BY-LAWS OF GOVERNOR'S

LANDLORD-TENANT LAWS STUDY COMMISSION

1. Except as otherwise specifically provided, this Commission shall follow Roberts Rules of Order in the conduct of all business meetings. (11/17/70)

2. Meetings will be held at the call of one chairman, except that additional meetings may be called by a simple majority of the Commission. (11/17/70)

3. Any rule of order may be waived by a vote of three-quarters of the Commission. (11/17/70)

4. (a) There shall be at least two weeks written notice to all members in advance of any meeting whether called by the chairman or the members. (11/17/70)

   (b) The agenda for each meeting shall accompany the notice of that meeting. No vote shall be taken on any major issue at any meeting unless notice of that issue to be voted on was contained in the agenda. (11/17/70)

5. A simple majority shall constitute a quorum to conduct business. (11/17/70)

6. The Commission shall make a preliminary consideration of all issues before it where it shall provisionally adopt whatever policies, principles and proposed changes in the landlord-tenant law as it shall feel proper. It shall take such other action as it shall feel proper to effectuate its purposes. (11/17/70)

7. A simple majority of those present shall suffice for the provisional adoption of any policy, principle or declaration of proposed law revision. (11/17/70)

   Thereafter such provisional adoption shall not be subject to reconsideration or review at the meeting where adopted or thereafter except by a three-quarters vote of those present to reconsider or review. (11/17/70)

8. All policies, principles and declarations of proposed law revision shall be subject to final review or reconsideration before final adoption when the Commission has completed the preliminary consideration of all issues properly before it. (11/17/70)

9. A simple majority of those present shall suffice for the final adoption of any policy, principle or proposed law revision, or any other action of the Commission. (11/17/70)

10. Any member or group of members dissenting from any final action of the Commission may file a minority report which shall be forwarded with the final action of the Commission. (11/17/70)

11. A three reader approach for passage of bills will be followed. At the first reader meeting, the bill be introduced, explained by the Reporter, and, if appropriate, referred to a subcommittee. At the next meeting following introduction (second reader), members of the Commission will discuss the bill, but will not vote on it. At the second meeting following introduction (third reader), the Commission will further discuss the bill and vote on it. The Commission may agree to use a two reader procedure, permitting a vote on the bill at the next meeting following introduction. (1/11/77)

12. A member may be removed by the chairman if he misses three consecutive meetings without good cause, good cause to be determined by the chairman. The Chairman will review the attendance record of each member every June, and will discuss a member's status with each member who he determines to have a poor attendance record. (3/8/77)

13. A two-thirds vote at the first or second reader meeting can waive the three reader requirement for approval of bills. A bill cannot be voted upon at a first reader meeting. (3/8/77)

14. A two-thirds vote is required to pass an amendment to a bill which is proposed at a third reader meeting; if an amendment to a bill proposed at a third reader meeting does not receive a two-thirds vote it is defeated. (10/11/77)

COMMISSION RESOLUTION

(April 11, 1978)

A member of the Commission who lobbies or testifies for or against a Commission bill cannot identify himself or herself as a member of the Commission.

Landlord-Tenant Laws Study Commission

First Meeting

The first meeting of the Landlord-Tenant Laws Commission was held Wednesday, August 26, 1970, in Room 801 of the State Office Building, Baltimore, Maryland. Present were: Judge Silver, Chairman and presiding, Mr. Alter, Mr. Eschabacher, Mr. Laurent, Mr. Offitt, Mrs. Pollard and Mr. Sallow. Mr. Milliman from the Legal Aid Bureau was also present.

Judge Silver informed the Commission that he would prefer it if all meetings were public. It was his intention to devote a part of each meeting to the public to allow them to air their opinions and grievances.

Judge Silver informed the Commission that he would prefer scheduling meetings at night so as not to interefere with the members' work days. The Commission determined that, if necessary, hearings would be scheduled in other parts of the State. It was hoped this would avoid the charge the Commission was only concerned with the situation in Baltimore City.

The Commission was informed that the time provision for the Commission's report had been deleted from House Joint Resolution 63, however, Judge Silver expressed the hope that a proposal could be prepared for the coming legislative session in January 1971.

Due to its ease and proximity, Judge Silver indicated he would use the offices of the Legal Aid Bureau to answer correspondence. He introduced Mr. Milliman, staff attorney for Legal Aid, to the Commission and informed the Commission he had requested the Covernor to appoint Mr. Milliman to the Commission.

Judge Silver cautioned the Commission on the emotional aspects of the issue and expressed his belief that the Commission must produce a practical bill that can pass the Ceneral Assembly. It should, he felt, contain protections for both the tenant and the landlord.

Mr. Laurent expressed his concern about the size of the professional staff. He felt to do an adequate job the Commission would need a full or part-time staff of professionals with expertise in this area. He suggested the Commission enlist the aid of the University of Maryland Law School and Morgan State College. Judge Silver indicated he had no objection to this and if additional staff was warranted, he would ask the Governor for funds.

Judge Silver read to the Commission a letter he had received from the Citizens Planning and Housing Association. The Association recommended the addition of four people to the Commission, which it felt would give a better tenant representation (Mr. Milliman was one of those recommended). The Commission agreed that additional tenant representation was justified and determined to

accept one person from those recommended and selected Mr. Alter and Mr. Laurent to recommend one person from Baltimore County and one from Montgomery County.

The staff was requested to obtain materials and forward these to the Commission members. Mr. Sallow was appointed Vice-Chairman.

Mr. Gordon Peltz, an attorney in Baltimore County, commended the Commission on their first meeting and indicated he would like to volunteer and follow the Commission in its work.

A meeting was scheduled for Tuesday, September 22, 1970, at 7:45 p.m. in Room 801 of the State Office Building, Baltimore, Maryland.

Respectfully submitted,

George D. Webb
Legislative Analyst

LANDLORD-TENANT COMMISSION

AGENDA FOR DECEMBER 15, 1970

This agenda is an outline of the problem areas in the first topic of the general agenda which the Commission adopted on November 17, 1970. It is not a study paper listing in detail the alternative arguments on each side of the various issues. It clearly contains more issues than can be comfortably dealt with in a single meeting.

I. PROCEDURAL AND COURT REFORM

Some of the issues in this topic may require an "education process" for the non-lawyer members of the Commission. Resource individuals with practical knowledge in the area will be invited to attend in order to explain and evaluate current practices and offer suggested changes.

A. Service of Process in Eviction Cases

(In order to institute legal proceedings of any sort, it is necessary to give the defendant formal notification of the proceedings. In eviction actions, the current practice is to attempt personal service of these papers on the tenant, and if he cannot be found, to take the notice on the door of the premises.)

1) Current practice -- personal service, posted notice.

2) Is the current practice well calculated to give the tenant actual notice of an eviction action? What legal problems does this create for landlords as well as tenants?

3) What sorts of reform might be employed to better insure actual service?

4) What would be the effect on the courts and landlords and tenants to change current practice?

B. Right to Appeal in Eviction Cases

(Presently landlords or tenants who contest the legal basis of the decision of the court in an eviction case have only limited right to appeal; from the People's Court or its equivalent to the Supreme Bench or its equivalent. There is no right to appeal to the Court of Special Appeals or to the court of last resort, the Court of Appeals. The Court of Appeals <u>may</u> entertain such an appeal if it wishes, as a petition for writ of <u>certiorari</u>. However, there is no appeal as a matter of right.)

1) Current practice -- appeal only to Supreme Bench.

2) Does the current practice give unified interpretation to landlord-tenant law? Does it adequately protect the right to due process of both landlords and tenants?

3) If change in current practice is indicated, what would be

an appropriate forum for an appeal as a matter of right?

C. Transcripts in Contested Evictions
(Under current practice there is no transcript in eviction cases on initial hearing before the People's Court. There is a transcript on appeal to the Supreme Bench, as the appeal is a trial de novo, or retrial of the entire case.)

1) Current practice -- no transcript on initial hearing.

2) What changes will result from the creation of the new District Courts?

3) Should either party have the right to a transcript at the initial trial in a contested eviction?

4) Should either party have the right to remove a contested eviction to a court of general jurisdiction?

5) Should the trial de novo appeal be continued?

D. Consolidation of "Rent Court" and "Landlord-Tenant Court"
(Presently in Baltimore City "Rent Court" entertains eviction actions only,whereas other disputes between landlords and tenants are heard in "Landlord-Tenant Court." This sometimes results in a multiplication of lawsuits which cannot be consolidated.

1) Current Practice -- separate "Rent Court" and "Landlord-Tenant Court."

2) Consideration of the factors which have created this separation.

3) Consideration of the problems which the separation engenders.

4) Should "Rent Court" and "Landlord-Tenant Court" be consolidated?

E. Appeal Bonds
(Current practice is to require an appeal bond for a tenant if he should wish to appeal for an adverse decision in an eviction case, irrespective of whether he continues to pay rent.)

1) Current Practice -- Appeal Bond required.

2) Constitutional objections which have been raised concerning this practice.

3) What safeguards are necessary to protect the interests of both landlords and tenants when decisions are appealed?

4) Should an appeal bond be required?

F. Right to Counsel
(Current practice permits either party to be represented by

counsel in eviction cases. It does not require representation of tenants.)

1) Current Practice -- legal counsel for tenants not required.

2) Consideration of proposal in American Bar Foundation's Model Residential Landlord-Tenant Code requiring legal counsel for tenants in all eviction cases.

3) Should tenants have the right to appointed counsel in eviction actions?

The above agenda does not purport to exhaust this area. Inclusion of an issue on the agenda does not represent any opinion as to the validity of the countervailing arguments on that issue.

Respectfully submitted,

James W. McElhaney
Associate Professor of Law
Reporter

Landlord-Tenant Laws Study Commission

Second Meeting

The Landlord-Tenant Laws Study Commission met on Tuesday, September 22, 1970, in Room 801 of the State Office Building, in Baltimore. Present were: Judge Silver, Chairman and presiding, Mr. Alter, Mr. Flynn, Mr. Laurent, Mrs. Pollard and Mr. Offitt. Mr. Milliman from the Legal Aid Bureau was also present.

Judge Silver informed the Commission that Mr. Milliman had prepared a tentative staff budget and had suggested various people for the positions. Mr. Milliman indicated the Commission would need a reporter who would coordinate and do the basic research for the Commission, a part-time assistant, a consultant, and a secretary. The secretary, Judge Silver explained, is an immediate necessity due to the need to answer the many letterswhich he receives regarding the Commission's work. At the present time, Judge Silver is using the Legal Aid Bureau secretaries to answer Commission correspondence. The budget, as prepared by Mr. Milliman, provides for approximately $7,000 until 1971. These funds are made available from the Governor's budget and, if necessary, additional funds will be requested. Mr. Milliman was asked by the Commission to prepare figures for a fixed budget based upon the fiscal year.

Mr. Milliman had recommended James McCulhaney, a professor at the University of Maryland Law School, for the position of reporter. There was some discussion as to whether Mr.McCulhaney was the right man for the reporter position. Judge Silver, therefore, requested Mr. Milliman to write to the Dean of the University of Maryland Law School and request that he recommend candidates for the position. A subcommittee was appointed to interview the various candidates for reporter.

Mr. Laurent and Mr. Alter informed the Commission that to date they had not been able to make final recommendations as to people from Baltimore or Montgomery counties for appointment to the Commission by the Governor. Judge Silver recommended that they contact a Miss Shirley Loftus, the head of the Montgomery County Tenants' Association.

Judge Silver read the Commission a letter from the Property Owners' Association of Baltimore City, Inc. In their letter they complimented the Commission on the purpose for which it was created, but rejected the continued expansion of the Commission. The Association stated in its letter that it felt too large a Commission would be unwieldy and some constraint should be placed upon its membership.

Judge Silver asked Mr. Milliman to contact Mr. Eugene Feinblatt, Department of Urban Law, School of Hygiene, Johns Hopkins University. It was hoped the Commission might make use of Mr. Feinblatt's expertise and knowledge in the field of urban problems.

Mr. Morton Funger, of the Apartment House Council Home Builders of Metropolitan Washington, stated to the Commission that he felt if there is to be tenant representation from the Washington area, there should also be landlord representation. He indicated that his Association represents a large majority of the Washington apartment owners. Judge Silver indicated to Mr. Funger that the Commission's size would become unwieldy if all the groups were represented. Mr. Funger replied that if they could not obtain membership on the Commission, they would appreciate attending and testifying before the Commission.

Mr. John Morrison, representing the apartment builders and management groups in the Baltimore area, informed the Commission he would appreciate attending and volunteering their viewpoints in helping the Commission formulate any legislation.

Mr. Stanley Sugarman, of the Property Owners Association, recommended an attorney by the name of Franklin Gerber for the position of reporter with the Commission. Mr. Sugarman explained that Mr. Gerber has had extensive experience in real estate law and would possibly make a good reporter for the Commission.

The Commission adjourned at 9:45 p.m.

Landlord-Tenant Laws Study Commission

Third Meeting

The third meeting of the Landlord-Tenant Laws Study Commission was held on Tuesday, October 20, 1970, at 7:45 p.m. in Room 801 of the State Office Building, Baltimore, Maryland. Present were: Judge Silver, Chairman and presiding, Mr. Alter, Mr. Everngam, Mr. Flynn, Mr. Funger, Mr. Goode, Mr. Hocberg, Mr. Laurent, Mrs. Martin, Mr. Milliman, Mr. Morrison, and Mr. Offitt.

Professor McElhaney, Commission Reporter, was introduced by Chairman Silver to the Commission. Professor McElhaney informed the Commission that in private practice he had represented landlords and since being at the University of Maryland Law School, he had represented tenants. Professor McElhaney visualized his job as one of finding the issues the Commission would vote on and then drafting legislation based upon the Commission's decisions. This would also ential, he stated, research of existing laws and proposals for change. Professor McElhaney informed the Commission that he would attempt to represent their values and be fair and impartial. In response to a question from Mr. Morrison, Mr. McElhaney stated he was not solely concerned with urban problems but is also concerned with state-wide issues. At the present time, he stated, he is open to the question of whether separate legislation is needed for the State or City.

Professor William Grigsby of the University of Pennsylvania appeared before the Commission in regard to the study he conducted in Baltimore City on poverty problems, particularly in the area of housing. He informed the Commission that while his study interviewed both tenants and landlords and investigated dwellings, they did not focus specifically on the questions of landlord-tenant laws. The study, he stated, was concerned with the general housing environment in the City of Baltimore as compared to other urban areas. The market environment, Professor Grigsby stated, must be viewed from both sides -- the tenant and the landlord. In Baltimore, he stated, there has been great abandonment while the rents have gradually kept pace with the rising prices. Professor Grigsby stated the Commission should consider economics when deciding on any revision of the landlord-tenant laws. At present, he stated, a large percentage of landlords are losing money on a cash basis, and about half the landlords in Baltimore City say the return on their investment is inadequate. This inadequate return helps to contribute to the problem of the majority of small landlords who cannot meet the rising maintenance costs. Twenty-five per cent of the inventory in Baltimore City, Professor Grigsby stated, appears to be owned by large landlords. The majority of this was in good condition. The most serious problems were in those dwellings owned by small landlords, who were the least able to afford the maintenance costs. The Professor reminded the Commission that it must provide laws that both the landlord and the tenant can take advantage of.

Professor Grigsby stated that the median cost to raise the dwelling units in Baltimore City to code standards was approximately $3,000. He stated there are approximately 145,000 rental units in Baltimore City and approximately 40% of these are below the standards of the Building Code.

Professor McElhaney suggested that the Commission invite Professor Russell Reno of the University of Maryland Law School to speak on the present state of landlord-tenant laws in the State of Maryland. The Commission asked Professor McElhaney to invite Professor Reno to attend the next meeting of the Commission.

The Comission scheduled its next meeting for Tuesday, November 17, 1970, at 7:45 p.m. in Room 801 of the State Office Building in Baltimore. The Commission adjourned at 9:15 p.m.

LANDLORD-TENANT LAWS STUDY COMMISSION
FIFTH MEETING
MINUTES

The fifth meeting of the Landlord-Tenant Laws Study Commission was held on Tuesday, December 15, 1970, at 7:45 p.m., in Room 801 of the State Office Building, W. Preston Street, Baltimore, Maryland. Present were: Judge Silver, Chairman and presiding, Mr. Alter, Mr. Everngam, Mr. Funger, Mr. Hocberg, Mr. Laurant, Mr. Milliman, Mr. Offitt, Mrs. Pollard, Mr. Sallow, Mrs. Anita Price, and Mr. Ramsey W. J. Flynn.

Judge Silver announced that the Commission had two new members: Mr. Ramsey W. J. Flynn and Mrs. Anita Price, and announced Mr. William J. Flynn had been forced to resign from the Commission due to an illness in his family.

Professor McElhaney, Commission Reporter, started the meeting outlining the topic for the evening: Service of Process in Eviction Cases and Right to Repeal Eviction Cases. Professor McElhaney pointed out that this was basically a non-controversial subject, since it was in the landlord's interest to insure that the court procedure followed in eviction cases was legally sound and it would not be overturned by court decisions. Also, it was in the tenant's interest to insure that he had legal notice before being evicted.

Professor McElhaney then introduced Mr. Peter Smith, attorney for Piper and Marbury, who has done extensive work in the field of poverty law. Mr. Smith prefaced his remarks by noting that he did have a bias for the tenants, although he recognized that there was merit on both sides. Mr. Smith noted the statistics on the number of cases filed in summary ejectment, the very small percentage of those cases contested, and the correspondingly large number of cases decided ex parte. Mr. Smith stated that obviously this great percentage of ex parte decisions could not be attributed solely to lack of adequate notice, but that it was his belief that the lack of adequate notice obviously played a part in the fact that so few landlord-tenant cases were contested. This statement was based on the supposition that while there are a large number of cases without any merit on one side or the other, in a preponderence of cases there is some merit to the landlord side and some merit to the tenant side, and that in these cases, i.e., cases with merit on both sides, lack of adequate notice effectively limits the rights of the tenant.

Judge Silver asked Mr. Smith two questions: 1) Is the current practice of giving notice constitutionally correct and well calculated to give tenant actual notice of an eviction action, and 2) If not, how can adequate notice be served? Mr. Smith responded by saying that a practice analogous to the practice used by the State Health Department in apprising medicare recipients of their status might work out very well. Mr. Smith promised to send a copy of that procedure to the Commission. Further, Mr. Smith said, it may be necessary for administrative personnel or a commission to work out problems between the landlord and the tenant, short of eviction, in order to clear up those cases where both the landlord and the tenant have some merit to their cases. Mr. Smith pointed out that the present procedure allowed the

opportunity for so-called "sewer" service, whereby the constable, instead of placing the summons on the door of the tenant, throws the summons down the sewer, from whence the name "sewer service" comes. Mr. Smith made clear that he did not feel that this happened all the time, but that there was the opportunity for this to happen and that tacking the summons on the door left the constable open to these charges, and did not provide an adequate safeguard against neighborhood children tearing the summons off, having the summons blown away, etc. Judge Silver asked Mr. Smith if there were any differences between Baltimore and other major jurisdictions. Mr. Smith responded by saying that he did not know. The Secretary stated that he would write major jurisdictions and try to determine how they have handled the situation.

Mr. Leon Amernick was the next witness. Mr. Amernick is a landlord's agent who practices before the People's Court in summary ejectment proceedings. Mr. Amernick stated that he was not a lawyer, although a graduate. He felt that the present system of notice was adequate for both the tenant and the landlord, and that there was no constitutional conflict involved. Mr. Amernick also pointed out that while the number of landlord-tenant cases have increased, the percentage of people contesting those cases have not increased. From this statistic, Mr. Amernick submitted that notice, or lack of it, made no difference since for the last twenty years, the same percentage of people have not contested the eviction proceedings despite the doubling of the number of eviction proceedings.

The next witness to testify before the Commission was Joseph H. H. Kaplan, who is an attorney at Venable,Baetjer , and Howard, and who has had experience in the landlord-tenant field. Mr. Kaplan spoke on the question of the right to appeal in eviction cases in Baltimore City: presently tenants and landlords in Baltimore City have the limited right to appeal from the People's Court to the Supreme Bench. There is no right to appeal to the Court of Special Appeals or to the court of last resort, the Court of Appeals. The Court of Appeals may entertain such an appeal if it wishes, as a petition for writ of certiorari, but there is no appeal as a matter of right. Mr. Kaplan would recommend a direct appeal to the Court of Special Appeals. The appeal would be on the lower court record, and not a record extract, a procedure similar to that used by the U.S. 4th Circuit in habaes corpus cases. This would require no printing of the record. In summing up, Mr. Kaplan made three basic recommendations: First, there be a right of appeal to the Special Court of Appeals. Appellate court decisions would insure that there would be a uniform body of case law within the State. Presently, the People's Courts are not bound by the decisions of the Supreme Bench or by the Circuit Courts of the other counties. Therefore, there are a number of different interpretations and conflicting decisions within the same courts and among the different counties. By allowing an appellate court to decide these issues, with formal printed opinions, the law would be clearly set forth and would not be reargued at every trial. Mr. Kaplan's second recommendation is that the record not be printed on appeal in order to conserve money for both the tenant and the landlord. The third recommendation is that the briefs be typewritten to reduce the cost of appeal.

The next witness was Mr. Kenneth Pilla, an attorney from Legal Aid. Mr. Pilla recommended that there be personal service in landlord-tenant cases, that the wording of the notices be changed to make it easier for the layman to understand, and requested that Legal Aid phone numbers be included on the notices.

Mr. Stanley Sugarman next addressed the Commission. Mr. Sugarman, who is a professional landlord, stated that the large number of eviction notices is somewhat misleading, because it has been his experience that a small percentage of the tenants receive a preponderance of the eviction notices because this is the only way that the landlord can force these tenants to pay rent.

Mr. Peter Smith spoke shortly on the importance of the right to appeal, and made three points. First, the serious need for decisions by the Court of Appeals. Second, the need for written opinions to bring about uniformity in the law, and, third,a need to minimize the expense of appeal, not only for the indigent, but for the middle class person as well.

The Commission then discussed the need to bring in witnesses from outside Baltimore City, and to bring in witnesses who present both sides of the question. It was the feeling,voiced by Mr. Offit, that he would like to see the landlord's interests presented by an attorney who would be able to define the legal issues involved.

Judge Silver noted that the Commission could fulfill its function if it merely modernized and brought about an adequate service of process and notice to the tenants, and he hoped to move forward in these areas. Judge Silver further asked that the Commission be prepared to decide at the next meeting the issue of the right to appeal in landlord-tenant cases, in the hope that some legislation in this could be placed before the Legislature at the next session.

The meeting adjourned at 10:15 p.m., with the next meeting to be on January 19, 1971, at 7:45 p.m., in Room 801 of the State Office Building, West Preston Street, Baltimore, Maryland.

Respectfully submitted,

W. MINOR CARTER
Legislative Analyst

cd

Mrs Robert Colbert (Gloria)
2601 Columbia Place
Landover md
20785

LANDLORD TENANT LAWS STUDY COMMISSION
MINUTES
SIXTH MEETING

The sixth meeting of the Landlord Tenant Laws Study Commission commenced at 7:45 p.m., in Room 801 of the State Office Building, on West Preston Street, in Baltimore, Maryland. The following members were present: Judge Edgar Silver, Chairman and presiding: Mr. Alter, Mr. Evergngam, Mr. Funger, Mr. Goode, Mr. Hochberg, Mr. Laurent, Mrs. Martin, Mr. Milliman, Mr. Morrison, Mrs. Pollard, Mrs. Price, and Mr. Sallow, and Professor James W. McElhaney.

The meeting was opened by Judge Silver, who read letters from Mr. Offit and Mr. Flynn expressing their views in opposition to a vote being taken on the right to appeal at the meeting.

Mr. Eugene Hettleman, representing the Property Owners' Association of Baltimore City, presented the Commission with the views of that organization. Mr. Hettleman maintained that the present law regarding the right to appeal to the Court of Appeals or the Court of Special Appeals was satisfactory for both sides. He noted that the Court of Appeals operates the same way that the U.S. Supreme Court operates, by limiting the right of appeal to petition certiorari. Concerning the issue on bond on appeal, Mr. Hettleman felt that this should be discontinued, since it is worthless to the landlord and often hard for the tenant to post. He suggested that the better practice would be to grant a stay of execution with the tenant paying rent to the landlord. This practice would ease the administration of the courts and would be the result if the court finds for the landlord. If the court finds for the tenant, the tenant could obtain a lien on the dwelling, if the landlord does not comply with the court's holding. In ending his testimony, Mr. Hettleman stated that he felt that the body of landlord tenant case law is very board, and that, since the District Court system is about to start, this is a very poor time for the Commission to recommend any changes since the rules of the District Courts are not yet firm.

Chief Judge William T. Tippett, Chief Judge of the People's Court of Baltimore City, testified next and commented on the present system of landlord tenant law and offered some recommendations for improvement. Copies of both Judge Tippett's testimony and proposals are attached, with minor revisions that Judge Tippett requested.

After Judge Tippett's testimony, the Commission took a vote on whether or not the Commission was in favor of the general principle of a formal right to appeal in landlord tenant cases. The vote was unanimously in favor of the principle.

Mr. Jerome Butler, Chief Constable of Baltimore City, testified that in a study period at the end of 1970 showed that his office served 23,000 eviction notices and then warrants. Approximately 21,000 were settled, and 1800 were marked restitution. The warrants were usually vacant, but there were approximately 400 put outs on the street. In response to a question, Constable Butler stated that his office does not break the statistics down any further than that.

The Tenants' Union Group of South Baltimore made a brief statement, telling the Commission of their interest in the Commission's work and supporting Judge Tippett's proposal.

The meeting ended at 10:45 p.m.

Respectfully submitted,

W. MINOR CARTER, LEGISLATIVE ANALYST

Enclosure

LANDLORD TENANT COMMISSION
SEVENTH MEETING

MINUTES

The seventh meeting of the Landlord and Tenant Laws Study Commission convened at 7:45 p.m. on February 19, 1971, at the State Office Building, in Baltimore. Judge Edgar P. Silver, Chairman, presided over the meeting, with the following members in attendance: Mr. Irvin Alter, Mr. G. Gregg Everngam, Mr. Morton Funger, Mr. Moe Hochberg, Mr. Ramsey W. J. Flynn, Mr. George Laurant, Mr. Michael Milliman, Mr. John Morrison, and Mr. Howard Offitt.

The first people to testify before the Commission were Mrs. Gloria Colbert of Crisis Intervention in Prince George's County, Mr. Allan Richmond, Assistant Sheriff of Prince George's County, and Mrs. Harriet Young, a tenant in Prince George's County. Mr. Richmond started theirtestimony by stating the rules concerning evictions which are followed by the Sheriff's office in Prince George's County. There are no evictions on Fridays in order to prevent someone being put out on the street on a Friday afternoon with all the Social Services Offices closed for the weekend. The Sheriff's Office in Prince George's County gives personal service on evictions 48 hours prior to the actual eviction and Mr. Richmond stated this has worked very well. Mr. Richmond stated he was against any fees other than minimum expenses for collection and legal expenses. Mr. Richmond estimated that the Prince George's Sheriff's County serves 1000 eviction notices a year, and said that they try for personal service in every case. He felt that personal service was a very good thing and, at this time, the present system was working well. Mrs. Young, who is a tenant at Baper Village, a federally subsidized apartment, managed by the South Potomac Realty Company, stated that there was a penalty clause of $50.00 if the rent was not paid on time. Mr. Morrison was appointed by Judge Silver to check into this situation and report back to the Commission at its next meeting.

Mrs. Colbert had some suggestions to make to the Commission concerning the rights of tenants. Her basic suggestion is that the lease be explained in detail to the tenant so that the tenant will know exactly what his rights and obligations are and what the land's rights and obligations are.

Mrs. Dorothy Rosin, Resident Manager of the Rock Creek Garden Apartments in Silver Spring, was the next person to testify. The Rock Creek Garden Apartments contains 504 units and are 22 years old. The one-bedroom apartments rent for $140.00, and the two-bedroom apartments rent for $160.00. There is a one-year lease. Mrs. Rosin testified that the Resident Manager deals with the administrative details of running the apartment. In her apartment they prefer elderly residents. The security deposit is $100.00 and the tenant receives no interest. However, there is no late charge for not paying rent on time. Presently, there are two vacancies. Mrs. Rosin said that she felt that the law, as presently constituted, will protect the rights of the tenant.

Mrs. Ruth Longchamps of the Rock Creek Woods Apartments spoke after Mrs. Rosin. Rock Creek Woods contains 270 units and charges $149.00 for an efficiency apartment and $240.00 for a three bedroom apartment. They have a $100.00 security deposit with no interest for the tenant and have a 5% late charge plus legal fees if the rent is not paid on time.

Mr. John Hanna, a tenant in the Meadow Lane Apartments, was the last witness of the night. Mr. Hanna had the complaint that his landlord would not take cash for payment of the rent. There is a six-month rental agreement in his apartment unit and he is presently being evicted. The landlord will only accept a check or money order. Mr. Hanna has won a court decision holding that payment for rent must be in cash. However, he has now gotten a 30-day notice to leave the apartment and he has no recourse but to do so. He requested that a stronger retaliatory eviction process be enacted by the Commission.

The Commission then conducted a business meeting concerning the right of appeal without a bond to the Special Court of Appeals. Professor McElhaney had prepared a working paper on Right to Appelate Review in landlord-tenant cases, and this was adopted with one change in Paragraph #6. It now reads "either the landord or, in the event escrow be ordered by the trial court, to the Court, in accordance with the order of the Court from which the appeal is taken." This change was made to avoid any inference that the Rent Escrow Law should be applied anywhere where it has not been enacted by legislation.

The Commission adjourned at 9:45 p.m. Its next meeting will be March 19, 1971, in Room 801 of the State Office Building, 301 W. Preston Street, Baltimore, Maryland. Mr. Cannon, a tenant in Prince George's County, will be one of the witnesses.

Respectfully submitted,

W. MINOR CARTER
Legislative Analyst

WMC/cd

LANDLORD TENANT LAW COMMISSION
NINTH MEETING
MINUTES

The ninth meeting of the Landlord Tenant Law Study Commission convened at 8:00 p.m. on April 19, 1971. The meeting was chaired by Vice-Chairman William Sallow, and the following members were in attendance: Mr. Alter, Mr. Everngam, Mr. Funger, Mr. Hochberg, Mr. Flynn, Mr. Laurent, Mr. Milliman, Mr. Morrison, Mr. Offitt, Mrs. Pollard, and Professor James W. McElhaney.

The meeting was held before a large audience in the auditorium of the Montgomery County Office in Silver Spring, Maryland. Mr. Sallow convened the meeting, and recognized a number of members of the General Assembly in the audience. State Senator Victor Crawford was the first witness to testify before the Commission. Senator Crawford noted that there were different problems in different areas of the State in regard to landlord-tenant law, but basically they are problems common to all tenants and all landlords in the State of Maryland. He said he hoped these problems could be worked out, and that meaningful legislation and meaningful guidelines could be produced by the Commission, with the help of the testimony of both the landlords and the tenants present.

