of interruption of the service and after having had reasonable time to restore such service; or who knowingly and willfully denies ingress or egress to the leased premises to a tenant, subtenant, assignee, or other person who is entitled by the lease, sublease, or assignment to use the premises. The new section would not apply when the interruption of essential services is caused by the deliberate or negligent action of the tenant, a member of the tenant's family, or a person on the leased premises with the tenant's consent; or by the failure of a tenant to pay a utility bill for the interrupted service, when the tenant is responsible under the lease to pay such bill.

This bill is similar to provisions in Baltimore City, P.L.L. § 9-15, and Baltimore County, Baltimore County Code § 16-4, 16-5 (Supp. 1976). Although Baltimore City provides for imprisonment of up to 10 days in addition to a fine of up to $50, no landlord has ever been imprisoned for violation of this section. This bill provides that it does not preempt public local laws or ordinances of a similar nature, so that these Baltimore City and Baltimore County laws would not be preempted by this bill.

This bill is proposed by the Commission because the Commission was advised that some landlords attempt to evict or eject tenants by intentionally interrupting essential services such as heat, or locking a tenant out of his premises, instead of resorting to legal process under section 8-401 (Failure to pay rent) or section 8-402 (Holding over) of the Real Property Article. The Commission believes that this bill would deter such conduct. Sections 8-401 and 8-402 do not prohibit self-help attempts at eviction or ejectment, although section 8-208(a)(6) of the Real Property Article prohibits lease provisions authorizing self-help eviction. Maryland common law has not addressed the question of self-help ejectment or eviction. This bill would also protect tenants against landlords who, in order to avoid expenses, intentionally fail to restore essential services such as heat after equipment breakdowns or malfunctions; or who intentionally do not pay utility bills, with the result that a utility company stops providing essential services to the leased premises. The Commission was advised that some landlords act in this manner. The Commission believes that this bill would also deter such conduct by landlords.

2. Legal Approval. No Assistant Attorney General is assigned to the Commission.

3. Legislative History. This bill is an amended version of HB 483 of the 1979 Regular Session and HB 1135 and HB 1136 of the 1978 Regular Session, which received unfavorable reports from the House Judiciary Committee.

4. Fiscal Note. See attached DFS Form 31.

5. Environmental Effects. None.

ESTIMATE OF LEGISLATION

[illegible] Circle, Room 2.6, Annapolis, Maryland 21401

Governor's Landlord Tenant-Laws Study Commission

October 3, 1979

COMMITTEE CONTACT: _____

Landlord and Tenant - Essential Services

Steven G. Davison [illegible]: Reporter Tel: (301) 727-6350

☒ [illegible]

☐ [illegible]

☐ [illegible] as follows:

				TOTAL

☐ [illegible]

				TOTAL

(USE REVERSE SIDE OF FORM FOR FISCAL NOTE DETAIL)

[illegible]:

DFS Form 31 (12/77-Rev.)

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant - Application for Leases

FOR the purpose of allowing a landlord to charge a non-refundable application fee; allowing a landlord to charge a refundable fee provided an applicant has signed an application meeting specified requirements; providing that an applicant has a right to cancel said application for lease under certain circumstances; providing that a landlord must return a refundable fee within a specified period of time after an applicant cancels his application prior to acceptance of the application by the landlord; providing for the return of a refundable fee, less specified damages, to an applicant if the applicant cancels his application after acceptance of his application by the landlord; and providing an applicant a remedy against a landlord who violates these requirements.

BY repealing and re-enacting, with amendments,

Article - Real Property
Section 8-213
Annotated Code of Maryland
(1974 Volume and 1979 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMELY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows :

Article - Real Property

8-213.

(a) An application for a lease shall contain a statement which explains :

(1) The liabilities which the APPLICANT [tenant] incurs upon signing the application; and

(2) The provisions of [subsections (b), (c), and (d) of] this section.

[(b)(1) If a landlord requires from a prospective tenant any fees other than a security deposit as defined by §8-203(a) of this subtitle, and these fees exceed $25, then the landlord shall return the fees, subject to the exceptions below, or be liable for twice the amount of the fees in damages. The return shall be made not later than 15 days following the date of occupancy or the written communication, by either party to the other, of a decision that no tenancy shall occur.

(2) The landlord may retain only that portion of the fees actually expended for a credit check or other expenses arising out of the application, and shall return that portion of the fees not actually expended on behalf of the tenant making the application.

(c) If, within 15 days of the first to occur of occupancy or signing a lease, a tenant decides to terminate the tenancy,

the landlord may also retain that portion of the fees which represents the loss of rent, if any, resulting from the tenant's action.

(d) This section does not apply to any landlord who offers four or less dwelling units for rent on one parcel of property or at one location, or to seasonal or condominium rentals.]

(B) A LANDLORD MAY NOT REQUIRE FROM AN APPLICANT A NON-REFUNDABLE APPLICATION FEE OF MORE THAN $25.00 OR 10% OF ONE MONTH'S RENT, WHICHEVER IS GREATER. OTHER FEES MAY BE REQUIRED BY A LANDLORD ONLY IF AN APPLICANT SIGNS AN APPLICATION WHICH PARTICULARLY DESCRIBES THE PREMISES TO BE RENTED AND THE DATE OCCUPANCY OF THE PREMISES IS TO BEGIN, AND SUCH FEES SHALL BE REFUNDABLE UNDER THE CONDITIONS OF SUB-SECTION (C).

(C)(1) IF THE APPLICANT NOTIFIES THE LANDLORD OF HIS CANCELLATION OF THE APPLICATION PRIOR TO THE LANDLORD NOTIFYING THE APPLICANT OF ACCEPTANCE OF HIS APPLICATION, THE APPLICANT'S OBLIGATION UNDER THE APPLICATION SHALL TERMINATE AND ANY REFUNDABLE FEES GIVEN TO THE LANDLORD UNDER SUB-SECTION (B)SHALL BE RETURNED WITHIN 21 DAYS OF THE LANDLORD'S RECEIPT OF THE NOTICE OF CANCELLATION.

(2) IF THE APPLICANT NOTIFIES THE LANDLORD OF HIS CANCELLATION OF THE APPLICATION AFTER THE LANDLORD HAS NOTIFIED THE APPLICANT OF ACCEPTANCE OF HIS APPLICATION, THE APPLICANT'S OBLIGATION UNDER THE APPLICATION SHALL TERMINATE, BUT THE LANDLORD MAY WITHHOLD THAT PORTION OF THE REFUNDABLE FEE WHICH REPRESENTS THE ACTUAL LOSS OF RENT RESULTING FROM THE APPLICANT'S CANCELLATION.

(3) IF ANY PORTION OF THE REFUNDABLE FEE IS WITHHELD, THE LANDLORD SHALL SEND BY FIRST CLASS MAIL TO THE APPLICANT, WITHIN 60 DAYS AFTER THE DATE OCCUPANCY WAS TO BEGIN, OR WITHIN 10 DAYS OF LEASING OF THE PREMISES, WHICHEVER IS SOONER, A LIST OF THE AMOUNT OF LOST RENT CLAIMED UNDER SUB-SECTION (C)(2) AND ANY PORTION OF THE REFUNDABLE FEE WHICH IS DUE THE APPLICANT.

(D) IF THE LANDLORD, WITHOUT A REASONABLE BASIS, FAILS TO COMPLY WITH THIS SECTION, AN APPLICANT HAS AN ACTION OF UP TO TWICE THE AMOUNT OF THE REFUNDABLE FEE WHICH WAS WRONGFULLY WITHHELD, PLUS ATTORNEY'S FEES.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1980.

1. Explanation and Justification. This bill would amend section 8-213 (Applications for leases) of the Real Property Article. Section 8-213, which was sponsored by Senator Broadwater and enacted in 1978, has received many varied interpretations by judges, lawyers, and landlords, because of ambiguities in the statute's language. This bill would resolve these problems while continuing to regulate the abuses sought to be prevented by Senator Broadwater. This bill, as section 8-213 presently does, would limit the maximum amount of a non-refundable application fee that a landlord can charge an applicant for a lease (a prospective tenant). Section 8-213 presently provides that the amount of an application fee (defined as any fee other than a security deposit) exceeds $25, the landlord must return the fee less the amount actually expended for a credit check or other expenses arising out of the application. The present wording of section 8-213 is unclear as to whether the landlord can retain $25 plus the amount actually expended for a credit check and other expenses in processing the application when the fee exceeds $25. Another problem with the present version of section 8-213 is that it does not address when and in what manner a landlord must return to an applicant, who does not become a tenant by executing a lease, a fee that was to become a security deposit if a lease had been executed. This bill would allow a landlord to charge an applicant a non-refundable application fee of not more than $25 or 10% of one month's rent, whichever is greater. This bill would allow a landlord to charge an applicant other fees (such as an amount that would constitute a security deposit if a lease is executed) only if the applicant signs an application particularly describing the premises to be rented and the date occupancy is to begin. Such additional fees would have to be returned to an applicant if the applicant cancels his application or if the landlord does not accept the application, less loss of rent for the premises incurred by the landlord if the applicant cancels his application after the landlord has notified him that his application has been accepted. The Commission believes that an application fee that does not exceed $25 or 10% of one month's rent should be non-refundable in order to reimburse landlords for personnel and administrative costs in processing applications, such as the cost of a credit check on the applicant, and lost rental while the premises are held off the market during processing of the application. The bill also specifies that an applicant has a right to cancel an application (which may include signing a leaseform which the landlord has not signed). The bill specifies that an applicant's obligations under the application terminate when the landlord receives notice of cancellation of the application from the applicant. Section 8-213 presently does not explicitly give an applicant a right to cancel an application which he has signed. The Commission believes that the bill's right of cancellation is fair to both applicants and landlords, because it gives the applicant a reasonable period of time to further consider his application (until receiving approval of his application) without forfeiting any portion of a refundable fee, while allowing the landlord to be compensated for lost rent if an applicant waits until after acceptance of his application to cancel his application. The bill provides that if a landlord withholds any portion of a refundable fee, he must send by first class mail to the applicant

a list of the amount of lost rent that he is withholding from the refundable fee, within 60 days after occupancy of the premises was to have begun or within 10 days of leasing of the premises, whichever is sooner. The 60 day maximum period was established because a refundable fee might be as much as two months rent (the maximum permissible security deposit under section 8-203 of the Real Property Article); if the premises remain vacant for 60 days, a landlord would be entitled to recover 2 months or 60 days lost rent from the refundable fee. In this situation, the landlord would not know how much lost rent he could withhold from the refundable fee until 2 months or 60 days from the date the applicant was to begin occupancy. The bill also would require a landlord to return the portion of the refundable fee due the applicant with the itemized list of lost rent being withheld. The bill provides that if the landlord, without a reasonable basis, fails to comply with this section, the applicant has an action of up to twice the amount of the refundable fee which was wrongfully withheld, plus attorneys' fees. The bill provides, as section 8-213(a) presently provides, that an application must contain a statement explaining the provisions of the section and the liabilities incurred by the applicant upon signing the application.

This bill would also repeal present section 8-213(c), which provides that if a tenant decides to terminate the tenancy within 15 days of the occupancy of the premises or signing the lease, the landlord may retain from the fee any lost rent resulting from tenant's action, in addition to expenses arising out of the application. This section should be repealed, because this provision would appear to apply even if a tenant had a right to terminate the tenancy under the common law (such as under the constructive eviction doctrine) or under rent escrow, implied warranty of habitability, or other statutes. In addition, this provision appears to apply even though the landlord also may have recovered lost rent from a security deposit pursuant to section 8-203.

Finally, this bill would make section 8-213 applicable to all landlords; section 8-213 presently does not apply to any landlord who offers four or less dwelling units for rent on one parcel of property or at one location, or to seasonal or condominium rentals. The Commission believes that all landlords should be subject to the duties under the bill, because the rights established by the bill are of great importance to all tenants.

2. Legal Approval. No Assistant Attorney General is assigned to the Commission.

3. Legislative History. This bill has not been previously submitted by the Commission.

4. Fiscal Note. See attached DFS Form 31.

5. Environmental Effects. None.

FISCAL ESTIMATE OF LEGISLATION

Governor's Landlord-Tenant Laws Study Commission

October 3, 1979

BILL TITLE: Landlord and Tenant - Application for Leases

Preparer: Steven Davison Title: Reporter Tel: (301) 727 6350

☒ This bill has no impact on revenues or expenditures of this agency.

☐ This bill will affect estimated additional revenue increase or reduction as follows:

	General Funds	Special Funds	Federal Funds	Local Funds	TOTAL

☐ This bill will affect expenditures as follows:

	General Funds	Special Funds	Federal Funds	Local Funds	TOTAL

PLEASE ATTACH SHEET FOR FURTHER DETAIL

COMMENTS/REMARKS:

STATE OF MARYLAND
OFFICE OF THE GOVERNOR-ELECT

From Arlington 261-2527
269-3336

TO: All Departments, Commissions, Boards and Other Units Assigned to the Executive Branch

DATE: 8/6/79

FROM: Judson P. Garrett, Jr., Chief Legislative Officer

SUBJECT: 1980 Legislative Session - Administration Legislation

Room 202

Bills to him

We are in the process of developing legislation to be sponsored by the Administration in the 1980 legislative session and would appreciate receiving, by September 4, 1979, a brief summary of any proposal you recommend be introduced as an Administration measure.

At this point in time, a brief description of the issue and the reason it warrants inclusion in the Administration's package is sufficient. After discussion of the proposals with the Governor, I will advise you of his decision concerning their introduction as Administration legislation.

cc: Committee Liaisons
Program Staff
Legislative Liaisons

Steven G. Davison
Reporter,
Governor's Landlord-Tenant Laws
Study Commission
University of Baltimore School of Law
1420 N. Charles Street
Baltimore, MD 21201

September 25, 1980

Mr. Judson P. Garrett, Jr.
Chief Legislative Officer
Executive Department
State of Maryland
State House, Room 202
Annapolis, MD 21404

Dear Mr. Garrett:

In accordance with your memoranda dated July 14, 1980, I am forwarding five bills approved by the Governor's Landlord-Tenant Laws Study Commission for introduction in the next session of the General Assembly as departmental bills, and explanations and justifications of these bills.

The Commission will not be submitting any further bills for the next session of the General Assembly.

If you have any questions with respect to these bills, you can contact me at home ((703) 525-7669) or at the University of Baltimore (727-6350 x. 362).

Sincerely yours,

Steven G. Davison

SGD/lv
cc: Members of Governor's Landlord-Tenant Laws Study Commission (with enclosures)
Ms. Margaret Kostrisky (with enclosures) [Chief Clerk, District Court of Maryland, Annapolis, MD 21404]

BILL ORDER
HB 141

(1b) AN ACT concerning

Landlord and Tenant - Duty to Provide Leaseform and Lease

FOR the purpose of requiring a landlord who rents by means of a written lease to provide a copy of the leaseform, upon written request, to a prospective tenant; and requiring a landlord within a certain time after occupancy to provide a tenant with a copy of his executed lease.

CIRCLE ONLY ONE:

(rr) By repealing and re-enacting, with amendments,
or
(an) By adding to
or
(r) By repealing

Article Real Property

Section 8-203.1

Annotated Code of Maryland

(19 74 Replacement Volume and 19 80 Supplement)

Circle as appropriate

(ed) - July 1 effective date

(sev) - severability clause

(eed) - emergency effective date

(sii) - salary increase not to affect incumbent

(acd) - abnormal effective date:_____

Office_____

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted as follows:

Article - Real Property

8-203.1

(A)(1) UPON WRITTEN REQUEST, A LANDLORD WHO RENTS BY MEANS OF A WRITTEN LEASE SHALL PROVIDE ANY PROSPECTIVE APPLICANT FOR A LEASE WITH A COPY OF THE PROPOSED LEASE FORM IN WRITING, WITHOUT REQUIRING EXECUTION OF THE LEASE OR ANY PRIOR DEPOSIT. THE LEASE FORM SHALL BE COMPLETE IN EVERY MATERIAL DETAIL, EXCEPT FOR THE DATE, THE NAME AND ADDRESS OF THE TENANT, THE DESIGNATION OF THE PREMISES, AND THE RENTAL RATE.

(2) WITHIN 30 DAYS OF THE DATE OF OCCUPANCY BY THE TENANT, THE LANDLORD SHALL PROVIDE THE TENANT WITH A COPY OF THE LEASE IF THE LANDLORD AND TENANT HAVE EXECUTED A WRITTEN LEASE.