Delegate Charles Docter then testified before the Commission, and he mentioned a number of his bills that had been introduced in the last session of the Legislature concerning the rights of landlords and tenants. In particular, he discussed H.B. 337, which dealt with retaliatory evictions. This bill, after substantial amending in the House Judiciary Committee, passed the House but did not pass the Senate. He felt that there was a great need for this type of legislation and recommended it to the Commission. His testimony was greeted with a great deal of applause. Delegate Docter then introduced Mr. Willard Wishnow, President of the Montgomery County Tenants Association, who made some introductory remarks stating that he would introduce further speakers on the points that he mentioned. Mr. Wishnow stated that he felt that the landlord-tenant law now in existence in Maryland should undergo revision to bring the tenant's rights more in keeping with present-day standards of equality and fairness. He introduced Mr. Stanley Lipshutz, who discussed what he described as a retaliatory eviction. Mr. Lipshutz's rent was raised after he reported that he had slipped on the steps of his apartment building. His rent was raised from $140.00 to $250.00 right after his complaint, and when he refused to pay the rent increase, he was forced to move from his apartment. He stated that he felt that the rent increase was a direct result of his complaint about his fall, which resulted, he stated, from the failure of the landlord to adequately clean the sidewalks.

Mr. Wishnow then introduced a lady tenant who described what she also termed a retaliatory eviction where, when she was ill, the wind blew out a window in her apartment and the cost of repairing the window has been assessed against her. When she refused to pay, her rent was increased. By refusing the pay the increased rent, she had to move. She is still living at the apartment, however, because she has a medical certificate stating that it would be physically harmful for her to move.

Mr. Wishnow next introduced a lady tenant who discussed rent increases. When she first moved into her apartment two years ago, she stated that she was paying $192.50 for a two-bedroom apartment. However, eleven months ago, her rent was increased to $243.00, in addition to which she had to pay rent for her parking space and put down a security deposit. She felt that this rent increase was unwarranted, and that she had been led into decorating her apartment so that she would not move when her rent was increased. She has since left that apartment.

Mr. Wishnow then introduced a tenant who discussed leases. The tenant claimed that many apartment owners would not allow leases, and that there was no maintenance in many apartments. He stated that the reason no leases were given was that leases prevented a rapid increase in rent. The last witness presented by Mr. Wishnow was Stephen Greenleigh, who stated that the tenant has no rights other than the right to pay rent. He stated that tenants desire State legislation giving the landlord and the tenant equality.

Mr. Sallow then called the first landlord witness, Mr. John T. O'Neill, the Executive Vice President of the Building and Owners Association. Mr. O'Neill took exception to most of the statements of the Montgomery County Tenants Association. He stated that many of the alleged complaints of the tenants, particularly those concerning health hazards, could be taken up with the Board of Health. He stated that the Board of Health had regulations governing sanitary and healthful conditions, and that they were empowered to force these conditions. Mr. O'Neill stated that the tenant always had the powers of the Board of Health at their disposal, and that their unwillingness to use these powers showed either than their claims were not legitimate or that they did not know the full extent of their rights. Mr. O'Neill stated that the Building Owners Association would willingly investigate any case of retaliatory eviction, and would do all in their power to rectify any proven case. He stated that no claims had been brought to the Building and Owners Association, and until they were, and until these complaints were documented by facts, that the Building and Owners Association was powerless to act on accusations. Mr. O'Neill stated that the average rent increase in Montgomery County has been about 7%, and he has stated that he will send these figures to the Landlord-Tenant Commission. As to the question of the lady who complained about the windows, Mr. O'Neill stated that the windows were weak, that all the tenants had been warned about these windows and told that they would be liable if the windows were broken, if the person had not fastened the windows properly. Mr. O'Neill maintained that it was for this reason, i.e., the improper fastening of the windows, that the lady was being held liable for the replacement of the windows.

Mr. Veccharelli of the Prince George's Tenant Association was the next to speak. Mr. Veccharelli centered his testimony on three points: first, the need for legislation in the area of landlord-tenant law: secondly, he felt that the 7% average increase of rents was not true: that the increase was greater than 7%; and thirdly, the need for a better written lease and one where the rights of both the landlord and the tenant are clearly set forth.

The next witness was Mr. Stephen Greenleigh, who also testified for the Montgomery Tenant Association, but in this instance, was testifying for the Montgomery County Community Action Council. Mr. Greenleigh stated that there was a great need for stronger landlord-tenant legislation, particularly for the protection of the tenant. He recommended that some form of rent stabilization be introdued in Maryland. He felt that rent control was too imprecise a word to attach to his plan, which he will send to the Commission, but that something should be done to protect the tenant from unwanted increases in rent, and from rent increases that amount to retaliatory eviction, in his view. Mr. Greenleigh also had some statistics on late fees which he will send to the Commission.

The last person to testify before the Commission was Mr. Jacob Lehrman, who is an investor in the Warwick Towers. Mr. Lehrman testified that the amount of rent charged for apartments is a combination of the supply and demand for apartments and the proper amount of return on dollars invested in the apartment. A few years ago, Mr. Lehrman said, the apartment market was such that there were a great number of vacancies, and apartments could be rented at a low cost because the supply was great and the demand was low. Today that situation has been reversed, and, therefore, while the demand is high, the supply is limited and rents have gone up. The rise of interest rates has also been an added cost. Therefore, the rents have gone up. Mr. Lehrman gave personal examples of these factors, showing how both the number of apartments and the rising interest rates have affected him and his investment in the Warwick Towers. Mr. Lehrman further stated that he did not initially require security deposits, but after having been left with an apartment in a state of disarray, he has found it necessary to introduce a security deposit into his lease to protect himself.

After Mr. Lehrman's testimony, there was a general "give and take" between the audience and some members of the Commission. After a few minutes of this, Mr. Sallow adjourned the meeting at 10:10 p.m.

The next meeting was scheduled for May 18, 1971, in Baltimore. At a later date, however, this meeting was changed to May 25, 1971, at 7:45 p.m. in the State Office Building, Room 801, Baltimore City.

Respectfully submitted,

W. MINOR CARTER
Legislative Analyst

WMC/cd

MINUTES
of the

LANDLORD-TENANT LAWS STUDY COMMISSION

(Tenth Meeting)

The meeting was called to order at 7:45 P.M. on May 25th, 1971, in Room 801 of the State Office Building, 801 West Preston Street, Baltimore, Maryland, by Judge Edgar Silver, Chairman. Members of the Commission in attendance at the meeting were Mr. Irvin Alter, Mr. Greg Everngam, Mr. Morton Funger, Mr. Moe Hochberg, Mr. Ramsey Flynn, Mr. George Laurent, Mr. Howard Offitt and Mr. William Sallow.

The first order of business was testimony from the Apartment House Council of the Metropolitan Washington Builders Association. Mr. Joseph R. Schuble of the Apartment House Council read a prepared statement, a copy of which is enclosed with the minutes. During Mr. Schuble's testimony, there were questions from the Commission. Mr. Hochberg contested Mr. Schuble's statement that the rent increases in Montgomery County had averaged between four to seven percent per year. Mr. Schuble also gave to the Commission a copy of an opinion which allowed the withholding of rent when a toilet overflows which is not the result of the direct fault of either the landlord or the tenant. Mr. Schuble disagreed with the decision in this case; a copy of which is attached to the minutes.

After Mr. Schuble's testimony was completed, the Commission discussed its plans for the future. It was decided that there would be no meetings over the summer and the next meeting would be in September. However, during this time Professor McElhaney was charged with the writing of a proposed model lease or code for submission to the Commission in September. Professor McElhaney will submit his work product as it develops to the Commission, so they will be able to give him their comments as he proceeds.

The meeting was adjourned at 9:45 P.M. on May 25th, 1971. The next meeting was scheduled for September 14th, 1971, in Room 801 of the State Office Building, Baltimore, Maryland.

Respectfully submitted,

W. Minor Carter
Legislative Analyst

mdc

MINUTES
of the

LANDLORD-TENANT LAWS STUDY COMMISSION

(Eleventh Meeting)

The eleventh meeting of the Governor's Commission on Landlord-Tenant Laws was called to order at 7:45 on October 19, 1971, in Room 801 of the State Office Building, 301 West Preston Street, Baltimore, Maryland, by Judge Edgar Silver, Chairman and presiding. Members of the Commission in attendance at the meeting were Mr. Irvin Alter, Mr. G. Greg Everngam, Mr. Morton Funger, Mr. Ramsey W. J. Flynn, Mr. George Laurent, Professor James W. McElhaney, Mr. Michael Milliman, Mr. John Morrison, Mrs. Anita Price and Mr. William Sallow.

The first order of business was to consider the scope of the Commission from the charge to the Commission contained in Resolution 46 of the 1970 Session which is not clear as to whether or not all landlord-tenant relationships, including commercial leases, were to be considered by the Commission. It was decided that the Commission should limit itself to residential landlord-tenant relationships only.

Professor McElhaney then passed out copies of the proposals that he developed for the Commission. In his introductory remarks to the Commission concerning his proposals, Professor McElhaney stated that he did not consider any rent control provisions simply because he felt that this was not the answer and that the federal government's price and wage freeze has mooted this issue for the next year.

Professor McElhaney then went through his report giving the Commission a general rundown of what he has attempted to do. Due to a lack of manpower the entire report was not ready at this meeting. However, Professor McElhaney stated that he will have the remainder of the report typed up and mailed to the members this week. Professor McElhaney was quite explicit in requesting all members of the Commission and interested parties to forward any comments to him concerning his report. He further suggested that the Commission aim to have an entire landlord-tenant code completed by December of 1972, but complete some items prior to January of 1972 in order to have them introduced at the 1972 Session. It was suggested that the Commission attempt to complete the statewide eviction procedures, the security deposit section, and some tenant's remedies in time for the 1972 Legislative Session.

The next meeting of the Commission is set for November 9th at 7:30 p.m. in Room 801 of the State Office Building in Baltimore. It was suggested during the meeting that the Commission meet more frequently, perhaps bi-monthly, in the future. Therefore, it may be that the Commission will be meeting on November 23rd and every two weeks thereafter until the General Assembly comes into session. It is anticipated that this will serve as notice for the meeting on November 23rd.

Respectfully submitted,

W. Minor Carter
Legislative Analyst

STATE OF MARYLAND

S. JAMES, CHAIRMAN
.TER LOWE, VICE-CHAIRMAN

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SECRETARY AND DIRECTOR OF RESEARCH

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Minutes of the Landlord-Tenant Law Study Commission

(Twelfth Meeting)

The Twelfth Meeting of the Governor's Commission on Landlord-Tenant Laws was called to order on Tuesday, November 9, 1971 in Room 801 of the State Office Building, 301 W. Preston Street, Baltimore, Maryland. Members of the Commission in attendance at the meeting were: Mr. G. Greg Everngam, Mr. Morton Funger, Mr. Moe Hochberg, Mr. Ramsey W.J. Flynn, Mr. George Laurent, Mr. Michael Milliman, Mr. John Morrison, Mr. Howard Offitt, Mrs. Margaret B. Pollard and Professor James W. McElhaney.

In the absence of the Chairman and the Vice-Chairman, Professor McElhaney was elected as the temporary Chairman of the Commission for this meeting. Professor McElhaney called the meeting to order and distributed the remainder of his proposals. The first section of his proposal had to be passed out at the last meeting.

The Commission, after discussion, unanimously voted to waive the notice provisions as contained in the by-laws of the Commission. A long discussion then followed concerning the future schedule of the Commission. It was decided that there would be evening meetings on November 17th and November 23rd at 7:45 in Room 801 of the State Office Building in Baltimore, Maryland.

It was suggested by Mrs. Pollard that the Commission meet over a weekend in order to get as much done as possible. However, the Commission did not feel that there would be sufficient attendance for a meeting of this type. The Commission then, through a series of motions, decided on mid-week, late afternoon meetings to be followed by dinner and then another meeting in the evening. The first late afternoon meeting was scheduled for December 2nd at 3:00 p.m. in Room 801 of the State Office Building, Baltimore, Maryland and the second meeting was scheduled for December 14th at 3:00 p.m. in the Silver Spring area.

It was decided that the November 17th meeting would consider the amendment of the rules of procedure for the Commission and all areas of mutual consent for which immediate legislation could be drafted. A copy of the rules of order have been enclosed for your information.

It is urged that all members of the Commission attend the meetings since we are reaching important decisions.

Respectfully submitted,

W. Minor Carter

November 10, 1971

Rules of Order for Landlord-Tenant Commission

Judge Edgar P. Silver, Chairman

1. Except as otherwise specifically provided, this Commission shall follow Roberts Rules of Order in the conduct of all business meetings.

2. Meetings will be held at the call of the chairman, except that additional meetings may be called by a simple majority of the Commission.

3. Any rule of order may be waived by a vote of three-quarters of the Commission.

4. (a) There shall be at least two weeks written notice to all members in advance of any meeting whether called by the chairman or the members.

   (b) The agenda for each meeting shall accompany the notice of that meeting. No vote shall be taken on any major issue at any meeting unless notice of that issue was contained in the agenda.

5. A simple majority shall constitute a quorum to conduct business.

6. The Commission shall make a preliminary consideration of all issues before it where it shall provisionally adopt whatever policies, principles and proposed changes in the landlord-tenant law as it shall feel proper. It shall take such other action as it shall feel proper to effectuate its purposes.

7. A simple majority of those present shall suffice for the provisional adoption of any policy, principle or declaration of proposed law revision.

   Thereafter such provisional adoption shall not be subject to reconsideration or review at the meeting where adopted or thereafter except by a three-quarters vote of those present to reconsider or review, except

8. All policies, principles and declarations of proposed law revision shall be subject to final review or reconsideration before final adoption when the Commission has completed the preliminary consideration of all issues properly before it.

9. A simple majority of those present shall suffice for the final adoption of any policy, principle or proposed law revision, or any other action of the Commission.

10. Any member or group of members dissenting from any final action of the Commission may file a minority report which shall be forwarded with the final action of the Commission.

As Adopted and Amended
11/17/70

VII. PUBLIC REGULATION AND REMEDIES

General Commentary

The purpose of this section is to make new proposals or modifications of existing procedures. It is not intended to supplant housing code enforcement.

A. Statewide minimum housing code.

Commentary

At present there is no statewide housing code. Indeed, there are many counties which have no housing codes. The purpose of such a statewide code would not be to replace any city's or county's code, but rather to provide a bare minimum in housing standards which would set a universal minimum standard. Safe heating, plumbing, electrical wiring and basic structural integrity should be the right of all Maryland tenants. Moreover, local governmental units should be encouraged to enact more comprehensive codes. Since housing codes are inextricably intertwined with landlord-tenant rules, such a proposal would be appropriate to come from this commission. It need not be a part of the Residential Landlord-Tenant Code, however.

B. Require annual license and inspection of all rental units.

Commentary

At a time when our society carefully regulates and inspects fundamental consumer products and services (airplanes, cars, children's toys, foods, clothing, drugs, to name an obvious few), it seems strange that housing is largely exempt. Multiple dwelling inspection and licensing laws, like fire escape laws for apartments and factories, grew out of some disasterous sweatshop and tenement fires around the turn of the centur Surely we have progressed beyond that.

A valid license at low cost should be required for every rental unit. Perhaps economies of scale in inspecting multiple units should permit reduced per unit costs. The requirement should be statewide.

Licenses should be denied for failure to come up to rent escrow or statewide minimum housing code standards (see Section VII A, above). Licenses should not be denied for minor code violations.

Failure to obtain a license should result in a respectable, but not oppressive civil fine [for example, from $10.00 to $25.00 per unit, in the discretion of the court.

C. Require a valid license to bring any landlord's remedy provided in this code or subsisting in the common law, provided that, in case of failure to have such a license, the landlord could pay the cost of the license plus a minimum fine into court in order to avoid an unjust delay of the proceedings.

D. Require all licensing fees, fines, and fines from housing code violations to be paid into a fund which will in part support the cost of making emergency repairs by governmental agencies of defective dwelling units.

ommentary

The cost of such fines and fees is presently economically destructive. It takes money out of the housing market, diminishing the pool of available funds to maintain and repair our current housing stock. If government is going to collect this money, and to an extent it already does, then it should use it to improve the market from which it came. Ear-marking federal gas tax moneys for highway projects has been tremendously successful - perhaps too successful. No such hopes are held out for these funds; however, at least they could be used to help the situation rather than merely create a negative incentive, as is the present situation.

E. Permit rent escrow to be brought by a governmental agency.

Commentary

The source of this suggestion is F. Grad, LEGAL ASPECTS OF HOUSING CODE ENFORCEMENT IN BALTIMORE CITY (1971). Its principal utility is probably to permit rent escrow on an appropriate scale for large multiple dwelling units in order to permit the accumulation of funds to make fundamental repairs to benefit all tenants. It also could serve to protect old or infirm tenants who are not able to sufficiently protect themselves.

F. Create local governmental agencies empowered to make emergency repairs where the landlord fails or refuses to do so, empowering the agency to assert a lien on rents until the repairs are paid for.

Commentary

Rent liens are more practicable than receivership, which contemplates taking over a rental unit or units and actually running it until it is brought into code compliance. Firstly, complete code compliance may be impossible, or highly impractable, yet a public receiver could hardly get away with trying to do less. Secondly, receivership has limited success - perhaps in part due to its effectiveness: landlords do not let economically repairable units fall into receivership. (Economically unrepairable units should be destroyed.)

The city of Chicago boasts of an effective emergency repair unit which fixes leaking plumbing, fills empty oil tanks, fixes defective furnaces, and the like, on an around-the-clock basis. This was perhaps the most important bit of information which came out of a recent symposium of three days' duration on housing code enforcement.

The repairs should probably be limited to emergency matters directly effecting the immediate health and safety of the tenants. Cosmetic and convenience items should be left to other remedies.

G. Make housing code enforcement a civil remedy. Permit the court, under its powers of civil contempt, to order repairs. Court can suspend license.

Commentary

The drawbacks of standard housing code enforcement have been previously commented on in this outline. Among drawbacks previously indicated, housing code enforcement is currently a criminal matter exclusively. In the majority of cases, it is simply an injustice to lable a landlord a criminal for failing to make repairs, and tends to drive reputable landlords out of the market. Surely the policy of the law ought to be otherwise. Moreover, criminal actions are procedurally cumbersome. See generally, F. Grad, LEGAL ASPECTS OF HOUSING CODE ENFORCEMENT IN BALTIMORE CITY (1971).

H. Create licensing board empowered to grant and take away required licenses.

Commentary

Generally speaking, taking a landlord's license away does the tenant no good if it means he must move out. This, of course, need not necessarily follow. The ultimate sanction to withhold the privilege of engaging in a particular business is a powerful one, and must be protected against. Nevertheless, landlords are just as important to their tenants as realators are to their clients, and the public interest demands sanctions in appropriate cases. The difficult drafting job is not in creating the power, but in fashioning satisfactory safeguards.

I. Receivership.

Commentary

Receivership, as previously indicated; works better as a deterrent than as a remedy. Nevertheless, it is probably important for it to be a possible alternative, in order to discourage "milking" the capital out of a building by collecting rents and failing to make repairs.

J. Tax incentives for repairing housing units.

Commentary

Although theoretically outside the scope of the commission's charge, the tax aspects of modern business are so important as to warrant some suggestions to the legislature. Presently the tax structure penalizes substantial upgrading. We need to do everything possible to make the housing market attractive to responsible investors which is in accord with the general public interest. Tax incentives for upgrading older buildings is a good way to foster such investment interests. These incentives should not reward ordinary maintenance but rather upgrading. The buildings should probably be at least 15 years old in order to qualify.

4-802 Statutory Form for Notice of Eviction for Failure to Pay Rent

[The following form has all the blanks filled in with hypothetical facts in order to make it more understandable. In its published form, general discriptions would be substituted.]

A. If posted on the premises, the notice of eviction action must be on cardboard which is weather-proof, no less than .012 inches thick, with the printed information in no smaller than point type. Information which is not printed must be either typewritten or clearly lettered (hand printed).

B. The notice of eviction must be in the following form:

To: Oscar Occupant
1111 S. Tenant Rd.
Baltimore, Maryland 21200

order you not ~~EVICTION~~ NOTICE to come to court

This is to inform you that the landlord of your home has asked the court to ~~evict~~ you for failure to pay rent [and to order you to pay the rent you owe]. Your case will be heard on Tuesday, January 20, 1980 at 9:00 in the morning in the District Court of Baltimore City. That court is located on Fayette and Gay Streets in Baltimore, and is in Room 201.

You should come and give your defense if you feel you are being improperly evicted. If you have a valid defense, all or some of your rent may not be due. But to present such a defense, you or your lawyer must appear in court. You have the right to bring a lawyer with you or to have him go in your place. If you cannot afford a lawyer, you may ask Legal Aid or the Court to appoint a lawyer to represent you. If you can afford a lawyer, but do not know one, the Bar Association can help you find one.

Legal Aid of Baltimore	Clerk of District Court	Baltimore City Bar Ass
Address and Telephone	Address and Telephone	Address and Telephone

If you have not paid the rent, you may do so at any time before the constable moves you out. If you pay the rent within 10 days of when it was due, you will not have to pay any court costs. If the rent is more than 10 days late, you will also have to pay $2.50 court costs.

Rent and costs (if any) should be paid to your landlord. His name is Lawrence Landlord. His address is 1111 Landlord La., Baltimore, Maryland 21

IF YOU PRESENT NO DEFENSE TO THE COURT AND DO NOT PAY THE RENT, YOU MUST MOVE OUT. IF YOU DO NOT, YOU WILL BE MOVED OUT OF YOUR HOME BY THE CONSTABLE ON WEDNESDAY, JANUARY 28, 1980.

Date Rent was Due _____

Amount of Rent Due _____

Date Action Filed _____

Title of Case

Docket No.

Date Notice Served _____

Signature of Constable Serving Notice _____

Clerk of Court
District Court of Balti... City

STATE OF MARYLAND

WILLIAM S. JAMES, CHAIRMAN
THOMAS HUNTER LOWE, VICE-CHAIRMAN

CARL N. EVERSTINE,
SECRETARY AND DIRECTOR OF RESEARCH

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MEETING OF THE LANDLORD-TENANT LAWS STUDY COMMISSION

(Thirteenth Meeting)

The Thirteenth Meeting of the Governor's Commission on Landlord-Tenant Laws was called to order on Wednesday, November 17, 1971, in Room 801 of the State Office Building in Baltimore, Maryland by the Chairman, Judge Edgar P. Silver. Members of the Commission in attendance were: Mr. G. Greg Everngam, Mr. Morton Funger, Mr. Moe Hochberg, Mr. Ramsey W.J. Flynn, Mr. George Laurent, Mr. Michael Millemann,Mr. John Morrison, Mr. Howard Offitt, Mrs. Margaret B. Pollard, Mr. William Sallow and Professor James W. McElhaney.

The first order of business of the Commission was to announce the charges in membership. Mr. William Goode has moved to New York State and Mrs. Vance Martin is attending school and, therefore, they will no longer be able to take part in the Commission. Nominated to take their place were Mr. Michael Butler, who is the Associate Director of Health, Welfare and Housing for the Urban League, and Mr. W. Minor Carter. It is hoped that both new members will receive their official notification from the Governor prior to the next meeting.

Due to the press of business and personal affairs, the Commission has been averaging about 11 to 12 members present. This has not been enough to be totally effective under the rules of order. Under rule 4A, at least two weeks written notice was required prior to any meeting. With the accelerated schedule of Commission meetings, this requirement is ineffectual, but, under rule 3, three-fourths of the Commission is needed to waive this rule of order. After discussion, the Commission decided to poll the members of the Commission by mail on the following proposition: The Commission may act in any matter with a minimum of 8 persons present and a simple majority of

STATE OF MARYLAND

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HOMAS HUNTER LOWE, VICE-CHAIRMAN

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those members present shall decide any question regardless of any other provision in the rules of order. Since under the existing rules of order, it is necessary for three-fourths of the Commission to assent to a change of the rules, this vote will be taken by mail, and anyone wishing to register his or her vote should contact Mr. W. Minor Carter at Piper & Marbury in Baltimore, phone no. 539-2530 prior to 5:00 p.m. by the 24th of November. Silence will be considered a yes vote.

The Commission then moved on to discuss areas of Professor McElhaney's proposals that it was felt could be unanimously agreed upon. The first matter to be discussed was the eviction notice, written in plain language. It was felt by the Commission that the notice should be modernized and made statewide. There was discussion as to whether the word "eviction" should be in the notice since many members of the Commission felt that the tenant may feel that the words "eviction notice" meant that the tenant was being evicted at that time. Therefore, it was decided to change the title of the notice to "notice to come to court". Professor McElhaney was charged with drawing up the notice in suitable form for introduction to the Legislature and resubmitting it to the Commission. It was also suggested that the clerks of the court and the chief judge of the district court be given copies in order that they may make any suggestions that they feel are warranted.

The next item discussed was a statewide right of redemption. This would allow a tenant to pay his rent and court costs right up to the time that the sheriff comes for the actual putting out. The tenant would then be allowed to remain on the premises. This is in effect in many political sub-divisions in Maryland at present, although it is not codified. The Commission voted to have this codified with Mr. Everngam voting against this proposal, stating that he felt that once the judge decided the matter, that should be the final decision.

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In connection with the right of redemption, the Commission then discussed "put-out" notice which would inform the tenant that the landlord has received permission from the court to evict the tenant, unless the tenant pays his rent and the court costs prior to a certain day. This would be in plain language form and be served in the same manner as the "notice to come to court". The Commission adopted this proposal with Mr. Everngam voting against it, on the same grounds as his opposition to the right of redemption. Both the chief judge of the district court and the clerks of the court will be notified as to the intention of the Commission to put this legislation in, so that they may again make suggestions and program for any additional costs that these bills may require.

The Commission decided,after a brief discussion,to adopt the view that any lease for a term of more than one year must be in writing to be enforceable. The Commission then discussed proposal IIA: the duty of the landlord to deliver the leased premises to the tenant at the beginning of the term. This turned out to be a fairly controversial item and was held off for a later meeting.

Proposal IIC, which allows for the mitigation of damages when a tenant abandons the leased premises, was adopted with the word "affirmative" changed to "reasonable". In connection with this proposal VIG, making acceleration clauses void, was also agreed upon.

The last matter taken up was proposal IIF, requiring non-resident landlords to appoint a resident agent. It was stated that Article 75, Section 96 already covers this area.

The Commission then decided to discuss security deposits at the next meeting, which is scheduled for 7:45 p.m. in Room 801 of the State Office Building in Baltimore, Maryland.

STATE OF MARYLAND

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...UNTER LOWE, VICE-CHAIRMAN

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The second item to be discussed at that meeting, if there is sufficient time, will be a statewide escrow bill.

Respectfully submitted,

W. Minor Carter

TENANTS' DEPOSITS

§ 41. Escrow account for deposits not credited to rent.

When a landlord or an authorized agent of the landlord requires a deposit of money from a tenant in an apartment building and/or development with 4 or more units prior to or in connection with any lease, which is not credited to rent, the deposit shall be deposited to an escrow account. (1969, ch. 633, § 1.)

Editor's note.—Section 2, ch. 633, Acts 1969, provides that the act "shall not apply to any project or development governed by a regulatory agreement as required by the United States government, any of its agencies or assigns which protects tenant deposits."

Section 3, ch. 633, provides that the act shall apply only to deposits made subsequent to its effective date and § 4 provides that the act shall take effect July 1, 1969.

§ 42. Return of deposit upon termination of lease; deductions from deposit.

Within twenty days after the termination of a lease, any money held in connection with the lease in an escrow account under the provisions of § 41 of this subtitle shall be returned to the tenant; but the landlord may deduct from the amount returned an amount equal to any rent past due, an amount equal to damages for lost future rent where the tenant vacates the leased premises contrary to the terms of the lease, and for any damage to the property for which the tenant may properly be held liable. (1969, ch. 633, § 1.)

§ 43. Damages recoverable in suit to recover deposit.

In any suit by a tenant to recover a deposit under this subtitle, where the tenant has successfully established his right to the return of all or part of the deposit, the tenant shall be entitled to recover as damages the amount of the deposit plus court costs including a reasonable attorney's fee not to exceed twenty-five percent (25%) of the amount due. If the court should find that the suit was brought by the tenant without substantial justification, the landlord shall be entitled to recover a reasonable attorney's fee not to exceed twenty-five percent (25%) of the amount due. (1969, ch. 633, § 1.)

§ 96. Personal jurisdiction over person as to cause of action arising from business, etc., in State; tortious injury outside State.

(a) A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action arising from the person's

(1) Transacting any business in this State;

(2) Contracting to supply goods, food, services or manufactured products in this State;

(3) Causing tortious injury in this State by an act or omission in this State;

(4) Causing tortious injury in this State or outside of this State by an act or omission outside the State if he regularly does or solicits business, engages in any other persistent course of conduct in this State or derives substantial revenue from goods, food, services or manufactured products used or consumed in this State;

(5) Having an interest in, using, or possessing real property in this State; or

(6) Contracting to insure or act as surety for, or on, any person, property, or risk, contract, obligation, or agreement located, executed or to be performed within this State at the time of contracting, unless the parties otherwise provide in writing.
(1970, ch. 540; 1971, ch. 769, § 1.)

(b) When jurisdiction over a person is based solely upon this section, only a cause of action arising from acts enumerated in this section may be asserted against him. (1964, ch. 95, § 1; 1965, ch. 749; 1968, ch. 707.)

STATE OF MARYLAND

WILLIAM S. JAMES, CHAIRMAN
THOMAS HUNTER LOWE, VICE-CHAIRMAN

CARL N. EVERSTINE,
SECRETARY AND DIRECTOR OF RESEARCH

THE LEGISLATIVE COUNCIL

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MEETING OF THE LANDLORD-TENANT LAW STUDY COMMISSION

(Fourteenth Meeting)

The Fourteenth Meeting of the Governor's Commission on Landlord-Tenant Laws was called to order on Tuesday, November 23, 1971, in Room 301 of the State Office Building, Baltimore, Maryland, by the Chairman, Judge Edgar P. Silver. Members of the Commission in attendance were: Mr. Howard Offitt, Mr. Michael Millemann, Mr. John Morrison, Mr. George Laurent, Mr. William Sallow, Mr. Moe Hochberg, Mr. G. Greg Everngam, Mr. Morton Funger, Mr. Ramsey W.J. Flynn and Professor James W. McElhaney. Mr. W. Minor Carter was also in attendance and Judge Silver stated that the letter appointing Mr. Carter to the Commission had been mailed by the Governor's office and, therefore, Mr. Carter would have a vote at this meeting.