[(a)] (B) After January 1, 1975, any landlord who offers more than 4 dwelling units for rent on one parcel of property or at one location and who rents by means of written leases shall [:]

[(1) Provide, upon written request from any prospective applicant for a lease, a copy of the proposed form of lease in writing, complete in every material detail, except for the date, the name and address of the tenant, the designation of the premises, and the rental rate, without requiring execution of the lease or any prior deposit; and

(2) E]embody in the form of the lease and in any executed lease the following:

[(i)](1) A statement that the premises will be made available in a condition permitting habitation, with reasonable safety, if that is the agreement, or if that is not the agreement, a statement of the agreement concerning the condition of the premises; and

[(ii)](2) The landlord's and the tenant's specific obligations as to heat, gas, electricity, water, and repair of the premises.

[(b)](C) No landlord subject to subsection [(a)](B) may embody any of the following provisions in any lease or form of lease and if any provision is embodied, it is against public policy and void:

(1) Any provision purporting to authorize the landlord to take possession of the premises or the tenant's personal property except pursuant to law; and

(2) Any provision purporting to permit a landlord to commence an eviction proceeding or issue a notice to quit solely and exclusively, without any other basis, as retaliation against any tenant for planning, organizing, or joining a tenant organization with the purpose of negotiating collectively with the landlord.

[(c)](D) Nothing in this section may be interpreted to alter the landlord's or the tenant's rights arising from breach of any provision of a lease, or either party's right to terminate, or not renew a lease pursuant to the terms of the lease or the provisions of other applicable law.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1981.

BILL ORDER
HB 142

(1b) AN ACT concerning

Landlord and Tenant - Application for Leases

FOR the purpose of allowing a landlord to charge a non-refundable application fee; allowing a landlord to charge a refundable fee provided an applicant has signed an application meeting specified requirements; providing that an applicant has a right to cancel said application for lease under certain circumstances; providing that a landlord must return a refundable fee within a specified period of time after an applicant cancels his application prior to acceptance of the application by the landlord; providing for the return of a refundable fee, less specified damages, to an applicant if the applicant cancels his application after acceptance of his application by the landlord; and providing an applicant a remedy against a landlord who violates these requirements.

CIRCLE ONLY ONE:

(rr) By repealing and re-enacting, with amendments,
or
(an) By adding to
or
(r) By repealing

Article Real Property

Section 8-213

Annotated Code of Maryland

(1974 Replacement Volume and 1980 Supplement)

Circle as appropriate

(ed) - July 1 effective date

(eed) - emergency effective date

(aed) - abnormal effective date:_____

(sev) - severability clause

(sii) - salary increase not to affect incumbent

Office_____

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

Article - Real Property

8-213

(a) An application for a lease shall contain a statement which explains:

(1) The liabilities which the APPLICANT [tenant] incurs upon signing the application; and

(2) The provisions of [subsections (b), (c), and (d) of] this section.

[(b)(1) If a landlord requires from a prospective tenant any fees other than a security deposit as defined by §8-203(a) of this subtitle, and these fees exceed $25, then the landlord shall return the amount of the fees in damages. The return shall be made not later than 15 days following the date of occupancy or the written communication, by either party to the other, of a decision that no tenancy shall occur.

(2) The landlord may retain only that portion of the fees actually expended for a credit check or other expenses arising out of the application, and shall return that portion of the fees not acutally expended on behalf of the tenant making the application.

(c) If, within 15 days of the first to occur of occupancy or signing a lease, a tenant decides to terminate the tenancy, the landlord may also retain that portion of the fees which represents the loss of rent, if any, resulting from the tenant's action.

(d) This section does not apply to any landlord who offers four or less dwelling units for rent on one parcel of property or at one location, or to seasonal or condominium rentals.]

(B) A LANDLORD MAY NOT REQUIRE FROM AN APPLICANT A NON-REFUNDABLE APPLICATION FEE OF MORE THAN $25.00 or 10% OF ONE MONTH'S RENT, WHICHEVER IS GREATER. OTHER FEES MAY BE REQUIRED BY A LANDLORD ONLY IF AN APPLICANT SIGNS AN APPLICATION WHICH PARTICULARLY DESCRIBES THE PREMIESE TO BE RENTED AND THE DATE OCCUPANCY OF THE PREMISES IS TO BEGIN, AND SUCH FEES SHALL BE REFUNDABLE UNDER THE CONDITIONS OF SUB-SECTION (C).

(C)(1) IF THE APPLICANT NOTIFIES THE LANDLORD OF HIS CANCELLATION OF THE APPLICATION PRIOR TO THE LANDLORD NOTIFYING THE APPLICANT OF ACCEPTANCE OF HIS APPLICATION, THE APPLICANT'S OBLIGATION UNDER THE APPLICATION SHALL TERMINATE AND ANY REFUNDABLE FEES GIVEN TO THE LANDLORD UNDER SUB-SECTION (B) SHALL BE RETURNED WITHIN 21 DAYS OF THE LANDLORD'S RECEIPT OF THE NOTICE OF CANCELLATION.

(2) IF THE APPLICANT NOTIFIES THE LANDLORD OF HIS CANCELLATION OF THE APPLICATION AFTER THE LANDLORD HAS NOTIFIED THE APPLICANT OF ACCEPTANCE OF HIS APPLICATION, THE APPLICANT'S OBLIGATION UNDER THE APPLICATION SHALL TERMINATE, BUT THE LANDLORD MAY WITHHOLD THAT PORTION OF THE REFUNDABLE FEE WHICH REPRESENTS THE ACTUAL LOSS OF RENT RESULTING FROM THE APPLICANT'S CANCELLATION.

(3) IF ANY PORTION OF THE REFUNDABLE FEE IS WITHHELD, THE LANDLORD SHALL SEND BY FIRST CLASS MAIL TO THE APPLICANT, WITHIN 60 DAYS AFTER THE DATE OF OCCUPANCY WAS TO BEGIN, OR WITHIN 10 DAYS OF LEASING OF THE PREMISES, WHICHEVER IS SOONER, A LIST OF THE AMOUNT OF LOST RENT CLAIMED UNDER SUB-SECTION (C)(2) AND ANY PORTION OF THE REFUNDABLE FEE WHICH IS DUE THE APPLICANT.

(D) IF THE LANDLORD, WITHOUT A REASONABLE BASIS, FAILS TO COMPLY WITH THIS SECTION, AN APPLICANT HAS AN ACTION OF UP TO TWICE THE AMOUNT OF THE REFUNDABLE FEE WHICH WAS WRONGFULLY WITHHELD, PLUS ATTORNEY'S FEES.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1981.

BILL ORDER

(1b) AN ACT concerning

Landlord and Tenant - Protective Orders

FOR the purpose of providing that in a suit seeking damages or possession of the premises or both from a holdover tenant, upon motion by either party, a court for good cause shown may issue any protective order which justice requires.

CIRCLE ONLY ONE:

(rr) By repealing and re-enacting, with amendments,
or
(an) By adding to
or
(r) By repealing

Article Real Property

Section 8-402(e)

Annotated Code of Maryland

(1974 Replacement Volume and 1980 Supplement)

Circle as appropriate

(ed) - July 1 effective date

(eed) - emergency effective date

(acd) - abnormal effective date:_____

(sev) - severability clause

(sii) - salary increase not to affect incumbent

Office_____

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

Article - Real Property

8-402

(E) IN A SUIT BROUGHT UNDER EITHER SUBSECTION (A) OR (B), OR UNDER BOTH SUBSECTIONS (A) AND (B), UPON MOTION BY EITHER PARTY A COURT FOR GOOD CAUSE SHOWN MAY ISSUE ANY PROTECTIVE ORDER WHICH JUSTICE REQUIRES.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect on July 1, 1981.

1. Explanation and Justification. This bill would enact a new section 8-402(e) of the Real Property Article, which would authorize courts, in suits to recover damages from holdover tenants under section 8-402(a) of the Real Property Article and in suits to eject holdover tenants or both to recover damages from and to eject holdover tenants under section 8-402(b) of the Real Property Article, to issue any protective order which justice requires. Both a landlord and a tenant who are parties to a holdover tenant action under section 8-402(a) or section 8-402(b) could seek a protective order by filing a motion (pursuant to Rule 321) requesting a protective order. Rule 321 specifies the procedures for filing motions and for courts to follow in acting upon motions.

One type of protective order that would be authorized by this bill would be an order by a court requiring a defendant in a suit under section 8-402(b) seeking to eject a holdover tenant, to pay into the escrow account of the court a sum including an amount equivalent to rent that would have been due under the prior lease for the period of holding over after termination of the lease and damages caused by the tenant's holding over, in order to obtain a stay of execution of judgment after the time for appeal (10 days after judgment) has expired. If the defendant did appeal an order of ejectment under section 8-402(b), the district court would return the amount paid into escrow as a condition of the stay of execution; the defendant, however, in order to stay execution of the judgment of ejection pending disposition of the appeal, is required by section 8-402(b)(2) to post an appeal bond. If the defendant did not appeal the judgment of ejectment, the district court would order the amount in escrow (the amount required to be posted to obtain a stay of execution after the time for appeal has expired) to be paid to the landlord. Such a protective order would benefit the defendant in a hold over tenant action by giving him sufficient time to obtain new housing, while insuring that the landlord was compensated for lost rent and damages caused by the tenant's holding over.

Other types of protective orders could be issued by the district courts and circuit courts as justice required. Courts would not be required to issue a protective order requested by a party's motion in a suit under section 8-402(a) or section 8-402(b); issuance of protective orders would be within the court's equitable discretion, based upon a case-by-case determination and weighing by the court of the facts and equities of each case. In cases filed in the district court under section 8-402 or section 8-402(b) in which the tenant demands and has a right to a jury trial, the case would be transferred to the circuit court and the circuit court would then have jurisdiction to issue protective orders under the bill; protective orders previously issued by a district court would become void once the case was transferred to the circuit court for jury trial.

2. Legal Approach. No Assistant Attorney General is assigned to the Commission.

3. Legislative History. This bill has not been previously introduced into the General Assembly.

4. Fiscal Note. See attached DFS Form 31.

5. Environmental Effects. None.

BILL ORDER
HB 422

(1b) AN ACT concerning

Landlord and Tenant - Essential Services

FOR the purpose of making it a misdemeanor, punishable by a fine, for any landlord, owner, or manager of a residential leased premises to knowingly and willfully fail to supply or interrupt the supply of essential services after knowledge of interruption of such services and after having reasonable time to restore such services; defining the term essential services; making it also a misdemeanor for a landlord, owner, or manager of a residential leased premises knowingly and willfully to deny ingress or egress to leased premises to any person entitled by the lease, sublease, or assignment to use the premises; and providing certain exceptions.

CIRCLE ONLY ONE:

(rr) By repealing and re-enacting, with amendments,
or
(an) By adding to
or
(r) By repealing

Article 27 Crimes and Punishment

Section 303

Annotated Code of Maryland
(1976 Replacement Volume and 1980 Supplement)

Circle as appropriate

(ed) - July 1 effective date

(eed) - emergency effective date

(aed) - abnormal effective date:_____

(sev) - severability clause

(sii) - salary increase not to affect incumbent

Office_____

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended or enacted to read as follows:

Article 27 - Crimes and Punishments

303

(A) FOR THE PURPOSE OF THIS SECTION "ESSENTIAL SERVICES" MEANS AND IS LIMITED TO HEAT, RUNNING WATER, HOT WATER, ELECTRICITY, GAS, REFRIGERATOR, OR STOVE, TO WHICH A TENANT IS ENTITLED UNDER THE EXPRESS OR IMPLIED TERMS OF HIS LEASE OR AMENDED LEASE.

(B) IT IS A MISDEMEANOR FOR ANY LANDLORD, OWNER, OR MANAGER OF A RESIDENTIAL LEASED PREMISES TO KNOWINGLY AND WILLFULLY:

(1) FAIL TO SUPPLY OR INTERRUPT THE SUPPLY OF ESSENTIAL SERVICES TO THE LEASED PREMISES;

(2) FAIL TO RESTORE ESSENTIAL SERVICES TO THE LEASED PREMISES, AFTER HAVING KNOWLEDGE OF ANY INTERRUPTION AND AFTER HAVING REASONABLE TIME TO RESTORE SUCH SERVICES; OR

(3) DENY INGRESS OR EGRESS TO THE LEASED PREMISES TO A TENANT, SUBTENANT, ASSIGNEE, OR OTHER PERSON WHO IS ENTITLED BY THE LEASE, SUBLEASE, OR ASSIGNMENT TO USE THE PREMISES.

(C) UPON CONVICTION, THE LANDLORD, OWNER, OR MANAGER SHALL BE SUBJECT TO A FINE OF NOT MORE THAN $100.

(D) THIS SECTION DOES NOT APPLY TO ANY INTERRUPTION OF ESSENTIAL SERVICES CAUSED BY:

(1) A DELIBERATE OR NEGLIGENT ACTION OF THE TENANT, A MEMBER OF HIS FAMILY, OR A PERSON ON THE LEASED PREMISES WITH THE TENANT"S CONSENT; OR

(2) THE FAILURE OF THE TENANT TO PAY THE UTILITY BILL FOR THE INTERRUPTED SERVICE, WHERE SUCH BILL IS THE TENANT"S RESPONSIBILITY BY THE TERMS OF THE LEASE; OR

(3) THE INTERRUPTION OF ESSENTIAL SERVICES BY THE LANDLORD FOR A REASONABLE PERIOD OF TIME FOR THE PURPOSE OF MAKING NECESSARY REPAIRS OR PERFORMING REQUIRED MAINTENANCE.

(E) THIS SECTION SHALL NOT EFFECT ANY SIMILAR PUBLIC LOCAL LAW OR ORDINANCE ENACTED BY ANY COUNTY OR BALTIMORE CITY.

SECTION 2. AND BE IT FURTHER PROVIDED, That this Act shall take effect July 1, 1981.

STATE OF MARYLAND

EXECUTIVE DEPARTMENT

GOVERNOR'S LANDLORD TENANT LAWS STUDY COMMISSION

Professor Steven Davison
Commission Reporter
University of Baltimore
School of Law
1420 N. Charles Street
Baltimore, MD 21201

August 31, 1982

John D. Eastwick
Chief Legislative Officer
State of Maryland
Executive Department
Room 202
State House
Annapolis, MD 21404

Dear Mr. Eastwick :

On behalf of the Governor's Landlord-Tenant Laws Study Commission, I am enclosing five bills that the Commission has approved for submission as departmental bills to the 1983 Regular Session of the General Assembly. Each of these bills is accompanied by a Proposal for Legislation Form, 1983 Session, and Supporting Materials, in accordance with your memorandum dated July 14, 1982.

If additional information with respect to these bills is needed, please telephone me at work in Baltimore ((301) 625-3397) or at home in Arlington, Virginia ((703) 525-7669).

Thank you for your consideration of these bills.

Sincerely Yours,

Steven G. Davison

Steven G. Davison,
Commission Reporter

cc: (with enclosures) : Commission members

PROPOSAL FOR LEGISLATION
1983 SESSION

Proposal Number: LTC # 82-1

Subject: Landlord and Tenant - Termination of Tenancy

Articles and Sections of Maryland Code Affected: Real Property Article, section 8-501

Submitted by: Governor's Landlord-Tenant Laws Study Commission
(Agency and Division)

Attachment Checklist:

* Draft of Body of Bill

* Explanation

* Justification (with relevant statutes and court decisions attached)

* History of Substantially Similar Bills Introduced in Prior Sessions

___ Legal Approval

* Fiscal Estimate of Legislation (DFS Form 31)

Environmental Effects (Check One):

___ Environmental Assessment Form Attached or

* Environmental Assessment Form not required by the Maryland Environmental Policy Act

Contact Persons:

Persons able to Discuss and Testify on Proposal: C. Laurence Jenkins, Jr., Commission Chairman, 222 East Redwood, Suite 300 Baltimore 21202 Telephone No. (301) 752-6597

Legal Advisor: Commission Reporter, Steven G. Davison, Univ. of Baltimore Law School, 1420 N. Charles, Baltimore, MD 21201 Telephone No. (301) 625-3397

Sponsorship Preference:

___ Senate ___ House ___ Either

Date: May 10, 1982

C. Laurence Jenkins Jr.
(Signature of Agency Head)

NOTE: Please forward two copies of this form with attachments to:

Chief Legislative Officer, Executive Department, Room 202, State House, Annapolis, Maryland 21404 (Telephone No. 269-3336).