The general topic to be discussed at the meeting was security deposits. Professor McElhaney suggested that the security deposits be binding upon the present owner of the premises and all subsequent owners. This would mean that upon the sale of the property the security deposits would be included in the price of the building and the tenant would not be responsible for paying a new deposit to the new owner. It was pointed out that the Commission would want to be careful that, in the case of ground rents, the proposed statute would not bind the owner of the ground rent. Mr. Morrison made the motion that security deposits should be binding on the present owner and all subsequent owners, which was seconded. The motion carried with the amendment that Professor McElhaney draft the proposed legislation with the ground rent problem in mind.

The next proposal to be discussed was item II.E. which proposed that the landlord be required to send out a form for the tenant to complete on which the tenant would list the

defects in the rented premises. This proposal was voted down after discussion. Mr. Funger then proposed that the landlord be required to give the incoming tenant a copy of the inspection sheet of the apartment when the outgoing tenant left. This would give the incoming tenant a record of what the landlord had charged the previous tenant for as well as an idea of what the landlord looked for in claiming damages at the end of the tenant's term. The Commission agreed that this was an excellent idea and that Professor McElhaney should draft legislation incorporating it.

The Commission then moved on to the subject of the wrongful withholding of a security deposit. It was during the discussion of the proposal, which is contained on page 13 of the report, it was suggested that the mere withholding of the security deposit was not sufficient and that the landlord must be willfully and arbitrarily withholding the deposit for the treble damages remedy to take effect. Mr. Funger suggested that the tenant also be liable to treble damages if the tenant withholds payment of the last month's rent, therefore forcing the landlord to utilize the security deposit as the last month's rent. This, if the security deposit is equal to one month's rent, leaves the landlord with no fund to draw upon if the tenant has done any damage to the apartment. The treble damages would come into effect when the tenant failed to pay, within 30 days, a bill to the landlord for repairing any damage to the premises. This proposal sparked a long discussion and it was finally decided to consider this again at a later meeting.

The Commission then moved on to the security deposit and the duties of the landlord in respect to it. Presently, the landlord is required to put the security deposit in a non-interest bearing escrow account. There is some dispute as to this regulation. Mr. Carter called up the Real Estate Commission which stated that they were not involved with this security deposit. The Commission decided to request that a member of the Real Estate Commission appear before the Landlord-Tenant Commission to discuss security deposits.

It was acknowledged by all members of the Commission that there is tremendous interest among the tenants to receive some interest on their deposit monies. From the landlord point of view there is the administrative costs in determining the amount of interest due on an account and the problem of establishing what the interest should be. Mr. Flynn suggested that the minimum deposit to be affected by any legislation would be $100.

It was further suggested that there be a limit on the amount of the deposit that could be required, i.e., the amount to equal one month's rent.

The Commission agreed unanimously that the requirement that security deposits be placed in a non-interest bearing account be repealed. There was some discussion as to whether or not the landlord should be allowed to post a bond in lieu of a special bank account for security deposit or whether he be required to place the security deposits in a special interest bearing account.

Mr. Carter made the suggestion that interest be paid on an annual basis of $1 for every $25 of deposit and, for purposes of simplification, interest would be paid on security deposits only in multiples of 25. Therefore, a security deposit of $135 would be rounded off for interest bearing purposes to $125, while a security deposit of $140 would be rounded off to $150. Interest would not be paid on less than a six-month period. There was a great deal of discussion on this point and Judge Silver appointed Mr. Carter and Mr. Flynn to a special subcommittee to work out a proposal for the Commission to act upon.

Mr. Carter then handed out copies of the landlord-tenant bill that has been prefiled in the General Assembly by Delegate Arthur King. Anyone desiring a copy of this bill should write either the Department of Legislative Reference or Mr. Carter.

Mr. Laurent then stated that he wanted the provisions of any bill the Commission comes out with to be non-waiverable.

The Commission then adjourned until its meeting on December 2nd at 3:00 p.m. in Room 801 of the State Office Building. This will be a late afternoon and evening meeting with dinner. The exact details will be worked out by the staff prior to the meeting. The first item to be discussed at the next meeting will be a state-wide escrow bill. Also to be discussed will be any items of legislation that Professor McElhaney has completed.

Respectfully submitted,

W. Minor Carter

House Bill No. 298.

Introduced by Delegates Orlinsky, Chester, Brailey, McCarty, Adams, Webster, Heintz, Brown, Dean, L. Randolph, L. K. Lee, C. Douglass, G. Curran, Dixon, Hergenroeder, J. Douglass, O'Brien and Conaway.

RENT ESCROW LAW — Topic to be discussed at Dec. 2 meeting

Sealed with the Great Seal and Presented to the Governor, for his approval this ..... day of .....

at ..... o'clock .....M.

.....

APPROVED
BY Chief Executive

CHAPTER 687 MAY 24 '71

AN ACT to repeal Sections 9-9 and 9-10 of the Code of Public Local Laws of Baltimore City (1969 Edition; being Article 4 of the Code of Public Local Laws of Maryland), title "Baltimore City," subtitle "Landlord and Tenant," subheading "Rent Escrow Law," and to enact new Section 9-9 in lieu thereof to provide certain safeguards for tenants under certain circumstances and to make other provisions regarding the rights and duties of landlords and tenants of residential premises.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That Sections 9-9 and 9-10 of the Code of Public Local Laws of Baltimore City (1969 Edition; being Article 4 of the Code of Public Local Laws of Maryland), title "Baltimore City," subtitle "Landlord and Tenant," subheading "Rent Escrow Law," be and they are hereby repealed and that a new Section 9-9 be and it is hereby enacted in lieu thereof, to read as follows:

EXPLANATION: *Italics indicate new matter added to existing law.*
[Brackets] indicate matter stricken from existing law.
CAPITALS indicate amendments to bill.
~~Strike out~~ indicates matter stricken out of bill.

[9-9. Rent escrow law.

(a) *Defense in action.* In an action of distress for rent or in any complaint proceeding brought by a landlord to recover rent or the possession of leased premises for nonpayment of rent (including a proceeding brought under Section 9-2 hereof), where the property is leased for residential use for a term of one year or less, the tenant may assert as a defense, in addition to any other defenses authorized by law, that there exists upon the leased premises, or the property used in common of which the leased premises form a part, a condition which constitutes, or if not promptly corrected, will constitute, a fire hazard or a serious threat to the life, health or safety of occupants thereof, including but not limited to, a lack of heat or of running water or of light or of electricity or adequate sewage disposal facilities or an infestation of rodents.

(b) *Same; conditions.* The assertion of the defense provided for in subsection (a) shall be conditioned upon the following:

(1) Prior to the commencement of the action of distress for rent or the complaint, the landlord or his agent was notified in writing by certified mail of the aforesaid condition or conditions by the tenant or was notified by a violation or condemnation notice from an appropriate State or municipal agency, but that the landlord has refused, or having a reasonable opportunity to do so, has failed to remedy the same.

(2) Payment of the tenant into court of the amount of rent found by the Court to be due and unpaid, to be held by the Court pending the issuance of an order under subsection (d) of this section.

(c) *Answer to defenses.* It shall be a sufficient answer to such a defense if the landlord or his agent establishes that:

(1) The condition or conditions alleged in the defense does not in fact exist or that such condition or conditions have been removed or remedied; or

(2) Such condition or conditions have been caused by the tenant or members of the family of such tenant or of their guests; or

(3) The tenant has unreasonably refused entry to the owner or his agent to the premises for the purpose of correcting such condition or conditions.

(d) *Order of Court.* The Court shall make findings of fact upon any defense raised under this section or the answer to any defense and, thereafter, shall pass such order as the justice of the case shall require, including any one or more of the following:

(1) An order to set-off to the tenant as determined by the Court in such amount as may be equitable to represent the existence of any condition set forth in subsection (a) of this section which is found by the Court to exist.

(2) Terminate the lease or order surrender of the premises to the landlord.

(3) Refer any matter before the Court to the proper State, or municipal agency for investigation and report and grant a continuance of the action or complaint pending receipt of such investigation and report. When such a continuance is granted, the tenant shall deposit

with the Court any rents which will become due during the period of continuance, to be held by the Court pending its further order or in its discretion the Court may use such funds to pay a mortgage on the property in order to stay a foreclosure.

(e) *Costs.* If it shall appear that the tenant has raised a defense under this section in bad faith, or has caused the violation or has unreasonably refused entry to the landlord or his agent for the purpose of correcting the condition giving rise to the violation, the Court, in its discretion, may impose upon the tenant the reasonable costs of the landlord, including counsel fees and court costs and the costs of repair where the court finds the tenant has caused the violation.

(f) *Waivers to be void.* Any provision of a lease or other agreement whereby any provision of this section for the benefit of a tenant, resident or occupant of a dwelling is waived, shall be deemed against public policy and shall be void.]

[9-10. Same; retaliatory acts.

(a) *Findings and purposes.*

(1) It is found and declared that there exist in the City of Baltimore structures used for human habitation which are, or may become in the future, substandard with respect to structure, equipment, or maintenance; and that such conditions constitute a menace to the health, safety, welfare, and reasonable comfort of its citizens.

(2) It is further declared that the State of Maryland and the City of Baltimore have enacted laws and ordinances to enforce certain standards to assure that such conditions do not persist or develop.

(3) It is further declared that in order to assure that dwellings meet these minimum requirements as established in these laws and ordinances, tenants must have the free unencumbered right of complaint to their landlords, the courts, and governmental agencies.

(4) It is further declared that retaliation, without cause, by landlords through eviction, rental increases, or other action, and tenant's fear of such retaliation, have restricted the exercise of these rights.

(5) Therefore, it is declared that it is against public policy to allow landlords to engage in such retaliatory acts.

(b) *Protection of the tenant's rights.*

(1) No action or proceeding to recover possession of any leased premises shall be maintainable by the landlord against the tenant, nor shall an action of distress for rent be maintainable, nor shall the landlord cause the rent to be increased, nor may the services which by law are to be supplied by the landlord to or for the benefit of the tenant be decreased, if the action, rent increase or reduction of services by the landlord is in retaliation for the tenant withholding rent which the Court determines a proper exercise of rights under section 9-9 of the Code of the Public Local Laws of Baltimore City (1969 Edition, as enacted by Chapter 459 of the Acts of 1968).

(2) If notice of eviction, increase in rent, or decrease in services was given within six months from the withholding of the rent as provided in subsection (b) (1) hereof, there shall be a rebuttable presumption that the landlord acted in retaliation.

(c) *Protection of the landlord's rights.*

Notwithstanding subsection (b) hereof, the landlord may take action to recover possession or to increase the rent, as the case may be, if he can show that any of the following conditions exist:

(1) The conditions which formed the basis of the tenant's action enumerated under subsection (b) hereof were caused by an act or omission of the tenant or members of his family, or any invitee or assignee thereof, beyond those acts [of] *or* omissions constituting ordinary wear and tear; or

(2) The landlord seeks in good faith to recover possession of the property for his immediate and personal use as a dwelling; or

(3) The landlord has contracted in good faith, in writing, to sell the property for immediate personal use and occupancy as a dwelling by the purchaser; or

(4) The landlord must increase the rent due to a substantial increase in taxes or a substantial increase in maintenance or operating costs not associated with the condition or conditions for which rent was properly withheld under Section 9-9 of the Code of the Public Local Laws of Baltimore City, or the landlord has completed a substantial capital improvement of the leased premises or the property of which the leased premises are a part and which improvement benefits the leased premises; or

(5) The Court finds that the landlord has brought an action or proceeding to recover possession or has increased the rent for good cause and not in retaliation for the exercise of actions enumerated under subsection (b) hereof.

(d) *Waiver of tenant's rights prohibited.*

Any provision of a lease or other agreement whereby any provision of this section for the benefit of a tenant, resident, or occupant of a dwelling is waived, shall be deemed against public policy and shall be void.

(e) *Application to Housing Authority of Baltimore City.*

This law and Section 9-9 of the Code of the Public Local Laws of Baltimore City shall apply to any premises leased by the Housing Authority of Baltimore City.[1]]

9-9.

(a) Findings and purposes.

(1) It is found and declared that there exist in the City of Baltimore structures used for human habitation which are, or may become in the future, substandard with respect to structure, equipment or maintenance; and that such conditions constitute a menace to the health, safety, welfare and reasonable comfort of its citizens.

(2) It is further declared that in order to assure that dwellings meet certain minimum requirements as established by this act tenants must have the free, unemcumbered right of complaint to their landlords, the courts and governmental agencies.

(3) It is further declared that retaliation, without cause, by landlords through eviction, rental increases or other action, and tenants'

fear of such retaliation, MAY have restricted the exercise of these rights.

(4) It is therefore declared that the interests of public policy require that meaningful sanctions be imposed upon those who would perpetrate or perpetuate such conditions and that such retaliatory actions on the part of landlords be proscribed. SUCH SANCTIONS ARE INTENDED TO PROTECT THE LIFE, HEALTH AND SAFETY OF TENANTS AND ARE NOT TO BE USED TO HAVE PREMISES REDECORATED OR TO HAVE MINOR CODE VIOLATIONS CORRECTED. IT IS ALSO NOT THE INTENTION THAT SUCH SANCTIONS BE USED BY EITHER LANDLORDS OR TENANTS AS A MEANS OF HARASSMENT.

(b) Where property situated in the City of Baltimore is leased for the purpose of human habitation, the tenant of such property may assert that there exists upon the leased premises, or upon the property used in common of which the leased premises form a part, a condition or conditions which constitute, or if not promptly corrected, will constitute a fire hazard or serious threat to the life, health or safety of occupants thereof, including but not limited to, a lack of heat or of hot or cold running water (EXCEPT IF THE PROPERTY IS A ONE-FAMILY DWELLING OR A MULTIPLE DWELLING WHERE THE TENANT IS RESPONSIBLE FOR PAYMENT OF THE WATER CHARGE AND WHERE THE LACK OF SUCH WATER IS THE DIRECT RESULT OF THE TENANT'S FAILURE TO PAY THE WATER CHARGE) or of light or of electricity or of adequate sewage disposal facilities or an infestation of rodents (EXCEPT IF THE PROPERTY IS A ONE-FAMILY DWELLING) or of the existence of paint containing lead pigment on surfaces within the dwelling, PROVIDED THAT THE LANDLORD HAS NOTICE OF THE PAINTED SURFACES, AND IF SUCH CONDITION WOULD BE IN VIOLATION OF THE BALTIMORE CITY HOUSING CODE.

(c) The assertion described in subsection (b), above, may be made

(1) on the initiative of the tenant by his filing in People's Court of Baltimore City a declaration setting forth such assertion and praying for one or more forms of relief as enumerated in subsection (f), below, or

(2) by the tenant as a defense in answer to an action of distress for rent or in any complaint proceeding brought by a landlord to recover rent or the possession of leased premises for nonpayment of rent (including a proceeding brought under Section 456 hereof).

(d) The assertion by the tenant, whether made by complaint or answer, shall be conditioned upon the following:

(1) Prior to the commencement of the action by the tenant or by the landlord, the landlord or his agent was notified in writing by Certified Mail (return receipt) of the condition or conditions described in subsection (b), above, or was notified of such condition or conditions by a violation or condemnation notice from an appropriate State or municipal agency, but that the landlord has refused, or having a reasonable opportunity to do so, has failed to remedy the same. For the purposes of this subsection, what period of time shall

be deemed to be unreasonable delay is left to the discretion of the court ~~except that a period in excess of thirty (30) days from receipt of the notification by the landlord shall be deemed per se unreasonable~~ EXCEPT THAT THERE SHALL BE A REBUTTABLE PRESUMPTION THAT A PERIOD IN EXCESS OF THIRTY (30) DAYS FROM RECEIPT OF THE NOTIFICATION BY THE LANDLORD IS UNREASONABLE; and

(2) Payment by the tenant into court of the amount of rent called for under the lease, unless or until such amount is modified by subsequent order of the court under subsection (f) (4), below.

(3) THE TENANT HAS NOT RECEIVED MORE THAN FIVE (5) SUMMONS CONTAINING COPIES OF COMPLAINTS FILED BY THE LANDLORD AGAINST THE TENANT FOR RENT DUE AND UNPAID IN THE YEAR IMMEDIATELY PRIOR TO THE INITIATION OF THE ACTION BY THE TENANT OR BY THE LANDLORD. IF THE TENANT HAS LIVED ON THE PREMISES SIX MONTHS OR LESS AND HAS RECEIVED THREE (3) SUMMONS WITH COPIES OF COMPLAINTS FOR RENT DUE AND UNPAID, THE TENANT SHALL NOT BE ENTITLED TO MAKE AN ASSERTION AGAINST THE LANDLORD AS DESCRIBED IN SUBSECTION (B).

~~(c)~~ (E) It shall be sufficient answer or rejoinder to such a declaration or defense if the landlord establishes to the satisfaction of the court that

(1) The condition or conditions alleged by the tenant do not in fact exist, or

(2) such condition or conditions have been removed or remedied, or

(3) such condition or conditions have been caused by the tenant or members of his family or his or their invitees or assignees, or

(4) the tenant has unreasonably refused entry OR UNREASONABLY FAILED TO MAKE ARRANGEMENTS TO BE HOME FOR THE ENTRY to the landlord or his agent to the premises for the purpose of correcting such condition or conditions.

(f) The court shall make findings of fact on the issues before it and shall make any order that the justice of the case may require. Such an order may include, but is not limited to, any one or more of the following:

(1) Termination of the lease or ordering the premises surrendered to the landlord,

(2) Ordering all monies already, accumulated in escrow disbursed to the landlord or to the tenant IN ACCORDANCE WITH SUBSECTIONS (F)(4),(F)(5), OR (G),

(3) Ordering that the escrow be continued until the complained of condition or conditions be remedied,

(4) Ordering that the amount of rent, whether paid into the escrow account or paid to the landlord, be abated as determined by the court in such an amount as may be equitable to represent the existence of the condition or conditions found by the court to exist.

THE MERITS OF THE INITIAL CASE BY THE COURT. NOTHING IN THIS SUBSECTION SHALL ALTER THE LANDLORD'S OR TENANT'S RIGHT TO TERMINATE OR NOT RENEW A WRITTEN LEASE FOR ONE YEAR OR LONGER UNDER THE FORMS CONTAINED THEREIN; PROVIDED, HOWEVER, THAT SUCH WRITTEN LEASE SHALL NOT BE USED TO DEFEAT THE INTENT AND PROVISIONS OF THIS ACT.

(L) A LANDLORD MAY REPOSSESS HIS PREMISES AFTER GIVING A PROPER SIXTY-DAY NOTICE TO THE TENANT OF THE LANDLORD'S DESIRE TO REPOSSESS THE PREMISES PROVIDED THAT THE LANDLORD, IN GOOD FAITH, INTENDS TO RAZE OR BOARD UP HIS PREMISES AND INTENDS TO OBTAIN A PERMIT TO DO SO.

~~(l)~~ *(M) Any provision of a lease or other agreement whereby any provision of this Act for the benefit of a tenant, resident or occupant of a dwelling is waived shall be deemed to be against public policy and shall be void.*

~~(m)~~ *(N) This Act shall also apply to any residential premises located in Baltimore City leased by an Agency of the State of Maryland or the City of Baltimore.*

SEC. 2. *And be it further enacted,* That all laws or parts of laws, public general or public local, inconsistent with the provisions of this Act, are hereby repealed to the extent of such inconsistency.

SEC. 3. *And be it further enacted,* That this Act shall take effect July 1, 1971.

Approved:

.....
Governor.

.....
Speaker of the House of Delegates.

.....
President of the Senate.

STATE OF MARYLAND

WILLIAM S. JAMES, CHAIRMAN
MAS HUNTER LOWE, VICE-CHAIRMAN

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MEETING OF THE LANDLORD-TENANT LAW STUDY COMMISSION

(Fifteenth Meeting)

The Fifteenth Meeting of the Governor's Commission on Landlord-Tenant Laws was called to order at 3:30 p.m. on Thursday, December 2, 1971, in Room 801, The State Office Building, Baltimore, Maryland, by Vice Chairman William Sallow. Members of the Commission in attendance were: Mr. G. Greg Everngam, Mr. Morton Funger, Mr. Ramsey W.J. Flynn, Mr. George Laurent, Mr. Michael Butler, Mr. Michael Millemann, Mr. John Morrison, Mr. Howard Offitt, Mrs. Margaret B. Pollard, Mr. William Sallow and Mr. W. Minor Carter. Professor James W. McElhaney was also present. The topic scheduled to be discussed at the meeting was rent escrow. Mr. Millemann started the discussion off by discussing what rent escrow was and how it operates. Mr. Millemann pointed out that rent escrow allows the tenant to pay his rent into escrow if there exists on the leased premises a fire hazard or a serious threat to the life, health or safety of the occupants. After it has been judicially determined that this condition exists, rents are paid into escrow until the landlord makes repairs. Once the landlord has made the repairs, the escrow moneys are given to the landlord. The whole purpose of the escrow bill, as outlined by Mr. Millemann, is to encourage landlords to maintain their rented properties in a manner so that they are free from any danger to the occupants and to give the tenants the right, when these conditions exist, to take action to try to correct them.

At the conclusion of Mr. Millemann's remarks, there followed a general discussion on rent escrow as well as other solutions to this problem. Mr. Funger suggested that the Commission discuss licensing proposals, whereby all landlords are licensed, and in any case where the landlord has failed in his duty to provide housing that is not a hazard, his license is revoked. Mr. Funger pointed out that this is extremely strong

medicine and would effectively stop substandard housing by taking away the license to rent that housing. However, in the discussion, it was pointed out that one of the drawbacks present in licensing is that, upon revocation of the license, the tenant is forced to move. In many cases, this works a true hardship on the tenant as well as any other tenant living on the premises.

The effectiveness of rent escrow came under a great deal of discussion. Mr. Millemann and Mr. Offitt presented their various viewpoints on the effectiveness and the burdens it has imposed upon the landlord and the tenant.

After a ten minute recess, Mrs. Pollard moved that the Orlinsky bill, which is presently the law in Baltimore City, be adopted statewide in principle by the Commission. After discussion on the motion, Mr. Laurent amended the motion to say that the Commission should adopt a statewide rent escrow bill in principle. There was discussion on this motion. It was pointed out by a member that rent escrow did not truly get to the problem of, for example, a lack of heat, in a quick manner. It was suggested that the bill be amended to allow a tenant who was suffering under a condition which makes him eligible for rent escrow able to have all the rents on that property withheld in escrow until the dangerous condition is repaired. The discussion then turned to whether there should be a criminal penalty or the rent escrow system.

It was pointed out by Professor McElhaney and Mr. Millemann that all available studies, including the Grad Report, show that criminal sanctions do not work in this field and that civil sanctions are far superior.

It was also pointed out in the general discussion that rent escrow certainly did not answer all tenant problems but it was or could be an effective weapon to prevent hazardous conditions to occur. The motion was called and the Commission voted 6 to 4 to adopt, in principle, a statewide rent escrow bill.

The Commission then heard the report of the security deposit subcommittee, consisting of Mr. Flynn and Mr. Carter. This subcommittee suggested that security deposits draw 3% interest per year. The landlord must keep the security deposits in a separate account. The deposit must be a minimum of $50 to draw interest and landlords cannot require a security deposit greater than one month's rent per unit dwelling. No interest

will be given on the security deposit for a period under six months. The reason that the subcommittee decided upon 3% per year was that Savings and Loan Associations are given between 4 3/4 and 5 1/2% per year and the Savings and Loans estimate that it will take between 1 1/4 and 1 1/2% for the landlords to handle money. The Commission agreed with the subcommittee and unanimously adopted this plan. The idea of more criminal sanctions was put off until a later time.

The Commission then went back to rent escrow, and Mr. Millemann set forth the procedures to invoke rent escrow. The Commission discussed the notice to the landlord that rent escrow was being invoked and it was decided that written notice by certified mail must be sent to the landlord or notice of a housing code violation. The Commission also discussed allowing the landlord to get the escrow money out to complete the repairs. Mr. Millemann pointed out that if the landlord has not repaired the premises within six months, the escrow money is given to the tenant.

Another function of rent escrow is that the judge, during the period when the hazardous condition is in existence, may abate the rent. This provoked discussion among the Commission members as to whether or not this was the proper place for abatement and whether the judge has the knowledge to properly make the decision. Rent escrow may be raised as a defensive action or an affirmative action, which means that the tenant may raise it without having withheld rent immediately. The other point discussed in respect to rent escrow was that there would be a hearing after the repairs if the tenant requested it. The landlord could apply to the court for the rent of the escrow, and, if the tenant did not object, the court, without a hearing, could return the money to the landlord. Rent escrow provisions would not be effective if the tenant did not pay all his rents on time into the escrow fund and, if the tenant fails to do so, his protection on the rent escrow bill is terminated.

The motion was made that these procedural actions in the rent escrow bill be approved in principle for the statewide rent escrow bill. This motion carried.

The next meeting was set for December 14th at 3:30 p.m. in the Holiday Inn at 8777 Georgia Avenue in Silver Spring. The Commission will have dinner at the Holiday Inn and continue their meeting after dinner. It is planned that we will have dinner in the meeting room.

Matters to be discussed at the next meeting are: consideration of items in final form that we placed in principle and further discussion on rent escrow.

Respectfully submitted,

W. Minor Carter

LANDLORD-TENANT LAWS STUDY COMMISSION

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Professor James W. McElhaney
University of Maryland Law School
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Mr. W. Minor Carter
900 First National Bank Building
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December 6, 1971

...S, CHAIRMAN
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CARL EVERSTINE,
SECRETARY AND DIRECTOR OF RESEARCH

THE LEGISLATIVE COUNCIL

16 FRANCIS STREET—P. O. BOX 348
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MEETING OF THE LANDLORD-TENANT LAW STUDY COMMISSION

(Sixteenth Meeting)

The Sixteenth Meeting of the Governor's Commission on Landlord-Tenant Laws was called to order at 3:30 p.m. on Tuesday, December 14, 1971 at the Holiday Inn, 8777 Georgia Avenue, Silver Spring, Maryland, by the Honorable Edgar P. Silver, Chairman. The members of the Commission in attendance were: Mr. G. Greg Everngam, Mr. Morton Funger, Mr. Moe Hochberg, Mr. Ramsey W.J. Flynn, Mr. Michael Millemann, Mr. John Morrison, Mrs. Margaret B. Pollard, Judge Edgar P. Silver and Mr. W. Minor Carter. Professor James W. McElhaney was also present.

The Commission opened its meeting by receiving testimony from Mr. Stuart Weinblatt, Director of State Affairs, University of Maryland Student Government Association. Copies of his testimony are attached to the minutes. In essence, Mr. Weinblatt discussed the problems students have in obtaining apartments and his feeling that the students lack any power as tenants.

Mr. Charles Wolf of the Real Estate Commission spoke before the Commission concerning their role in landlord-tenant relations. Mr. Wolf was closely questioned on their regulations requiring an escrow account. The whole range of the Real Estate Commission's powers in regard to landlord-tenant was discussed without arriving at any firm answers.

The Commission then discussed security agreements and went over a proposed bill that incorporated those changes the Commission had decided upon at the last meeting. The Commission made a number of changes to the security deposit bill but could not agree on paragraph 4. Judge Silver appointed a subcommittee of Messrs. Flynn, Millemann and Carter. They will have to work

out the wording of that paragraph. The revised proposal, with the exception of paragraph 4, is attached to the minutes.

The Commission then went on to rent escrow. Again the Commission made changes to the statute which incorporated those decisions that had been made in principle. Copies of the proposed statutes with changes are attached to the minutes.

During the meeting the Commission had dinner at the Holiday Inn and adjourned the meeting at 9:20 p.m.

The next meeting is set for January 6, 1972 at 7:00 p.m. in Room 801 of the State Office Building in Baltimore.

Respectfully submitted,

W. Minor Carter

Section 5-601 RENT ESCROW [draft version]

1) Statement of Purpose and Intent

It is the purpose of this Act 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, minor housing code violations. Furthermore, it is not the intent of this Act 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.

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.

2) Scope

a. This Act is to apply to all residential dwelling units, leased for the purpose of human habitation within the State of Maryland except those located in Baltimore City governed by Section 9-9 of the Code of Public Local Laws of Baltimore City.

b. This Act is to apply to all such dwelling units whether they are:

1. publicly or privately owned; or

2. single or multiple units.

3) Conditions and Defects Covered

a. This Act 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:

1. 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;

2. lack of adequate sewage disposal facilities;

3. infestation of rodents;

4. the existence of paint containing lead pigment on surfaces within the dwelling unit;

5. the existence of any structural defect which presents a serious and substantial threat to the physical safety of the occupants;

6. the existence of any condition which presents a health or fire hazard to the dwelling unit;

b. This Act is not intended to provide a remedy for the landlord's failure to repair and eliminate minor defects or, in

those locations governed by such codes, minor housing code violations. 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 Act:

1. any defect which merely reduces the aesthetic value of the leased premises, such as the lack of fresh paint, rugs, carpets, paneling or other decorative amenities;

2. small cracks in the walls, floors or ceilings;

3. the absence of linoleum or tile upon the floors, provided that they are otherwise safe and structurally sound;

4. the absence of air conditioning.

4) Notice and Opportunity to Correct

a. In order to employ the remedies created by this Act, the tenant must give the landlord notice of the existence of the defects or conditions. This notice shall be given either by:

1. a written communication sent by Certified Mail listing the asserted conditions or defects; or

2. a written violation, condemnation or other notice from an appropriate State, county, municipal or local governmental agency stating the asserted conditions or defects.

b. Unless he shall refuse to make the repairs or correct the conditions, the landlord shall have a reasonable time after receipt of notice in which to make the repairs or correct the

conditions. 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. There is a rebuttable presumption that a period in excess of thirty (30) days from the receipt of notice is unreasonable.

5) Procedure

Upon refusal of the landlord to make the repairs or correct the conditions, or if after a reasonable time he shall have failed to do so, the tenant may:

a. bring an action of rent escrow to pay rent into court because of the asserted defects of conditions; or

b. 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.

Whether the issue of rent escrow is raised affirmatively or defensively, the tenant may request one or more of the forms of relief set forth in Section 7.

6) Conditions and Defenses

a. Relief under this Act is conditioned upon:

1. giving proper notice, and where appropriate, the opportunity to correct, as described by Section 4 of this Act.

2. payment by the tenant, into court, of the amount of rent required by the lease, unless such amount is modified by

the court as provided in Section 7 c, below.

b. It shall be a sufficient defense to the allegations of the tenant that:

1. the tenant, his family, his agents, his employees, or his assignees or social guests have caused the asserted defects or conditions; or

2. the landlord or his agents were denied reasonable and appropriate entry for the purpose of correcting or repairing the asserted conditions or defects.

7) Relief

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:

a. order the termination of the lease and return of the leased premises to the landlord, subject to the tenant's right of redemption;

b. order that the action for rent escrow be dismissed;

c. 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. full or abated rents be pd into

D, Order that the court until the necessary repairs

8) Subsequent Proceedings are made by landlord or his representative

After rent escrow has been established, the court:

a. shall, after a hearing, if so ordered by the court or one is requested by the tenant, order that the moneys in the escrow account be disbursed to the landlord after the necessary repairs have been made;

b. 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;

c. 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;

d. may, after an appropriate hearing, order that some or all moneys in the escrow account be disbursed to pay a mortgage on the property in order to stay a foreclosure;

e. shall, after a hearing, if one is requested by the landlord, 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.

f. 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.

9 Waiver prohibited
No provision herein shall be waived
in any lease, written or oral

LANDLORD-TENANT CODE

Section 2-103 Security Deposits (Draft edition)

1. A security deposit is any payment of money including the payment of the last month's rent in advance of the time it is due given to the landlord by the tenant in order to protect the landlord against non-payment of rent or damage to the leased premises.

2. A landlord may not impose a security deposit in excess of the equivalent to one month's rent per dwelling unit, irrespective of the number of tenants. If a landlord charges more than the equivalent of one month's rent per dwelling unit as a security deposit, the tenant shall have the right to recover up to three fold the extra amount so charged, plus reasonable attorney's fees. This action may be brought at any time during the tenancy, or within two years after its termination.

3. Failure to provide a tenant with a written receipt for a security deposit shall make the landlord liable to the tenant in the sum of $25. A receipt for a security deposit may be included in a written lease.

4. If the landlord imposes a security deposit, he shall, ~~within thirty days after the beginning of the tenancy~~, upon request provide the tenant with a written list of all damages for which the previous tenant was charged, ~~together with~~ a statement of the amount of the charges. If the previous tenant was not charged with any damages, the landlord shall so ~~certify, to the tenant in writing~~ indicate. ~~A copy of a written inspection check-list used by the landlord will satisfy the requirements of this section.~~

Failure to provide the tenant with such a written statement shall make 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 or unpaid rent which could be reasonably withheld under this section.

5. The landlord has the duty to maintain all security deposits in a federally or state insured institution within the State of Maryland. Such account must be devoted exclusively to security deposits, and may bear interest. Security deposits must be deposited in such an account within thirty days after receipt. Failure to deposit and maintain a security deposit as prescribed by this section shall be a criminal offense punishable as larceny after trust. The purpose of this section is not only to punish absconding with the funds, but also to punish co-mingling them with other funds.

6. Such security deposit accounts shall be trust accounts, with the landlord acting as trustee for the benefit of his tenants. Security deposits shall be secure from attachment by any creditors other than the tenant. In the event of sale or transfer of any sort, including, but not limited to, receivership or bankruptcy, the security deposit shall be binding on the successor in interest to the landlord to whom the deposit was given. Any successor in interest shall be a substitute trustee of the security deposits, and shall, whether or not such a substitution is made, be liable to the tenant for failure to

return the security deposit, together with interest, as provided in this act.

7. Within forty-five days after the end of the tenancy, the landlord shall return the security deposit to the tenant together with simple interest in the amount of three per centum (3%) per annum, less any damages rightfully withheld. Interest shall accrue in six month intervals from the day the tenant gave the landlord the security deposit but shall not compound. Interest shall only be payable on security deposits of fifty dollars ($50) or more.

8. The security deposit, or any portion thereof, may only be withheld for unpaid rent, damage due to breach of lease or for damage to the leased premises in excess of ordinary wear and tear caused by the tenant, his family, agents, employees or social guests. 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 such breach.

9. If damages are withheld, the landlord shall present the tenant, within thirty days after the termination of the tenancy, a written list of the damages claimed, together with a statement of their cost. Failure to comply with this requirement will forfeit the right to withhold any part of the security deposit for damages.

10. If the landlord shall,without reasonable basis, fail to return all or any part of the security deposit, plus accrued interest, within forty-five days after the termination of the

tenancy, the tenant shall have an action for up to threefold the amount so withheld, plus reasonable attorney's fees.

11. No provision herein may be waived in any lease, written or oral.

STATE OF MARYLAND

WILLIAM S. JAMES, CHAIRMAN
OMAS HUNTER LOWE, VICE-CHAIRMAN

CARL N. EVERSTINE,
SECRETARY AND DIRECTOR OF RESEARCH

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MEETING OF THE LANDLORD-TENANT LAW STUDY COMMISSION

(Seventeenth Meeting)

The Seventeenth Meeting of the Governor's Commission on Landlord-Tenant Laws was called to order at 7:10 p.m. on Thursday, January 6, 1972 in Room 801 of the State Office Building, Baltimore, Maryland, by the Honorable Edgar P. Silver, Chairman. Members of the Commission in attendance were: Mr. Irvin Alter, Mr. G. Greg Everngam, Mr. Morton Funger, Mr. Moe Hochberg, Mr. Ramsey W.J. Flynn, Mr. George Laurent, Mr. Michael Butler, Mr. Michael Millemann, Mr. John Morrison, Mrs. Margaret B. Pollard, Mr. William Sallow and Mr. W. Minor Carter. Professor James W. McElhaney was also present.

Judge Silver opened the meeting by discussing what the procedure would be for the Commission during the session of the General Assembly. It was decided that the bills that the Commission has agreed upon will be drawn up and submitted, along with an interim report to the Governor for his consideration. It was the hope of the Commission that the bills that the Commission have agreed upon will be introduced and enacted into law at this session.

The Commission then discussed the rent escrow bill. A paragraph was added to the bill stating that no provision could be waived in a lease. The Commission then went into a long and sometimes heated discussion over whether the rent escrow bill should be statewide or exclude Baltimore City. A number of members felt that there should be no exclusions and that the bill should apply equally in all parts of the State, while some members of the Commission, in particular Mr. Millemann and Mr. Laurent, felt that nothing should be done which would weaken the present rent escrow law in Baltimore City. It was decided by the Commission that the rent escrow bill would be statewide with the comment added to the

bill stating that it was the intention of this rent escrow bill not to supercede any other rent escrow law presently enacted in the State of Maryland. In addition, Judge Silver stated that he would, on behalf of the Commission, go to Annapolis and ask the Governor to veto any provision of a rent escrow bill that would weaken the present rent escrow bill in Baltimore City. The Commission was very firm in its opinion that the rent escrow bill that has evolved from their meetings is the best bill possible and that any amendments which would either strengthen or weaken the bill should be very carefully thought out. The Commission has felt that it has gone into rent escrow very thoroughly and investigated all proposals.

In adopting the statewide rent escrow bill, Mr. Everngam stated that he was against a rent escrow bill and would file a minority dissenting report. The Commission then moved on to security deposits and discussed the draft edition of the security deposit bill. It was decided that any security deposits presently held by landlords that are in excess of one month's rent will not have to be adjusted until the end of the present lease; however, the tenant shall start drawing interest on his security deposit upon the effective date of the law. The Commission agreed on paragraph 4 that the tenant shall have the right to request from the landlord a written list of all damages for which the previous tenant was charged.

The Commission discussed the material on retaliatory eviction that had been mailed out prior to the meeting. Professor McElhaney explained in part the history and the proposals concerning retaliatory eviction. The Commission decided not to vote on any retaliatory eviction bill at the present time but to have another meeting to discuss and decide on the various proposals.

Judge Silver charged Mr. Carter with getting all of the bills prepared in statutory fashion and with submitting them to the Governor and to the Commission. The next meeting of the Commission was set for Tuesday, February 8th at 7:30 p.m. in Room 801 of the State Office Building. Mr. Carter stated that he hoped to have the complete report and bills done at that time.

Respectfully submitted,

W. Minor Carter

WMC:hs

STATE OF MARYLAND

. JAMES, CHAIRMAN
ER LOWE, VICE-CHAIRMAN

CARL N. EVERSTINE,
SECRETARY AND DIRECTOR OF RESEARCH

THE LEGISLATIVE COUNCIL

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January 4, 1972

TO THE MEMBERS OF THE LANDLORD AND TENANT COMMISSION:

Enclosed are two suggested retaliatory eviction drafts. It is planned that we will consider retaliatory evictions at our meeting on the evening of January 6th, 1972.

Sincerely yours,

W. MINOR CARTER

mdc

RETALIATORY EVICTION

Drafting a statute which prohibits retaliatory eviction and which adequately protects the legitimate interests of both landlords and tenants is a difficult task. Although actual instances of retaliatory eviction may be rare, it does occur. Perhaps more importantly, the fear of retaliatory eviction, whether or not justified, has a tremendously inhibiting force on individuals which dissuades them from seeking the protection of the law to which they are entitled.

Most landlords are not opposed to prohibiting retaliatory evictions. They recognize the importance of providing adequate protection to the exercise of legal rights. On the other hand, some fear that what was designed to be a shield might, in the hands of the wily, become a sword. They argue that unscrupulous tenants might attempt to perpetuate their tenancies at present rents indefinitely by simply making periodic complaints to the authorities. This, they assert, could amount to private rent control in a most unfair form.

To be a fair law, an anti-retaliatory eviction provision must:

1. protect the tenant against retaliatory evictions and rent increases for a long enough period of time in order to keep the fear of these practices from inhibiting the exercise of his legitimate rights;

2. protect the landlord from the abuse of this shield;

3. be sufficiently simple in its operation so that landlords and tenants alike will be certain of their rights without resort to litigation, and so that, if need be, it may be easily applied by the courts.

If no time period is provided, then parties cannot be certain of their rights unless they are tested in court. Thus, although it appears simple, the suggestion that there merely be a prohibition against retaliatory evictions and rent increases actually complicates the situation. For this reason, a

rebuttable presumption of retaliation for evictions and rent increases coming within 12 months of protected activity is recommended.

It is important that there be a presumption, since it determines outcome when there is no proof of retaliatory motive. This is desirable since in the preponderance of cases it would be extremely difficult for a tenant to show the intention of the landlord. The landlord is in a much better position to do this.

Similarly, it is important that the presumption be rebuttable. In other words, if an eviction or rent increase is not retaliatory, the landlord must be permitted to show that.

The time limitation of 12 months is designed for the landlord's protection as well. Past this time, the burden would be on the tenant (and, from a practical standpoint, very hard to meet) to show retaliation.

The protection must extend to complaints which are not necessarily successful. Otherwise when a tenant complains, it is at his peril that he accurately predicted the outcome of his complaint. On the other hand, frivolous complaints must not be protected. Otherwise there is the potential for using the protection against retaliation as an unfair weapon. For this reason the strong recommendation is made that only good faith complaints give rise to protection against retaliation.

With these factors in mind, the following is offered. It is recommended that the comment be enacted by the legislature as explanatory of the law.

'Section 5-901 Retaliatory Evictions and Rent Increases Prohibited [Draft edition]

1. No action or proceeding to recover possession of a dwelling unit may be brought against a tenant, nor shall a landlord otherwise cause a tenant to quit a dwelling unit involuntarily nor demand an unreasonable increase in rent, decrease the services to which the tenant has been entitled, nor increase the obligations of a tenant in retaliation for a tenant's

a) good faith complaint or report concerning housing deficiencies made to the landlord or governmental authorities directly by a tenant or through a tenant organization; or

b) good faith organization of or membership in a tenant organization; or

c) good faith assertion of any action or defense invoking any legal remedy for the correction of housing deficiences.

2. Within a period of one year following the good faith complaint or report, assertion of an action or defense, or the joining or organizing of a tenant's organization referred to in Section 1, there shall be a rebuttable presumption that any action or proceeding to recover possession, decrease in services or increase in obligations is retaliatory.

3. There shall be a rebuttable presumption that an action of eviction for cause [see pp. 5-7 McElhaney Report], although brought within the one-year period referred to in Section 2, is not in retaliation, provided that the cause arose after the good faith complaint or other activity of the tenant referred to in Section 1.

4. Any increase in rent, decrease in services, or increase in obligations of a tenant in excess of actual increase in taxes or operating expenses attributable to the dwelling ~~that~~ shall be considered unreasonable for purposes of this act. Any increase in rent, decrease in services or increase in obligations of a tenant imposed as a result of expenses incurred in bringing the leased premises up to the standards required by the provisions of Section 5-601 (the rent escrow law) of this act shall be considered unreasonable for purposes of this act.

5. No provision herein may be waived in any lease, written or oral.

6. Cause shall exist when:

a. The tenant, his family or social guests have substantially damaged the leased premises, either intentionally or through culpable neglect, beyond

ordinary wear and tear, for which the tenant refuses to pay, or upon demand has failed to make timely payment, or

b. The tenant has been more than 10 days late in the payment of rent on more than six (6) occasions during a twelve-month period, for which the owner has properly brought an action of eviction for failure to pay rent for which there was no good faith legal or equitable defense asserted by the tenant, provided that the action of eviction for cause for habitual late payment of rent is brought within 30 days of the most recent such late payment, and that the tenant was notified in writing that he would be evicted for late payment of rent prior to his last late payment.

Commentary

The prupose of this Act is to protect tenants against retaliatory evictions, rent increases, decreases in services or increases in obligations. In order to qualify for the protection afforded by this Act, the tenant's activities must be in good faith, and not made for the purpose of insuring his tenure or freezing his rent. In order to be in good faith, a complaint or action or defense need not be ultimately successful, but only made with reasonable belief in its validity. On the other hand, a complaint, while technically correct, which is made for the purpose of prolonging the tenancy or freezing the rent, may be found to be in bad faith.

The following is suggested by MORTON FUNGER:

No action or proceeding to recover possession of a habitation may be brought against a tenant, nor shall an owner otherwise cause a tenant to quit a habitation involuntarily nor demand an increase in rent from the tenant that is more than currently the amount charged for a comparable type of unit in the project, nor decrease the services to which the tenant has been entitled, nor increase the obligations of a tenant solely in retaliation against a tenant's: (a) good faith complaint or report concerning housing deficiencies made to owners or governmental authorities directly by a tenant or through a tenant organization, or (b) good faith organization of or membership in a tenant organization. Nothing herein contained in this paragraph shall prevent landlord or tenant from exercising any rights under a lease, providing said action is not solely for retaliation.

STATE OF MARYLAND

AM S. JAMES, CHAIRMAN
UNTER LOWE, VICE-CHAIRMAN

CARL N. EVERSTINE,
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MINUTES OF THE LANDLORD-TENANT LAW STUDY COMMISSION

(Twentieth Meeting)

The Twentieth Meeting of the Governor's Commission on Landlord-Tenant Laws was called to order at 7:30 p.m. on Tuesday, February 8th in Room 802 of the State Office Building in Baltimore, Maryland by the Honorable Edgar P. Silver, Chairman. The members of the Commission in attendance were: Mr. Irvin Alter, Mr. W. Minor Carter, Mr. G. Greg Everngam, Mr. Ramsey W.J. Flynn, Mr. Morton Funger, Mr. Moe Hochberg, Mr. George Laurent, Mr. Michael Millemann, Mr. John Morrison and Mr. William Sallow. Professor McElhaney was present as reporter for the Commission.

Mr. Carter handed out a draft copy of the interim report to the Governor which included a report on the Commission's activities and drafts of the legislation that the Commission had agreed to recommend. In discussing the report, Judge Silver referred to his meeting the previous day with Governor Mandel.

Judge Silver stated that the Governor was for the proposals by the Commission in principal, but naturally he could not definitively back any proposals that he had not seen in actual bill form. The Governor recommended that Delegate Martin Kircher, Chairman of the House Judiciary Committee, introduce the bills.

Referring to legislative tactics, Judge Silver stated that he would like all the Commission members to take as active a part as possible in urging passage of the proposals in order to see the legislation passed. Mr. Carter stated that he would keep the Commission members informed of the legislative status of the Commission's proposals. Mr. Carter also stated that he would ask Senator Joseph Curran, Chairman of the Senate Judicial Proceedings Committee, to introduce the proposals on the Senate side.

The Commission looked through the final forms of the bills. It was also stated that if there were no objections given, the bills would be presented to the Legislature at the end of the week. Some changes in the bills that had been drawn were considered. However, only one change was made. The word "trustee" in the security deposit bill was changed to "fiduciary capacity". The other bills were approved by the Commission in the same form.

The Commission then turned to retaliatory eviction. Professor McElhaney spoke at some length on the subject of retaliatory eviction, but no agreement could be reached. The argument centered around the issue of proof and what burdens the landlord and tenant would have to carry in any case of retaliatory eviction.

The Commission voted on a bill concerning retaliatory eviction which had a rebuttable presumption of retaliatory eviction with a six month period. This bill was modeled loosely after the Baltimore City bill. With Judge Silver voting in favor of the bill, the bill was approved by the Commission, breaking a 5-5 tie. Upon seeing that the minority were strongly committed to their position, the motion was changed from approving the bill to approving the bill in principal.

A heated discussion continued on the bill until Judge Silver appointed a subcommittee to study this question of retaliatory eviction. The subcommittee consisted of Messrs. Funger, Millemann, Laurent, Morrison and Carter.

The Commission then adjourned, deciding to hold its next meeting in Room 802 of the State Office Building in Baltimore on February 29th at 7:30 p.m. The subcommittee on retaliatory eviction will meet at 5:00 p.m. on February 23rd in Room 802 of the State Office Building.

Respectfully submitted,

W. Minor Carter

RETALIATORY EVICTION

Following is a draft of the retaliatory eviction bill that was discussed at the last meeting of the Commission.

There has been one change added in Section 48(b) and (c) concerning the duty of the tenant to first show that he has, in good faith, taken part in one of the activities described in Section 47. If the tenant cannot show this good faith ascertion, the burden shall not shift to the landlord.

- - - - - -

Subtitle: Retaliatory Evictions.

47. No action or proceeding to recover possession of a dwelling unit may be brought against a tenant, nor shall a landlord otherwise cause a tenant to quit a dwelling unit involuntarily nor demand an unreasonable increase in rent, decrease the services to which the tenant has been entitled, nor increase the obligations of a tenant in retaliation for a tenant doing any of the following:

(1) Make a good faith complaint or report concerning housing deficiencies made to the landlord or governmental authorities directly by the tenant or through a tenant organization; or

(2) The good faith organization of or membership in a tenant organization; or

(3) The good faith assertion of any action or defense invoking any legal remedy for the correction of housing deficiences.

48.

(a) Within a period of one year following any activity outlined in Section 47, there shall be a rebuttable presumption that any action or proceeding to recover possession, decrease in services or increase in obligations is retaliatory.

(b) In order to raise the presumption of retaliatory eviction, the

tenant must first affirmatively show that he, in good faith, did one or more of the actions referred to in Section 47.

(c) Upon such a showing, the burden shall shift to the landlord to show that the action was not in good faith, or that the eviction is not retaliatory.

49. There shall be a rebuttable presumption that an action of eviction for cause, although brought within the one-year period referred to in Section 48, is not in retaliation, provided that the cause arose after the activity of the tenant referred to in Section 47.

50.

(a) Any increase in rent, decrease in services, or increase in obligations of a tenant in excess of actual increase in taxes or operating expenses attributable to the dwelling shall be considered unreasonable for purposes of this subtitle.

(b) Any increase in rent, decrease in services or increase in obligations of a tenant imposed as a result of expenses incurred in bringing the leased premises up to the standards required by the provisions of a rent escrow law shall be considered unreasonable.

51. No provision herein may be waived in any lease, written or oral.

52. Cause shall exist when:

(a) The tenant, his family or social guests have substantially damaged the leased premises, either intentionally or through culpable neglect, beyond ordinary wear and tear, for which the tenant refuses to pay, or upon demand has failed to make timely payment; or

(b) The tenant has been more than 10 days late in the payment of rent on more than six (6) occasions during a twelve-month period, for which the owner has properly brought an action of eviction for failure to pay rent for which there was no good faith legal or equitable defense asserted by the tenant, provided that the action of eviction for cause for habitual late payment of rent is brought within 30 days of the most recent such late payment, and that the tenant was notified in writing that he would be evicted for late payment of rent prior to his last late payment.

STATE OF MARYLAND

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MINUTES OF THE LANDLORD-TENANT LAWS STUDY COMMISSION

(Twenty-first Meeting)

The Twenty-first Meeting of the Governor's Commission on Landlord-Tenant Laws was called to order at 7:45 p.m. on Tuesday, February 29th in Room 801 of the State Office Building in Baltimore, Maryland by the Honorable Edgar P. Silver, Chairman. Members of the Commission in attendance were: Mr. W. Minor Carter, Mr. G. Greg Everngam, Mr. Ramsey W.J. Flynn, Mr. Moe Hochberg, Mr. George Laurent, Mr. Michael Millemann, Mr. John Morrison, Mr. William Sallow. Professor McElhaney was present as reporter for the Commission.

Mr. Carter reported to the Commission that the bills had been introduced in the House of Delegates by Delegate Kircher as a Governor's Study Commission recommendation. It was decided that a hearing would be requested on March 9th and that as many members of the Commission as possible would be present.

The Commission discussed a draft of the retaliatory eviction bill that had been submitted to the full Commission by a subcommittee. The debate on the draft was marked by long and sometimes heated discussion.

Section 47, Subsection 1 was discussed as to whether or not it gave full protection to complaints by the tenants. It was felt that the words "directly" or "indirectly" should be added since it would be possible for a tenant to complain to someone other than the landlord or governmental authority and still be subjected to a retaliatory eviction by a landlord.

In Section 50 the Commission decided that the words "by a judgment pursuant to the imposition of" should be stricken since this would allow a retaliatory eviction by the landlord of a tenant who has invoked the rent escrow law but has not yet received a final judgment. The Commission also discussed

what corrections should be sufficient for the landlord to evict under any circumstances. A long debate ensued over whether or not the landlord shall have the right to evict the tenant who is holding over in an apartment which the landlord has agreed in good faith to rent to another occupant. It was felt by Mr. Millemann that this provision would shift the whole burden of proof in the retaliatory eviction law, since a landlord need only rent out the premises to another and the landlord is then required only to show good faith and not the burden of showing the eviction is not retaliatory. By a vote of 5 to 3 with Messrs. Morrison, Flynn and Everngam voting in the negative, the Commission voted to strike this subsection from the proposal.

An additional subsection was considered which dealt with harassment of the landlord by the tenant. This failed to carry.

After a thorough consideration of the bill, the Commission then voted on whether to adopt these recommendations. The vote was 5 to 3 in favor of adopting the bill with Messrs. Morrison, Flynn and Everngam voting in the negative. They requested that they be listed as voting against these proposals and afforded the opportunity of presenting a minority report.

The Commission then discussed legislative tactics again and Judge Silver said that he would be available on March 9th to testify on behalf of the bill. Professor McElhaney will be out of town at that time but will be available for any subcommittee discussions or further committee hearings as needed.

The meeting adjourned at 10:15 p.m. The next meeting of the Commission will be set at a later date.

Respectfully submitted,

W. Minor Carter

STATE OF MARYLAND

WILLIAM S. JAMES, CHAIRMAN
MAS HUNTER LOWE, VICE-CHAIRMAN

CARL N. EVERSTINE,
SECRETARY AND DIRECTOR OF RESEARCH

THE LEGISLATIVE COUNCIL

16 FRANCIS STREET—P. O. BOX 348
ANNAPOLIS, MARYLAND 21404
TELEPHONE: CO 3-2321

Dear Members of the Commission:

As most of you know from material received under separate cover, the bills that we have submitted, with the exception of the retaliatory eviction bill, are set for hearing on March 9th at 12 noon in the House Judiciary Committee Room (Room H-8).

The retaliatory eviction bill should be introduced within the next few days. However, it does not look likely at this time that it will be considered on March 9th. I have enclosed an article from The New York Times concerning the Supreme Court decision on the right of tenants to withhold rent.

Respectfully submitted,

W. Minor Carter

High Court Denies Right of Tenants to Withhold Rent

Special to The New York Times

WASHINGTON, Feb. 23—The Constitution does not give tenants the right to withhold rent payments from landlords who fail to make repairs, the Supreme Court held today.

In a 5-to-2 decision, the Court dealt a blow to legal reformers who had hoped to liberalize landlord-tenant law through Supreme Court decisions, much as the poor have used court decisions to win greater rights under the welfare laws.

"The Constitution does not provide judicial remedies for every social and economic ill," Justice Byron R. White wrote for the majority. "We are unable to perceive in that document any constitutional guarantee of access to dwellings of a particular quality or any recognition of the right of a tenant to occupy the real property of his landlord beyond the term of his lease without the payment of rent."

He added, "The assurance of adequate housing and the definition of landlord-tenant relationships is a legislative, not a judicial, function."

Can Sue Landlord

The Court held, however, that, if the landlord has failed to make repairs, the tenant can sue him in a separate action.

New York tenants will not be greatly affected by the decision because the State Legislature is one of the few to give a tenant the right to defend an eviction suit by contending that the landlord's failure to make repairs, resulting in "dangerous conditions," gives the tenant the right to withhold rents and pay them to a court.

At issue was Oregon's "forcible entry and detainer" law, which is typical of the laws in effect in many states to govern the eviction of tenants who fail to pay rent. Donald and Edna Lindsey, of Portland, sued in Federal District Court in 1970 to have the law declared unconstitutional, after their landlord brought an action in 1970 to evict them.

Their home, described by a city official as "one of the worst I have seen that people are still living in," was declared unfit for habitation in 1969 by the City Bureau of Buildings. After the landlord failed to make any repairs, they stopped paying their $100-per-month rent.

They challenged three features of the law found in various forms in many states.

Upheld on 2 Counts

One requires an eviction trial within two days after an eviction notice is served. Another prevents a tenant from giving any excuse in court for nonpayment of rent. The third requires that a tenant cannot appeal an eviction order without posting two bonds to cover all rents accruing until the case is decided.

The lower court held that these did not violate the Federal Constitution, and the Supreme Court agreed on the first two counts.

Justice White said that landlord-tenant law has traditionally been established by the states and added that speed and simplicity were essential to prevent tenants from living rent-free while stalling in court.

The double-bond provision was held to be unconstitutional under the 14th Amendment because it places an unnecessarily heavy burden on a tenant's right to appeal.

The majority decision was supported by Chief Justice Warren E. Burger and Justices Potter Stewart, Thurgood Marshall and Harry A. Blackmun. Justices Lewis F. Powell Jr. and William H. Rehnquist did not take part.

Justice William O. Douglas dissented, saying that the short notice of trial and the refusal to hear defenses were denials of due process of law. Justice William J. Brennan Jr. said that the case should have been sent back to the Oregon courts for their interpretation.

STATE OF MARYLAND

WILLIAM S JAMES, CHAIRMAN
AMOS HUNTER LOWE, VICE-CHAIRMAN

CARL N. EVERSTINE,
SECRETARY AND DIRECTOR OF RESEARCH

THE LEGISLATIVE COUNCIL

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MINUTES OF THE LANDLORD-TENANT LAWS STUDY COMMISSION

(Twenty-second Meeting)

The Twenty-second Meeting of the Governor's Commission on Landlord-Tenant Laws was called to order at 7:45 p.m. on Tuesday, May 23rd in Room 801 of the State Office Building in Baltimore, Maryland by Vice Chairman William Sallow. Members of the Commission in attendance were Mr. Irvin Alter, Mr. W. Minor Carter, Mr. G. Greg Everngam, Mr. Morton Funger, Mr. Moe Hochberg, Mr. John Morrison and Mr. William Sallow. Professor James W. McElhaney was also present.

Mr. Sallow called upon Mr. Carter to give a report on the legislative progress of the Commission's recommendations. Mr. Carter reported that three of the Commission's bills had been enacted by the General Assembly, dealing with security deposits, quiet enjoyment and plain language notices. Judge Silver, who had been unavoidably detained, presided over the meeting at this point.

Mr. Carter reported that House Bill 993, dealing with plain language notices, would probably be vetoed by the Governor at the request of the Chief Judge of the District Court. The Chief Judge had both practical and theoretical problems with the bill. Due to the two-day appeal period, it will be impossible for the tenant to be mailed a notice telling him of his appeal period and have the tenant receive it prior to the expiration of that appeal. Also, the put-out notice would require that date to be set at trial, whereas the practice today is that the put-out date is established some time after the trial. Therefore, the effect of the bill would be to shorten the time the tenant had to stay in the building after the court decision. The District Court stated that they would honor the theory of the plain language notice and put these safeguards in by their judicial rule-making power.

Some landlords reported that their was a letter writing campaign underway requesting the Governor to veto the security deposit bill. Judge Silver stated that he would do everything in his power to see that this bill was signed.

Mr. Everngam recommended that the Commission get in touch with the judges who deal with landlord-tenant problems and discuss with them any problems that they have or could foresee. The Commission voted in favor of this proposal. Judge Silver asked Minor Carter if he would take care of this matter.

The Commission then discussed the lack of attendance by certain members of the Commission. It was decided that a letter would be sent to all members of the Commission requesting that they take part in the Commission, but if their schedules did not allow them to attend the Commission meetings, to seriously consider allowing another interested party to take their place on the Commission. The secretary was requested to send out this letter.

It was pointed out that the Commission failed to have its appeal procedure from the District Court to the Court of Appeals passed in legislative form and presented to the Legislature. This was an oversight and will be done for the next Session of the General Assembly.

Professor McElhaney then suggested that the Commission reconsider the retaliatory eviction bill and put it in shape to be presented to the Legislature next year and to correct those flaws concerning rural counties in the rent escrow bill. The Commission would meet with judges if they will meet with us and also work on the final code. The Commission agreed with this schedule.

It was also decided that the second Tuesday of every month would be the Commission's regular meeting time and that June 13th at 7:45 p.m. in Room 801 in Baltimore City would be the next meeting.

Respectfully submitted,

W. Minor Carter

STATE OF MARYLAND

WILLIAM S. JAMES, CHAIRMAN
THOMAS HUNTER LOWE, VICE-CHAIRMAN

CARL N. EVERSTINE,
SECRETARY AND DIRECTOR OF RESEARCH

THE LEGISLATIVE COUNCIL

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June 19, 1972

MEETING OF THE LANDLORD-TENANT LAW STUDY COMMISSION

(Twenty-third Meeting)

The Twenty-third Meeting of the Governor's Commission on Landlord-Tenant Laws met on June 13, 1972 at 7:45 p.m. in Room 801 of the State Office Building in Baltimore, Maryland. Judge Edgar P. Silver convened the meeting and the following members were present: Mr. Morton Funger, Mr. Ramsey W.J. Flynn, Mr. George Laurent, Mr. John Morrison, Mr. William Sallow and Mr. W. Minor Carter. Professor James W. McElhaney, reporter for the Commission, was also present.

Judge Silver started the meeting off with a discussion of the membership. At the last meeting, Judge Silver instructed Mr. Carter to write a letter to each member of the Commission reminding them of the importance of the meetings and the schedule so that there would be as high an attendance as possible. Senator Snyder had withdrawn saying his time schedule made it impossible for him to continue on the Commission and therefore he was resigning.

There was some issue as to who should replace Snyder and it was decided that Senator John Carroll Byrnes would be asked if he were interested.

If a seat for a delegate became open, it was decided after some discussion that Delegate Latshaw should be solicited for his availability.

It was felt that by replacing those members who have not been active in the Commission, it would not be necessary to utilize other techniques, such as telephone polls, in order to bring attendance up to a quorum at all meetings. Mr. Carter was requested to write all members who had not contacted him concerning their wishes to remain on the Commission to see if they desired to

continue as members.