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant - Termination of Tenancy

FOR the purpose of providing that unless stated otherwise in a written agreement between the landlord and tenant, a tenancy from year to year, month to month, and week to week may be terminated by the tenant giving the landlord a specified amount of notice in writing; and providing the form that such notice of termination may take.

BY repealing and reenacting, with amendments,

Article - Real Property
Section 8-501
Annotated Code of Maryland
(1981 Volume and 1982 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland read(s) as follows :

Article - Real Property

8-501.

(A) UNLESS STATED OTHERWISE IN A WRITTEN AGREEMENT BETWEEN THE LANDLORD AND TENANT, A TENANT MUST GIVE WRITTEN NOTICE TO THE LANDLORD AT LEAST A MONTH BEFORE THE END OF THE PERIOD FOR WHICH HE HOLDS THE SAME IN ORDER TO TERMINATE A TENANCY FROM YEAR TO YEAR OR MONTH TO MONTH AND AT LEAST A WEEK BEFORE THE END OF THE PERIOD FOR WHICH HE HOLDS THE SAME IN ORDER TO TERMINATE A TENANCY FROM WEEK TO WEEK.

(B) THE NOTICE REQUIRED TO BE GIVEN BY SUBSECTION (A) SHALL BE SUFFICIENT IN FORM IF IT STATES THE INTENTION OF THE TENANT TO TERMINATE THE TENANCY OR TO LEAVE THE PREMISES AND STATES THE DATE WHEN THE TENANCY TERMINATES.

(C) No written agreement between a landlord and tenant shall provide for a longer notice period to be furnished by the tenant to the landlord in order to terminate the tenancy than that required of the landlord to the tenant in order to terminate the tenancy.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1983.

Explanation.

This bill, which would add two new subsections to section 8-501 of the Real Property Article, would specify the notice that a periodic tenant must give to his landlord in order to terminate a periodic tenancy. (A periodic tenancy is a tenancy without a fixed term; a periodic tenancy may be created by express agreement or by implication, as where the tenant enters a lease and pays rent periodically, without an agreement or understanding as to the term of the tenancy. The length of a periodic tenancy is determined by the period for which rent is due and payable. A periodic tenancy may occur as a result of an oral lease; or when a tenant under a written lease for a fixed term continues to reside on the leased premises with the consent of the landlord, without executing a new written lease for a fixed term, after the fixed term under the written lease has expired. A periodic tenancy continues until either the landlord or tenant gives notice of termination to the other; the notice that a landlord must give a tenant to terminate a periodic tenancy is specified by section 8-402 of the Real Property Article of the Annotated Code.)

The bill provides that unless stated otherwise in a written agreement between the landlord and tenant (the written agreement could be either part of a written lease or a separate document), a tenant must give written notice to the landlord at least a month before the end of the period for which he holds the same in order to terminate a tenancy from year to year or month to month, and at least a week before the end of the period for which he holds the same in order to terminate a tenancy from week to week. This bill would make the law applicable state-wide similar to the law governing Baltimore City, under Baltimore City P.L.L. §9-16, although §9-16 requires a week-to-week tenant to give a landlord at least 30 days notice of termination.

For example, if a month-to-month tenant who pays rent on the first day of each month gives written notice of termination to his landlord on or before December 31, 1983, the tenancy would terminate one month later (on January 31, 1984). If the month-to-month tenant, however, gave notice of termination to his landlord on or after January 1, 1984, the tenancy would not terminate until February 28, 1984, so that the tenant would be liable for rent for February, 1984.

The bill also would provide that a notice of termination of a periodic tenancy by a tenant is sufficient in form if it states the intention of the tenant to terminate the tenancy or to leave the premises and states the date when the tenancy terminates. This provision of the bill is similar to the law governing Baltimore City under Baltimore City P.L.L. §9-18.

2. Justification.

In 1876, the Maryland Court of Appeals in Hall v. Myers, 43 Md. 446, stated that a tenant must give a landlord a reasonable amount of notice in order to terminate a periodic tenancy. The Court did not define, and has not subsequently defined, what is a reasonable amount of notice. There reportedly is disagreement among district and circuit court judges as to the amount of notice periodic tenants must give a landlord to terminate a periodic tenancy.

Maryland statutes also do not define the amount of notice that a tenant must give a landlord in order to terminate a periodic tenancy. Section 8-402(b)(5) of the Real Property Article (which does not apply in Baltimore City and which was not included in the 1981 Replacement Volume of the Real Property Article although it does not appear to have been repealed by the Maryland General Assembly) does state that if a tenant gives a landlord orally (parole) a specified amount of notice that he is terminating a periodic tenancy, the landlord does not have to give the tenant the specified amount of notice to quit that otherwise would be required to be given to the tenant in order to bring a holdover tenant action under section 8-402 to have the tenant ejected. Section 8-402 (b)(5) of the Real Property Article, however, does not explicitly state that a periodic tenant must give the specified amount of notice to terminate a tenancy.

3. Legislative History.

This bill has not been previously introduced to the Maryland General Assembly.

4. Legal Approval.

There is no Assistant Attorney General assigned to the Commission.

5. Fiscal Note.

See attached DFS Form 31.

6. Environmental Effects.

None

7. Contact Person.

Commission Reporter - Professor Steven Davison, University of Baltimore School of Law, 1420 N. Charles Street, Baltimore, Maryland, 21201, (Phone: (301)625-3397).

ESTIMATE OF LEGISLATION

Mr. Dennis H. Parkinson, Supervising Analyst, Department of Fiscal Services,
Maryland General Assembly, 90 State Circle, Room 226, Annapolis, Maryland 21401

FROM: Governor's Landlord-Tenant Laws Study Commission

DATE: August 31, 1982

REF: BILL/RES. NO. _____ COMMITTEE REFERRAL: _____

SHORT TITLE: Landlord and Tenant - Termination of Tenancy

Prepared By: Steven G. Davison Title: Reporter Tel: (301) 625-3397

☒ Has no fiscal impact on revenues or expenditures of this agency.

☐ Will provide an estimated additional revenue increase or reduction as follows:

	General Funds	Special Funds	Federal Funds	Local Funds	TOTAL
First Year					
Second Year					
Third Year					
Fourth Year					
Fifth Year					

☐ Will provide an estimated additional expenditure increase or reduction in funds as follows:

	General Funds	Special Funds	Federal Funds	Local Funds	TOTAL
First Year					
Second Year					
Third Year					
Fourth Year					
Fifth Year					

☐ Net Effect (subtract expenditures from revenues):

	General Funds	Special Funds	Federal Funds	Local Funds	TOTAL
First Year					
Second Year					
Third Year					
Fourth Year					
Fifth Year					

(USE REVERSE SIDE OF FORM FOR FISCAL NOTE DETAIL)

COMMENTS/REMARKS: _____

DFS Form 31 (12/77-Rev.)

PROPOSAL FOR LEGISLATION
1983 SESSION

Proposal Number: LTC # 82-2

Subject: Landlord and Tenant - Failure to Pay Rent

Articles and Sections of Maryland Code Affected: Real Property Article, Section 8-401

Submitted by: Governor's Landlord-Tenant Laws Study Commission
(Agency and Division)

Attachment Checklist:

___ Draft of Body of Bill

___ Explanation

___ Justification (with relevant statutes and court decisions attached)

___ History of Substantially Similar Bills Introduced in Prior Sessions

___ Legal Approval

___ Fiscal Estimate of Legislation (DFS Form 31)

Environmental Effects (Check One):

___ Environmental Assessment Form Attached or

___ Environmental Assessment Form not required by the Maryland Environmental Policy Act

Contact Persons:

Persons able to Discuss and Testify on Proposal: C. Laurence Jenkins, Jr., Commission Chairman, 222 East Redwood, Suite 300, Baltimore 21202 Telephone No. (301) 752-6597

Legal Advisor: Commission Reporter, Steven G. Davison, Univ. of Baltimore Law School, 1420 N. Charles, Baltimore, MD 21201 Telephone No. (301) 625-3397

Sponsorship Preference:

___ Senate ___ House ___ Either

Date: Dec 10, 1982

C. Laurence Jenkins
(Signature of Agency Head)

: Please forward two copies of this form with attachments to:

Chief Legislative Officer, Executive Department, Room 202, State House, Annapolis, Maryland 21404 (Telephone No. 269-3336).

H.B. L.T.C. #2

Typed by skj/Support
Proofread by
Corrected by
Checked by

By: (Departmental - Landlord Tenant Comm.)

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant - Failure to Pay Rent

FOR the purpose of providing for the procedure by which a landlord can regain possession of rental property for nonpayment of rent and foreclose the right of redemption; and generally relating to right of redemption of the rented premises by the tenant.

BY repealing and reenacting, with amendments,

Article - Real Property
Section 8-401(b) and (e)
Annotated Code of Maryland
(1981 Volume and 1982 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland read(s) as follows:

Article - Real Property

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
Numerals at right identify computer lines of text.

...).

(b) Whenever any landlord shall desire to repossess any premises to which he is entitled under the provisions of § 8-401(a), he or his duly qualified agent or attorney, shall make his written complaint under oath or affirmation, before the District Court of the county wherein the property is situated, describing in general terms the property sought to be repossessed, and also setting forth the name of the tenant to whom the property is rented or his assignee or subtenant with the amount of rent due and unpaid; and praying by warrant to repossess the premises, together with judgment for the amount of rent due and costs. IF JUDGMENTS FOR POSSESSION OF THE PREMISES FOR RENT DUE AND UNPAID HAVE BEEN ENTERED IN FAVOR OF THE LANDLORD AGAINST THE TENANT AT LEAST THREE TIMES WITHIN THE 12 MONTH PERIOD PRIOR TO THE INITIATION OF THE ACTION AND THE LANDLORD WISHES TO FORECLOSE THE RIGHT OF REDEMPTION AFTER JUDGMENT OF RESTITUTION, CERTIFIED COPIES OF PREVIOUS JUDGMENTS OF RESTITUTION MUST BE ATTACHED TO THE COMPLAINT AND MADE PART THEREOF. The District Court shall issue its summons, directed to any constable or sheriff of the county entitled to serve process, and ordering him to notify by first-class mail the tenant, assignee, or subtenant to appear before the District Court at the trial to be held on the fifth day after the filing of the complaint, to answer the landlord's complaint to show cause why the prayer of the landlord

should not be granted, and the constable or sheriff shall proceed to serve the summons upon the tenant, assignee or subtenant in the property or upon his known or authorized agent, but if for any reason, neither the tenant, assignee or subtenant, nor his agent, can be found, then the constable or sheriff shall affix an attested copy of the summons conspicuously upon the property. The affixing of the summons upon the property after due notification to the tenant, assignee, or subtenant by first-class mail shall conclusively be presumed to be a sufficient service to all persons to support the entry of a default judgment for possession of the premises, together with court costs, in favor of the landlord, but it shall not be sufficient service to support a default judgment in favor of the landlord for the amount of rent due. THE SUMMONS SHALL SET FORTH, IN LAYMAN'S TERMS, THE TENANT'S RIGHT TO REDEEM PURSUANT TO § 8-401(E) AND WHEN THIS RIGHT MAY BE INAPPLICABLE.

(e) In any action of summary ejectment for failure to pay rent where the landlord is awarded a judgment giving him restitution of the leased premises, the tenant shall have the right to redemption of the leased premises by tendering in cash, certified check or money order to the landlord or his agent all [past due rent] RENT DUE AT THE TIME OF JUDGMENT and late fees, plus all court awarded costs and fees, at any time before actual execution of the eviction

e. [This subsection does not apply to any tenant who has received more than three summons containing copies of complaints filed by the landlord against the tenant for rent due and unpaid in the 12 months prior to the initiation of the action to which this subsection otherwise would apply.] THIS SUBSECTION DOES NOT APPLY TO ANY TENANT AGAINST WHOM AT LEAST THREE JUDGMENTS FOR POSSESSION OF PREMISES FOR RENT DUE AND UNPAID HAVE BEEN ENTERED IN THE 12 MONTHS PRIOR TO THE INITIATION OF THE ACTION TO WHICH THIS SUBSECTION OTHERWISE WOULD APPLY. NOTHING IN THIS SUBSECTION SHALL PRECLUDE A TENANT IN ANY ACTION UNDER THIS SECTION FROM RAISING ANY DEFENSE AVAILABLE UNDER STATE OR LOCAL LAW. IF A TENANT PREVAILS ON ANY OF THESE DEFENSES, THE JUDGMENT, WHETHER OR NOT IT INCLUDES A JUDGMENT OF RESTITUTION AGAINST THE TENANT, SHALL NOT BE CONSIDERED A JUDGMENT FOR POSSESSION OF PREMISES FOR PURPOSES OF THIS SUBSECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1983.

Explanation.

This bill would amend section 8-401 of the Real Property Article (Rent Due and Payable) to provide that a tenant loses the right of redemption (the right to avoid eviction for failure to pay rent when it was due and payable by paying the amount of rent due and payable to the landlord or his agent prior to the actual execution of the eviction order) under section 8-401(e) only if at least three judgments for possession of premises for rent due and unpaid have been entered in the 12 months prior to the initiation of the action to which the right of redemption would otherwise apply.

The bill would also amend section 8-401(e) of the Real Property Article to provide that nothing in subsection 8-401(e) precludes a tenant in any action under section 8-401 from raising any defense available under state or local law (which is intended to refer to defenses available under both common law and statutory law); and that if a tenant prevails on any of these defenses, the judgment, whether or not it includes a judgment of restitution against the tenant, shall not be considered a judgment for possession of premiese for purposes of section 8-401(e).

The bill would also amend section 8-401(b) of the Real Property Article to provide that if the landlord wishes to foreclose the tenant's right of redemption under section 8-401(e), certified copies of previous judgments of restitution for rent due and unpaid in the prior 12 months must be attached to the complaint filed under section 8-401 and made a part thereof.

Finally, the bill would amend section 8-401(b) of the Real Property Article to require a summons in an action brought under Section 8-401 to set forth, in layman's terms, the tenant's right to redeem pursuant to section 8-401(e) and when this right may be inapplicable.

2. Justification.

At present, section 8-401(e) provides that a tenant loses his right of redemption under section 8-401(e) if the tenant has received more than three summons containing copies of complaints filed by the landlord against the tenant for rent due and unpaid in the 12 months prior to initiation of the landlord's action under section 8-401(e).

A tenant can thus lose his right to redemption because the landlord has filed four or more summonses under section 8-401 in the prior 12 months, even though the rent at issue in those summonses had actually been paid or had been partially or completely abated by court order

under section 8-211 of the Real Property Article (the rent escrow statute) or under common law or other statutory authority.

The Commission was informed that some landlords, because of clerical errors or because of a desire to have a tenant lose his right of redemption under section 8-401(e) so that the tenant can be evicted for retaliatory reasons (such as the making of complaints to the landlord or governmental agencies or the organizing of other tenants) file summonses under section 8-401 even though rent had been paid by the tenant. Section 8-401 nevertheless counts such summonses in determining when a tenant loses his right of redemption under section 8-401(e). Section 8-401(e) also counts a summons in determining whether a tenant loses the right of redemption, even when the tenant successfully raises a defense, such as a rent escrow defense under section 8-211 of the Real Property Article, that causes a court to hold that no rent is due and payable, or that only some of the rent is due and payable (with the court abating the balance of rent that would otherwise be due and payable). The Commission believes that the present version of section 8-401(e) is unfair in counting summonses in such cases in determining whether a tenant loses his right of redemption.

Consequently, the Commission in this bill proposes to amend section 8-401 to provide that only judgments for possession obtained by a landlord in previous cases under section 8-401(e) may be counted in determining whether the tenant has lost the right of redemption, except where a landlord received a judgment for possession despite the tenant having prevailed on a defense (this can occur when a tenant's rent escrow defense under section 8-211 of the Real Property Article, although successful, results in the court ordering only partial abatement of the amount of rent due, thus allowing the landlord to obtain a judgment for restitution on the basis of the balance of unpaid rent that was not paid when due).

The Commission believes that in order to implement these changes with respect to the right of redemption a landlord should be required to provide the court with certified copies of previous judgments for restitution in section 8-401 cases; and the summonses used in cases brought under section 8-401(b) should explain these rules with respect to the right of redemption.

3. History.

This bill was introduced as HB 449 in the 1982 Regular Session, which received an unfavorable report from the House Judiciary Committee.

4. Legal Approval.

No Assistant Attorney General is assigned to the Commission.