The Commission then turned to a discussion of rent escrow. It was felt that the reason the bill was not passed by the present Legislature could be caused by two factors: (a) it encompassed all housing, including sharecroppers and tenant farmers, and (b) it would preempt local legislation that is stronger than the proposed rent escrow bill.

It was proposed that the provision be put in the bill allowing any political subdivision to add on any provision they desire as long as that provision did not contravene or weaken any portion of the bill. This would solve the problem of local subdivisions desiring stronger landlord-tenant bills.

Professor McElhaney suggested that housing, such as sharecroppers and tenant farmers, could be effectively exempted from the bill by the use of a dollar limitation. He suggested that all housing that rented for less than $50 a month would automatically be exempted from the rent escrow provisions. This led to a spirited discussion among the Commission members. Many ideas were advanced such as census tracks, metropolitan and rural distinctions and basing rent escrow on only those items, other than items representing hazards to health and safety, which were present in the building at the time the building was rented.

There are many variations on these basic themes and Professor McElhaney was charged with preparing sample amendments to the bill reflecting these main ideas. These amendments would be mailed out approximately 10 days prior to the next meeting so that all members of the Commission would have an opportunity to weigh the various alternatives.

The next meeting was set for July 11th at 7:30 p.m. at the University of Maryland Law School.

The September meeting was set for September 12th at Towson State College on York Road. This will be a dinner meeting.

Respectfully submitted,

W. Minor Carter

STATE OF MARYLAND

...LIAM S. JAMES, CHAIRMAN
...S HUNTER LOWE, VICE-CHAIRMAN

CARL N. EVERSTINE,
SECRETARY AND DIRECTOR OF RESEARCH

THE LEGISLATIVE COUNCIL

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MEETING OF THE LANDLORD-TENANT LAW STUDY COMMISSION

(Twenty-fourth Meeting)

The Twenty-fourth Meeting of the Governor's Commission on Landlord-Tenant Laws met on July 10, 1972 in the Faculty Counsel Room at the University of Maryland School of Law at 7:30 p.m. Judge Edgar P. Silver convened the meeting and the following members were present: Mr. Irwin Alter, Hon. J. Carroll Byrnes, Mr. Michael Butler, Mr. Morton Funger, Mr. Moe Hochberg, Mr. John Morrison, Mr. William Sallow. Professor James W. McElhaney, Reporter for the Commission, was also present and served as secretary pro tem. at the direction of the chairman.

The first order of business was to discuss whether an August meeting should be held. The unanimous decision of those present was that it should be cancelled.

The second order of business was a short discussion of the meeting to be held at Towson State College on September 12, 1972.

The remainder of the meeting was devoted to a discussion of three possible alternative amendments to the Rent Escrow Bill defeated by the Legislature at the last term. A copy of those alternatives is attached to the minutes. It was the consensus of those present that the third alternative, on page 2 of the report from Professor McElhaney, was the preferable method of attacking this problem. Some sentiment was also expressed in favor of the second alternative.

The Hon. J. Carroll Byrnes suggested that, in addition to making these proposed changes in the Rent Escrow Bill, that the Commission also be prepared to discuss what local political sub-divisions are doing in this area when our final work product is presented to the Legislature. Accordingly, Ms. Estelle E. Rogers Levi, student research assistant for the summer, has undertaken to gather this material.

Respectfully submitted,

James W. McElhaney
Reporter
Secretary Pro Tem.

STATE OF MARYLAND

WILLIAM S. JAMES, CHAIRMAN
OMAS HUNTER LOWE, VICE-CHAIRMAN

CARL N. EVERSTINE,
SECRETARY AND DIRECTOR OF RESEARCH

THE LEGISLATIVE COUNCIL

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September 18, 1972

MINUTES OF THE TWENTY-FIFTH MEETING OF THE LANDLORD-TENANT COMMISSION

The twenty-fifth meeting of the Governor's Commission on Landlord-Tenant Law Revision was held in the Student Center of Towson State College in Towson, Maryland. The Commission had dinner in the faculty dining room prior to its formal business meeting in a conference room. The following members were present: Mr. Irvin Alter, Mr. Michael Butler, Senator John Carroll Byrnes, Mr. Greg Everngam, Mr. Bill Flynn, Mr. Morton Funger, Mr. Moe Hochberg , Mr. George Laurent, Mr. Michael Millemann, Mrs. Margaret Pollard, Mr. William Sallow, Mr. Minor Carter and the reporter, Professor James McElhaney.

Judge Edgar Silver, Chairman of the Commission, called the formal business meeting to order at approximately 7:30 p.m. The first item discussed was Chapter 349 of the 1972 Laws of Maryland. This Chapter will not to into effect until January 1, 1973 and it is a compilation and recodification of all the real property law into a new Article 21. Mr. Carter, who is also secretary to the Maryland State Bar Association Code Revision Committee which wrote this Statute, explained that the Bill did not contain any changes to landlord-tenant law. The main thrust of the Bill was to bring all of the Maryland law on real property into one article so that it was not necessary to search throughout the Code to find the relevant sections which were scattered throughout the Code. Professor McElhaney pointed out that the new Article 21 had a revised numbering system which he had adopted to all of the proposals before the Commission.

The Commission then moved on to the first item on the agenda which was an anti-discrimination draft prepared by Professor McElhaney. This was in response to a letter from George Laurent, who stated that he has received a number of complaints from women, particularly divorced or separated women, who have experienced problems in renting

apartments. It was alleged by these women that the landlords do refuse to rent to single women or women that are separated or divorced.

The draft was broken into three sections. The first section prohibited any discrimination whatsoever by race, religion, or creed. The second section prohibited discrimination due to sex, marital status, age or children unless that discrimination was on a consistent basis in the entire rental premises. The third section dealt with the penalties for violation.

Section A of the draft was approved by the Committee unanimously. The discussion then centered on sex and marital status discrimination. The Committee felt that these two items, after somewhat lengthy discussion, should be included in Section A so that discrimination by marital status or sex was totally prohibited.

The discrimination by age and children was also discussed at length. Many viewpoints were expressed. Tenants and landlords agreed to some extent that in some instances discrimination by age and children would be acceptable, an example being "Adults Only" buildings prohibited couples with children from renting. Discrimination by age would allow, if it was so desired, for an apartment to advertise for elderly units. Not everyone was in agreement that these were good or rational discriminations. However, it was decided by vote to strike Paragraph B in its entirety.

The Commission then turned to the penalty section. Professor McElhaney explained that this penalty section was in addition to any penalties that could be sanctioned by other State agencies.

The question was raised concerning "Mrs. Murphy", meaning those landlords who rent a limited number of units and usually live on the rental premises themselves. No decision was reached on the exact definition, but Professor McElhaney was charged with researching t Federal definition in federal statutes such as the Civil Rights Acts and the Housing Acts and the Commission would try to conform their definition as closely to the federal definition as possible in order to provide uniformity.

The next item was the rent receipt Bill. This statute is presently in the Annotated Code of Maryland, but only applies in Anne Arundel County. Professor McElhaney explained his proposal and stated he felt this is the sort of item that the Commission should take special care in looking for uniformity. The evident purpose of this statute is to prevent a landlord from accepting payments without issuing receipts. If at a later date, there was a dispute as to the rent due, the tenant would be unable to produce any records. Under the present statute in Anne Arundel County, failure to give a receipt would result in the forfeit of that rent. The point was raised as to whether this should apply to all landlords, since many

landlords with one or two units don't hand out receipts. It was suggested that this statute should be triggered by a demand from the tenant for a receipt and the penalty would be from that time. However, this would not give the tenant protection in Court since he probably would not have invoked the Statute when the landlord said he was behind. The Commission charged Professor McElhaney with writing a bill that he felt was more workable in light of the discussions of the Commission. One suggestion was that the bill limit the amount of back rent that could be forfeited. Professor McElhaney said that he would have the items that he was responsible for out to the Commission prior to the next meeting.

The next meeting was set for October 3 rather than October 10 in order to avoid that annual event: the World Series. The meeting will be at 7:30 at the University of Maryland School of Law.

Respectfully submitted,

W. Minor Carter

STATE OF MARYLAND

WILLIAM S. JAMES, CHAIRMAN
OMAS HUNTER LOWE, VICE-CHAIRMAN

CARL N. EVERSTINE,
SECRETARY AND DIRECTOR OF RESEARCH

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TELEPHONE: CO 3-2321

October 6, 1972

NOTIFICATION OF MEETINGS

GOVERNOR'S COMMISSION ON LANDLORD/TENANT LAWS

The Governor's Commission on Landlord/Tenant Laws will meet on October 17th, October 31st, and November 14th at 7:30 P.M. All meetings are to be scheduled for Room 801 of the State Office Building, Baltimore, Maryland.

All sessions will be voting sessions. At the October 17th meeting, the Commission will vote on discrimination at housing units, rent receipts, retaliatory eviction and Professor McElhaney's suggested code.

Any matter not voted upon at the October 17th meeting will be discussed and voted upon during the following meetings.

W. Minor Carter

WMC/mdc

STATE OF MARYLAND

WILLIAM S. JAMES, CHAIRMAN
THOMAS HUNTER LOWE, VICE-CHAIRMAN

CARL N. EVERSTINE,
SECRETARY AND DIRECTOR OF RESEARCH

THE LEGISLATIVE COUNCIL

16 FRANCIS STREET—P. O. BOX 348
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October 26, 1972

MINUTES OF THE TWENTY-SEVENTH MEETING OF THE

LANDLORD-TENANT COMMISSION

The Governor's Commission on Landlord-Tenant Law Revision met on Tuesday, October 17th in Room 801 of the State Office Building at 301 West Preston Street, Baltimore, Maryland. Judge Edgar P. Silver, Chairman of the Commission, called the meeting to order at 7:30 P.M. and the following members were present: Messrs. Flynn, Laurent, Hochberg, Offutt, Butler, Morrison, Everngam, Carter and Mrs. Pollard. Professor McElhaney was also present at the meeting.

The Commission discussed the rent receipt draft and after some discussion it was determined that the Commission could not agree on whether to go forward on this subject or not. The Commission was not sure rent receipts was a statewide problem and, until this was determined, the Commission decided to table any action on this statute.

At this time, Professor McElhaney introduced James Carbine, an attorney with the law firm of Weinberg & Green. Mr. Carbine has volunteered to be Professor McElhaney's research assistant.

The Commission then heard testimony from Joseph R. Schuble, the Vice Chairman of the Apartment House Council in Montgomery County, Mr. Schuble's testimony was based upon his letter to Mr. Morton Funger. The letter was an input to the landlord representatives on the Governor's Landlord-Tenant Commission, and copy of the letter is attached to the minutes.

Mr. Schuble spent most of his time discussing the proposed discrimination statute and felt that this statute was not needed.

...LI
...TER LOWE, VICE-CHAIRMAN

CARL N. EVERSTINE,
SECRETARY AND DIRECTOR OF RESEARCH

THE LEGISLATIVE COUNCIL
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He also felt that allowing the person who had been discriminated against to receive damages was rewarding the person for being discriminated against. Mr. Schuble felt that there should be a criminal penalty and any money damages should go to the State.

Mr. Schuble's testimony provoked a number of discussions, particularly on the depth and breadth of discrimination. Mr. Schuble felt that there were sufficient safeguards in the voluntary procedures set up by the Apartment Owners Council and procedures of the Department of Housing and Urban Development. This view was sharply contested by the members of the Commission. Mr. Schuble also felt that, if damages were to be given to a tenant who was discriminated against, $500 or three months rent was too great. He did not know what a proper amount would be.

After Mr. Schuble's testimony, Mr. Stuart Weinblatt, the Director of State Affairs of the University of Maryland Student Government Association, spoke to the Commission. A copy of his testimony is attached and his testimony follows this statement closely. It was established that discrimination against students had occurred in Prince George's County prior to the Prince George's County Landlord-Tenant Code. The County Council of Prince George's County stopped discrimination against students by proscribing discrimination by occupation.

The Commission voted on the second draft of the discrimination statute. There was an amendment to the first sentence by Mr. Carter to add the word "occupation". This motion was voted down 6-2. Paragraph (a) of Section 8-201 was then voted on and passed 6-0.

Section (b) was voted upon as shown in the past draft attached and passed 6-4-2 against and one abstaining.

Section (c) of the statute was passed 7-3.

The Commission then adjourned until its next meeting on October 31st at 7:30 p.m. in the State Office Building in Baltimore Maryland.

Respectfully submitted,

WMC:jmr

W. Minor Carter

dreyfuss brothers inc.

October 3, 1972

Mr. Morton Funger
Community Realty, Inc.
O.F.C. Corporation
Suite 207
1025 Connecticut Ave., N. W.
Washington, D. C. 20036

Re: Maryland Landlord
Tenant Commission

Dear Morty:

At our last Board of Directors meeting some concern was expressed over the fact that the Apartment House Council was not giving sufficient input regarding our position on the various matters being considered by the Governor's Commission to the landlord representatives on the Commission. With this in mind, I submit the following comments regarding some proposed legislation currently being discussed.

Section 8 - 201 - Discrimination Section

Paragraph (b) provides that a landlord shall not refuse to rent a dwelling unit, "... to a prospective tenant because of sex, marital status, age or children." The intent is not clear as to the number of children that a landlord may wish to set as a limit for occupancy requirements. While a landlord may allow children in a complex, he may wish to limit the number allowed in particular size apartments for various reasons. First, he may be required under special exceptions to zoning requirements to limit the number of school age children in order not to overburden existing school facilities. These requirements change as he gives an annual report to the local zoning authority, and he may have to reduce the number of incoming new children when he determines the number to which the existing population has grown in his project. Second, he may find that his existing population of children has grown beyond the limits reasonably given the fixed play facilities, and the influx of further children will only make the facilities unsatisfactory for all the residents.

Because of the above, I feel the reference to children should be eliminated entirely.

Paragraph (c) refers to the penalty a landlord must pay for violation, "... in addition to any other remedy the prospective tenant may have..." This whole concept of predetermined "damages" for the prospective tenant is a basic weakness of a substantial amount of current existing and proposed landlord-tenant legislation. There is an inherent motivating factor on the part of the prospective tenant to make a claim

against a landlord even though that claim may have a very weak or even non-existent basis, since, at no cost to the tenant, he stands to gain from bringing such an action. The landlord who is busy trying to operate a business is motivated to settle even claims without basis to avoid the nuisance, loss of time and publicity.

In order to avoid this inherent flaw, all penalties should be in the form of fines payable to the appropriate governmental agency. If the landlord is convicted and fined, the tenant will certainly have a sound basis for a civil suit.

Section 8 - 209 Rent Receipts Required

While the apparent "good" objective of this section is to limit landlords from accepting rent from a tenant, and then claiming that the tenant did not pay the rent, the attendant penalty borders on the ridiculous. The landlord or his agent who sincerely forgets to give a tenant a receipt, or the tenant who mails the landlord a money order are instances wherein the landlord would forfeit his right to the amount owed - a most unreasonable penalty especially when it behooves the tenant to avoid obtaining a receipt to make a windfall gain.

A reasonable man usually does not tender cash for any item today without receiving a receipt or bill of sale, and if a seller specifically refuses to provide a purchaser with a receipt, the purchaser certainly acts in a careless manner if he tenders his cash without a receipt.

How will the courts determine whether a landlord issued a receipt? The landlord can generate the receipt for his files at anytime. The tenant can say he never received one. Should the tenant be required to sign the receipt so the landlord can protect himself against false claims? What a tangled web we will weave. Under such a law, a landlord would be foolish to accept anything but checks for rental payments, and certified checks from delinquent tenants. Another burden for the tenant to bear.

Once again, if a penalty is in order, it should be a fine and not predetermined damages for the tenant.

House Bill 994 - Rent Escrow (Second Printing)

A glaring change in the latest draft of this bill under "A Bill Entitled" states: "... to provide for a means to allow tenants to withhold rent and raise certain defenses..." as opposed to the original bill which stated, "... to allow tenants to pay their rent into court...".

Under this proposed bill a tenant could withhold rent alleging defects; the landlord would have to bring suit to collect the rent. If there were no defects, or if they had been corrected in a timely manner, the tenant would have risked nothing, avoided paying rent for 30 to 60 days and may well have vacated owing rent by the time the landlord obtains a favorable court decision. The entire concept is unreasonable, unfair and without foundation.

The bill states that its purpose is, "... to provide tenants with a mechanism for encouraging the repair of serious and dangerous defects...". It assumes that the tenant has the right and ability to determine what are "serious and dangerous" defects, and gives the tenant the right to make this judgement as a partial party to a contract without even the determination of the facts by a housing inspector or court.

If a tenant is in violation of a lease agreement by not paying rent, damaging the property or any other violation of the lease contract, the landlord can do absolutely nothing to protect his rights or property except to bring action against the tenant in a duly authorized court of law. Why should the tenant be allowed such unreasonable unilateral power under a bilateral contract without the same due process through the courts?

For this concept of equity to be fair, the landlord should have the right to terminate services, utilities and even change the lock if the tenant is allegedly in violation of his lease until a court determines that this is not the case.

I doubt that there is a county in Maryland that does not have minimum housing codes which prohibit the existence of serious and dangerous defects in housing facilities. The enforcement of these codes should provide "a mechanism for encouraging the repair of serious and dangerous defects" without setting up the parties to a private contract as judge and jury to settle disputes.

Once again, a wise landlord would have to exercise all the protections available to him under the law such as raising security deposits to the full two months rent allowed and passing on the costs of dealing with the unscrupulous tenants, who take advantage of such legislation, to the majority of good tenants.

Sincerely,

Joseph R. Schuble
Vice Chairman
The Apartment House Council

JRS:cc

cc: Mr. Robert T. Foley
Mr. Stephen A. Goldberg
Mr. William Berry
Mr. Martin Kirsch
Mr. William K. Salamone
Mr. Irvin Alter
Mr. G. Greg Evernan
Mr. Ramsey W. Flynn
Mr. John Morrison
Mr. Howard Offitt
Professor James W. McElhaney

STUDENT GOVERNMENT ASSOCIATION
ROOM 106 STUDENT UNION BUILDING
UNIVERSITY OF MARYLAND
COLLEGE PARK, MARYLAND 20742

Testimony of Stuart Weinblatt, Director of State Affairs, Universtiy of Maryland Student Government Association, before the Governor's Commission on Landlord-Tenant Law Reform on October 17, 1972.

I addressed the commission last December 14 and at that time I related some problems of particular concern to the 10,000 members of the University community who are tenants. I asserted that "the laws which you are now seeking to rewrite must do more to protect the tenant. Especially when the natural laws of supply and demand are working against the tenant you must create laws to protect the tenant."

Among the problems mentioned was that of the retaliatory eviction which serves as an academic death warrant to a student who must live within walking distance of the University. It is hoped that the Commisssion will vote in favor of the propostion prohibiting retaliatory eviction when it appears later in the agenda.

The first item I shall discuss this evening pertains to the section on discrimination in housing units. As it now stands the bill covers all areas of discrimination-race, religion, sex, etc., with the exception of students. The ommission may be unintentional, but the affect of such an ommisssion would be an encumbrance upon any student seeking housing which would be difficult to avoid or overcome.

One instance that immediately comes to mind is that of the SpringHill Lake Apartments one mile from campus. The gargantuan housing unit does not rent to students. Any students who are living there are living there

because the apartment is listed in their parent's name, and the real occupants are unknown to the management. The management naturally claims that they do not discriminate against students, but merely that it requires their tenants to "be able to pay the rent." Through this device a person's income is subject ot question and this is how students have been discriminated against.

For some reason certain managements have determined that students are undesirable tenants. It is wrong and unfair for a class of people to be denied housin on the basis of their occupational status. It is for this reason that I recommend the commission add a provision to the discrimination code prohibiting discrimination on the basis of occupational or educational status. I add educational because there are cases of preferential bias given to graduates or undergraduate students. There was a time when graduate students were preferred, but now many landlords prefer freshmen because they are in the toughest bind and therefore easiest to manipulate.

In regards to the question of income, one should be allowed to live where he chooses if he has a "legitimate means of support." This clause would cover any working person engaged in any legal enterprise and recieving an income. It would also protect the student who is dependent upon his parents for income. He or she may not independently earn enough to fully pay the rent, but if there is a supplemental or primary source of revenue from home this person should not be denied housing. This person must in fact, be protected against such denial, and therefore I urge adoption of the propositions I have suggested.

There is one other class of people who are frequently prevented from recieving a lease-unmarried couples. I am not familiar with the

Board's work in this field, and so I am unable to comment on ... what else is needed. Suffice it to say that this group should also be considered when writing the laws prohibiting discrimination against clases of people.

The next matter on your agenda, and which I shall address is the area of rent receipts. Picture yourself as a person renting a housing unit with no formal contract or lease. You have no guidelines of your rights and responsibilities, or of the landlord's obligations and legal expectations of you. Add to this the lack of a receipt for payment of fees and the result is clearly confusion of direction and prolonged aggravation. An unwritten contract and nonexistent receipt can only mean uncertainty and desperation for the tenant.

I believe now as I did last year that all landlords be required to give tenants a copy of his lease written in plain language based on a model lease drawn on the state or local level. The same way that the lease serves as a formal protection for both landlord and tenant, the receipt also is a protection fro both against allegations and misunderstandings. This provision should be required in all landlord-tenant relationaships. Mrs. Murphy's tenants deserve the guarantee of a rent receipt just as much as the people who live in an expensive establishment.

Mrs. Murphy's tenants may need the receipt more than in regular establishments because in an area with a housing shortage, it is often easier to find new tenants than to satisfy present occupants. These situations can often become bitter and disputes arise over payment arise in this predicament as frequently as anywhere else.

One other important factor should be considered regarding the guarantee of rent receipts for all tenants. Without the receipt being required in informal arrangements, the Commission is condoning a means whereby people can accrue an unreported source of income. To be more specific , under this system, it is possible for people to acquire sums of money and this money can easily remain unaccounted in their income tax statements. Although the mere issuance of a receipt would not stop this problem if the process is a complete one the income will much more likely be reported.

I propose that leases be submitted and kept on record for all landlords. The files would be kept by the commisssion or local agency charged with administration of the new laws. In this manner, the leases could also be scrutinized for illegal provisions. If a complaint arises in court, the lease is on file; if there is a question of neglegient reporting of tax returns, the leases is on file with the Commission. Proper and full execution of the laws would be aided and the rentee could be protected against abuses by his landlord, and vice versa if a receipt is required.

The final legislative matter I bring before you is not on the agenda, but a topic I had mentioned in my last appearance before the Commission. Many tenants leave their rooms or apartments when they may have the right, legally to remain where they are. Tenant education in the form of a pamphlet outlining his legal rights, what he can and cannot do, is almost essential if he is not to be abused and trampled upon. As a new car comes with a pamphlet explaining how the car works, a rent contract should also be accompanied by a pamphlet explaining how the contract works.

In conclusion I should like to urge the commission to enact an anti-discrimination code which would prohibit exclusion on the basis of occupational status; a code which would prohibit exclusion on the basis of educational status;, a code which would prohibit exclusion on the basis of one's means of support; a code which would prohibit exclusion on the basis of marital status. These provisions should come in addition to the existing proposals which I support.

I also urge the Commission to require a lease and rent receipt in all instances where a party is renting a room or apartment. The pamphlet on tenant education for apartment and room dwellers would be most beneficial in helping to avoid confusion and tension that may exist.

Since its inception this Governor's Study Commission has demonstrated its fairness and an open attitude towards the question of landlord-tenant reform. I hope that the oversights which I have mentioned this evening can be quickly and judiciously corrected.

GOVERNOR'S COMMISSION ON
LANDLORD - TENANT LAW REVISION

Minutes of Meeting of
July 1, 1974

1. Meeting called to order at 7:14 P.M.

2. 13 members present: The chairman, Carbine, Adams, Dancey, Alter, Everngam, Brynes, Funger, Sallow, Laurent, Offitt, Parmentier, Piccinini.

3. Proposed rent excrow legislation (H.B.154G of 1974 Regular Session), with modified provisions on conditions (Section F(1)(111) and applicability (Section F (1)(IV)), was read. A motion by G. Laurent to resubmit this bill was seconded and was passed by a vote of 9-1 (Everngam opposed).

4. Proposed right of appeal legislation (S.B. 729 of 1974 Regular Session) was read. A motion by Mr. Everngam to resubmit this bill was seconded and was passed by a unanimous vote.

5. Mr. Carbine gave a report on the Commission's retaliatory eviction bill (S.B.731), which was passed by the 1974 Regular Session. He noted that the bill was amended to include mobile homes, and to include section (F) on conditions. Mr. Carbine made a motion proposing a bill that would strike all words in Section (F) after the word "lease". He explained that the words he proposed to strike were an exception to, and in effect negated, the retaliatory eviction prohibitions of S.B.731. He explained that his proposed amendment would prevent these words from having a negatory effect on the retaliatory eviction prohibitions. After discussion, Mr. Carbine withdrew his motion. A subcommittee, composed of Brynes, Funger, and Carbine, were appointed to study subsection (F).

6. Mr. Carbine noted that the Commission bill, prohibiting certain types of lease provisions (S.B.730), as enacted by the 1974 Regular Session, deleted the provision in section C(2), providing for a penalty of up to $500.00. He explained that this provision was initially withdrawn by the Commission before submission, but was later reintroduced. He explained that the penalty could be awarded regardless of whether there were proven actual damages. The present law as enacted permits award of only proven actual damages. The resubmission of the penalty provision was discussed. Senator Byrnes added that a penalty provision should include a requirement of showing cause (i.e., malice), as is usual in punitive damages provisions. A motion to put this matter on the agenda for the September 10 meeting was approved.

7. Judge Silver stated that he would meet with Governor Mandel on July 2 to discuss the Commission's work. Mr. Carbine and Mr. Laurent, as well as representatives of tenants organizations, were also to attend this meeting.

8. The need to study problems associated with the conversion of rental apartments to condominiums was discussed.

9. Mr. Steven Davison, an instructor at the University of Baltimore Law School, was introduced as a candidate for full time reporter for the Commission. Mr. Davison commented on his past experiences and general principles. The full-time reporter for the Commission would be paid $20/hour and a maximum of $3,500.00. Funds are also allocated for secretarial services and for law student research at $5/hour.

10. Alter commented on the fact that Judge Sweeney submitted a landlord-tenant law bill in the 1974 Regular Session which was not a Commission bill. In the future, the Commission decided that its proposed legislation would be sent with an accompanying letter to indicate sponsorship. Senator Byrnes suggested that the Commission meet during the legislative session to review bills submitted by other members of the legislature, since there is no prefiling in the 1975 session.

The meeting was adjourned at 9:00 P. M.

GOVERNOR'S COMMISSION ON
LANDLORD - TENANT LAW REVISION

Minutes of Meeting of
September 11, 1974

1. Meeting called to order at 8:0? P.M.

?. 9 members present = The chairman, Carbine, Adams, Dancey, Alter Laurent, Walsh, Piccinini, Carter.

3. Votes on amendments to S. B. 731 and S. B. 730 were tabled until after discussion of amendments to 8-401 (summary ejectment for failure to pay rent) and 8-40? (Holding Over), proposed by Mr. Davison.

4. Mr. Davison presented proposed amendments to 8-401 and 8-40?. Mr. Davison indicated that these proposed amendments would affect the appeal bill (proposed Section 8-117) adopted at the meeting of the Commission on July 1, 1974. Mr. Davison noted that the appeal bill, as presently approved, seeks to provide for a right of appeal in all landlord - tenant cases by adding a new Section 8-117 and by repealing Section 8-401(f). Mr. Davison, noted, however, that the Holding Over provision, Section 8-40?, has provisions for appeal under Section 8-40?(b)(?) and that there is also a provision for appeals from distraint of rent judgments under Section 8-33?. (Citations are to the Real Property Article as re-codified by Chapter 1? (S.B. ?00) of the 1974 Regular Session). Mr. Davison stated that these two sections should be amended to conform with proposed Section 8-117. Mr. Davison also noted that an appeal under Section 8-40?(c) should be provided under proposed Section 8-117. Mr. Davison indicated that Mrs. Patricia Kostrisky, Chief Clerk of the District Court, had questioned whether the appeal bill should provide for jury trials. The members of the Commission noted that 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. It was suggested that a jury trial could be had, under Section 8-117, on appeal before the Circuit Court or Baltimore City Court, where the trial would be de novo. The chairman suggested that the District Court, in landlord - tenant cases where the amount in controversy exceeded $500, might waive exclusive jurisdiction so that a jury trial could be had before the Circuit Court or Baltimore City Court. Mr. Davison was asked to further investigate this problem. Mr. Davison also proposed that the first sentence of proposed Section 8-117 (B) be amended to provide that: "The tenant, INCLUDING SUBTENANT. ASSIGNEE, OR SOMEONE HOLDING UNDER THEM, in order to stay execution of the judgment from which appeal is taken. . ." Mr. Davison indicated that this procedural change would make proposed section 8-117 consistent with his proposed amendments to 8-401 and 8-40?. A copy of the amended version of the appeal proposed by Mr. Davison is enclosed.

5. Mr. Davison proposed procedural amendments to 8-401 and 8-407. These proposed amendments are in response to the Revisor's Notes to Section 8 of Chapter 1? (S.B. ?00) of the 1974 Regular Session. Copies of the amendments to 8-401 and 8-407 proposed by Mr. Davison are enclosed. Mr. Davison noted that his amendments to 8-401 would provide for notice and service both to the tenant and to the subtenant, assignee or someone holding under them. His proposed amendments to 8-407 would provide for notice and service to tenant, subtenant, assignee, or someone holding under them, who is in actual possession of the premises. Changes to the appeal provisions under 8-401 and 8-407 were also proposed; these changes are consistent with the appeal bill, and should be proposed in case the appeal bill is not enacted. Mr. Davison also noted a proposed change to 8-401 would permit the landlord to recover, under 8-401, real estate taxes, utility charges and other charges, in addition to rent. Mr. Davison indicated that reference to rent in proposed Section 8-117(b) should be changed if this change was adopted. Mr. Walsh stated that this proposed change would violate the due process clause of the Fourteenth Amendment, since it would allow personal judgments for charges other than rent without the defendant having had personal service of process as required by the due process clause. Mr. Walsh noted that rent was considered as a covenant running with the land and as a right incident to the land, so that summary ejectment suits, such as those provided in Maryland under Section 8-401, could quasi-in-rem actions, with personal service of process on the tenant not required. (Section 8-401 provides for service of process by first class mail and by posting on the premises). Mr. Carbine questioned whether the sentence proposed to be added at the end of 8-401(a) was necessary (this proposal would provide that the tenant would not be discharged from his liability to pay rent if the landlord accepted rent from, or filed a complaint under 8-401 against, a subtenant, assignee or someone holding under them). Mr. Davison indicated that this provision was not necessary, since it stated the common law as presently in existence, and would be merely a reassurance to anyone concerned about the issue. Mr. Davison also noted that the final sentence in 8-401(d) had been amended in accordance with a suggestion by Mrs. Patricia Kostrisky, Chief Clerk of the District Court. Mr. Alter noted that this would allow landlord - tenant law judgments to be recorded in the same as other civil judgments. Mr. Davison also stated that he had mistakenly added the "cure" provision from 8-401 to 8-407(c), which provides for ejectment where one-half year's rent is due. Mr. Davison indicated that a right to cure under 8-407(e) might not be compatible under 8-407(c), which provides for ejectment of the tenant in these circumstances.

6. Mr. Carbine made a motion, which was seconded, to amend Section 8-?08(f) (enacted by Chapter 645(S.B. 731) of the 1974 legislative session, by placing a period after the first "lease," deleting 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." Mr. Carbine stated that the words he proposed to delete were an exception to, and in effect negate, the retaliatory eviction prohibitions of Section 8-108. The motion was passed unanimously.

7. Mr. Laurent made a motion to amend Chapter 375 (S.B. 730) of the 1974 Regular Legislative Session by adding to paragraph C(7) a provision permitting a court to award up to $500 in punitive damages, in addition to actual damages and attorneys fees. Mr. Laurent explained that his amendment was similar to the punitive damage provision unsuccessfully introduced in the 1974 Regular Legislative Session, although the previous version would have permitted up to $500 in punitive damages. Mr. Laurent's motion was seconded by Mr. Carter. This motion was defeated by a vote of 5 - 4, with the chairman breaking the tie. Mr. Alter made a motion, which was seconded by Mr. Piccinini, that the Commission take no further action on Chapter 375 (S.B. 730) during the 1975 Legislative Session. This motion passed.

8. The chairman discussed future business of the Commission. He stated that conversion of rental units to condominiums was one of the highest priority items, having a higher priority than mobile home landlord - tenant law revision. The chairman asked Mr. Davison to prepare recommendations and proposed bills with respect to control of condominium conversion.

9. Mr. Davison discussed his outline presentations on conversion of rental units to condominiums and on mobile home landlord - tenant law revision. Mr. Davison noted that the District of Columbia City Council had recently passed a 60 day moratorium on conversion of rental housing to condominiums.

10. The next meeting will be at 7:30 P.M. on October 8 and November 12.

11. The meeting was adjourned at 9:15 P.M.

Steven Davison
Reporter

GOVERNOR'S COMMISSION ON

LANDLORD - TENANT LAW REVISION

Minutes of Meeting of
October 8, 1974

1. Meeting called to order at 7:45 P.M.

2. 14 members present: The chairman, Sallow, Laurent, Adams, Funger, Dancey, Carbine, Piccinini, Alter, Gorham, Everngam, Walsh, Byrnes, Parmentier.

3. Mr. Davison noted that the form of the amendment to Section 8-208(f) (retaliatory eviction), passed at the September 11 meeting, that was forwarded to the Governor's office inadvertently deleted the words "breach of" before the words "any provision." Mr. Davison stated that a corrected form of the bill would be forwarded to the Governor's office.

4. The appeal bill was discussed. Mr. Davison discussed the problem with jury trials in landlord - tenant cases in district court where the amount in controversy exceeds $500. District Courts do not have jury trials. The Maryland Constitution provides that any party may pray for a jury trial where the amount in controversy exceeds $500. However, District Courts have exclusive jurisdiction over landlord - tenant cases where the amount in controversy does not exceed $500. Mr. Davison stated that this problem in the District Courts with respect to failure to provide jury trials where constitutionally required exists in other subject matter areas where the District Courts have exclusive jurisdiction. Consequently, Mrs. Patricia Kostrisky, Chief Clerk of the District Court, has stated that this jury trial problem is one that requires a common solution with respect to all areas of exclusive District Court jurisdiction, and should not be approached under landlord - tenant law revisions. Mr. Davison recommended that the appeal bill not include jury trial problems, but that this jury trial problem be brought to the attention of the Governor's office after the appeal bill is passed and forwarded. Mr. Carbine noted that appeal provisions in the proposed amendments to 8-401 (rent due and payable) and to 8-402 (holding over) appeared to conflict with the appeal bill provisions. Mr. Davison stated that the proposed changes in 8-401 and 8-402 were intended to achieve the goals of the appeal bill in case the proposed amendments to 8-401 and 8-402 passed but the appeal bill did not pass. However, Mr. Davison stated that there might be some confusion if the proposed amendments to 8-401 and 8-402 passed subsequent to passage of the appeal bill. A motion was made by the chairman to pass the appeal bill, subject to non-substantive changes in the appeal bill and the proposed amendments to 8-401 and 8-402, to reconcile this problem. This motion was

seconded and was passed unanimously.

5. The proposed amendments to 8-401 (Rent Due and Payable) were discussed. Mr. Davison noted that the present version of the proposal would continue to make 8-401 applicable only to collection of rent, since collection of other charges would require personal, due process service on a defendant (as noted by Mr. Walsh at the previous meeting). Requiring personal, due process service under 8-401, rather than service by first class mail or by posting on the premises, would change 8-401 from a summary ejectment action to a more time-consuming civil ejectment action. Mr. Davison noted that the proposed amendments would make 8-401 applicable to subtenants, assignees, or someone holding under them or the tenant, as well as the tenant as at present. Mr. Davison also noted that the amendments would permit recording a judgment under 8-401 if there has been personal service of process on the defendant. Mr. Walsh discussed problems that have arisen under the Commission's amendment to 8-401(e), which makes the right to cure inapplicable if a defendant has received three or more summons for failure to pay rent in the 12 months prior to initiation of the action under 8-401. Mr. Walsh stated that in Baltimore City, a tenant can raise a rent escrow defense as a defense to a suit for eviction and to collect unpaid rent. The provision in 8-401(e) penalizes the tenant in Baltimore City who receives a summons in such a suit but who successfully raises the rent escrow defense. Mr. Walsh also noted records of landlord - tenant cases are destroyed after 60 days, so consequently, even if a tenant was allowed to avoid this exception to the right to cure under 8-401(e) by showing a successful rent escrow defense, he would not be able to do so because the records had been destroyed. Mr. Carbine questioned the constitutionality of the provision under 8-401(e) requiring a tenant to pay late fees, as well as rent, in order to cure, without personal, due process service on the tenant under 8-401. The chairman stated that he saw no constitutional problem with this provision. The chairman tabled consideration of 8-401 until the next meeting to permit proposal of substantive changes to 8-401(e) with respect to the exception to the right to cure where a tenant has received 3 or more summons in the previous 12 month period.

6. Mr. Davison discussed the proposed amendments to 8-402 (holding over). He explained that the proposed amendments would make 8-402 specifically applicable to subtenants, assignees, or someone holding under them who wrongfully holds over at the end of the term of the lease. Mr. Davison also stated that the proposed amendments would specifically authorize a sheriff or constable, in enforcing an eviction order, to remove the wrongfully holding over defendant's goods from the premises. The proposed amendments to 8-402 were passed unanimously.

7. Mr. Davison discussed his proposed bill with respect to conversion of rental apartments to condominiums. Mr. Flynn, a former member of the Commission representing the Home Builders Association and the Real Estate Board of Baltimore, stated the Association and the Board would like to help the commission in drafting a bill with respect to this problem. Mr. Flynn stated that the bill proposed by Mr. Davison was fraught with dangers and that the Association ahd the Board might be able to draft a bill offering a better approach to the problem. The chairman told Mr. Flynn that no vote on the bill proposed by Mr. Davison was contemplated at this meeting of the Commission. The chairman appointed a subcommittee of the Commission to meet with members of the public and to work on a bill with respect to the conversion of rental apartments to condominiums. The members of the Commission appointed to this subcommittee are: Sallow (who will act as chairman of the subcommittee), Adams, Piccinini, Franquet (new member of the Commission), and Gorham. Mr. Davison will be an ex officio member of the subcommittee. The chairman requested Mr. Flynn to contact Mr. Davison to arrange for a meeting between Mr. Flynn and the subcommittee. The chairman stated that the Maryland House of Delegates and Senate would be notified to expect late filing of a bill with respect to conversion of rental apartments to condominiums, so that the legislature would be prepared to act on such a bill in this session.

8. The chairman stated the representatives of mobile home owners were studying the mobile home landlord - tenant law problem, and that the Commission would take no action on the question at this time.

9. New Business
   a. Mr. Carbine proposed a resolution to modify the jurisdiction of District Courts to enable them to render expedited declaratory judgments in landlord - tenant cases. He explained that this would provide for resolution of disputes between landlord and tenant, as to whether there has been breach of the lease, without forcing the tenant to have to risk eviction. Mr. Alter objected to this motion as being not within the Commission's jurisdiction. Mr. Carbine withdrew this motion.
   b. Mr. Carbine stated that he would introduce two resolutions at the December meeting to bring the Uniform Landlord - Tenant Act before the Commission for consideration and to empower the Reporter to investigate this Act and its effects on Maryland landlord - tenant law.

10. Mr. Paul Olson, chairman of the Prince George's Tenant Consumer Association, told the Commission that he feared that the courts would soon void the Prince George's County Landlord - Tenant Commission ordinance. They stated that if this occurred, tenants in Prince George's County would want to work through the Commission to enact similar legislation.

11. The next meeting will be on November 12.

12. The meeting was adjourned at 9:25 P.M.

Steven Davison
Reporter

GOVERNOR'S COMMISSION ON
LANDLORD - TENANT LAW REVISION

Minutes of Meeting of
November 12, 1974

1. Meeting called to order at 7:45 P.M.

2. 13 members present: Sallow (Vice chairman, presiding), Carbine, Piccinini, Franquet, Walsh, Parmentier, Adams, Funger, Everngam, Carter, Alter, Offitt, Morrison.

3. Proposed amendments to Section 8-401 (Rent Due and Payable) were discussed. Mr. Davison discussed the provision in Section 8-401(e), enacted in the last legislative session, which makes the right to cure by a tenant for non-payment of rent inapplicable to tenants who have received three or more summons in a 12 month period for non-payment of rent. Mr. Davison stated that this provision was probably unconstitutional under the Due Process clause of the Constitution, since it penalizes tenants who successfully or in good faith raise defenses such as rent escrow, violation of rent control statutes, retaliatory rent increases, or no rent due and payable. Mr. Davison stated that a tenant should have a right to cure where three or more summons in a 12 month period have been received where a tenant has successfully or in good faith defended the actions for summary ejectment. Mr. Davison stated, however, that the District Courts, pursuant to Section 8-401(d), destroy all records of landlord - tenant rent cases after sixty days from date of judgment. Consequently, there would be no method of determining whether a tenant had in good faith or successfully raised certain defenses in previous summary ejectment suits. Mr. Davison indicated that problems with respect to the constitutionality of this exception to a tenant's right to cure could be resolved by making the right to cure inapplicable if three or more recorded judgments for rent due and unpaid have been entered against a tenant within a 12 month period. Mr. Davison noted that this would be burdensome for landlords, but that records of judgments after sixty days from date of judgment are available only if the judgment has been recorded. Mr. Davison noted that a proposed amendment to Section 8-401(d) will provide for recording of judgments under Section 8-401 if there is proof of personal service. Mr. Davison also suggested that the exception to the right to cure might be keyed to summonses which have been certified by the constable as having been personally served upon the tenant. Mr. Piccinini and Mr. Alter stated that personal service of summonses in rent cases was difficult, if not impossible, and noted that Section 8-401 presently provided for service by first class mail and posting. Mr. Franquet suggested that service of the summons under Section 8-401 be required by certified mail. Mr. Offitt stated that he did not

believe that any injustice was resulting because of this exception to the right to cure. Mr. Walsh stated that he did not know of any specific instances where this exception to the right to cure had been invoked, but stated that the Commission should not recommend unconstitutional legislation and that injustice may result in the future when tenants begin raising defenses such as rent escrow in summary ejectment rent cases. Mr. Offitt and Mr. Alter stated that hearings were held in District Courts prior to issuance of warrants of restitution under Section 8-401(d), and that judges at such hearings review the records to insure that no injustice is done. They stated that these warrant of restitution hearings would prevent any injustices from occurring under the exception to the right to cure. Mr. Piccinini made a motion, which was seconded by Mr. Walsh, to table the proposed amendments to Section 8-401 until the next meeting to permit further study of the exception to the right to cure. The motion passed.

4. Mr. Sallow presented the condominium conversion subcommittee's proposed bill (copy enclosed) to protect tenants in conversion condominiums who purchase condominium units. Mr. Davison stated that the subcommittee's bill was a conversion condominium buyer protection bill that gives a tenant in a conversion condominium a first right of refusal to purchase his leased premises as a condominium unit, specifies in detail the form of notice to be given to tenants when a rental building is to be converted to a condominium; and gives to a tenant who purchases a condominium unit implied warranties that his premises are habitable and fit. Mr. Davison stated that this bill was separate from the original bill presented at the October 8 meeting, which would regulate the conversion of rental buildings to condominiums by requiring that all tenants be provided with comparable replacement housing prior to conversion, and that a certain percentage of units in a conversion condominium remain as rental premises after conversion. Mr. Davison stated that the two bills should be kept separate at the request of the Governor's office. Mr. Davison stated that the subcommittee had concluded that the requirement that a certain percentage of units in a converted condominium remain as rental premises after conversion would be unwise because it would preclude private or federally insured financing. Mr. Morrison presented to the Commission proposed amendments to the conversion condominium buyer protection bill recommended by the Condominium Committee of the Home Builders Association. Mr. Carter stated that the Bar Association Condominium Committee had examined the initial draft of the subcommittee's buyer protection bill, and would meet again in December to examine the subcommittee's final draft of the bill. Mr. Carter stated that the Bar Association Condominium Committee would propose some amendments to the bill to make it consistent with the Maryland condominium law. Mr. Franquet stated that the Commission should hold hearings on the buyer protection bill to permit tenants' organizations to study and comment on the bill. Mr. Morrison moved to

approve the conversion condominium buyer protection bill, subject to procedural non-substantive amendments that might be proposed by the Bar Association, Home Builders Association, or tenants' organizations at the next meeting. Mr. Adams seconded the motion. Mr. Carbine moved to table the buyer protection bill until the next meeting, stating that Commission policy and by-laws provided that the Commission should not vote on a bill at the same meeting that the bill was initially presented. Mr. Everngam seconded the motion. Mr. Sallow stated that the sub-committee had throughly studied and worked on the bill with the cooperation of Mr. Fitzpatrick of the Bar Association Condominium Committee and with Mr. Flynn of the Home Builders Association, and that they were in agreement with the bill. Mr. Morrison stated that the Commission by-laws had been changed to permit a vote on a bill at the same meeting that the bill was initially presented. Mr. Alter made a point of order that public exposure to the bill should occur before sending it to the legislature. Other members of the Commission stated that the legislature could give the bill public exposure and that Commission policy in the past had not been to try to sell a bill to the public by means of public hearings. The motion to table the conversion condominium buyer protection bill was defeated. The motion to pass the conversion condominium buyer protection bill, subject to procedural, non-substantive amendments at the next meeting was approved unanimously.

5. The next meeting was set for December 10. The agenda would include discussion and vote on Section 8-401, and proposed amendments to the conversion condominium buyer protection amendments by the Bar Association, Home Builders Association, and tenants' organizations.

Steven G. Davison
Reporter

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:

(1)(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:

(1) A copy of the proposed declaration and by-laws;
(2) A copy of the proposed article 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 projected 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 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; [and]

(7) A copy of the floor plan of the unit 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 SECTION 11-102.1 IS DELIVERED, BUT ONLY WHERE THE CONDOMINIUM IS CONVERTED FROM A RESIDENTIAL RENTAL BUILDING; 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), BUT ONLY WHERE THE CONDOMINIUM IS CONVERTED FROM A RESIDENTIAL RENTAL BUILDING. A LICENSED PROFESSIONAL ENGINEER SHALL BE LIABLE FOR MISTAKES, ERRORS, OR OMISSIONS ONLY IF SUCH MISTAKES, ERRORS, OR OMISSIONS ARE THE RESULT OF WANTON, 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 subections (C) - (G)]

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

HOME BUILDERS ASSOCIATION OF MARYLAND
CONDOMINIUM COMMITTEE
OCTOBER 10, 1974

MINUTES

Present:

Larry Rachuba	Walter Koppelman	
Tom Farrell	Walter Ward	Staff:
Bill Flynn	Larry Shoemaker	Dave Perry
Al Monshower		

Larry Rachuba called the meeting to order.

It was reported that Larry Rachuba, Bill Flynn, and staff from HBAM had attended the September 19th Condominium, responsibility of owner, hearing, in Annapolis. Delegate Dorman feels that there should be more state control over condominium construction and conversion.

It was noted that Delegate Docter is proposing a law for the 1975 legislative session which would prevent conversion of apartments that are more than ten years old to condominiums.

It was also noted that Washington D.C. has a six month moratorium on conversions.

Larry Rachuba reported that on October 8, he, Bill Flynn, and the staff from HBAM had attended a Landlord-Tenant Commission meeting. The Landlord-Tenant Commission is proposing legislation for regulation of conversion of apartments to condominiums. The commission felt that since they have had little experience with condominiums that a sub-committee should be formed to study their proposals. Bill Flynn and Larry Rachuba said that the Realtors and Home Builders would submit their recommendations for conversion regulations at the November 12th meeting.

In reference to conversion practices the following points were noted:

- The existing law of 120 days notice for conversion was realistic.
- To require 35% tenant approval for conversion is probably unconstitutional. The Long Island Association of Home Builders has initiated a suit in New York State testing the 35% tenant approval requirement for conversion.
- To require 25% of the rental units to remain rental units after conversion is unrealistic since it would detract from the condominium concept and force the owner to select who would and would not be part of the 25%. Tom Farrell noted that this practice would probably be prohibitive for acquiring financing.
- To require the apartment owner to find comparable rental units for the individuals who decided to leave aftcr notice of conversion had been received would place additional burden upon the owner.
- In order to prevent undue hardship on the elderly and individuals [illegible] middle income the federal government

should subsidize conversion for these people through low interest rates or reduced mortgages.

- Individuals living in the rental units at the time of the notice of conversion should have the right of 1st refusal.
- Individuals could remain beyond the 120 day period for conversion if a hardship exists (health, etc.).
- A monthly fee guarantee for a period of one year or more with an inflation factor added could provide some additional financial security for the condominium buyer.

It was decided that a sub-committee from the Realtors and Home Builders would be formed to outline proposals for conversion regulations.

It was also decided that articles and letters would be written for the newspapers and HBAM magazine concerning the advantages of condominium ownership. These articles and letters would be based upon the written recommendations that have been submitted to Larry Rachuba by committee members.

Tom Farrell outlined the FHA 234 program as it relates to condominiums.

In reference to the proceeding remarks concerning state financial assistance for low and middle income families and the elderly regarding conversion financing it was noted that George Schnader and staff at HBAM would be going to the State Department of Community and Economic development on October 24 to discuss any programs the state has or proposes to have.

The Housing Act of 1974 has a provision for a 1 year study of condominiums which HUD and NAHB both support.

There being no further business the meeting was adjourned.

Respectfully submitted,

David S. Perry
Technical Director

DSP/mab

The following changes are recommended by the Condominium Committee of the Home Builders Association of Maryland in reference to the attached proposed Landlord/Tenant Commission's legislation for conversion of apartment units to condominium units.

. In reference to section (1)(a)... 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. The condominium committee recommends that this sentence be deleted and that the wording as it exist in HB 133 remain as is in reference to the 120 days notice.

. In reference to section (1)(B)... 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). The terms of the offer of sale to a tenant shall be the terms of sale to be initially offered to members of the public. The condominium committee recommends that the 90 days be reduced to 60 days. After 2(A),, the following should be inserted... FAILURE TO NOTIFY SENDER OF SAID NOTICE OF ACCEPTANCE IN WRITING BY THE TENANT WITHIN 60 DAYS SHALL CONSTITUTE REJECTION. After the words, Shall be the same terms, insert OR BETTER TERMS.

. In reference to section (1)((b))(c) (should be d) we recommend that this section be deleted since it is adequately

addressed in HB 133.

. Section (1)(E) should be deleted entirely.

. In reference to Section (1)(F) and after the words, liability to the landlord, insert if 90 DAYS WRITTEN NOTICE HAS BE SENT 1ST CLASS MAIL, RETURN RECEIPT REQUESTED, BY THE TENANT.

. In the Notice of Conversion to Condominium and after the words at least 120 days delete prior to the initial offer of sale condominium units to the public.

. On page 3, first paragraph, line 4, delete at anytime hereafter , and insert, IF 90 DAYS WRITTEN NOTICE HAS BEEN SENT 1ST CLASS MAIL, RETURN RECEIPT REQUESTED, BY THE TENANT.

. On page 3, third paragraph, change 90 days to 60 days.

. On page 3, third paragraph, and sentence beginning Your acceptance . . . or rejection, and insert IF WITHIN THE 60 DAYS A NOTICE OF ACCEPTANCE HAS NOT BEEN RECEIVED THEN THIS CONSITUTES A REJECTION.

. On page 3, paragraph 6, beginning with If you do accept, delete the entire paragraph since they already have sufficient time.

GOVERNOR'S COMMISSION ON

LANDLORD - TENANT LAW REVISION

Minutes of Meeting of
December 10, 1974

1. Meeting called to order at 7:40 P.M.

2. Twelve members present: The chairman, Sallow, Laurent, Walsh, Adams, Dancey, Gorham, Franquet, Alter, Funger, Parmentier, Byrnes.

3. Proposed amendments to Section 8-401 (Rent Due and Payable) were discussed. Mr. Alter stated that he was not understood properly at the last meeting when discussing the exception to the right to cure under Section 8-401(e). Mr. Alter stated that he did not mean that there were judicial hearings prior to a warrant of restitution being ordered. Mr. Alter stated that if, at the time a constable seeks to evict a tenant pursuant to a warrant of restitution ordered under Section 8-401(d), a tenant tenders the rent due and unpaid to the landlord, the constable will not execute the warrant of restitution to evict the tenant, even if the landlord refuses to accept the tendered rent. He explained that in this situation, the constable will return the warrant of restitution and have the case re-scheduled on the judicial calendar. Mr. Alter stated that he had talked with a number of landlords and that he and they would not object to repeal of the last sentence in Section 8-401(e) which makes the right to cure inapplicable if a tenant has received three or more summonses in the previous 12 months for rent due and unpaid. Mr. Walsh and Mr. Davison reiterated their opinions of the previous meeting that this exception to the right to cure violated the Due Process Clause of the Constitution. Mr. Walsh stated that Legal Aid was prosecuting a case which would challenge this section. Mr. Laurent stated that Mr. Carbine agreed that this exception to the right to cure was unconstitutional. Mr. Franquet made a motion, which was seconded by Mr. Walsh, to pass the proposed amendments to Section 8-401, with the last sentence in Section 8-401(e) (exception to the right to cure) deleted and with the appeal and security bond provisions of Section 8-401(f) amended to be similar to the proposed Appeal bill. The motion was passed unanimously. (Copy of the proposed amendments to Section 8-401, as approved by the Commission, is enclosed).

4. Proposed amendments to the conversion condominium buyers' protection bill, which was passed at the November 12 meeting, were considered. Mr. Franquet and Mr. Paul Olson stated that tenants' organizations were satisfied with the bill as enacted and had no amendments to offer. There were no representatives present from the Bar Association Condominium Committee. The Commission then considered proposed amendments to the bill which had been offered at the November 12 meeting by the Home Builders Association. Mr. Adams made a motion, which was seconded by Ms.

Gorham, to amend Section 1.1(a) of the bill so that it would remain as enacted by Chapter 704 (H.B. 133) of the 1974 Regular Session. This motion failed. Mr. Sallow made a motion, which was seconded by Mr. Walsh, to keep the period during which a tenant may accept the offer to purchase his condominium under Section 1.1(b) as 90 days, rather than the 60 day period proposed by the Home Builders Association. This motion passed. Mr. Franquet made a motion, which was seconded by Mr. Walsh, to amend Section 1.1(b) by adding a provision that failure to notify sender of said notice of acceptance in writing by the tenant within 90 days shall constitute rejection of the offer of sale, and by amending the form of notice specified by Section 1.1(g) to include this sentence. This motion passed. Mr. Laurent made a motion, which was seconded by Mr. Sallow, to reject the Home Builders Association's proposed amendment to Section 1.1(d), to leave Section 11-102.1(b) as enacted by Chapter 704 (H.B. 133) of the 1974 Regular Session. This motion passed. Mr. Sallow made a motion, which was seconded by Mr. Walsh, to reject the Home Builders Association proposal to delete Section 1.1(e) of the bill. This motion passed. Mr. Adams made a motion, which was seconded by Mr. Alter, to approve the Home Builders Association's proposed amendment to Section 1.1(f) which would require tenant to give 90 days written notice by first class mail, return receipt requested, before a tenant could terminate his lease prior to termination under the lease. This motion failed. Mr. Byrnes made a motion, which was seconded by Mr. Walsh, to amend Section 1.1(f) of the bill to provide that a tenant could not terminate the lease prior to termination under the lease unless he had given 30 days written notice by first class mail, return receipt requested. This motion passed. A motion by Mr. Alter, seconded by Mr. Adams, to amend the time period in Mr. Byrnes' motion to 60 days was defeated. Mr. Walsh made a motion, which was seconded by Mr. Laurent, to change the form of specified notice under Section 1.1(g) to conform to Mr. Byrnes' motion to amend Section 1.1(f). This motion passed. A copy of the conversion condominium buyers' protection bill, as amended, is enclosed.

5. The proposed bill to regulate conversion of residential rental buildings to condominiums was discussed. Mr. Davison stated that Section 1.2(e), which prohibits conversion if less than 35% of the tenants indicate concurrence in writing with conversion plans within 30 days from receipt of notice of conversion, is unconstitutional pursuant to Seattle Trust Co. v Roberge, 278 U.S. 116. Mr. Byrnes requested Mr. Davison to draft a letter for Mr. Byrnes signature requesting the State Attorney General to issue an opinion with respect to the constitutionality of this provision. Consideration of this bill was tabled until the next meeting.

6. The chairman stated that he has been contacted by individuals concerned with landlord - tenant problems in mobile home parks. He stated that the Commission would discuss these problems at the next meeting, and would try to schedule representatives of mobile home park landlords and tenants to make presentations at a future meeting of the Commission.

. The next meeting was scheduled for January 14, 1975. The agenda for the January 14 meeting was set.

8. The meeting was adjourned at 9:10 P.M.

Steven G. Davison
Reporter.

GOVERNOR'S COMMISSION ON

LANDLORD - TENANT LAW REVISION

Minutes of Meeting of
January 14, 1975

1. Meeting called to order at 7:45 P.M.

2. Eight members present (lack of quorum): The chairman, Parmentier, Piccinini, Franquet, Gorham, Carbine, Laurent, Adams.

3. George Laurent's letter of November 19, 1974, was discussed. Mr. Laurent's letter proposes district courts be vested with jurisdiction to render declaratory judgments in expedited hearings where tenants have been served with an eviction notice, and that tenants be informed of the reasons for eviction in the eviction notice and be entitled to cure any violation of a lease before being served with a notice of eviction. (Copy of the letter is enclosed). Mr. Carbine noted that district courts are not authorized to render declaratory judgments. Mr. Piccinini stated that tenants never face instant retaliatory eviction, receiving either 30 or 60 days notice before eviction. Mr. Carbine stated that the Commission should inquire as to why the Judicial Reform Act of 1970 did not authorize District Courts to render declaratory judgments. Mr. Carbine noted that proposals (1) and (2) on page 2 of Mr. Laurent's letter of November 19, 1974, would present difficult drafting problems (i.e., to what types of leases would the proposal apply - written and/or oral?) It was the sense of the Commission that the Reporter draft bills to implement the proposals of Mr. Laurent's letter.

4. It was the sense of the Commission that mobile home park landlord and tenant representatives be invited to make presentations with respect to mobile home park landlord-tenant problems in Maryland at the February 11 meeting of the Commission. Presentations would be limited to 15 minutes.

5. The Uniform Residential Landlord and Tenant Act of the National Conference of Commissioners on Uniform State Laws was discussed by Mr. Carbine. Mr. Carbine made a motion to authorize the Commission to study this Act. Mr. Carbine's motion would direct the Commission to do background research with respect to the changes that the Uniform Act would make on Maryland landlord-tenant law; and to study the economic impact that would be caused, by adoption of the Act, particularly with respect to the question of a lease as a conveyance of an estate in land or a lease as a contract. Mr. Carbine's motion

passed. Mr. Davison stated that he would have University of Baltimore Law School students undertake research of the Uniform Act, and present periodic reports to the Commission with respect to parts of the Uniform Act.

6. It was the sense of the Commission that the Commission table further consideration of bills to regulate conversion of rental buildings to condominiums until such time as conditions indicate a necessity for stricter legislation than that already passed the Commission.

7. The question of a requirement of evictions only for good cause was discussed. Mr. Paul Olson stated that there were numerous situations where tenants were evicted without good cause or for an insignificant cause, with no cause for eviction being cited. Mr. Olson stated that in Prince George's County and Montgomery County, rent control legislation permits landlords to raise the rent of vacant premises to the highest rent being charged for comparable units in the landlord's complex. He asserted that landlords evict tenants in order to raise rent pursuant to these provisions of rent control statutes. Mr. Olson indicated that he would like to see Maryland adopt a fair (good cause) eviction statute similar to the New Jersey fair eviction statute (Ch. 49, 1974 N.J. laws) (copy enclosed). Mr. Adams stated that in Prince George's County, a landlord's expenses in rental apartments increased an average of 16% from 1973 to 1974. He stated that because of this, the Prince George's Landlord-Tenant Commission had recommended that no rent control legislation be adopted in the county, but the County Executive had recommended rent control legislation for political reasons. Mr. Adams stated that the Prince George's Landlord-Tenant Commission has recommended rent control legislation permitting a 6% annual rental increase and increased fuel expenses to be passed along to tenants. Mr. Adams stated that landlords are facing significant cost increases that have to be passed on to tenants. Mr. Adams and Mr. Piccinini stated that landlords do not evict tenants solely to raise rents, since permissible rental increases for vancant units are not that great. It was the sense of the Commission that the New Jersey fair constructive eviction law be placed on the agenda of the February 11 meeting.

8. The Commission further discussed rent control legislation. Mr. Paul Olson asserted that inefficient landlords pass through costs to tenants much higher than the 6% that rent control legislation authorizes. Mr. Olson requested amendments to the state rent control legislation that would provide for (1) enforcement either by the state Attorney General or in the Consumer Protection Agency; (2) staff and funds to enforce the law; (3) a ceiling on allowable costs for fuel, electricity and water which could be passed on to tenants; and (4) automatic pass-on to tenants of reduced costs to landlords as a result of services to tenants being reduced by the landlords. Members of the Commission questioned whether rent control legislation was an area that should be considered by the Commission, because rent control legislation

that would be considered by the General Assembly regardless of any recommendations by the Commission and because drafting of rent control legislation required information that was beyond the capabilities of the Commission. It was the sense of the Commission that the question of whether the Commission should undertake consideration of rent control legislation should be discussed and voted by the Commission at the February 11 meeting.