5. Fiscal Note.

See attached DFS Form 31.

6. Environmental Effects.

None.

7. Contact Person.

Professor Steven Davison, Reporter for the Governor's Landlord-Tenant Laws Study Commission, University of Baltimore School of Law, 1420 N. Charles Street, Baltimore, MD, 21201, (301)625-3397.

LTC # 82-2

FISCAL ESTIMATE OF LEGISLATION

Mr. Dennis R. Parkinson, Supervising Analyst, Department of Fiscal Services,
Maryland General Assembly, 90 State Circle, Room 226, Annapolis, Maryland 21401

FROM: Governor's Landlord-Tenant Laws Study Commission

DATE: August 31, 1982

REF: BILL/RES. NO. _____ COMMITTEE REFERRAL: _____

SHORT TITLE: Landlord and Tenant - Failure to Pay Rent

Prepared By: Steven G. Davison Title: Reporter Tel: (301) 625-3397

* *

☒ Has no fiscal impact on revenues or expenditures of this agency.

☐ Will provide an estimated additional revenue increase or reduction as follows:

	General Funds	Special Funds	Federal Funds	Local Funds	TOTAL
First Year					
Second Year					
Third Year					
Fourth Year					
Fifth Year					

☐ Will require an estimated additional expenditure increase or reduction as follows:

	General Funds	Special Funds	Federal Funds	Local Funds	TOTAL
First Year					
Second Year					
Third Year					
Fourth Year					
Fifth Year					

☐ Net Effect (subtract expenditures from revenues):

	General Funds	Special Funds	Federal Funds	Local Funds	TOTAL
First Year					
Second Year					
Third Year					
Fourth Year					
Fifth Year					

(USE REVERSE SIDE OF FORM FOR FISCAL NOTE DETAIL)

COMMENTS/REMARKS: _____

PROPOSAL FOR LEGISLATION
1983 SESSION

Proposal Number: LTC # 82-3

Subject: Landlord and Tenant - Duty to Provide Lease

Articles and Sections of Maryland Code Affected: Real Property Article, Section 8-203.1

Submitted by: Governor's Landlord-Tenant Laws Study Commission
(Agency and Division)

Attachment Checklist:

* Draft of Body of Bill

* Explanation

* Justification (with relevant statutes and court decisions attached)

* History of Substantially Similar Bills Introduced in Prior Sessions

___ Legal Approval

* Fiscal Estimate of Legislation (DFS Form 31)

Environmental Effects (Check One):

___ Environmental Assessment Form Attached or

* Environmental Assessment Form not required by the Maryland Environmental Policy Act

Contact Persons:

Persons able to Discuss and Testify on Proposal: C. Laurence Jenkins, Jr., Commission chairman, 222 East Redwood, Suite 300 Baltimore 21202 Telephone No. (301) 752-6597

Legal Advisor: Steven G. Davison, Commission Reporter, Univ. of Baltimore Law School, 1420 N. Charles, Baltimore 21201 Telephone No. (301) 625-3397

Sponsorship Preference:

* Senate ___ House ___ Either

Date: Aug 10, 1982

C. Laurence Jenkins
(Signature of Agency Head)

NOTE: Please forward two copies of this form with attachments to:

Chief Legislative Officer, Executive Department, Room 202, State House, Annapolis, Maryland 21404 (Telephone No. 269-3336).

141/81 HB LTC # 82-3

Typed by dyd/Support
Proofread by
Corrected by
Checked by

...: (Departmental -- Landlord Tenant Comm.)

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant - Duty to Provide Lease

FOR the purpose of requiring a landlord who rents by means of a written lease to provide a copy of the lease form, upon written request, to a prospective tenant; and requiring a landlord within a certain time after occupancy to provide a tenant with a copy of his executed lease.

BY repealing and reenacting, with amendments,

Article - Real Property
Section 8-203.1
Annotated Code of Maryland
(1981 Volume and 1982 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland read(s) as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
Numerals at right identify computer lines of text.

1557

Article -- Real Property

§ 20B-1.

(A) (1) ON WRITTEN REQUEST, A LANDLORD WHO RENTS BY MEANS OF A WRITTEN LEASE SHALL PROVIDE ANY PROSPECTIVE APPLICANT FOR A LEASE WITH A WRITTEN COPY OF THE PROPOSED LEASE FORM, WITHOUT REQUIRING EXECUTION OF THE LEASE OR ANY PRIOR DEPOSIT. THE LEASE FORM SHALL BE COMPLETE IN EVERY MATERIAL DETAIL, EXCEPT FOR THE DATE, THE NAME AND ADDRESS OF THE TENANT, THE DESIGNATION OF THE PREMISES, AND THE RENTAL RATE.

(2) IF THE LANDLORD AND TENANT HAVE EXECUTED A WRITTEN LEASE, THE LANDLORD SHALL PROVIDE THE TENANT WITH A COPY OF THE LEASE WITHIN 30 DAYS OF THE DATE OF OCCUPANCY BY THE TENANT.

[(a)] (B) After January 1, 1975, any landlord who offers more than 4 dwelling units for rent on one parcel of property or at one location and who rents by means of written leases, shall[:

(1) Provide, upon written request from any prospective applicant for a lease, a copy of the proposed form of lease in writing, complete in every material detail, except for the date, the name and address of the tenant, the designation of the premises, and the rental rate, without requiring execution of the lease or any prior deposit; and

(2) [Embody] EMBODY in the form of THE lease and [in any executed lease the following:

[(i)] (1) A statement that the premises will be made available in a condition permitting habitation, with reasonable safety, if that is the agreement, or if that is not the agreement, a statement of the agreement concerning the condition of the premises; and

[(ii)] (2) The landlord's and the tenant's specific obligations as to heat, gas, electricity, water, and repair of the premises.

[(b)] (C) No landlord subject to subsection [(a)] (B) may embody any of the following provisions in any lease or form of lease and if any provision is embodied, it is against public policy and void:

(1) Any provision purporting to authorize the landlord to take possession of the premises or the tenant's personal property except pursuant to law; and

(2) Any provision purporting to permit a landlord to commence an eviction proceeding or issue a notice to quit solely and exclusively, without any other basis, as retaliation against any tenant for planning, organizing, or joining a tenant organization with the purpose of negotiating collectively with the landlord.

(c)] (b) Nothing in this section may be interpreted to alter the landlord's or the tenant's rights arising from breach of any provision of a lease, or either party's right to terminate, or not renew a lease pursuant to the terms of the lease or the provisions of other applicable law.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1983.

1. Explanation.

This bill would amend section 8-203.1 of the Real Property Article to require all landlords who rent by means of a written lease to provide a copy of their leaseform to a prospective tenant upon written request, and to provide tenants with a copy of their executed lease within 30 days of the date of occupancy by the tenant. Section 8-203.1 at present requires landlords who rent by means of written leases to provide prospective tenants with a copy of the proposed leaseform upon written request only if the landlord offers more than four dwelling units for rent on one parcel of property or at one location. Section 8-203.1, however, does not require landlords to provide tenants with a copy of the executed lease.

This bill would not require landlords to use written leases; it would only apply to landlords who use written leases.

2. Justification.

The Commission is proposing to amend section 8-203.1 to impose upon all landlords a duty to provide a copy of the leaseform to prospective tenants because the Commission was advised that some small landlords not regulated by section 8-203.1 refuse to give prospective tenants a copy of the leaseform, and because the Commission believes that all prospective tenants should have an opportunity for themselves and their attorneys to examine a leaseform before executing it.

The Commission is also proposing to amend section 8-203.1 to require all landlords to provide tenants with a copy of their written executed lease within 30 days of occupancy because it was advised that many landlords do not provide their tenants with a copy of the executed written lease; a tenant who does not have a copy of his lease will generally be unaware of all of his responsibilities and rights as a tenant.

3. History.

This bill was introduced as HB 450 of the 1982 Regular Session, HB 141 of the 1981 Regular Session, and HB 580 of the 1980 Regular Session, which received unfavorable reports from the House Judiciary Committee.

4. Legal Approval.

No Assistant Attorney General is assigned to the Commission.

5. Fiscal Note.

See attached DFS Form 31.

6. Environmental Effects.

None.

7. Contact Person.

Professor Steven Davison, Reporter for the Governor's Landlord-Tenant Laws Study Commission, University of Baltimore School of Law, 1420 N. Charles Street, Baltimore, Maryland, 21201, (301)625-3397.

ESTIMATE OF LEGISLATION

Mr. Dennis H. [illegible], Supervising Analyst, Department of Fiscal Services, Maryland General Assembly, 90 State Circle, Room 226, Annapolis, Maryland 21401

FROM: Governor's Landlord-Tenant Laws Study Commission

DATE: August 31, 1982

REF: BILL/RES. NO. ______ COMMITTEE REFERRAL: ______

SHORT TITLE: Landlord and Tenant - Duty to Provide Lease

Prepared By: Steven G. Davison Title: Reporter Tel: (301) 625-3397

* *

☐ Has no fiscal impact on revenues or expenditures of this agency.

☐ Will provide an estimated additional revenue increase or reduction as follows:

	General Funds	Special Funds	Federal Funds	Local Funds	TOTAL
First Year					
Second Year					
Third Year					
Fourth Year					
Fifth Year					

☐ Will involve an estimated additional expenditure increase or reduction in funds as follows:

	General Funds	Special Funds	Federal Funds	Local Funds	TOTAL
First Year					
Second Year					
Third Year					
Fourth Year					
Fifth Year					

☐ Net Effect (subtract expenditures from revenues):

	General Funds	Special Funds	Federal Funds	Local Funds	TOTAL
First Year					
Second Year					
Third Year					
Fourth Year					
Fifth Year					

(USE REVERSE SIDE OF FORM FOR FISCAL NOTE DETAIL)

COMMENTS/REMARKS: ______

DFS Form 31 (12/77-Rev.)

PROPOSAL FOR LEGISLATION
1983 SESSION

Proposal Number: LTC # 82-4

Subject: Landlord and Tenant -Application for Leases

Articles and Sections of Maryland Code Affected: Real Property Article, section 8-213

Submitted by: Governor's Landlord-Tenant Laws Study Commission
(Agency and Division)

Attachment Checklist:

* Draft of Body of Bill

* Explanation

* Justification (with relevant statutes and court decisions attached)

* History of Substantially Similar Bills Introduced in Prior Sessions

____ Legal Approval

* Fiscal Estimate of Legislation (DFS Form 31)

Environmental Effects (Check One):

____ Environmental Assessment Form Attached or

* Environmental Assessment Form not required by the Maryland Environmental Policy Act

Contact Persons:

Persons able to Discuss and Testify on Proposal: C. Laurence Jenkins, Jr., Commission Chairman, 222 East Redwood, Suite 300 Baltimore 21202 Telephone No. (301) 752-6597

Legal Advisor: Commission Reporter, Steven G. Davison, Univ. of Baltimore Law School, 1420 N. Charles, Baltimore 21201 Telephone No. (301) 625-3397

Sponsorship Preference:

* Senate ____ House ____ Either

Date: Aug 19, 1982

C Laurence Jenkins Jr
(Signature of Agency Head)

NOTE: Please forward two copies of this form with attachments to:

Chief Legislative Officer, Executive Department, Room 202, State House, Annapolis, Maryland 21404 (Telephone No. 269-3336).

Typed by dyd/Suppert
Proofread by
Corrected by
Checked by

By: (Departmental – Landlord Tenant Comm.)

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant – Application for Leases

FOR the purpose of allowing a landlord to charge a nonrefundable application fee; allowing a landlord to charge certain fees if an applicant has signed an application; providing that an applicant may cancel an application for lease under certain circumstances; providing that a landlord must return a refundable fee within a specified period of time; providing that a landlord may be liable to an applicant for a certain amount; and generally relating to the fees that a landlord may charge an applicant for a rental, the applicant's right to cancel an application, and the refunding of fees to the applicant.

BY repealing and reenacting, with amendments,

Article – Real Property

Section 8–213

Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
Numerals at right identify computer lines of text.

(1981 Volume and 1982 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) of the Annotated Code of Maryland read(s) as follows:

Article - Real Property

8-213.

(a) An application for a lease shall contain a statement which explains:

(1) The liabilities which the [tenant] APPLICANT incurs upon signing the application; and

(2) The provisions of [subsections (b), (c), and (d) of] this section.

[(b) (1) If a landlord requires from a prospective tenant any fees other than a security deposit as defined by § 8-203(a) of this subtitle, and these fees exceed $25, then the landlord shall return the fees, subject to the exceptions below, or be liable for twice the amount of the fees in damages. The return shall be made not later than 15 days following the date of occupancy or the written communication, by either party to the other, of a decision that no tenancy shall occur.

(2) The landlord may retain only that portion of the fees actually expended for a credit check or other expenses arising out of the application, and shall return that portion of the fees not actually expended on behalf of the tenant making application.

(c) If, within 15 days of the first to occur of occupancy or signing a lease, a tenant decides to terminate the tenancy, the landlord may also retain that portion of the fees which represents the loss of rent, if any, resulting from the tenant's action.

(d) This section does not apply to any landlord who offers four or less dwelling units for rent on one parcel of property or at one location, or to seasonal or condominium rentals.]

(B) (1) A LANDLORD MAY NOT REQUIRE FROM AN APPLICANT A NONREFUNDABLE APPLICATION FEE OF MORE THAN $25 OR 10 PERCENT OF 1 MONTH'S RENT, WHICHEVER IS GREATER.

(2) OTHER FEES MAY BE REQUIRED BY A LANDLORD ONLY IF AN APPLICANT SIGNS AN APPLICATION THAT PARTICULARLY DESCRIBES THE PREMISES TO BE RENTED AND THE DATE ON WHICH OCCUPANCY OF THE PREMISES IS TO BEGIN. THESE ADDITIONAL FEES SHALL BE REFUNDABLE AS PROVIDED UNDER SUBSECTION (C) OF THIS SECTION.

(C)(1) IF THE LANDLORD REJECTS AN APPLICATION FOR A LEASE OR IF THE APPLICANT NOTIFIES THE LANDLORD OF HIS CANCELLATION OF THE APPLICATION PRIOR TO THE LANDLORD NOTIFYING THE APPLICANT OF ACCEPTANCE OR REJECTION OF HIS APPLICATION, THE OBLIGATION OF THE APPLICANT UNDER THE APPLICATION TERMINATES AND ANY REFUNDABLE FEES GIVEN TO THE LANDLORD SHALL BE REFUNDED WITHIN 21 DAYS OF THE NOTICE OF REJECTION OR CANCELLATION.

(2) IF THE APPLICANT NOTIFIES THE LANDLORD OF HIS CANCELLATION OF THE APPLICATION AFTER THE LANDLORD HAS NOTIFIED THE APPLICANT OF ACCEPTANCE OF THE APPLICATION, THE OBLIGATION OF THE APPLICANT UNDER THE APPLICATION TERMINATES, BUT THE LANDLORD MAY WITHHOLD THAT PORTION OF THE REFUNDABLE FEE WHICH REPRESENTS THE ACTUAL LOSS OF RENT THAT RESULTS FROM THE CANCELLATION BY THE APPLICANT.

(3) IF ANY PORTION OF THE REFUNDABLE FEE IS WITHHELD, THE LANDLORD SHALL SEND BY FIRST-CLASS MAIL TO THE APPLICANT A LIST OF THE AMOUNT OF LOST RENT CLAIMED UNDER SUBSECTION (C)(2) OF THIS SECTION AND ANY PORTION OF THE REFUNDABLE FEE THAT IS DUE THE APPLICANT. THE LIST AND REFUND SHALL BE SENT WITHIN 60 DAYS AFTER THE DATE OF OCCUPANCY OR WITHIN 10 DAYS OF LEASING OF THE PREMISES, WHICHEVER IS SOONER.

(D) IF THE LANDLORD, WITHOUT A REASONABLE BASIS, FAILS TO COMPLY WITH THIS SECTION, HE IS LIABLE FOR UP TO TWICE THE AMOUNT OF ANY REFUNDABLE FEE THAT WAS WRONGFULLY WITHHELD, PLUS ATTORNEY'S FEES.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act will take effect July 1, 1983.

1. Explanation.

This bill would amend section 8-213 (Applications for Leases) of the Real Property Article.

This bill initially would amend section 8-213(a)(1) by changing "tenant" to "applicant". The bill does not define "applicant", but an "applicant" is a prospective tenant who will become a tenant if the landlord accepts his application for a lease and executes a lease with him.