9. The meeting was adjourned at 9:15 P.M.

Steven G. Davison
Reporter

GOVERNOR'S COMMISSION
ON LANDLORD - TENANT LAW REVISION

Minutes of Meeting
of February 11, 1975

1. Meeting called to order at 7:50 P.M.

2. Members present: the chairman, Laurent, Adams, Carbine, Dancey, Walsh, Franquet, Morrison, Everngam.

3. Mr. Davison reviewed the status of the Commission's bills before the General Assembly. Mr. Davison stated that hearings on H.B. 138 (Amendments to RP 8-402 (Holding Over)), H.B. 142 (Condominium Conversion), and H.B. 150 (Rent Escrow) were held before the House Economic Matters Committee on February 6th. Mr. Davison stated that Mr. Anthony Mierzwiki and Samuel Blibaum, Esquire, representing Apartment Builders and Owners Council, Home Builders Association, had proposed substantive amendments to RP 4-402 (Holding Over) in opposing H.B. 138 before the House Economic Matters Committee, and were present at the meeting to present their proposed amendments. The chairman requested that their presentation be heard after the mobile home park testimony. Mr. Davison stated that Delegate Rosenshine had introduced H.B. 500 (copy enclosed), a bill based upon H.B. 142, with respect to condominium conversion. Mr. Davison noted that H.B. 500 would require 360 days notice to tenants prior to conversion to a condominium, as opposed to 120 days notice in the Commission's bill. He also stated that H.B. 500 exempted certain types of rental buildings, including stock cooperatives, property rented for commercial purposes, and property leased for primarily residential purposes where tenancies are by the month or by the week. Mr. Davison also stated that Mr. Hamm, co-chairman of the Bar Association Condominium Committee, had testified in opposition to the Commission's condominium conversion bill. Mr. Davison stated that this opposition by the Bar Association was unexpected, since Mr. Fitzpatrick, the other co-chairman of the Bar Association Condominium Committee, had worked with the Commission's subcommittee in drafting H.B. 142, and the Bar Association Condominium Committee had been invited to the December 11 meeting to offer amendments to the Commission bill, but had not appeared. Mr. Davison also stated that Mr. Hamm had testified that the Bar Association Condominium Committee had introduced their own condominium conversion bill (copy enclosed), which had been assigned to the House Judicial Proceedings Committee. The chairman and Mr. Davison indicated that Minor Carter, member of the Commission and member of the Bar Association Condominium Committee, had told them that he thought that the Commission was aware that the Bar Association, according to their by-laws, could not support the Commission's bill, and that the Bar Association would be submitting their own condominium conversion bill. Mr. Davison stated that he and Mr. Morrison, member of the Commission, had implied in their testimony to the House Economic Matters Committee that the Bar Association supported the Commission's bill,

and had been embarrassed by Mr. Hamm's testimony. Mr. Davison noted that hearings on H.B. 251 (Appeal Bill) and H.B. 252 (Retaliatory Eviction) were held before the House Economic Matters Committee on February 11. Mr. Davison noted that the House Committee had favored a right to appeal within five days, rather than the two day period in H.B. 251; and that Delegate Wolfgang had favored an amendment to be added after line 101 of H.B. 251 to provide that an appeal bond, on appeal under 8-402 (Holding Over), would be in the amount of all rent in arrear, and all loss or damage which the landlord may suffer by reason of or during the appeal. The Commission had no opposition to these amendments to H.B. 251. Mr. Davison noted that the enrolled version of H.B. 252 was different from the version passed by the Commission. Mr. Davison noted that the Commission had voted to amend RP 8-208.1(f) by deleting the phrase "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." Mr. Davison stated that the enrolled version, which was drafted by Mr. Peddicord and Mr. Wilner of the Governor's Office in consultation with the chairman of the Commission, would amend RP 8-208.1(f) by adding to the end of the section the words "NOT INCONSISTENT WITH THIS SECTION." Mr. Davison and Mr. Carbine indicated that these words were awkward at the end of the section, and that it was unclear which words the phrase would modify. Mr. Davison stated that he had proposed to the House Committee that the words, "NOT INCONSISTENT WITH THIS SECTION," be added after the words, "either party's right," and before the words, "to terminate, or not renew a lease pursuant to the terms of the lease or the provisions of other applicable law." The Commission approved Mr. Davison's proposed amendment to H.B. 252. Mr. Davison noted that the Commission's bill to amend RP 8-401 (Rent Due and Payable) was enrolled as SB 270 and was assigned to the Senate Judicial Proceedings Committee. (copy enclosed). (There is no House version of this bill). Mr. Davison also indicated that Senator Byrnes had introduced five of the Commission's bills to the Senate: SB 466 (Retaliatory Evictions); SB 467 (Amendments to 8-402 (Holding Over)); SB 468 (Condominium Conversion); SB 482 (Rent Escrow); and SB 483 (Appeal Bill). Hearings have not been set for these bills in the Senate.

4. The Commission heard testimony with respect to landlord-tenant problems in the mobile home parks.

   A. Mr. Thomas Cook, President, Wicomico County Mobile Home Owners Association, stated that his association attempted to secure rights for residents of mobile home parks. He noted that 75% of mobile home residents in Maryland own their home. He indicated that mobile home owners renting space in mobile home parks were often restricted in their right to have visitors; residents of parks often are charged extra fees for having overnight visitors. Mr. Cook stated that one park owner prevented a resident from having her grandchildren stay overnight pursuant to a rule prohibiting babysitting. In some parks, he explained, residents can't use clothes washers and dishwashers because of inadequate

sewage. He stated that mobile home park residents are evicted for making complaints of violations to public health officials. Mr. Cook stated that a former president of his association was evicted from a mobile home park after he testified before the House Economic Matters Committee and organized residents in the park. Mr. Cook presented copies of leases used by mobile home park owners (copies enclosed).

B. Mrs. Garris, mobile home consultant for the Maryland State Health Department, testified that certain mobile home parks had problems with respect to safe and sufficient water supply, sewage disposal, trash collection, and maintenance of property. She noted that mobile home parks were originally established as transient parks, but have become subdivisions. Mrs. Garris stated that certain parks had problems with overcrowding, resulting in water supply problems. She stated that residents in parks who complain to the state health department are usually evicted, even if they make valid complaints; consequently, many residents phone in anonymous complaints. Mrs. Garris noted that the state has strict regulatory authority over water supply and sewage disposal in mobile home parks.

C. CPO Ray Funk, USN, a resident of a mobile home park in St. Mary's County, testified that residents in his mobile home park had been subject to rent increases, but that the Maryland Court of Special Appeals had held that mobile home parks were subject to the state rent control law (Glazer v Fitzgerald, No. 793, September term, 1973). Mr. Funk stated that entrance fees, at a minimum of $250, were charged to new residents by mobile home park owners even when a home already in the park is sold to the new residents and the home is not moved. Mr. Funk described poor upkeep in his park due to clearing of a new area, which resulted in uprooted trees, garbage, etc., being dumped in an area adjacent to the park. Rats were attracted to rotting material in the dump and foul odors developed. Mr. Funk displayed photographs showing water drainage and erosion problems at his park.

D. David Hausser, a resident of a mobile home park in Anne Arundel County, stated that in a particular mobile home park, a new resident must pay a $500 entrance fee to move a home into the park if they didn't buy the home from the owners of the park. Mr. Hausser stated that in Anne Arundel County, such entrance fees ran between $400 and $600, and were non-refundable. He stated that such entrance fees sometimes were in exchange for promises of improved services - services which later were not provided.

E. Richard Rombro, representing the Maryland Mobile Home Association (an association whose members include manufacturers, mobile home park owners and developers, and companies providing services and accessories for mobile homes), stated that there had been no in-depth study of mobile home park problems in Maryland. He noted that the mobile home park landlord-tenant bill introduced in the 1974 Session of the General Assembly (H.B. 141) was based upon laws of other states, and not based upon actual problems in Maryland. (A copy of a similar bill (H.B. 459) introduced into the 1975 General Assembly is enclosed). Mr. Laurant replied that the Commission did not wait for in-depth studies of all problems to be completed, but rather prepared bills to deal with authenticated problems, amending such bills or statutes as further problems were discovered. Mr. Rombro stated that there were 419 mobile home parks in Maryland, most of which were well-run and provided their residents with good services. He testified that the primary problem with respect to mobile home parks was stringent zoning ordinances limiting locations of mobile homes, usually permitting residence in mobile homes to be only in mobile home parks. Mr. Rombro stated that mobile home park owners desired to maintain high standards in their parks in order to attract good residents; Woodall's Directory rates the quality of mobile home parks for the benefit of mobile home owners. Mr. Rombro indicated that park owners want to have new homes in the park, calling for constant upgrading. Mr. Rombro stated that he knew of no park owners who require home owners in the parks to move their home out of the park when the home reached a certain age. But he stated that if a resident sold a home that was beyond a certain age, the new owner might be required to move the home out of the park.

F. Mr. Carl Gallagher, President of the Maryland Mobile Home Association, testified that the association attempts to make low cost housing available to members of the public. He conceded that there are problems in the mobile home industry, but that the Association seeks to deal with these problems. He indicated that park owners offer services to residents which include recreation, lighting, sewage, and reasonable lease clauses.

G. Mr. Homa, Legislative Officer for the Maryland Mobile Home Association, testified that zoning was the key factor in solving mobile home park problems. He stated that, due to efforts of the Association, Montgomery County had recently enacted a comprehensive mobile home zoning ordinance. Mr. Homa noted that mobile home park owners pay real estate taxes on the park's land, maintain streets in the park, and provide services to residents of the park.

H. Ms. Jennifer Russell, a member of the Mobile Home Task Force for Baltimore Neighborhoods, Inc. and who did her masters thesis on mobile homes in Harford County (while a member of the county planning department), testified that there were 7000 mobile homes in Harford County, half of which are in mobile home parks and half on private lots. Ms. Russell noted that Harford County was one of the few counties in Maryland that allow mobile homes on private lots. She stated that there was a large demand for spaces in mobile home parks in Harford County, but a short supply of spaces; this caused the mobile home parks in the county to be poor in quality. Ms. Russell testified that there were 27 mobile home parks in the county, two of which were operated by the military. She stated that most of the county's parks had health problems, although the Health Department inspected the parks annually pursuant to annual licensing of the parks. Most parks, she testified, have problems with raw sewage, water pipes bursting, pot holes in roads, electricity, and overcrowding. Ms. Russell indicated that some residents of parks rented their home from the owner, but most residents owned their own home. The usual rent paid by a home owner to rent space for his home in a park is $60 per month. Entrance fees for the county's parks are $200 to $800, which are non-refundable. Dealers selling mobile homes in the county pay entrance fees to park owners to insure that purchasers of homes have a park which they may enter. Ms. Russell also indicated that mobile home owners have difficulty in moving into other parks following retaliatory eviction from a park. She stated that parks have stringent rules governing pets and children and overnight guests. Violation of park rules means immediate eviction, although the owner may not enforce a rule against his friends in the park. Ms. Russell noted the "closed park" concept - parks may be open only to people who purchase homes from particular dealers. Park owners may also require residents to buy certain supplies (oil, skirting, steps) from a dealer stipulated by the owner, with the owner getting kickbacks from such designated dealers. Park owners may also charge exit fees when residents leave a park. If a resident of a park sells his home, the owner may require the home owner to pay him a "commission" fee of 10-25% of the sale price (even if the park owner did nothing to help sell the home). Some home owners may have to sell their home to the park owner at a considerable loss because of restrictive park rules as to whom the home owner may sell his home. Ms. Russell stated that park residents face retaliatory evictions for making complaints to the health department. Some park owners, she asserted, practiced racial discrimination and discrimination against unmarried persons in admission to mobile home parks. Ms. Russell suggested that one solution to the problems encountered in mobile home parks was to have large management corporations operate the parks. (A copy of a handout submitted by Ms. Russell is enclosed).

5. Mr. Anthony Mierzwicki and Samual Blibaum, Esquire, outlined proposed amendments to H.B. 138 (Amendments to 8-402 (Holding Over)) favored by the Apartment Builders and Owners Council, Home Builders Association. They proposed amendments to lines 110-115 of H.B. 138 that would permit a landlord under a residential lease to recover actual damages, not limited to twice the rent under the lease as presently provided for by 8-402, against a holdover tenant. Mr. Mierzwicki and Mr. Blibaum indicated that lines 120-125 should also be amended to permit a landlord under a commercial lease to recover actual damages, not limited to twice the rent under the lease as presently provided under 8-402. They indicated that this limitation on recovery of damages didn't take into account the real problems of a landlord when a new tenant is ready to take possession and the landlord cannot deliver possession because of a hold over tenant; a landlord in such a situation may have to pay damages to the new tenant which include moving expenses, hotel costs, etc. They also proposed amending lines 145-155 to permit a landlord to provide the required notice in the lease itself, rather than in a separate notice no later than 100 days before the termination of the lease. Mr. Mierzwicki and Mr. Blibaum also proposed amending lines 181-184 to prohibit a continuance where a tenant has failed to appear at the date of trial specified by the summons; the present provision rewards a tenant for failing to appear. Mr. Mierzwicki and Mr. Blibaum also proposed amending H.B. 138 by deleting lines 327-332, since it allows a mortgagee to cure in situations where the landlord has no control. Mr. Mierzwicki and Mr. Blibaum stated that they would be willing to introduce their proposals as a separate bill. The Commission requested Mr. Davison to work with Mr. Mierzwicki and Mr. Blibaum in drafting this bill. Mr. Mierzwicki and Mr. Blibaum will introduce the bill in the General Assemly as soon as it is drafted; the Commission decided to consider such bill at the March 11 meeting.

6. The Commission passed unanimously a motion by Mr. Laurent, seconded by Mr. Carbine, that the Commission not consider rent control legislation.

7. The chairman stated that he understood that Mr. Funger and Mr. Alter had resigned from the Commission.

8. The meeting was adjourned at 10:10 P.M.

Steven Davison
Reporter

Governor's Commission on Landlord -
Tenant Law Revision

Minutes of Meeting
of March 11, 1975

Meeting began at 7:40 p.m.

Present: Sallow (vice-chairman, presiding), Offitt, Morrison, Parmentier, Franquet, Laurent, Walsh, Piccinini.

Legislative Session. Mr. Davison stated that hearings on Commission bills had been completed before the House Economic Matters Committee. He stated that the committee had assigned the bills to a subcommittee, but that neither the subcommittee nor full committee had taken action on the bills. Mr. Davison stated that hearings on SB 270 (Amendments to RP 8-401 (Rent Due and Payable)), SB 467 (Amendments to RP 8-402 (Holding Over)), and SB 466 (Retaliatory eviction) had been held by the Senate Judicial Proceedings Committee. He stated that he had offered the following amendment to SB 270, to follow after line 108 of SB 270: A LANDLORD HAS NO DUTY TO SERVE A SUMMONS AND COMPLAINT UNDER THIS SUBSECTION UPON A SUBTENANT, ASSIGNEE, OR SOMEONE HOLDING UNDER THE TENANT UNLESS THE LANDLORD HAS ACTUAL KNOWLEDGE THAT THE TENANT SUBLEASED OR ASSIGNED THE PREMISES. Mr. Davison stated that Senator Steinberg had voiced opposition to repeal of the provision (lines 158-161 of SB 270) in RP 8-401 making the right to cure inapplicable if the tenant has received three or more summons in the previous 12 months for rent due and payable. Mr. Davison stated that he had voiced the Commission's belief that this provision was unconstitutional; and had indicated that there would be difficulty in keying this exemption to situations where tenants had successfully or in good faith defended such prior complaints or where such complaints were settled or satisfied without a judgment on the merits, because records of rent cases are destroyed after 60 days. Mr. Davison stated, however, that he had submitted the following language to Senator Steinberg (although continuing to support the Commission's position), to be added at line 161 of SB 270 (if the exemption to the right to cure was not repealed): OTHERWISE WOULD APPLY, EXCEPT THAT THIS PROVISION DOES NOT APPLY WHERE A TENANT SHOWS THAT HE MADE A GOOD FAITH OR ACTUAL DEFENSE TO ANY SUCH SUMMONS AND COMPLAINT, OR THAT ANY SUCH SUMMONS AND COMPLAINT WAS DISMISSED OR ENTERED AGREED, SETTLED OR SATISFIED WITHOUT JUDGMENT ON THE MERITS. Mr. Davison stated that hearings on SB 482 (rent escrow) and SB 483 (appeal bill) would be held by the Senate Judicial Proceedings Committee on March 12 and that hearings on SB 468 (condominium conversion) and SB 603 (condominium conversion) would be held by the Senate Judicial Proceedings Committee on March 14. Mr. Davison stated that the House Economic Matters Committee would be holding hearings on the following bills (not Commission bills) on March 20

at noon: HB 879 (rent escrow), HB 1019, HB 1034, HB 1490 (rent control), HB 1057 (notice to roomers), and HB 1073 (security deposits). Mr. Sallow noted that HB 1073 would repeal RP 8-203(h) of the security deposit law and would weaken the security deposit law for which the Commission had worked. Mr. Davison was requested by the Commission to testify in opposition to this bill. The Commission unanimously passed a motion that the Commission will not testify, through the reporter, for or against landlord - tenant bills that are not Commission bills, unless such bills are in conflict with Commission bills, in which case the reporter is directed to testify against such bills and in support of Commission bills. Mr. Davison also stated that the House Economic Matters Committee would be holding a hearing on HB 1330, the bar association condominium conversion bill (same as SB 674), on Saturday, March 22, at 10:00 a.m. Mr. Davison also stated that hearings had been held on the following bills (not Commission bills): HB 459 (mobile home parks landlord - tenant law), HB 403 (condominium conversion), SB 151 (mobile home parks landlord - tenant law), SB 403 (amendments to mitigation of damages - defeated in committee), and SB 392 (lease options). Mr. Davison distributed copies of a number of bills that had been introduced with respect to landlord - tenant law, and indicated he would mail copies of late filed bills.

Members of the Commission discussed whether the Commission should send letters to all members of the legislature before the next session inviting them to submit to the Commission copies of any landlord - tenant bills they will file. This issue was tabled until a meeting in the fall.

The Commission discussed the amendments to HB 138 and SB 467 (amendments to RP 8-402 (holding over)) proposed by the Apartment Builders and Owners Council. Mr. Walsh noted that RP 8-402(b) authorized damages to a landlord with personal service of process and without a tenant having rights of discovery. Mr. Walsh stated that if 8-402(b) was amended to authorize recovery of actual damages, as proposed by the Council, there should be personal service of process and rights of discovery. Members of the Commission discussed whether a landlord could bring a separate suit to recover actual damages in a suit under 8-402(b). Mr. Laurent made a motion, which was seconded by Mr. Morrison, to request the legislature to withdraw HB 138 and SB 467 in order to allow the Commission to study in more depth substantive revisions to RP 8-402. This motion passed unanimously.

The declaratory judgment bill was discussed. Mr. Piccinini questioned the need for the bill. Mr. Laurent stated that BNI had recently handled a dozen cases for which the bill would have been helpful. Mr. Laurent stated that the bill should apply only to tenants under a written lease of residential premises for a term of a year or more. In response to questions by Mr. Morrison and Mr. Piccinini, Mr. Laurent stated that the bill should not apply to cases under RP 8-401 (rent due and payable) where a tenant receives notice for failure to pay

rent. Mr. Piccinini questioned whether the bill should apply to tenants who receive a notice to quit at the termination of the lease. Consideration of the bill was tabled until the next meeting.

7. Mr. Davison discussed the various handouts with respect to the Uniform Residential Landlord and Tenant Act. He reviewed the research being conducted with respect to the Act by law students.

8. Discussion of the good cause eviction bill was tabled until the next meeting.

9. The meeting was adjourned at 9:25 p.m.

Steven G. Davison
Reporter

SGD:eg

P. Rent Escrow HB 150
P. Cond Conv. HB 1330 + SB 1104 favored by Bar Assn
? Ret. Eviction HB 466
K Rent due Payable SB 270
IC SB 483
K Mob. Home

GOVERNOR'S COMMISSION ON
LANDLORD - TENANT LAW REVISION

16 Francis Street
Annapolis, Maryland

8-208.1 Real Property

NOTICE OF MEETING

The Governor's Commission on Landlord - Tenant Law Revision will hold a regular meeting on Tuesday, April 8, 1975, at 7:30 p.m. in room 801 of the State Office Building, 301 West Preston Street, Baltimore, Maryland.

The items on the agenda, in the order to be considered, are as follows:

1. Discussion of 1975 Session of Maryland General Assembly.
2. Discussion of revised declaratory judgement bill (copy enclosed).
3. Discussion of good cause eviction bill.
4. Discussion of substantive revision and amendment of RP 8-402 (Holding Over).
5. Discussion of Uniform Residential Landlord and Tenant Act.
6. Future business of the Commission.

Steven G. Davison
Reporter

SGD:eg

GOVERNOR'S COMMISSION ON

LANDLORD - TENANT LAW REVISION

Minutes of Meeting of
April 8, 1975

1. Meeting commenced at 7:45 p.m.

2. Present: Sallow (vice-chairman, presiding), Laurent, Walsh, Piccinini, Carbine, Franquet, Everngam, Parmentier (left at 8:40 p.m.)

3. Mr. Davison discussed the status of Commission bills and other landlord - tenant bills before the 1975 Regular Session of the General Assembly. Mr. Davison stated that the Legislature had enacted the Commission's statewide rent escrow law (HB 150). Mr. Davison also stated that he had supported the Bar Association's condominium bills (HB 1330, SB 1104), although proposing amendments to each bill to include the warranty provisions and offer of sale provisions included in the Commission's condominium conversion bill (HB 142, SB 468). He noted that the condominium conversion provisions in HB 1330 and SB 1104 were otherwise identical to the provisions of HB 142 and SB 468. Mr. Davison stated that both HB 1330 and SB 1104 had passed the legislature, although HB 1330 included the Commission's warranty provision (but not the offer of sale provisions). SB 1104 had passed without the warranty provisions nor the offer of sale provisions. The sense of the Commission was that the Commission recommend that the Governor sign HB 1330 but veto SB 1104. [Note: It was subsequently determined that although the House had amended HB 1330 by including the Commission's warranty provisions, the Senate had amended HB 1330 by deleting the warranty provisions, and the House had acceded to these amendments. As enacted, therefore, HB 1330 and SB 1104 contain identical provisions with respect to condominium conversion.] Mr. Davison noted that the appeal bill (SB 483, HB 251) had been substantially amended by the Senate Judicial Proceedings Committee (see enclosure) and had passed the Senate as so amended, but had not passed the House. Mr. Davison noted that both House and Senate Committees had questioned the need for a de novo hearing at the circuit court level. Mr. Carbine stated that the reason for this provision was that there would be an inadequate record for appeal from the district court, particularly if the tenant failed to appear at a district court proceeding. Mr. Walsh agreed with Mr. Carbine. Mr. Stuart Wilcox stated that even though landlord - tenant appeals are heard on the record by the circuit courts, the circuit courts will adduce additional evidence where the district court record is inadequate. Mr. Laurent requested that the Reporter contact the clerk of the Circuit Court to determine the fiscal impact of de novo circuit court hearings and of rights of appeal in landlord-tenant cases to the Court of Special Appeals. Mr. Carbine stated that the number of appeals to the circuit court would be reduced by the short time period for

appeal. Mr. Franquet also noted that the cost of appeal, including attorneys fees, would also limit the number of appeals. Mr. Davison and Mr. Wilcox also noted that the cost of appeal bonds would also limit the number of appeals. Mr. Carbine made a motion, which was seconded by Mr. Laurent, to re-approve and re-submit the appeal bill to the Legislature. This motion passed unanimously. Mr. Davison noted that the Commission's proposed amendments to the rent due and payable section (RP 8-401) had passed the Senate, as amended by the Senate Judicial Proceedings Committee (SB 270), but had not passed the House. Mr. Davison noted that he had offered an amendment to SB 270 which provided 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 had been notified by the tenant of the assignment or subleasing. Mr. Davison stated that this was required in order to be fair to the landlord. The Commission passed a motion by Mr. Laurent, seconded by Mr. Carbine, to re-approve the proposed amendments to RP 8-401, subject to the amendment proposed by Mr. Davison. This amendment passed unanimously. Mr. Davison stated that the Commission's amendment to the retaliatory eviction law (SB 466, HB 252) had been amended by the Senate Judicial Proceedings Committee (see enclosure) so as to only remove a comma from RP 8-208.1(f). Mr. Davison stated that SB 466, as amended, had passed the Legislature. Mr. Davison stated that several members of the Commission had thought that the Commission's original proposed amendments would make clear that RP 8-208.1 (Retaliatory evictions) prohibited a landlord from failing to renew a lease due to a retaliatory motive prohibited by RP 8-208.1(a)(2). Mr. Davison stated that he believed that RP 8-208.1 would not be interpreted by a court as governing a landlord's right not to renew a lease, since RP 8-2081.(a)(2) only prohibits a landlord from "evicting" a tenant for retaliatory reasons. Mr. Davison stated that the word "evict" would not be interpreted by a court as encompassing a landlord's non-renewal of a lease, because of the estates in land doctrine that a landlord has a reversionary estate (future interest) at the end of the term of a lease. Mr. Davison stated that RP 8-208.1 should be amended to explicitly and specifically make RP 8-208.1 applicable to retaliatory non-renewal of leases. Mr. Davison also noted that RP 8-203.1(b)(2), making certain retaliatory eviction clauses in leases where a landlord rents four or more dwellings at one location, was in conflict with the more general provisions of RP 8-208.1, and should be repealed to remove this confusion. Mr. Carbine made a motion, which was seconded by Mr. Walsh, to have the Reporter draft amendments to the RP 8-208.1 that would include a definition of retaliatory eviction as encompassing retaliatory non-renewal of leases and would repeal the retaliatory eviction provisions of RP 8-203.1(b)(2). This motion passed unanimously. Mr. Paul Olson then noted that under RP 8-208.1(e), an eviction six months after determination of the merits of a court or administrative proceeding was conclusively not a retaliatory eviction; Mr. Olson proposed that the six month period should only be evidence that an eviction was not retaliatory. Mr. Walsh made a motion,

seconded by Mr. Laurent, to have the Reporter draft an amendment to RP 8-208.1(e) that would make this six month period only prima facie evidence that an eviction was not a retaliatory evic-rion.

Mr. Davison also noted that HB 1073 (repeal of RP 8-203(h) (Security Deposit)) had failed; and that the state-wide rent control law had not been re-enacted, and would expire June 30. (Montgomery County and Prince George's County will continue to have local rent control ordinances). Mr. Davison noted that HB 459 (mobile home landlord - tenant law) had passed both houses of the legislature, but with different amendments, and thus had not been enacted. Mr. Davison also noted that HB 879 (entitling local landlord-tenant commissions to become involved in rent escrow proceedings) had passed the legislature.

4. The Reporter's revised draft of the declaratory judgment bill was discussed. Mr. Carbine stated that as an alternative to the Reporter's bill, he would propose amending 4-402(c) and 3-403 of the Court and Proceedings Article to authorize District Courts to render declaratory judgments, and adding a provision under Title 8 of the Real Property Article to require a hearing on a landlord-tenant declaratory judgment case within 7 days after filing. Mr. Carbine stated that his proposal would simply amend the jurisdiction of the District Courts, leaving the courts to implement the exact procedures. Mr. Davison noted that Mr. Carbine's proposal would authorize District Courts to render declaratory judgments in all landlord-tenant cases (including holding over cases), whereas his proposal would limit declaratory judgment actions to rent - due and payable cases. Mr. Everngam stated that District Courts were ill-equipped to render declaratory judgments, and that such declaratory judgment bills would have no chance politically. Mr. Everngam stated that in Montgomery County, only a half-dozen declaratory judgment cases might be filed in circuit court. Mr. Walsh stated that Mr. Laurent's problem might be solved simply by providing under RP 8-401 that a tenant would not be ejected until 30 days after judgment (as opposed to the present 2 day period under RP 8-401). Mr. Walsh and Mr. Piccinini pointed out that judges (at least in Baltimore City) don't follow the 2 day removal provision in RP 8-401, but instead give a tenant 30 days to remove from the premises. Mr. Davison noted that there might be a question of lack of jurisdiction for want of a case or controversy if courts were given jurisdiction to hear a declaratory judgment action before had a tenant had received a notice to quit or notice to remove. (Mr. Parmentier left at 8:40 p.m.; thereafter, the Commission lacked a quorum). Mr. Laurent made a motion, seconded by Mr. Piccinini, that a subcommittee be appointed to study the declaratory judgment problem and to submit a proposal to the full Commission. This motion passed. Mr. Sallow then appointed a subcommittee to study the declaratory judgment problem, to be chaired by Mr. Walsh. Mr. Sallow appointed as members of this subcommittee Mr. Carbine, Mr. Laurent, and Mr. Piccinini, with

Mr. Davison and Mr. Samuel Blibaum as ex officio members.

5. The good cause eviction bill was discussed. Mr. Wilcox offered proposed amendments to the draft bill (copy enclosed). Mr. Walsh made a motion, seconded by Mr. Laurent, to have a subcommittee study this proposal. Mr. Carbine proposed an amendment to Mr. Walsh's motion to authorize employment of law students to aid such subcommittee. After discussion, Mr. Walsh withdrew his motion and substituted a motion to have the good cause eviction bill be the sole item on the agenda at the next meeting. This motion passed unanimously. Mr. Davison noted that he or law students would do research on experience with such a law in other states, and report to the Commission at the May meeting.

6. Proposed amendments to RP 8-402 (Holding Over) were discussed. The Commission first considered proposed amendments to the Commission's proposed amendments to RP 8-402 (HB 138, SB 467), proposed by the Apartment Builders and Owners Council through Mr. Samuel Blibaum. Mr. Blibaum noted that the principal amendments he was proposing would authorize actual damages in actions brought under 8-402(a). Mr. Walsh stated that personal service on a tenant was not required under 8-402, that a tenant did not have rights of discovery in an action under 8-402, and that a tenant in an action under 8-402 did not have time to adequately prepare his case. Mr. Davison suggested that this problem could be solved by deleting lines 103 to 162 in HB 138, thus repealing 8-402(a) and requiring a landlord seeking damages against a holdover tenant the same rights and remedies as other contract creditors. Mr. Davison noted however, that a landlord could still bring summary proceedings to recover possession against a holdover tenant. Mr. Stuart Wilcox suggested that if there was personal service of process, or personal appearance of a tenant in a summary proceeding under RP 8-402, the court should be able to award the landlord actual damages. But Mr. Walsh noted that a tenant would have no rights of discovery and a lack of time to prepare his case. Mr. Carbine noted that an action under RP 8-402(a) is an action for damages for breach of contract, which type of action is not normally determined by a summary proceeding as provided under RP 8-402(a). Mr. Carbine questioned why a landlord under 8-402, if able to quickly recover possession of the premises, should be better off than other contract creditors by having a summary proceeding to recover damages. Mr. Wilcox and Mr. Blibaum stated that they would have no objections to Mr. Davison's proposal. Mr. Carbine made a motion, which was seconded by Mr. Walsh, to amend HB 138 by deleting lines 103 to 162.