This bill also would amend section 8-213(a)(2) to require that an application for a lease contain all provisions of section 8-213, not the provisions of subsections (b), (c) and (d) of section 8-213. This amendment is a stylistic amendment that simplifies the language of section 8-213(a)(2).

The bill also would repeal subsections (b), (c) and (d) of section 8-213 and would enact new subsections (b), (c) and (d) of section 8-213.

The new subsection (b)(1) that would be enacted by this bill would allow a landlord to charge an applicant (a prospective tenant) a non-refundable application fee of not more than $25.00 or 10% of one month's rent, whichever is greater. This non-refundable application fee is intended to cover the costs incurred by the landlord in processing a prospective tenant's application for a lease. Such processing costs may include charges for a credit check of the applicant by a credit bureau, wages or salary of employees of the landlord who process applications for leases, and rent that is lost while the landlord holds the premises, which the applicant wishes to rent, off the market while the application is processed.

The new subsection (b)(2) that would be enacted by this bill would allow a landlord to charge an applicant other fees (such as an amount that would constitute a security deposit if a lease is executed) only if the applicant signs an application particularly describing the premises to be rented and the date occupancy is to begin. Subsection (b)(2) of the bill also provides that such additional fees are refundable as provided subsection (c) of the bill.

This bill thus classifies application fees as either non-refundable fees (which are governed by subsection (b)(1)) and refundable fees (which are governed by subsections (b)(2) and (c) of the bill). The non-refundable

fees specified by subsection (b)(1) of the bill may be kept by a landlord even if the applicant withdraws his application before it is accepted or rejected by the landlord or the landlord rejects the application and refuses to execute a lease with the applicant.

Subsection (c)(1) of the bill provides that the obligation of an applicant under the application terminates if the application is rejected or if the applicant notifies the landlord of his cancellation of the application prior to the landlord notifying the applicant of his acceptance or rejection of the application.

If the application is rejected or if the applicant cancels his application prior to the landlord notifying the applicant of acceptance or rejection of his application, any refundable fees (fees specified by subsection (b)(2) of the bill) would be required to be returned by the landlord to the applicant within 21 days of the notice of rejection or cancellation. Subsection (c)(1) of the bill.

Subsection (c)(2) of the bill provides that if the applicant notifies the landlord of his cancellation of the application after the landlord has notified the applicant of acceptance of the application, the obligation of the applicant under the application terminates, but the landlord may withhold that portion of the refundable fee which represents the actual loss of rent that results from the cancellation by the applicant.

Subsection (c)(3) of the bill provides that if any portion of the refundable fee (as defined by subsection (b)(2) of the bill) is withheld by a landlord, the landlord is required to send to the applicant by first class mail, a list of the amount of lost rent claimed under subsection (c)(2) of the bill, and any portion of the refundable fee that is due the applicant, within 60 days after the date of occupancy of the leased premises in question or within 10 days of leasing of the premises in question, whichever is sooner.

Finally, subsection (d) of the bill provides that if a landlord, without a reasonable basis, fails to comply with section 8-213, he is liable for up to twice the amount of any refundable fee that was wrongfully withheld, plus attorney's fees.

2. Justification.

Section 8-213 of the Real Property Article, which this bill would amend, has received many varied interpretations by judges, lawyers, and landlords, because of ambiguities in the statute's language. This bill would resolve these problems while continuing to regulate the abuses sought to be prevented by the bill.

One problem with section 8-213 that this bill would remedy is that 8-213 (a)(1) refers to a "tenant" incurring liabilities by signing an application for a lease. "Tenant" is a misleading term in this context, because a person becomes a tenant only when a lease is executed, not when an application for a lease is signed.

Similar problems are presented by section (b)(1)'s reference to a prospective tenant being required to pay a "security deposit" as an application fee. This terminology is inconsistent with the definition of "security deposit" under Real Prop. Art. §8-203(a) as money paid by a tenant to a landlord. As noted in the paragraph above, a person who files an application for a lease is not a tenant until a lease is executed. This bill would remove this improper terminology from section 8-213.

The present wording of subsections (b)(1) and (b)(2) of section 8-213 is unclear as to whether the landlord can retain $25.00 in addition to the amount actually expended for a credit check and other expenses incurred in processing an application when an application fee exceeds $25.00. Subsection (b)(1) requires a landlord to return only application fees other than a "security deposit" that exceed $25.00, while subsection (b)(2) requires a landlord to return that "portion of the fees not actually expended on behalf of the tenant making the application." This bill resolves this problem by clearly defining what portions of an application fee may be retained by a landlord and what portion must be refunded.

The Commission believes that the amount of an application fee that is non-refundable under this bill ($25.00 or 10% of one month's rent, whichever is greater) is an amount that would fairly reimburse landlords for personnel and administrative costs in processing applications, such as the cost of a credit check on the applicant, and lost rental while the premises are held off the market during processing of the application.

Section 213 also presently does not explicitly give an applicant a right to cancel an application which he has signed. This bill does explicitly give an applicant the right to cancel an application after he signs it, but makes an applicant liable for rent which the landlord lost while processing the application if the applicant cancels his application after the landlord has notified him that his application has been accepted. The Commission believes that this provision of the bill fairly balances the rights of landlords and prospective tenants. The Commission believes that the bill's right of cancellation is fair to both applicants and landlords, because it gives the applicant a reasonable period of time to further consider his application (until receiving approval of his application) without forfeiting any portion of a refundable fee, while allowing the landlord to be compensated for lost rent if an applicant waits until after acceptance of his application to cancel his application.

This bill provides that if a landlord withholds any portion of a refundable fee, he must send by first class mail to the applicant a list of the amount of lost rent that he is withholding from the refundable fee, within 60 days after occupancy of the premises was to have begun or within 10 days of leasing the premises, whichever is sooner. The 60 day maximum period was established because a refundable fee might be as much as two months rent (the maximum permissible security deposit under section 8-203 of the Real Property Article); if the premises remain vacant for 60 days, a landlord would be entitled to recover two months or 60 days lost rent from the refundable fee. In this situation, the landlord would not know how much lost rent he could withhold from the refundable fee until two months or 60 days from the date the applicant was to begin occupancy.

This bill would also repeal present section 8-213(c), which provides that if a tenant decides to terminate the tenancy within 15 days of the occupancy of the premises or signing the lease, the landlord may retain from the fee any lost rent resulting from the tenant's action, in addition to expenses arising out of the application. This section should be repealed, because this provision would appear to apply even if a tenant had a right to terminate the tenancy under the common law (such as under the constructive eviction doctrine) or under rent escrow, implied warranty of habitability, or other statutes. In addition, this provision appears to apply even though the landlord also may have recovered lost rent from a security deposit pursuant to section 8-203.

Finally, this bill would make section 8-213 applicable to all landlords; section 8-213 presently does not apply to any landlord who offers four or less dwelling units for rent on one parcel of property or at one location, or to seasonal or condominium rentals. The Commission believes that all landlords should be subject to the duties under the bill, because the rights established by the bill are of great importance to all tenants.

3. History.

A similar version of this bill was introduced as HB 451 of the 1982 Regular Session, HB 142 of the 1981 Regular Session, and HB 1384 of the 1980 Regular Session, which received unfavorable reports from the House Judiciary Committee. This bill corrects ambiguities that were present in these earlier versions of the bill.

4. Legal Approval.

No Assistant Attorney General is assigned to the Commission.

5. Fiscal Note.

See attached DFS Form 31.

6. Environmental Effects.

None.

7. Contact Person.

Professor Steven Davison, Reporter for the Governor's Landlord-Tenant Laws Study Commission, University of Baltimore School of Law, 1420 N. Charles Street, Baltimore, Maryland, 21201, (301)625-3397.

LTC #82-4

FISCAL ESTIMATE OF LEGISLATION

Mr. Dennis M. Lapchinsky, Supervising Analyst, Department of Fiscal Services, Maryland General Assembly, 90 State Circle, Room 226, Annapolis, Maryland 21401

FROM: Governor's Landlord-Tenant Laws Study Commission

DATE: August 31, 1982

RE: BILL/RES. NO. _____ COMMITTEE REFERRAL: _____

SHORT TITLE: Landlord and Tenant - Application for Leases

Prepared By: Steven C. Davison Title: Reporter Tel: (301) 625-3397

* *

☒ Has no fiscal impact on revenues or expenditures of this agency.

☐ Will provide an estimated additional revenue increase or reduction as follows:

	General Funds	Special Funds	Federal Funds	Local Funds	TOTAL
First Year					
Second Year					
Third Year					
Fourth Year					
Fifth Year					

☐ Will provide an estimated additional expenditure increase or reduction in funds as follows:

	General Funds	Special Funds	Federal Funds	Local Funds	TOTAL
First Year					
Second Year					
Third Year					
Fourth Year					
Fifth Year					

☐ Net Effect (subtract expenditures from revenues):

	General Funds	Special Funds	Federal Funds	Local Funds	TOTAL
First Year					
Second Year					
Third Year					
Fourth Year					
Fifth Year					

(USE REVERSE SIDE OF FORM FOR FISCAL NOTE DETAIL)

COMMENTS/REMARKS: _____

PROPOSAL FOR LEGISLATION
1983 SESSION

Proposal Number: LTC # 82-5

Subject: Landlord and Tenant - Essential Services

Articles and Sections of Maryland Code Affected: Article 27, section 338A

Submitted by: Governor's Landlord-Tenant Laws Study Commission
(Agency and Division)

Attachment Checklist:

* Draft of Body of Bill

* Explanation

* Justification (with relevant statutes and court decisions attached)

* History of Substantially Similar Bills Introduced in Prior Sessions

___ Legal Approval

* Fiscal Estimate of Legislation (DFS Form 31)

Environmental Effects (Check One):

___ Environmental Assessment Form Attached or

* Environmental Assessment Form not required by the Maryland Environmental Policy Act

Contact Persons:

Persons able to Discuss and Testify on Proposal: C. Laurence Jenkins, Jr., Commission Chairman, 222 East Redwood, Suite 300 Baltimore 21202 Telephone No. (301) 752-6597

Legal Advisor: Commission Reporter, Steven G. Davison, Univ. of Baltimore School of Law, 1420 N. Charles, Baltimore 21201 Telephone No. (301) 625-3397

Sponsorship Preference:

* Senate ___ House ___ Either

Date: Aug 10, 1982

C. Laurence Jenkins
(Signature of Agency Head)

NOTE: Please forward two copies of this form with attachments to:

Chief Legislative Officer, Executive Department, Room 202, State House, Annapolis, Maryland 21404 (Telephone No. 269-3336).

Typed by dyd/Supplee
Proofread by
Corrected by
Checked by

By: (Departmental - Landlord Tenant Comm.)

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant - Essential Services

FOR the purpose of prohibiting the failure of a landlord, owner, or manager of a residential leased premises to supply or restore an essential service; defining the term "essential service"; prohibiting denial of ingress or egress to leased premises to persons entitled to use the premises; providing certain exceptions; providing a penalty for violation of these provisions; and generally relating to the provision of essential services for residential leased premises.

BY adding to

Article 27 - Crimes and Punishments

Section 338A to be under the new subheading "Landlord and Tenant"

Annotated Code of Maryland

(1976 Replacement Volume and 1982 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
Numerals at right identify computer lines of text.

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) of the Annotated Code of Maryland read(s) as follows:

Article 27 – Crimes and Punishments

LANDLORD AND TENANT

338A.

(A) FOR THE PURPOSE OF THIS SECTION AN "ESSENTIAL SERVICE" MEANS THE HEAT, RUNNING WATER, HOT WATER, ELECTRICITY, GAS, REFRIGERATOR, OR STOVE TO WHICH A TENANT IS ENTITLED UNDER THE EXPRESS OR IMPLIED TERMS OF HIS LEASE.

(B) A LANDLORD, OWNER, OR MANAGER OF A RESIDENTIAL LEASED PREMISES MAY NOT KNOWINGLY AND WILLFULLY:

(1) FAIL TO SUPPLY AN ESSENTIAL SERVICE TO THE LEASED PREMISES;

(2) FAIL TO RESTORE AN ESSENTIAL SERVICE TO THE LEASED PREMISES, AFTER HAVING KNOWLEDGE OF ANY INTERRUPTION AND AFTER HAVING REASONABLE TIME TO RESTORE SUCH SERVICES; OR

(3) DENY INGRESS OR EGRESS TO THE LEASED PREMISES TO A TENANT, SUBTENANT, ASSIGNEE, OR TO ANY OTHER PERSON WHO IS ENTITLED BY THE LEASE, SUBLEASE, OR ASSIGNMENT TO USE THE PREMISES.

(C) THIS SECTION DOES NOT APPLY TO:

(1) AN INTERRUPTION OF AN ESSENTIAL SERVICE THAT IS CAUSED BY A DELIBERATE OR NEGLIGENT ACTION BY THE TENANT, A MEMBER OF HIS FAMILY, OR BY A PERSON WHO WAS ON THE LEASED PREMISES WITH THE CONSENT OF THE TENANT OR A MEMBER OF HIS FAMILY;

(2) AN INTERRUPTION OF AN ESSENTIAL SERVICE THAT IS CAUSED BY THE FAILURE OF THE TENANT TO PAY THE UTILITY BILL FOR THE INTERRUPTED SERVICE, IF, UNDER THE TERMS OF THE LEASE, THE BILL IS THE RESPONSIBILITY OF THE TENANT; OR

(3) THE INTERRUPTION OF AN ESSENTIAL SERVICE BY THE LANDLORD FOR A REASONABLE PERIOD OF TIME FOR THE PURPOSE OF MAKING NECESSARY REPAIRS OR PERFORMING REQUIRED MAINTENANCE.

(D) THIS SECTION SHALL NOT AFFECT ANY PUBLIC LOCAL LAW OR ORDINANCE ENACTED BY ANY COUNTY OR BALTIMORE CITY TO GOVERN THE PROVISION OF ESSENTIAL SERVICES.

(E) ANY PERSON WHO VIOLATES ANY PROVISION OF THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $100.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1983.

1. Explanation.

This bill would add a new section to Article 27 (Crimes and Punishments) of the Annotated Code of Maryland. This new section would make it a misdemeanor for any landord, owner, or manager of residential leased premises to knowingly and willfully fail to supply an "essential service" (defined as heat, running water, hot water, electricity, gas refrigerator, or stove, to which a tenant is entitled under the express or implied terms of his lease) to the leased premises; to knowingly and willfully fail to restore essential services to the leased premises after having knowledge of interruption of the services and after having had reasonable time to restore such services;or to knowingly and willfully deny ingress or egress to the leased premises to a tenant, subtenant, assignee, or other person who is entitled by the lease, sublease, or assignment to use the premises.

A person convicted of committing a misdemeanor in violation of this section could be punished by a fine of up to $100.00, but could not be jailed or imprisoned.

This new section would not apply when the interruption of essential services is caused by the deliberate or negligent action of the tenant, a member of the tenant's family, or a person on the leased premises with the tenant's consent; or by the failure of a tenant to pay a utility bill for the interrupted service, when the tenant is responsible under the lease to pay such bill.

This new section also would not apply when a landlord interrupts an essential service for a reasonable period of time for the purpose of making necessary repairs or performing required maintenance.

This bill is similar to provisions in Baltimore City, P.L.L. §9-15 (1981), and Baltimore County, Baltimore County Code §§ 16-4, 16-5 (Supp. 1976). Although Baltimore City provides for imprisonment of up to ten days in addition to a fine of up to $50.00, no landlord has ever been imprisoned for violation of this section. This bill provides that it does not preempt public local laws or ordinances of a similar nature, so that these Baltimore City and Baltimore County laws would not be preempted by this bill.

2. Justification.

This bill is proposed by the Commission because the Commission was advised that some landlords attempt to evict or eject tenants by intentionally interrupting essential services such as heat, or locking a tenant out of his premises, instead of resorting to legal process under section 8-401 (Failure to Pay Rent) or section 8-402 (Holding Over) of the Real Property Article. The Commission believes that this bill would deter such conduct because the similar statutes in Baltimore City and Baltimore County have been reported to have deterred such conduct.

Sections 8-401 and 8-402 of the Real Property Article do not prohibit self-help attempts at eviction or ejectment, although section 8-209(a)(6) of the Real Property Article prohibits lease provisions authorizing self-help eviction. Maryland common law has not addressed the question of self-help ejectment or eviction.

This bill would also protect tenants against a landlord who, in order to avoid expenses, intentionally fails to supply essential services to which a tenant is entitled under his lease, or intentionally fails to restore essential services such as heat after equipment breakdowns or malfunctions; or who intentionally does not pay utility bills, with the result that a utility company stops providing essential services to leased premises. The Commission was advised that some landlords act in this manner. The Commission believes that this bill would also deter such conduct by landlords.

3. History.

This bill was introduced as HB 452 of the 1982 Regular Session and as HB 422 of the 1981 Regular Session, which received unfavorable reports from the House Judiciary Committee.

4. Legal Approval.

No Assistant Attorney General is assigned to the Commission.

5. Fiscal Note.

See attached DFS Form 31.

6. Environmental Effects.

None.

7. Contact Person.

Professor Steven Davison, Reporter for the Governor's Landlord-Tenant Laws Study Commission, University of Baltimore School of Law, 1420 N. Charles Street, Baltimore, Maryland, 21201, (301)625-3397.

FISCAL ESTIMATE OF LEGISLATION

LTC # 82-5

TO: Ramagar, Fiscal Note System, Department of Fiscal Services
Maryland General Assembly, 90 State Circle, Room 226, Annapolis, Maryland 21401

FROM: Governor's Landlord - Tenant Laws Study Commission

DATE: August 31, 1982

BILL/RES. NO. _____ COMMITTEE REFERRAL: _____

SHORT TITLE: Landlord and Tenant - Essential Services

PREPARED BY: Steven C. Davison Title: Reporter Tel: (301) 625-3397

☒ Has no fiscal impact on revenues or expenditures of this agency.

☐ Will provide an estimated additional revenue increase or reduction as follows:

	General Funds	Special Funds	Federal Funds	Local Funds	TOTAL
First Year					
Second Year					
Third Year					
Fourth Year					
Fifth Year					

☐ Will require an estimated additional expenditure increase or reduction in funds as follows:

	General Funds	Special Funds	Federal Funds	Local Funds	TOTAL
First Year					
Second Year					
Third Year					
Fourth Year					
Fifth Year					

☐ Net Effect (subtract expenditures from revenues):

	General Funds	Special Funds	Federal Funds	Local Funds	TOTAL
First Year					
Second Year					
Third Year					
Fourth Year					
Fifth Year					

(USE REVERSE SIDE OF FORM FOR FISCAL NOTE DETAIL)

COMMENTS/EXPLANATION: _____

GOVERNOR'S LANDLORD-TENANT

LAWS STUDY COMMISSION

MODEL LEASE FOR SINGLE FAMILY HOMES

Approved : May 12, 1981

NOTICE :
THIS LEASE IS BASED ON MARYLAND LAW AS OF
JUNE 30, 1981

SINGLE FAMILY RESIDENTIAL LEASE AGREEMENT

THIS DOCUMENT IS A LEGAL, BINDING CONTRACT AND LEASE AND SHOULD BE REVIEWED CAREFULLY. FOR AN EXPLANATION OF ANY CLAUSE, SEEK LEGAL ADVICE. THIS LEASE CONTAINS STATEMENTS OF RIGHTS AND DUTIES CREATED BY MARYLAND STATUTE.

1. DEFINITIONS:

The following terms when used in this lease have the following meanings:

A. "Premises": The single family home, lot, and appliances in the home, at the following address:

_____

B. "Appliances":

The items checked below:

Stove _____

Refrigerator _____

Number Window Air Conditioner(s). _____

Central Air Conditioning _____

Clothes Washer _____

Clothes Dryer _____

Lawnmower _____

Dishwasher _____

Garbage Disposal _____

C. "First Day": _____.

D. "Last Day": _____.

E. "Monthly Rent Payment": _____.

F. "Tenant": The following person(s):

_____

_____

"You" refers to the Tenant in this lease. The persons listed below have all the rights of the tenant under this lease during the Tenant's tenancy:

(Full Name)	(age, if (under 18)	(relationship, if any)
_____	_____	_____
_____	_____	_____
_____	_____	_____

G. "Landlord": The following person(s):

_____

at the following address:

_____

and the Landlord's employees and agents.

"We" and "Us" refer to the Landlord in this lease.

2. LEASED PREMISES AND LEASE TERM:

We shall lease the premises to you for a term beginning on the First Day and ending on the Last Day.

3. ADVANCE PAYMENTS:

Before taking possession of the premises, you have paid us $_____, as itemized below:

a. Security deposit: $_____.

b. Monthly rent payment: $_____.

c. Pro-rated rent for _____days: $_____.

4. RENT:

You shall pay the monthly rent payment no later than the _____ day of each month during the term of this lease, beginning on:

_____ _____ _____,
(Month) (Day) (Year)

in the following manner:

_____

_____

5. LATE CHARGES:

You shall pay a charge of $_____ if the monthly rent payment is paid after the _____ day of the month. This charge is not more than 5% of the monthly rent payment.

6. SECURITY DEPOSIT:

We have received a security deposit of $_____ from you. The amount of the security deposit may not be more than two month's rent or $50.00 whichever is greater.

Within 30 days after the termination of this lease, we shall send you an itemized list of the amount, if any, that we shall be withholding from the security deposit for unpaid rent, damages due to your breach of this lease, and damage to the premises in exces of ordinary wear and tear caused by you or your family, agents, employees, or social guests. If we fail to comply with this requirement, we lose the right to withhold any part of the security deposit.

Within 45 days after the termination of this lease, we shall return to you any amount of the security deposit not withheld as specified in the itemized list. If we fail to return your deposit within 45 days, you have the right to sue us for up to 3 times the security deposit plus reasonable attorney's fees.

7. WHEN YOU MOVE IN:

We shall provide you with a written list of all existing damages to the premises if you request this list from us in writing within 15 days after you occupy the premises. If we fail to supply this list after your request it, we may be liable for up to 3 times the amount of your security deposit.

8. WHEN YOU MOVE OUT:

You have the right to be present when we inspect the premises in order to determine if any damage was done to the leased premises during the term of this lease, if you notify us by certified mail of your intention to move, the date of moving, and your new adress. You must mail us this notice at least 15 days prior to your date of moving. After we receive this notice, we will notify you by certified mail of the date and time when we will inspect the premises. The date of our inspection will be within five days before or five days after the date of moving specified in your notice. If we fail to comply with this requirement, we lose the right to withhold any part of the security deposit for damages.

9. LANDLORD'S DUTIES:

A. POSSESSION

We shall deliver possession of the premises to you on the First Day. If we do not deliver possession of the premises to you on the first day, you are not required to pay the monthly rent payments due under this lease until we

deliver possession to you, and you may end this lease by giving us written notice of termination before we deliver possession to you. You may also be able to recover from us the extra expenses you incur because you are not able to get into the apartment on the First Day.

B. YOUR USE OF THE PREMISES AND COMMON AREAS:

We shall not interfere with your use and enjoyment of the premises during the term of this lease.

C. CONDITION OF THE PREMISES:

We shall deliver the premises to you in a condition that is reasonably safe for habitation with the furnace and appliances in good working order.

D. REPAIRS AND MAINTENANCE:

We shall:

1. Pay for the cost of making repairs to the furnace, the plumbing, elecrical system, and the appliances if they have minor breakdowns as a result of old age (old age to be determined by the report of the serviceman, plumber, electrician, or repairman who is hired by us to make repairs);

2. Promptly replace the furnace, plumbing, electrical system, sewage line, and appliances if they breakdown as a result of old age and cannot be repaired (as determined by the report of the serviceman, plumber, electrician or repairman who is hired by us to make repairs).

10. TENANT'S DUTIES:

A. MAINTENANCE OF THE PREMISES:

You shall:

1. Keep the premises clean and safe;

2. Use all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances, including elevators, in the premises and development, in a proper manner;

3. Maintain in good working order, at your own expense, the furnace, the plumbing, electrical systme, sewage line, and other appliances on the premises, except where we have have the duty to do so.

4. Not deliberately or negligently waste or damage he premises or knowingly allow any person to do so;

5. Repair or pay for the repair, of waste or damage to the premises, damage to the plumbing on the premises (including stoppage of drain pipes and the sewage line, and bursting of pipes by freezing), and damage to the appliances, that are caused by intentional or negligent acts by you or your family, agents, employees or social guests;

6. Comply with all federal, state and local housing, health, fire, and police statutes, ordinances, and regulations applicable to the premises;

7. Properly maintain the lawn, hedges, flower beds, shrubbery, and garden, if any, keeping them watered and weeded, the lawn cut, and the shrubbery trimmed;

8. Remove, or cause to be removed, snow and ice on sidewalks, walkways, and steps on the premises.

B. OCCUPANCY:

You shall permit no more than _____ persons to reside in the premises at any one time.

C. SUBLEASE OR ASSIGNMENT:

You shall not allow anyone to take over the premises as a tenant in your place (e.g., sublease, transfer, or assign the premises) without our written consent.

D. USE OF PREMISES:

You shall:

1. Use the premises only for non-business purposes;

2. Not do or permit any hazardous act which might cause fire or increase the rate of insurance on the premises.

E. UTILITIES:

You shall pay all bills for water, gas, sewage, trash collection, fuel oil gas, and electricity for the premises, and to make all necessary deposits for these utilities and services at the offices of the respective utilities and services.

11. INSURANCE:

We suggest that you purchase renter's insurance to portect your property if damaged or stolen.

12. ACCESS:

We have the right to enter the premises at any reasonable time in order to inspect the premises, to make necessary or agreed upon repairs, alterations, or improvements, to supply necessary or agreed services, or to exhibit the premises to prospective or actual purchasers, mortgages, tenants, workmen, or contractors. We also have the right to post "For Rent" or For Sale" signs on the premises.

Except in an emergency, we shall give you at least two days notice before we enter the premises, and shall not enter the premises unless you are present.

13. NOTICE:

you shall send all notices to us to:

_____

_____.

_____ _____
(Witness) (Signature of Landlord)

_____
(Date)

_____ _____
(Witness) (Signature of Tenant)

_____
(Date)

14. REPOSSESSION

We may repossess the premises pursuant to judicial process you breach this lease.

15. AUTOMATIC RENEWAL:

UNLESS EITHER WE OR YOU GIVE THE OTHER WRITTEN NOTICE, AT LEAST _____ DAYS BEFORE THE LAST DAY, THAT HE DOES NOT WISH TO CONTINUE THIS LEASE FOR A TERM OF THE SAME LENGTH, THIS LEASE WILL AUTOMATICALLY RENEW FOR ANOTHER TERM. YOU AGREE THAT YOU HAVE READ AND UNDERSTAND THIS SECTION BY PLACING YOUR SIGNATURE, INITIALS, OR WITNESSED MARK IN THIS SPACE:

_____

THIS LEASE WAS PREPARED AS A PUBLIC SERVICE BY THE GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION OF MARYLAND.

GOVERNOR'S LANDLORD-TENANT

LAWS STUDY COMMISSION

MODEL LEASE FOR MULTI-UNIT RESIDENTIAL RENTAL BUILDING (HIGH RISE APARTMENTS, GARDEN APARTMENTS, ETC.)

Approved : May 12, 1981

NOTICE :
THIS LEASE IS BASED ON MARYLAND LAW AS OF JUNE 30, 1981

MULTI-UNIT RESIDENTIAL LEASE AGREEMENT

THIS DOCUMENT IS A LEGAL, BINDING CONTRACT AND LEASE AND SHOULD BE REVIEWED CAREFULLY. FOR AN EXPLANATION OF ANY CLAUSE, SEEK LEGAL ADVICE. THIS LEASE CONTAINS STATEMENTS OF RIGHTS AND DUTIES CREATED BY MARYLAND STATUTE.

1. DEFINITIONS:

The following terms when used in this lease have the following meanings:

A. "Premises": Apartment #_____ and the appliances at the following development at the following address:

_____

B. "Development": The structure of which the premises is a part and common areas owned by the Landlord and operated as an integral unit.

C. "Common Areas": Those areas and facilities being part of the Development owned by the Landlord and used by or for the benefit of the Tenant, his guests, employees, agents and invitees, which include by way of example only, lawns, parking areas, storage areas, recreational areas and facilities, laundry areas, rooms, and facilities. "Common areas" does not include any tenant's premises.

D. "Appliances":

The items checked below:

Stove _____

Refrigerator _____

Air Conditioner _____

Dishwasher _____

Garbage Disposal _____

E. "First Day": _____.

F. "Last Day": _____.

G. "Monthly Rent Payment": _____.

H. "Tenant": The following person(s):

_____

_____

"You" refers to the Tenant in this lease. The persons listed below have all the rights of the tenant under this lease during the Tenant's tenancy:

(Full Name)	(age, if (under 18)	(relationship, if any)
_____	_____	_____
_____	_____	_____
_____	_____	_____

I. "Landlord": The following person(s):

_____

at the following address:

_____

and the Landlord's employees and agents.

"We" and "Us" refer to the Landlord in this lease.

J. "Utilities": Water, Hot Water, Sewage, Waste, Collection, Electricity, Natural Gas, and Heating Fuel (if other than Natural Gas).

2. LEASED PREMISES AND LEASE TERM:

We shall lease the premises to you for a term beginning on the First Day and ending on the Last Day.

3. ADVANCE PAYMENTS:

Before taking possession of the premises, you have paid us $_____, as itemized below:

a. Security deposit: $_____.

b. Monthly rent payment: $_____.

c. Pro-rated rent for _____days: $_____.

4. RENT:

You shall pay the monthly rent payment no later than the _____ day of each month during the term of this lease, beginning on:

_____ _____ _____,
(Month) (Day) (Year)

in the following manner:

_____

_____

5. LATE CHARGES:

You shall pay a charge of $_____ if the monthly rent payment is paid after the _____ day of the month. This charge is not more than 5% of the monthly rent payment.

6. SECURITY DEPOSIT:

We have received a security deposit of $_____ from you. The amount of the security deposit may not be more than two month's rent or $50.00 whichever is greater.

Within 30 days after the termination of this lease, we shall send you an itemized list of the amount, if any, that we shall be withholding from the security deposit for unpaid rent, damages due to your breach of this lease, and damage to the premises in exces of ordinary wear and tear caused by you or your family, agents, employees, or social guests. If we fail to comply with this requirement, we lose the right to withhold any part of the security deposit.

Within 45 days after the termination of this lease, we shall return to you any amount of the security deposit plus 4% simple interest not withheld as specified in the itemized list. If we fail to return your deposit within 45 days, you have the right to sue us for up to 3 times the security deposit plus reasonable attorney's fees.

7. WHEN YOU MOVE IN:

We shall provide you with a written list of all existing damages to the premises if you request this list from us in writing within 15 days after you occupy the premises. If we fail to supply this list after you request it, we may be liable for up to 3 times the amount of your security deposit.

8. WHEN YOU MOVE OUT:

You have the right to be present when we inspect the premises in order to determine if any damage was done to the leased premises during the term of this lease, if you notify us by certified mail of your intention to move, the date of moving, and your new adress. You must mail us this notice at least 15 days prior to your date of moving. After we receive this notice, we will notify you by certified mail of the date

and time when we will inspect the premises. The date of our inspection will be within five days before or five days after the date of moving specified in your notice. If we fail to comply with this requirement, we lose the right to withhold any part of the security deposit for damages.

9. LANDLORD'S DUTIES:

A. POSSESSION

We shall deliver possession of the premises to you on the First Day. If we do not deliver possession of the premises to you on the first day, you are not required to pay the monthly rent payments due under this lease until we deliver possession to you, and you may end this lease by giving us written notice of termination before we deliver possession to you. You may also be able to recover from us the extra expenses you incur because you are not able to get into the premises on the First Day.

B. YOUR USE OF THE PREMISES AND COMMON AREAS:

We shall not interfere with your use and enjoyment of the premises and common areas during the term of this lease.

C. CONDITION OF THE PREMISES:

We shall deliver the premises to you in a condition that is reasonably safe for habitation with the appliances in good working order.

D. REPAIRS AND MAINTENANCE:

We shall:

1. Keep the premises in a habitable condition and in good repair;

2. Keep all common areas in a clean and safe condition;

3. Keep all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities supplied by us working properly;

4. Provide suitable containers for disposal of trash and arrange for their collection as needed.

E. UTILITIES:

We shall provide water and sewage service for the premises. We shall also provide the utilities checked below:

Electricity _____
Natural Gas _____
Heating Fuel _____
Hot Water _____

F. STORAGE AND PARKING:

We shall allow you to use the storage and parking areas in the development at no charge.

G. RECREATIONAL FACILITIES:

We shall allow you to use any recreational areas and facilities in the development at no charge.

10. TENANT'S DUTIES:

A. MAINTENANCE OF THE PREMISES:

You shall:

1. Keep the premises clean and safe;

2. Use all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances, including elevators, in the premises and development, in a proper manner;

3. Not deliberately or negligently waste or damage the premises or knowingly allow any person to do so.

B. DAMAGES TO THE PREMISES:

If you, a member of your family, or your guests waste or damage the premises or the development, you shall pay us all costs of the necessary repairs.

C. RULES AND REGULATIONS:

You shall:

1. Comply with any applicable laws, regulations, or guidelines of any governmental authority with respect to the regulation and conservation of fuels;

2. Comply with all reasonable rules and regulations adopted by the landlord and development that have been delivered to you.

You acknowledge by your initials here: _____, that you have received a copy of our existing rules and regulations prior to your occupancy of the premises.

D. OCCUPANCY:

You shall permit no more than _____ persons to reside in the premises at any one time.

E. SUBLEASE OR ASSIGNMENT:

You shall not allow anyone to take over the premises as a tenant in your place (e.g., sublease, transfer, or assign the premises) without our written consent.

-- USE OF PREMISES:

You shall:

1. Use the premises only for non-business purposes;

2. Not keep gasoline, paint, or other flammable material in the development, except as fuel in motor vehicles, or do or permit any hazardous act which might cause fire or increase the rate of insurnace on the development.

G. UTILITIES:

You shall pay for all utilities that we have not agreed to provide.

11. INSURANCE:

We suggest that you purchase renter's insurance to protect your porperty if damaged or stolen.

12. ACCESS:

We have the right to enter the premises at any reasonable time in order to inspect the premises, to make necessary or agreed upon repairs, alterations, or improvements, to supply necessary or agreed services, or to exhibit the premises to prospective or actual purchasers, mortgages, tenants, workmen, or contractors.

Except in an emergency, we shall give you at least two days notice before we enter the premises, and shall not enter the premises unless you are present.

13. NOTICE:

We shall send all notices to you at the premises and you shall send all notices to us to:

_____

_____.

_____ _____

(Witness) (Signature of Landlord)

_____

(Date)

_____ _____

(Witness) (Signature of Tenant)

_____

(Date)

14. REPOSSESSION :

We may repossess the premises pursuant to judicial process if you breach this lease.

15. AUTOMATIC RENEWAL:

UNLESS EITHER WE OR YOU GIVE THE OTHER WRITTEN NOTICE, AT LEAST _____ DAYS BEFORE THE LAST DAY, THAT HE DOES NOT WISH TO CONTINUE THIS LEASE FOR A TERM OF THE SAME LENGTH, THIS LEASE WILL AUTOMATICALLY RENEW FOR ANOTHER TERM. YOU AGREE THAT YOU HAVE READ AND UNDERSTAND THIS SECTION BY PLACING YOUR SIGNATURE, INITIALS, OR WITNESSED MARK IN THIS SPACE:

_____

THIS LEASE WAS PREPARED AS A PUBLIC SERVICE BY THE GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION OF MARYLAND.

EXPLANATION OF
MODEL LEASES FOR
SINGLE FAMILY HOMES AND
MULTI-UNIT RESIDENTIAL RENTAL BUILDINGS
APPROVED BY THE
GOVERNOR'S LANDLORD-TENANT LAWS
STUDY COMMISSION

I

On May 12, 1981, the Maryland Governor's Landlord-Tenant Laws [illegible] unanimously approved a Model Lease for Multi-Unit Residential Rental Buildings and a Model Lease for Single Family Homes. Most of the sections of these two model leases are identical, but they do differ in some sections. Consequently, this brochure explains both model leases, with differences in the two model leases highlighted.

II

GENERAL INTRODUCTION

These two model leases include all lease provisions that are required by Maryland statutory law to be included in residential leases, exclude lease provisions that Maryland statutory law prohibits in leases for residential dwellings, and include other provisions that the Commission believes result in leases that fairly balance the rights of landlords and tenants.

These model leases differ from most leases used by landlords renting single family homes and units in multi-unit residential dwellings, by being drafted to the greatest extent possible in "plain" English understandable to laymen; and by having the "Definitions" section, the first section in the model leases, contain the most significant provisions of a lease, such as a description of the leased premises, the monthly rent payment, and the first and last day of the term of the lease. One example of the "plain" English used in the model leases is the use of "We" instead of "Landlord" and "You" instead of "Tenant". Another feature of the model leases is that bold headings identify the subject matter of each section of the leases.

These model leases are organized by having, after the Definitions section, sections that specify the Leased Premises, the Lease Term, Advance Payments of rent and security deposit received by the landlord, the Monthly Rent Payment, Late Charges, statutory requirements governing Security Deposits, the Landlord's Duties, the Tenant's Duties, the landlord's rights to Access of the leased premises, and renewal of the lease. The model leases precisely specify the landlord's and the tenant's duties with respect to repair and maintenance of the leased premises, and with respect to provision of and payment for utilities.

These model leases comply with Maryland statutory and common law as of June 30, 1981. Before using these model leases, however, you should make sure that you have the latest edition of the model lease in question.

These model leases may be modified by adding or deleting provisions, so long as lease provisions prohibited by Maryland law are not included (a section of this brochure discusses prohibited lease provisions) and lease provisions required to be included in a residential lease [illegible] section-by-section analysis of the model leases

cates which sections of the model leases are required to be included in residential leases in Maryland.

Persons using these model leases or using modified versions of these model leases should be aware that the Commission will not in any way be a party to such an executed lease and that the Commission has no legal responsibility or liability to any party to such an executed lease.

III

SECTIONS OF MODEL LEASES THAT MUST BE COMPLETED BY LANDLORD AND TENANT

A

SINGLE FAMILY HOME MODEL LEASE

The blank spaces in sections 1.A, 1.C, 1.D, 1.E, 1.F, 1.G, 3, 4, 5, 6, 10.B, 13, and 15 must be completed in the manner agreed by the landlord and tenant. If the landlord agrees to furnish any appliances listed in section 1.B, the blank spaces next to the appropriate appliances should be checked(✓).

The landlord and tenant should sign and date the model lease in the appropriate spaces after section 14 of the lease. Although the model lease includes spaces for the signatures of witnesses to the signing of the lease by the landlord and the tenant, section 4-101(b) of the Real Property Article of the Maryland Annotated Code does not require a residential lease to be acknowledged by a notary.

B

MULTI-UNIT DWELLING MODEL LEASE

The blank spaces in sections 1.A, 1.E, 1.F, 1.G, 1.H, 1.I, 3, 4, 5, 6, 9.C.2, 10.D, 13, and 15 must be completed in the manner agreed to by the landlord and tenant. If the landlord agrees to furnish any appliances listed in section 1.D, or to furnish any utilities other than water and sewerage service listed in section 9.E, the appropriate blank spaces in sections 1.D and 9.E should be checked(✓).

The landlord and tenant should sign and date the lease in the appropriate blank spaces section 14 of the lease. Although the model lease includes spaces for the signature of witnesses to the signing of the lease by the landlord and tenant, section 4-101(b) of the Real Property Article of the Maryland Annotated Code does not require a residential lease to be acknowledged by a notary.

IV

SECTION-BY-SECTION ANALYSIS OF MODEL LEASES

INTRODUCTORY LANGUAGE

The three sentences in capital letters in each model lease prior to section 1(Definitions) are not required to be included in a residential lease by Maryland law. They have been included by the Commission for the information of persons using these model leases.

SECTION 1 (DEFINITIONS)

Sections 1.A, 1.C, 1.D, 1.F, and 1.G of the Single Family Home

[illegible] and sections 1.A, 1.E, 1.F, 1.H, and 1.I of the Model [illegible] idential Rental Buildings, are required to be included in leases for residential property by section 4-101(b) of the Real Property Article of the Maryland Annotated Code.(Section 4-101(b) of the Real Property Article states that a residential lease "is sufficient" if it contains the name of the lessor and lessee, a description of the property sufficient to identify it with reasonable certainty, and the interest intended to be granted(which would require the lease to specify when the lease term begins and ends).

The other definitions included in section 1 of each model lease are not required to be included in residential leases by Maryland law, but have been included in section 1 of each lease so that section 1 of each model lease contains the most significant provisions of a lease, including the lease term and rent.

The definitions used in section 1 of each model lease are not required to be worded they way they are by Maryland law; landlords are permitted by Maryland law to use different terms and wordings of defined terms than those used in the model leases so long as a residential lease includes the information required to be included in a residential lease by previously discussed section 4-101(b) of the Real Property Article.

SECTION 2(LEASED PREMISES AND LEASE TERM)

Although the exact language contained in section 2 of each model lease is not required to be followed by Maryland law, section 4-101(b) of the Real Property Article, as previously discussed in the analysis of section 1, requires a residential lease to specify when the lease term begins and ends and to describe the premises being leased.

SECTION 3(ADVANCE PAYMENTS)

Section 3 of each model lease is not required to be included in in a residential lease by Maryland law. Section 8-203(c)(1) of the Real Property Article, however, requires a landlord to give a tenant a receipt for the security deposit, which receipt can be included in a written lease. If section 3.a of the model leases is deleted, a landlord must give a tenant a separate receipt for his security deposit. Section 8-208.2 of the Real Property Article requires "every landlord to maintain a records system showing the dates and amounts of rent paid to him by his tenant or tenants and showing also the fact that a receipt of some form was given to each tenant for each cash payment of rent. The information that would be included in sections 3.b and 3.c of the model leases should suffice as the records required by section 8-208.2 with respect to rent paid in advance at the time a lease is signed.

SECTION 4(RENT)

The language used in section 4 of each model lease is not required to be included in a residential lease by Maryland law. Rent can [illegible] required to be paid on a weekly or yearly basis, or at any othe[illegible]y a landlord, as well as on a monthly basis as specified in the model leases. Rent can be required to be paid at any time of the month and at any place, as specified by the landlord.

SECTION 5(LATE CHARGES)

The language used in section 4 of each model lease is not required to be included in a residential lease in Maryland. Section 8-208(a)(3) of the Real Property Article, however, prohibites a residential lease from providing for a penalty for the late payment of rent that is in excess 5% of the amount rent due for the rental period for which the payment is delinquent, except that where rent is paid in weekly installments a penalty for late payment of rent cannot exceed $3 for each late payment or $12 in the aggregate each month.

SECTION 6(SECURITY DEPOSIT)

The first paragraph of section 6 of each model lease is not required to be included in a residential lease by Maryland law, although section 8-203(c)(1) of the Real Property Article required a landlord to give a tenant a receipt for a security deposit, which receipt may be included in a written lease. The second sentence of the first paragraph of section 6 specifies the statutory limit under section 8-203(b)(1) of the Real Property Article on the amount of a security deposit that can be required per dwelling unit, regardless of the number of tenants in that unit.

The second and third paragraphs of each model lease are not required to be included in residential leases in Maryland, but they do state a landlord's duties and liabilities under sections 8-203(h) and 8-203(f) of the Real Property Article, respectively.

As noted in sec & of the model leases, landlords in Maryland are required to pay a tenant 4 per cent simple interest per annum on security deposits of $50 or more, which interest is not compounded and accrues at six month intervals from the date the tenant gives the landlord the security deposit.

SECTION 7(WHEN YOU MOVE IN)

The first sentence of section 7 of each model lease is required to be included in residential leases or in a receipt for a security deposit by section 8-203(c)(3) of the Real Property Article. This language could be deleted from the model leases if it is included in the tenant's receipt for his security deposit. The second sentence of section 7 of each model lease is not required to be included in a residential lease in Maryland, but it does express a landlord's liability under section 8-203(d)(2) of the Real Property Article(although this liability is subject to a setoff for damages and unpaid rent which reasonably could be withheld under section 8-203).

SECTION 8(WHEN YOU MOVE OUT)

The information contained in section 8 of each model lease is required to be given in writing to a tenant at the time of his payment of the security deposit by section 8-203(g)(i) of the Real Property. This information, however, does not have to be included in a written lease; it could be included in the receipt for a security deposit or in [illegible] document if this information is given to the tenant in writing at the time he pays his security deposit to the landlord.

SECTION 9(LANDLORD'S DUTIES)

A. POSSESSION

The language and information contained in section 9.A of each model lease is not required to be included in a residential lease in Maryland, although section 9.A of each model lease does state a landlord's duties and liabilities under section 8-204 of the Real Property Article.

B. YOUR USE OF THE PREMISES AND COMMON AREAS

Section 9.B of each model lease is not required to be included in a residential lease in Maryland. Section 9.B of each model lease, however, expresses the covenant of quiet enjoyment which the common law implicitly gives to each tenant. If a landlord breaches this implied covenant of quiet enjoyment by interferring with a tenant's use or enjoyment of the leased premises, a tenant can move out of the leased premises and terminate the lease prior to the last day of the lease term stated in the model lease.

C. CONDITION OF THE PREMISES

Section 9.C of each model lease is not required to be included in residential leases in Maryland. Section 8-203.1(a)(2)(i) of the Real Property Article, however, which may apply to leased multi-unit residential dwellings but not to leased single family homes, states that "after January 1, 1975, any landlord who offers more than 4 dwelling units for rent on one parcel of property or at one location and who rents by means of written leases, shall ... embody ... in any executed lease ... a statement that the premises will be made available in a condition permitting habitation, with reasonable safety, if that is the agreement, or if that is not the agreement, a statement of the agreement concerning the condition of the premises...." Consequently, if a landlord who rents four or more dwelling units at one location deletes section 9.C from the model lease foe multi-unit residential dwellings, he should substitute a provision describing the condition of the premises at the beginning of the lease.

D. REPAIRS AND MAINTENANCE

Section 9.D of each model lease is not required to be included in residential leases in Maryland by Maryland statutory law. Maryland common law does not make the landlord responsible for repair of the leased premises after the tenant takes possession of the leased premises at the beginning of the term of the lease. Section 8-203.1(a)(2)(ii) of the Real Property Article, however, which may apply to leased multi-unit residential dwellings but not to leased single family homes, states that "after January 1, 1975, any landlord who offers more than 4 dwelling units for rent on one parcel of property or at one location and who rents by means of written leases, shall ... embody ... in any e[illegible] the landlord's and the tenant's specific obligations as to ... repair of the premises." Consequently, if a landlord who rents four or more dwelling units at one location deletes section 9.D from the model lease for multi-unit residential dwellings, he should

substitute a provision stating the landlord's and tenant's specific obligations as to repair of the premises.

Furthermore, under the Maryland rent escrow statute, section 8-211 of the Real Property Article, landlords of both residential multi-unit dwellings and single family homes have an obligation, subject to certain exceptions, to repair and eliminate conditions and defects in leased premises and common areas which constitute, or if not promptly corrected will constitute, a fire hazard or a serious and substantial threat to the life, health or safety of occupants. Sections 9 and 10 of each model lease are drafted in a manner that complies with section 8-211 of the Real Property Article. The full text of section 8-211, which is appended to this brochure, should be read to determine if it is applicable in a particular case.

SECTIONS 9.E and 10.G(UTILITIES) IN THE MULTI-UNIT DWELLING MODEL LEASE

Sections 9.E and 10.G of the model lease for multi-unit residential dwelling units are not required to be included in residential leases in Maryland. Section 8-203.1(a)(2)(ii) of the Real Property Article, however, states that "after January 1, 1975, any landlord who offers more than 4 dwelling units for rent on one parcel of property or at one location and who rents by means of written leases, shall ... embody ... in the executed lease ... the landlord's and the tenant's specific obligations as to heat, gas, electricity, and [water] ...." Consequently, a landlord who rents four or more dwelling units at one location may delete section 9. E of the model lease for multi-residential dwelling units if he substitutes a provision specifying his and the tenant's duties with respect to heat, gas, electricity and water(although section 8-203.1 does not explicitly require a lease to specify a landlord's obligation with respect to sewer service).

SECTION 9.F(STORAGE AND PARKING) IN THE MULTI-DWELLING UNIT MODEL LEASE

This provision is not required to be included in residential leases in Maryland.

SECTION 9.G(RECREATIONAL FACILITIES) IN THE MULTI-DWELLING UNIT MODEL LEASE

This provision is not required to be included in residential leases in Maryland.

SECTION 10(TENANT'S DUTIES)

Section 10 of each model lease is not required to be included in residential leases in Maryland. Under the common law in Maryland, a landlord has no duty to make repairs to the premises after the tenant begins occupancy of the leased premises, so the tenant has to make any desired repairs to the premises during the term of the lease(although the tenant is not obligated to make any repairs to the premises unless a lease provision requires him to do so). Section 8-203.1(a)(2)(ii) of the Real Property Article, however, which may apply to leased multi-unit residential dwellings but not to leased single family homes, s[illegible]nuary 1, 1975, any landlord who offers more than 4 dwelling units for rent on one parcel of property or at one location and who rents by means of written leases, shall ... embody in ... any

executed lease ... the landlord's and the tenant's specific obligations [illegible] repair of the premises." Consequently, if a landlord who rents four or more dwelling units at one location deletes sections 10.A.1 and 10.B of the Model Lease for Multi-Unit Residential Rental Buildings, he should substitute lease provisions that specify the tenant's duties with respect to repair of the leased premises.

Furthermore, as previously discussed in the analysis of section 9.D of the model leases, a landlord may have a duty to repair the leased premises in certain cases under the rent escrow statute, section 8-211 of the Real Property Article. Section 10 of the model leases are drafted in a manner that complies with section 8-211.

Under the common law, a tenant has a duty not to commit waste to the leased premises(a duty not to cause damage to the leased premises in excess of ordinary wear and tear). This common law duty of the tenant is expressed in section 10.A and 10.B of the Model Lease for Multi-Unit Residential Dwelling Units and seetions 10.A.1, 10.A.2, 10.A.4, and 10.A.5 of the Model Lease for Single Family Homes.

If section 10.E in the Model Lease for Multi-Unit Residential Dwelling Units or section 10.C in the Model Lease for Single Family Homes is deleted, under the common law a tenant would have the right to sublease, transfer, or assign the premises without the consent of the landlord.

If section 10.C in the Model Lease for Multi-Unit Residential Dwelling Units is deleted, under the common law a tenant would have a duty to obey rules and regulations of his landlord that are not included in his written lease or that are adopted after execution of the lease if they are found by a court to be reasonable.

SECTION 11(INSURANCE)

Section 11 in each of the model leases is not required to be included in residential leases in Maryland. The Commission has included section 11 in the model leases in order to advise tenants that a landlord is not responsible for the tenant's personal property and that the tenant should obtain insurance to protect his personal property.

SECTION 12(ACCESS)

Section 12 of each of the model leases is not required to be included in a residential lease in Maryland. If section 12 is deleted, a landlord, under traditional common law, would have no right to enter the leased premises after the tenant occupies the leased premises, although some courts recognized an implied right of the landlord to enter the leased premises to perform certain agreed services.

SECTION 13(NOTICE)

Section 13 of each model lease is not required to be included in a residential lease in Maryland. Section 13, however, would satisfy a landlord's duty under section 8-210 of the Real Property Article to list the name, address, and telephone number of the owner of the property or management entity, if any, either in a sign posted in a co[illegible]he residential rental property, in the written le[illegible] receipt.

SECTION 14(REPOSSESSION)

This clause is required to be included in a lease in Maryland [illegible]rd to have the right to evict a tenant for breach of a lease under section 8-402.1 of the Real Property Article. In order to evict a tenant under section 8-402.1, a lease must include a provision providing that the landlord may repossess the premises if the tenant breaches the lease, the landlord must give the tenant one month written notice that the tenant is in violation of the lease and the landlord desires to repossess the premises, and the tenant or person in actual possession of the premises must refuse to comply with the landlord's request. The landlord may then file suit in District Court to regain possession of the premises. Section 8-402.1 provides that the court shall give judgment for restitution of possession of the premises to the landlord if it finds that the tenant breached the terms of the lease and the breach was substantial and warrants an eviction.

SECTION 15(AUTOMATIC RENEWAL)

Section 15 of the model leases is not required to be included in a residential lease in Maryland, but section 15 is drafted in a manner that complies with the statutory requirements under section 8-208(b)(1) of the Real Property Article for automatic renewal clauses in residential leases in Maryland. Section 8-208(b)(1) states that : "If any lease shall contain a provision calling for an automatic renewal of the lease term unless prior notice is given by the party or parties seeking to terminate the lease, any such provision shall be distinctly set apart from any other provision of the lease and provide a space for the written acknowledgement of tenant's agreement to the automatic renewal provision, except leases containing an automatic renewal period of one (1) month or less. Any such provision not specifically accompanied by either the tenant's initials, signature, or witnessed mark, shall be unenforceable by the landlord."

Consequently, unless the blank space for the period of notice in section 15 is appropriately filled in and the tenant places his signature, initials, or witnessed mark in the appropriate space in section 15 of the model leases, section 15 of the model leases cannot be enforced by a landlord.

PROHIBITED LEASE PROVISIONS

Section 8-208(a) of the Real Property Article prohibits the following lease provisions in a lease for residential property:

1. a provision whereby the tenant authorizes any person to confess judgment on a claim arising out of the lease;

2. a provision whereby the tenant agrees to waive or to forego any right or remedy provided by applicable law;

3. a provision providing for a penalty for the late payment of rent in excess of 5% of the amount of rent due for the rental period for which the payment was delinquent, or $3 if rent is paid in weekly rental installments;

4. any provision whereby the tenant waives his right to a jury trial;

[illegible] whereby the tenant agrees to a period required for a landlord's notice to quit less than that provided by applicable law, although neither party is prohibited from agreeing to a longer notice period than that required by applicable law (Section 8-501 of the Real Property Article supplements this provision of section 8-208(a) by

written agreement between a landlord and tenant may provide for a longer notice period to be furnished by the tenant to the landlord in order to terminate the tenancy than that required of the landlord to the tenant in order to terminate the tenancy);

6. any provision authorizing the landlord to take possession of the leased premises, or the tenant's personal property therein unless the lease has been terminated by action of the parties or by operation of law, and such personal property has been abandoned by the tenant without the benefit of formal legal process;

7. any provision that indemnifies the landlord, holds the landlord harmless, or precludes or exonerates the landlord from any liability to the tenant, or to any other person, for any injury, loss, damage, or liability arising from any omission, fault, negligence, or other misconduct of the landlord on or about the leased premises or any elevators, stairways, hallways, or other appurtenances used in connection with them, and not within the exclusive control of the tenant. (Such a provision is also against public policy and void under section 8-105 of the Real Property Article).

Section 8-203.1(b) of the Real Property Article prohibits the following provisions in a residential lease, and makes such provisions against public policy and void, when the landlord offers more than 4 dwelling units for rent on one parcel of property or at one location:

1. any provision purporting to authroize the landlord to take possession of the premises or the tenant's personal property except pursuant to law;

2. any provision purporting to permit a landlord to commence an eviction proceeding or issue a notice to quit solely and exclusively without any other basis, as retaliation against any tenant for planning, organizing, or joining a tenant organization with the purpose of negotiating collectively with the landlord.

In Anne Arundel County and Baltimore City, a liquidated damages clause or penalty clause is prohibited in a residential lease, and is not enforceable. Md. Real Prop. Code Ann. §8-212. This prohibition may not be waived in any residential lease of property or space in Anne Arundel County or Baltimore City. Id.

Section 8-113 of the Real Property Article provides that a covenant or promise by the tenant to leave, restore, surrender, or yield the leased premises in good repair does not bind him to erect any similar building or pay for building destroyed by fire or otherwise without negligence or fault on his part.

No lease option agreement to purchase improved residential property, with or without a ground rent executed after July 1, 1971, is valid unless it contains this statement in capital letters: THIS IS NOT A CONTRACT TO BUY; and contains a clear statement of its purpose and effect with respect to the ultimate purchase of the property which is the subject of the lease option.

Steven G. Davison,
Reporter

GOVERNOR'S LANDLORD-TENANT

LAWS STUDY COMMISSION

MODEL LEASE FOR MULTI-UNIT RESIDENTIAL RENTAL BUILDING (HIGH RISE APARTMENTS, GARDEN APARTMENTS, ETC.)

Approved : February 8, 1983

NOTICE :
THIS LEASE IS BASED ON MARYLAND LAW AS OF JANUARY 1, 1983

NOTICE :

MARYLAND LAW PROHIBITS DISCRIMINATION IN THE RENTAL OF HOUSING BASED UPON RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, MARITAL STATUS, OR PHYSICAL HANDICAP.

MULTI-UNIT RESIDENTIAL LEASE AGREEMENT

THIS DOCUMENT IS A LEGAL, BINDING CONTRACT AND LEASE AND SHOULD BE REVIEWED CAREFULLY. FOR AN EXPLANATION OF ANY CLAUSE, SEEK LEGAL ADVICE. THIS LEASE CONTAINS STATEMENTS OF RIGHTS AND DUTIES CREATED BY MARYLAND STATUTES.

1. DEFINITIONS:

The following terms when used in this lease have the following meanings:

A. "Premises": Apartment #_____ and the appliances at the following development at the following address:

_____

B. "Development": The structure of which the premises is a part and common areas owned by the Landlord and operated as an integral unit.

C. "Common Areas": Those areas and facilities being part of the Development owned by the Landlord and used by or for the benefit of the Tenant, his guests, employees, agents and invitees, which include by way of example only, lawns, parking areas, storage areas, recreational areas and facilities, laundry areas, rooms, and facilities. "Common areas" do not include any tenant's premises.

D. "Appliances":

The items checked below:

Stove _____

Refrigerator _____

Air Conditioner _____

Dishwasher _____

Garbage Disposal _____

E. "First Day": _____.

F. "Last Day": _____.

G. "Monthly Rent Payment": _____.

H. "Tenant": The following person(s):

_____

_____

"You" refers to the Tenant in this lease. The persons listed below have all the rights of the tenant under this lease during the Tenant's tenancy:

(Full Name)	(age, if (under 18)	(relationship, if any)
_____	_____	_____
_____	_____	_____
_____	_____	_____

I. "Landlord": The following person(s):

_____

at the following address:

_____

and the Landlord's employees and agents.

"We" and "Us" refer to the Landlord in this lease.

J. "Utilities": Water, Hot Water, Sewage, Waste Collection, Electricity, Natural Gas, and Heating Fuel (if other than Natural Gas).

2. LEASED PREMISES AND LEASE TERM:

We shall lease the premises to you for a term beginning on the First Day and ending on the Last Day.

3. ADVANCE PAYMENTS:

Before taking possession of the premises, you have paid us $_____, as itemized below:

a. Security deposit: $_____.

b. Monthly rent payment: $_____.

c. Pro-rated rent for _____days: $_____.

You shall pay the monthly rent payment in advance no later than the _____ day of each month during the term of this lease, beginning on:

_____ _____ _____,
(Month) (Day) (Year)

in the following manner:

_____

_____

5. LATE CHARGES:

You shall pay a charge of $_____ if the monthly rent payment is paid after the _____ day of the month. This charge is not more than 5% of the monthly rent payment.

6. SECURITY DEPOSIT:

We have received a security deposit of $_____ from you. The amount of the security deposit may not be more than two month's rent or $50.00 whichever is greater.

Within 30 days after the termination of this lease, we shall send you an itemized list of the amount, if any, that we shall be withholding from the security deposit for unpaid rent, damages due to your breach of this lease, and damage to the premises in excess of ordinary wear and tear caused by you or your family, agents, employees, or social guests. If we fail to comply with this requirement, we lose the right to withhold any part of the security deposit.

Within 45 days after the termination of this lease, we shall return to you any amount of the security deposit not withheld as specified in the itemized list plus 4% simple interest on the security deposit. If we fail to return your deposit within 45 days, you have the right to sue us for up to 3 times the security deposit plus reasonable attorney's fees.

7. WHEN YOU MOVE IN:

We shall provide you with a written list of all existing damages to the premises if you request this list from us in writing within 15 days after you occupy the premises. If we fail to supply this list after you request it, we may be liable for up to 3 times the amount of your security deposit.

8. WHEN YOU MOVE OUT:

You have the right to be present when we inspect the premises in order to determine if any damage was done to the leased premises during the term of this lease, if you notify us by certified mail of your intention to move, the date of moving, and your new address. You must mail us this notice at l[illegible] to your date of moving. After we receive this notice, we [illegible] notify you by certified mail of the date

1 inspect the premises. The date of our inspection will be within five days before or five days after the date of moving specified in your notice. If we fail to comply with this requirement, we lose the right to withhold any part of the security deposit for damages.

9. LANDLORD'S DUTIES:

A. POSSESSION

We shall deliver possession of the premises to you on the First Day. If we do not deliver possession of the premises to you on the first day, you are not required to pay the monthly rent payments due under this lease until we deliver possession to you, and you may end this lease by giving us written notice of termination before we deliver possession to you. You may also be able to recover from us the extra expenses you incur because you are not able to get into the premises on the First Day.

B. YOUR USE OF THE PREMISES AND COMMON AREAS:

We shall not interfere with your use and enjoyment of the premises and common areas during the term of this lease.

C. CONDITION OF THE PREMISES:

We shall deliver the premises to you in a condition that is reasonably safe for habitation with the appliances in good working order.

D. REPAIRS AND MAINTENANCE:

We shall:

1. Keep the premises in a habitable condition and in good repair;

2. Keep all common areas in a clean and safe condition;

3. Keep all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities supplied by us working properly;

4. Provide suitable containers for disposal of trash and arrange for their collection as needed.

E. UTILITIES:

We shall provide water and sewage service for the premises. We shall also provide the utilities checked below:

Electricity _____
Natural Gas _____
Heating Fuel _____
Hot Water _____

F. STORAGE AND PARKING:

We shall allow you to use the storage and parking areas in the development at no charge.

G. RECREATIONAL FACILITIES:

We shall allow you to use any recreational areas and facilities in the development at no charge.

10. TENANT'S DUTIES:

A. MAINTENANCE OF THE PREMISES:

You shall:

1. Keep the premises clean and safe;

2. Use all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances, including elevators, in the premises and development, in a proper manner;

3. Not deliberately or negligently waste or damage the premises or knowingly allow any person to do so.

B. DAMAGES TO THE PREMISES:

If you, a member of your family, or your guests waste or damage the premises or the development, you shall pay us all costs of the necessary repairs.

C. RULES AND REGULATIONS:

You shall:

1. Comply with any applicable laws, regulations, or guidelines of any governmental authority with respect to the regulation and conservation of fuels;

2. Comply with all reasonable rules and regulations adopted by the landlord and development that have been delivered to you.

You acknowledge by your initials here: _____, that you have received a copy of our existing rules and regulations prior to your occupancy of the premises.

D. OCCUPANCY:

You shall permit no more than _____ persons to reside in the premises at any one time.

E. SUBLEASE OR ASSIGNMENT:

You shall not allow anyone to take over the premises as a tenant in your place (e.g., sublease, transfer, or [illegible]) without our written consent.

REMISES:

You shall:

1. Use the premises only for non-business purposes;

2. Not keep gasoline, paint, or other flammable material in the development, except as fuel in motor vehicles, or do or permit any hazardous act which might cause fire or increase the rate of insurnace on the development.

G. UTILITIES:

You shall pay for all utilities that we have not agreed to provide.

11. INSURANCE:

We suggest that you purchase renter's insurance to protect your porperty if damaged or stolen.

12. ACCESS:

We have the right to enter the premises at any reasonable time in order to inspect the premises, to make necessary or agreed upon repairs, alterations, or improvements, to supply necessary or agreed services, or to exhibit the premises to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

Except in an emergency, we shall give you at least two days notice before we enter the premises, and shall not enter the premises unless you are present.

13. NOTICE:

We shall send all notices to you at the premises and you shall send all notices to us to:

_____

_____.

14. REPOSSESSION:

We may repossess the premises pursuant to judicial process if you breach this lease.

_____ _____
(Witness) (Signature of Landlord)

_____
(Date)

_____ _____
(Signature of Tenant)

_____
(Date)

15. AUTOMATIC RENEWAL:

UNLESS EITHER WE OR YOU GIVE THE OTHER WRITTEN NOTICE, AT LEAST _____ DAYS BEFORE THE LAST DAY, THAT HE DOES NOT WISH TO CONTINUE THIS LEASE FOR A TERM OF THE SAME LENGTH, THIS LEASE WILL AUTOMATICALLY RENEW FOR ANOTHER TERM. YOU AGREE THAT YOU HAVE READ AND UNDERSTAND THIS SECTION BY PLACING YOUR SIGNATURE, INITIALS, OR WITNESSED MARK IN THIS SPACE:

_____

THIS LEASE WAS PREPARED AS A PUBLIC SERVICE BY THE GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION OF MARYLAND.