Mr. Blibaum then discussed his proposal to delete lines 181 to 184 of HB 138 to repeal the power of a court to continue a case where a party had failed to appear. Mr. Blibaum stated that the present provision permitted parties to gain a delay by failing to appear, thus rewarding dilatory action. Mr. Walsh noted that the present law hurt both tenants and landlord when the opposing party failed to appear. Mr. Franquet made a motion, which was seconded by Mr. Laurent, to amend HB 138 by deleting lines 181-184 and by deleting the words "and continuance" in line 187.

Mr. Blibaum then discussed his proposal to delete lines 327-332; he noted that the present provision allows a mortgagee to come in and take possession under a lease where the tenant has defaulted although a landlord hasn't consented to have the mortgagee be a tenant. Mr. Davison stated that this provision may be intended to apply only to ground rents (long term, 99 year leases with perpetual rights of renewal), and should not be repealed, but stated to be applicable only to ground rents. Mr. Wilcox stated that he believed that this provision was intended to be applicable to ground rents. The Reporter was requested to research this question and report to the Commission. The Commission considered amendments to HB 138 proposed by Mr. Ross of Prince George's County (copy enclosed); members of the Commission stated that they believed that the previously approved amendments had taken care of this proposal. The Reporter was requested to notify with Mr. Ross and Delegate Exum of the amendments proposed by the Commission.

7. The Uniform Residential Landlord and Tenant Act was discussed. Mr. Carbine moved that the principal item on the agenda for the June meeting be discussion of the Uniform Act, with the law students working for the Commission presenting their report on the Act. This motion was seconded and passed. Mr. Laurent suggested that in July and August the Commission might meet as a committee of the whole to further study the Uniform Act.

8. Mr. Sam Blibaum discussed the amended version of HB 686 which had passed the legislature. This bill will prohibit liquidated damages in leases in Anne Arundel County and Baltimore City.

9. The meeting was adjourned at 10:15 p.m.

Steven G. Davison
Reporter

GOVERNOR'S COMMISSION
ON LANDLORD - TENANT LAW REVISION

16 Francis Street
Annapolis, Maryland

NOTICE OF MEETING

The Governor's Commission on Landlord - Tenant Law Revision will hold a regular meeting on Tuesday, May 13, 1975, at 7:30 p.m. in room 801 of the State Office Building, 301 West Preston Street, Baltimore, Maryland.

The items on the agenda, in the order to be considered, are:

1. Report of declaratory judgment subcommittee, and discussion thereof.
2. Discussion and vote on good cause eviction bill.
3. Future business of the Commission.

Steven G. Davison
Reporter

GOVERNOR'S COMMISSION ON LANDLORD -

TENANT LAW REVISION

Minutes of Meeting
May 13, 1975

1. The meeting commenced at 7:55 p.m.

2. Present: Carbine, Morrison, Walsh, Franquet, Laurent, Piccinini, Everngam, Carter (quorum). The Reporter acted as an ex officio chairman in the absence of the chairman and vice-chairman.

3. Mr. Laurent and Mr. Franquet indicated that they had been informed that the chairman of the Commission, Judge Edgar P. Silver, had resigned. Messrs. Carbine, Morrison, Walsh, Franquet, Laurent, Piccinini, and Everngam (Mr. Carter had not yet arrived) requested the Reporter to prepare and send a letter to the Governor strongly recommending, on behalf of themselves as individual members of the Commission, the appointment of Mr. Sallow, the vice-chairman, as chairman of the Commission, and the appointment of a new vice-chairman and new members of the Commission to bring the Commission up to full strength. The members of the Commission present indicated that at present the Commission was having difficulty in obtaining a quorum at meetings.

4. Mr. Walsh presented the report of the declaratory judgment subcommittee. Mr. Walsh reported that the subcommittee had rejected both the Reporter's and Mr. Carbine's proposed bills for giving the District Court declaratory judgment jurisdiction in landlord-tenant cases because of difficulty of implementation of such a procedure. Instead, Mr. Walsh stated that the subcommittee was recommending a proposed bill (copy enclosed) which would specifically authorize the District Court, in actions under RP Article Section 8-402(b)(1) (as presently enacted), to stay execution of a judgment for restitution of possession for two to thirty days. Mr. Walsh stated that the stay of execution would be within the discretion of the court, since it is impossible to draft standards to govern granting of stays of execution that would be applicable to all situations. Mr. Walsh stated that if a tenant was granted a stay of execution, the court would be required to order a tenant to pay an amount, as determined by the court, for possession of the premises during the stay of execution. The amount, time, and conditions of such payments (which payments are equivalent to rent) would be determined by the court. Mr. Walsh stated that the proposed bill does not specify procedures for insuring that the holdover tenant makes such payments to the landlord; such procedures would be governed by the Rules of Civil Procedure. Mr. Carter and Mr. Morrison indicated that they would prefer to limit such stays of execution to two weeks. Mr. Morrison requested the Reporter to draft a proposed amendment to the subcommittee's bill that would require a holdover tenant,

in order to obtain a stay of execution, to pay to the landlord at the time of judgment, all rent in arrear; and an advance payment for possession during stay of execution, not to exceed one payment of rent under the tenant's lease.

5. Mr. Everngam made a motion, which was seconded and passed unanimimously, to have the Reporter draft a similar bill granting the District Courts discretion to stay execution of judgments under RP Article Section 8-401 (Rent Due and Payable).

6. Mr. Laurent presented two witnesses, Ms. Marcia Scott and Ms. Robin Ritter, in support of the good cause eviction bill. Mr. Laurent stated the two witnesses had failed to have their lease renewed by their landlord due to retaliatory reasons. Ms. Ritter indicated that she and Ms. Scott had been tenants at the Colony Apartments, Towson, for several years. They moved to a different apartment within the complex on August 1, 1974. At the time they moved, their new apartment had not been cleaned up nor painted, and the air conditioning was broken. The apartment was consequently uninhabitable during August, and they had to pay rent for a month's stay in a guest apartment at the complex. They presented the landlord with a list of 23 major repairs, including cleaning and painting, required in their apartment. The landlord (actually a resident manager-agent for the owners) kept promising to accomplish these repairs, but had not performed by October. Ms. Ritter then phoned Direct Line at the Baltimore Sun to seek help on this problem. When Direct Line contacted the landlord, it was told that 20 repairs had been made, when in fact they had not been made. Direct Line did not, however, confirm the landlord's claim with Ms. Ritter. The landlord then sent Ms. Ritter and Ms. Scott a letter suggesting that they might wish to move out. The landlord thereafter came to their apartment and discussed the list of repairs with them, and appeared to be sympathetic. The maintenance man came the next day and made some minor repairs, but left after promising to come back the following week to perform major repairs. However, he did not return, although he made similar major repairs in other apartments in the complex. Thereafter, Ms. Ritter and Ms. Scott phoned the landlord every two weeks with respect to the uncompleted repairs, but were continually put off. The landlord then sent Ms. Ritter and Ms. Scott a new lease form for a term beginning August 1, 1975. Ms. Ritter and Ms. Scott then wrote a letter to the landlord again pointing out the unaccomplished repairs; the landlord then replied with a letter stating that their lease would not be renewed. Ms. Ritter indicated that the landlord had never indicated that the repairs could not be afforded. In response to a question by Mr. Piccinini, Ms. Ritter stated that this dispute had become a personality conflict. Mr. Piccinini noted that the newly enacted rent escrow law might have been of help in effecting some of the major repairs. Mr. Davison noted that the proposed bills to amend RP Article Section 8-208.1 (retaliatory eviction) would explicitly prohibit retaliatory non-renewal of leases, as in this case, although it was arguable that RP Article Section 8-208.1 might be interpreted in its present version to prohibit

retaliatory non-renewal of leases. Mr. Davison noted that the retaliatory eviction law amendments and the good cause eviction bill should be discussed together, since they regulate the same subject area. The Commission decided to place the good cause eviction bill as the first item on the agenda for further discussion at the meeting on June 10.

7. Mr. Davison presented a draft of a proposed bill (copy enclosed, dated 5/2 /75) which would amend RP Article Section 11-102.1 (condominium conversion) (as enacted by the legislature in HB 1330 and SB 1104). These amendments would enact the bona fide offer of sale provision and the express warranty provisions which were in the Commission's original condominium conversion bill, but were deleted in HB 1330 and SB 1104. Mr. Carter stated that the warranty provisions with respect to a condominium unit should not apply where a tenant in a rental building was purchasing his premises as a condominium unit. Mr. Carter and Mr. Morrison stated that these warranty provisions would effectively bar conversion of rental buildings to condominiums because developers could not obtain financing. Mr. Morrison stated that a developer, when selling units in a converted condominium, should be allowed to make express "as is" warranties as is permitted in the sale of new homes and condominiums under RP Article, Title 10, Subtitle 2. Mr. Davison noted that there had been considerable comment during the legislative session that the bona fide offer of sale provision was not necessary, since developers make offers of sale to all their tenants when converting to a condominium. Mr. Morrison made a motion, which was seconded by Mr. Piccinini, to table the condominium conversion bill. This motion passed, with Mr. Franquet dissenting. The Commission requested the Reporter to draft a bill for discussion at the next meeting which would make the new home warranty provisions of RP Article, Title 10 Subtitle 2, applicable to condominium conversions (this would permit "as is" express warranties in the sale of converted condominiums). Mr. Carter requested the Reporter to draft a bill, for discussion at the June meeting, which would amend RP Article Section 11-102.1 to permit a tenant to terminate his lease anytime after receiving notice of conversion. [HB 130 (lines 173-174) originally permitted lease termination only within 120 days after notice of conversion, although this restriction was dropped in the final version. However, SB 1104 permits lease termination only within 180 days of notice of conversion. HB 1330 was signed by the Governor, while SB 1104 was vetoed, so this problem is now moot. (Reporter's later appended note)].

8. The meeting was adjourned at 9:30 p.m.

Steven Davison
Reporter

GOVERNOR'S COMMISSION
ON LANDLORD - TENANT LAW REVISION

16 Francis Street
Annapolis, Maryland

NOTICE OF MEETING

The Governor's Commission on Landlord - Tenant Law Revision will hold a regular meeting on Tuesday, June 10, 1975, at 7:30 p.m., in room 801 of the State Office Building, 301 West Preston Street, Baltimore, Maryland. The items on the agenda, in the order to be considered, are as follows:

1) Discussion and vote on good cause eviction bill.

2) Discussion and vote on proposed amendments to retaliatory eviction law (RP 8-208.1) and to prohibited lease provision law (RP 8-203.1). (copies enclosed)

3) Discussion and vote on declaratory judgment subcommittee's proposed bill to amend RP Article Section 8-402(b)(2). (copy enclosed)

4) Discussion and vote on proposed amendments RP Article Section 8-401(b) and (c). (copy enclosed)

5) Discussion and vote on proposed amendments to condominium conversion law. (copy enclosed)

6) Future business of the Commission.

RIGHT OF ENTRY into a TENANCY

Steven G. Davison
Reporter

July mtg.

GOVERNOR'S COMMISSION

ON LANDLORD-TENANT LAW REVISION

Minutes of Meeting

June 10, 1975

1. The meeting commenced at 7:40 p.m.

2. Present: Sallow (chairman), Laurent, Walsh, Adams, Gorham, Olson, Franquet, Dancey, Offitt, Everngam, Morrison, Davison.

3. Mr. William Sallow, formerly vice-chairman of the Commission, has been appointed chairman of the Commission by the governor. Mr. Paul Olson has been appointed a member of the Commission by the governor.

4. The good cause eviction bill was discussed.

   A. It was the sense of the Commisson that the definition of premises in the bill should be amended to make it applicable only to residential premises, as suggested by paragraph 2 of Stuart Wilcox's letter (copy enclosed).

   B. Paragraph 1 of Mr. Wilcox's letter was discussed. Mr. Adams stated that he thought that the bill should not be applicable to a landlord who owns a total of four rental units or less. Mr. Laurent stated that the bill should be applicable to all landlords renting residential premises; he stated that such uniformity of application has been the practice with respect to other Commission bills.

   C. Paragraph 3 of Mr. Wilcox's letter was discussed. Mr. Laurent stated that a non-renewal of a lease by a landlord was the most important type of action regulated by the bill; he stated that making the bill inapplicable to a landlord's failure to renew a lease would "gut" the bill.

   D. Paragraph 4 of Mr. Wilcox's letter was discussed. It was the sense of the Commission that paragraph (B)(1) of the bill should not be amended to include failure to pay "other lawful charges" as a ground for eviction. The sense of the Commission was that a landlord's remedy for a tenant's failure to pay "other lawful charges," as opposed to rent, should be a normal civil suit for damages.

   E. It was the sense of the Commission that paragraph (B)(3) of the bill should be amended to apply to actions of a tenant's family or invitees. The sense of the Commission was to extend coverage of paragraph (B)(3) to damage or injury to common areas as well as to the tenant's premises. The members of the Commission discussed whether paragraph (B)(3) should apply to ordinary negligence, as proposed by paragraph (5) of Mr. Wilcox's letter, or only to gross negligence, as in the bill. It was the sense

of the Commission that paragraph (B)(3) of the bill should be amended to add the words "after written notice to cease," in order to allow a tenant to cure a defect before the landlord could evict a tenant.

F. Paragraph 6 of Mr. Wilcox's letter was discussed. Mr. Walsh noted that Mr. Wilcox's proposal comes from the Baltimore City Code. It was the sense of the Commission that the word "immoral" should be deleted from Mr. Wilcox's proposal, since such a standard would be subject to the individual and arbitrary determination of each landlord as to what was "immoral." Mr. Walsh also suggested that Mr. Wilcox's proposal should be amended to include the phrase "after written notice to cease," after the word "tenant." Mr. Offitt and Mr. Adams stated that a landlord should not have to give a tenant written notice to cease where a tenant has been convicted for illegal activities upon the premises. Mr. Davison noted that it might be a violation of due process to allow a landlord to evict a tenant after the tenant is arrested for alleged illegal activities on the premises; Mr. Davison stated that an arrest, without a conviction, is not a legal grounds for government penalties.

G. At this point, Mr. Franquet made a motion to send the bill to a subcommittee for further study. This motion as seconded by Ms. Gorham. Mr. Walsh stated that the good cause eviction bill was an important and controversial bill. He stated that landlords object to the bill on the grounds that it constitutes a taking of property, that the bill's requirement that a landlord give notice and go to court to evict a tenant will be difficult and costly (i.e., problems in obtaining witnesses, particularly where other tenants are necessary witnesses but fear testifying against another tenant), and that delay in eviction pursuant to the bill may result in damages to the premises. Mr. Sallow and other members of the Commission stated that such an important and controversial bill should be discussed in detail by the entire Commission. Mr. Adams called the question. Mr. Franquet's motion was defeated by a vote of 8-3.

5. Because of the presence of witnesses to testify on item 5 on the agenda (condominium conversion), the chairman alloted, with the consent of the Commission, 15 minutes for testimony from witnesses with respect to agenda item 5.

Mr. Morrison stated that the proposed bill to make RP Article Title 10, Subtitle 2, applicable to conversion condominiums was the only viable method of providing for implied and express warranties with respect to conversion condominiums.

Mr. Franquet introduced Mr. and Mrs. Spizler as witnesses in support of the bill. Mr. Spizler stated that he and his wife had brought a garden-type conversion condominium in Prince Georges County last year. Their unit contained a 1 year warranty. They had assumed that

the building was approved by the county, but they later discovered that the developer had obtained only a conversion permit from the county, but not an electrical permit nor a use and occupancy permit. The building has inadequate wiring because of the developer's installation of window air conditioners. The developer had never received a county permit approving the building's wiring, and the county has condemned the building due to faulty wiring, thus preventing re-sale of the units by the present unit owners. The present unit owners have the choice of removing the window air conditioners, or paying $200-$300 per unit owner to improve the wiring for each unit to bring it up to county standards. Mr. Spizler also noted that hot water units were faulty; that the roofs are leaking; and that one building has a crack in the wall. He stated that the unit owners cannot afford the repairs; and that the mortgagee and loan insurer have refused to help the unit owners to make the repairs. The unit owners have been unable to obtain financing to make the necessary repairs. The developer-converter has also refused to make the necessary repairs. The developer purchased the building for the purpose of conversion to a condominium. Mr. Morrison noted that the proposed bill would not provide relief against an insolvent developer. Mr. Walsh stated that such problems might be prevented by requiring the developer to put up a performance bond; Mr. Morrison stated that no one would write such a bond. Mr. Offitt suggested that developers be required to put funds in an escrow account to insure successful completion of the project. Mr. Spizler stated that the Commission's bill would have protected himself and other purchasers in the project; Mr. Davison noted, however, that the bill would allow a developer to disclaim the express and implied warranties.

6. Discussion was resumed on the good cause eviction bill.

   A. Paragraph 7 of Mr. Wilcox's letter was discussed. Mr. Walsh stated that the Commission's draft bill was better drafted than Mr. Wilcox's proposal and should not be changed. Mr. Franquet suggested that paragraph (B)(4) of the bill should be amended to make it applicable to a tenant's family and invitees.

   B. It was the sense of the Commission that paragraph (B)(5) of the bill should be amended by deleting the word "substantially." It was the sense of the Commission that there should be notice to cease and right to cure before eviction under paragraph (B)(5). Mr. Davison noted that the bill did not authorize eviction of a tenant for breach of a condition (a clause in a lease, which if breached by the tenant, is considered to automatically terminate the lease without any further action by the landlord). Mr. Davison noted that paragraph (B)(5) would require a landlord to give a tenant written notice to cease, and thus a right to cure, before a tenant could be evicted for breach of a covenant in a lease.

C. Paragraph 9 of Mr. Wilcox's letter was discussed. It was the sense of the Commission that paragraph (B)(6) of the bill should be amended to add the words "or health" after the words "county hearing." It was noted that Baltimore City and Montgomery County ordinances require that vacant and unoccupied buildings, must, within 90 days, either be boarded up, put in condition, or torn down. It was also the sense of the Commission to delete the word "substantial" and the words "and it is economically unfeasible for the owner to eliminate the violations."

D. Paragraph (B)(7) of the bill was discussed. Mr. Walsh stated that the word "permanently" in paragraph (B)(7) would be interpreted by the courts on a basis of the reasonably forseeable future. Mr. Laurent stated that landlords would not utilize paragraphs (B)(6) and (B)(7) of the bill solely in order to evict tenants.

E. Paragraph 11 of Mr. Wilcox's letter was discussed. Mr. Morrison stated that habitual late payment of rent should be a good reason for a landlord to evict a tenant. Mr. Walsh stated that Mr. Wilcox's proposal would deny a tenant due process. Mr. Davison noted that Mr. Wilcox's proposal would add a provision to the bill that the Commission had proposed deleting from the retaliatory eviction law and from RP 8-401 (rent due and payable). Mr. Everngam and Mr. Morrison suggested that paragraph (B)(9) of the bill should attempt to include a definition of how many times payment of rent could be late before the landlord could evict a tenant.

7. The chairman discussed future business. Mr. Laurent suggested that the Commission meet as a committee of the whole in July and August. Mr. Laurent noted the need for regulation of a landlord's unrestricted right to re-enter the premises. A letter from Henry Blinder, law clerk at Pickett, Houton and Berman (copy enclosed), was discussed. Mr. Davison and Mr. Morrison noted that punitive damages under the security deposit law, RP Article §8-203, are within the discretion of the court. Mr. Franquet and Mr. Everngam stated that it would be inappropriate for the Commission to take a position on a matter before the courts. It was the sense of the Commission to accept the position of Mr. Franquet and Mr. Everngam.

8. The meeting was adjourned at 10:06 p.m.

Steven Davison
Reporter

6/20/75

GOVERNOR'S COMMISSION
ON LANDLORD-TENANT LAW REVISION

16 Francis Street
Annapolis, Maryland

NOTICE OF MEETING

The Governor's Commission on Landlord-Tenant Law Revision will hold a regular meeting on Tuesday, July 8, at 7:30 p.m., in room 801 of the State Office Building, 301 West Preston Street, Baltimore, Maryland. The items on the agenda, in the order to be considered, are as follows:

1) Discussion and vote on good cause eviction bill (copy enclosed).

2) Discussion and vote on proposed amendments to retaliatory eviction law (RP 8-208.1) and to prohibited lease provision law (RP 8-203.1).

3) Discussion and vote on declaratory judgment subcommittee's proposed bill to amend RP Article Section 8-402(b)(2).

4) Discussion and vote on proposed amendments RP Article Section 8-401(c)(3) and (d) copy enclosed).

5) Discussion and vote on proposed amendments to condominium conversion law.

6) Future business of the Commission.

Steven G. Davison
Reporter

GOVERNOR'S COMMISSION

ON LANDLORD-TENANT LAW REVISION

Minutes of Meeting of July 18, 1975

1. The meeting commenced at 7:30 p.m.

2. Members present: Olson, Franquet, Carbine, Morrison, Carter (lack of quorum). Mr. Davison, the Reporter, acted as ex officio chairman.

3. Mr. Franquet discussed a proposal of his that would require out-of-state landlords to post a bond, which would be forfeited if the landlord failed to comply with minimum standards (such as those of the Federal Housing Administration). Mr. Davison indicated, at the request of Mr. Franquet, that he would have a law student research this problem. Mr. Carbine discussed problems that would be associated with such a proposal. It was noted that such a requirement would probably have to be applied to in-state landlords.

4. The good cause eviction bill was discussed. Mr. Morrison stated that all landlords were totally and philosophically opposed to the applicability of the good cause eviction bill to a landlord's non-renewal of a lease. Mr. Morrison stated that the landlords' major objection to the bill was its limitation of a landlord's right to fail to renew a lease, rather than to its limitations on evictions during the term of the lease. Mr. Davison noted that the bill, by applying to evictions during the term of the lease, would in effect promulgate standardized, uniform lease provisions. Mr. Morrison stated that he thought that the Commission should discuss the broader question of whether a good cause eviction bill is fair before discussing details of the bill. Mr. Davison stated his agreement with the suggestion, but noted that the Commission had voted at the previous meeting to discuss details of the bill before discussing the basic concept of the bill. Mr. Davison stated that he would discuss with the chairman whether the Commission should discuss and vote on the basic concept of the bill at the next meeting. Mr. Carbine stated that the Commission should hear the landlords' philosophical opposition to the bill. Mr. Morrison stated that a landlord must have the right to not renew a lease, because a landlord may not be able to prove good cause grounds. Mr. Morrison noted a case involving tenants who were suspected arsonists, but who had been released from custody; after he evicted these tenants, the court held that they shouldn't be evicted, despite a lenghly, detailed lease which he had drafted himself. Mr. Carbine stated that he has always had serious

reservations about the good cause eviction bill; if there was a good enforcible retaliatory eviction law on the books, he would be inclined to vote against the good cause eviction bill. Mr. Franquet noted that the proposed bill to amend the retaliatory eviction law addresses some of the areas that would be covered by the good cause eviction bill.

5. Mr. Davison noted that there would be no meeting in August.

6. The meeting was adjourned at 9:00 p.m.

Steven Davison
Reporter

Davison

GOVERNOR'S COMMISSION

ON LANDLORD-TENANT LAW REVISION

16 Francis Street
Annapolis, Maryland

NOTICE OF MEETING

The Governor's Commission on Landlord-Tenant Law Revision will hold a regular meeting on Tuesday, September 9, 1975, at 7:45 p.m., in room 1103 of the State Office Building, 301 West Preston Street, Baltimore, Maryland. Please note that the meeting room has been changed from that used for previous meetings (room 801), and that the meeting will start 15 minutes later than usual.

The items on the agenda for the September 9th meeting, in the order to be considered, are as follows:

1) Discussion and vote on declaratory judgment subcommittee's proposed bill to amend RP Article Section 8-402(b)(2) (copy enclosed).

2) Discussion and vote on proposed amendments to RP Article Sections 8-401(c)(3) and 8-401(d) (copy enclosed).

3) Discussion and vote on proposed amendments to condominium conversion law (copy enclosed).

4) Discussion and vote on proposed amendments to retaliatory eviction law (RP 8-208.1) and to prohibited lease provision law (RP 8-203.1) (copies enclosed).

5) Discussion and vote on good cause eviction bill (copy enclosed).

6) Future business of the Commission.

Steven G. Davison
Reporter

8/26/75

GOVERNOR'S COMMISSION
ON LANDLORD-TENANT LAW REVISION

Minutes of Meeting of September 9, 1975

1. Members present: Sallow (chairman), Franquet, Laurent, Piccinini, Braverman, Olson, Adams (lack of quorum).

2. The meeting commenced at 8:00 p.m.

3. It was requested that a revised list of members of the Commission be prepared and sent to members of the Commission.

4. Mr. Sallow recommended Mr. Larry Jenkins for appointment to the Commission as an impartial member. Mr. Jenkins is an Assistant City Solicitor in Baltimore City, and was formerly an Assistant State Prosecutor for Housing Court in Baltimore City. He lives in Parkville. Mr. Sallow welcomed any recommendations of individuals to be appointed to the Commission. The Commission presently has 16 members, although it is authorized to have 19 members.

5. The problem of absent members, causing lack of quorums, was discussed. Mr. Laurent suggested that if a member of the Commission cannot attend the meeting, he should contact the Commission's secretary Ms. Eunice Gladem, 727-6350, ext. 384. Mr. Sallow suggested that the Commission's secretary phone members of the Commission several days in advance of each meeting to determine if they will attend the meeting. Mr. Davison indicated that he would have postcards enclosed with the notice of meeting to members of the Commission, to be returned by members of the Commission to indicate whether they will attend the meeting.

6. The Commission voted to hold a special meeting on September 22nd to consider the agenda originally scheduled for this meeting.

7. The question of mobile home park landlord-tenant regulation was raised. Mr. Sallow indicated that he would place this item on the agenda for a future meeting after the Commission's present docket had been completed.

8. The meeting adjourned at 8:40 p.m.

Steven G. Davison
Reporter

SGD/eg

GOVERNOR'S COMMISSION
ON LANDLORD-TENANT LAW REVISION
16 Francis Street
Annapolis, Maryland

NOTICE OF MEETING

The Governor's Commission on Landlord-Tenant Law Revision will hold a special meeting on Monday, September 22, 1975, at 7:30 p.m., in the Langsdale Auditorium on the first floor of the Langsdale Library of the University of Baltimore, Maryland Avenue, north of Mt. Royal, Baltimore, Maryland. This special meeting is being held because of a lack of a quorum at the regular meeting on September 9.

The items on the agenda for the September 24th meeting, in the order to be considered, are as follows:

1) Discussion and vote on declaratory judgment subcommittee's proposed bill to amend RP Article Section 8-402(b)(2) 7-1

2) Discussion and vote on proposed amendments to RP Article Sections 8-401(c)(3) and 8-401(d)

3) Discussion and vote on proposed amendments to condominium conversion law 10-0

4) Discussion and vote on proposed amendments to retaliatory eviction law (RP 8-208.1) and to prohibited lease provision law (RP 8-203.1)

5) Discussion and vote on good cause eviction bill

6) Future business of the Commission

Steven G. Davison
Reporter

GOVERNOR'S COMMISSION
ON LANDLORD-TENANT LAW REVISION

Minutes of Meeting of September 22, 1975

1. Members present: Sallow (chairman), Piccinini, Braverman, Franquet, Gorham, Morrison, Olson, Laurent, Carbine, Adams, Dancey (arrived at the start of agenda item 4).

2. The meeting commenced at 7:45 p.m.

3. The Commission heard testimony from Mr. John Magruther, with respect to the decision of his landlord not to renew his written lease because of retaliatory reasons. Mr. Morrison stated that he would make inquiries to Mr. Magruther's landlord to attempt to rectify this problem.

4. Mr. Davison noted that the Commission's regular meeting on October 14th would be held in the Hearing Room on the first floor of the State Highway Administration Building, 300 West Preston Street, Baltimore, Maryland. He indicated that he was attempting to secure this room as a permanent place for the Commission's meetings.

5. The Declaratory Judgment Subcommittee's proposed bill to amend RP Article Section 8-402(b)(2) (Holdover Tenants), and the proposed amendment to the subcommittee's bill, were considered and discussed. Mr. Carbine indicated that there were several drafting problems that should be corrected, although he did not disagree with the substance of the bill and the proposed amendment to the bill. Mr. Adams called the question for adoption of the bill, with the proposed amendment, subject to technical amendments by the Reporter. Mr. Morrison and Mr. Laurent seconded. The bill was passed by a 7 - 1 vote, Mr. Piccinini voting against the bill. (A copy of the bill in final draft form is enclosed). Mr. Piccinini expressed his desire to express his opposition to the bill. Mr. Sallow stated that Mr. Piccinini could prepare and submit to the members of the Commission a minority report expressing his opposition to the bill, and present his views to the legislature as an individual. Mr. Sallow, however, stated that members of the Commission should not testify before the legislature as speaking for the Commission unless they have been given permission by the Commission to testify on behalf of the Commission.

6. The proposed amendments to RP Article 8-401(c)(3) and 8-401(d) (Rent Due and Payable) were considered and discussed. Mr. Davison stated that he had drafted this bill at the request of a member of the Commission. Mr. Davison stated that this bill

would give a court the same discretion to stay execution of judgments in rent due and payable cases as was provided for in holdover tenant suits in the bill just adopted by the Commission. Mr. Carbine stated that the Declaratory Judgment Subcommittee had specifically rejected this proposal to allow the courts to authorize such stay of execution in rent due and payable suits under RP Article Section 8-401. Mr. Morrison called the question to disapprove the bill. Mr. Piccinini seconded. The motion passed (the bill was defeated) by a vote of 9 - 0.

7. The bill to amend RP Article Section 10-201 to extend express and implied warranties, applicable to newly constructed residential units (including newly constructed condominiums), to converted condominiums was considered and discussed. Mr. Davison noted that the law (Ch. 786, HB 1330) enacted by the 1975 Regular Session of the Legislature to regulate the conversion of rental dwelling buildings to condominiums did not include warranty provisions recommended by the Commission. Mr. Davison stated that the proposed bill differed from the warranty clause proposed by the Commission, but stated that the proposed bill was considered to be the most workable method of applying warranties to converted condominiums. Mr. Davison stated that the proposed bill would apply the same warranty provisions to converted condominiums as are applied to newly constructed residential buildings by RP Article Title 10, Subtitle 2. Mr. Davison noted, however, that these warranties, pursuant to RP Article Sections 10-203(c) and 10-204(d), could be excluded or modified. Mr. Morrison stated that he had no objections to the bill. Mr. Adams called the question to approve the bill, subject to technical amendments by the Reporter. Mr. Laurent seconded. The motion passed 10 - 0. (A copy of the approved bill in final draft form is included).

8. The bill proposing amendments to the retaliatory eviction statute (RP Article Section 8-208.1) was considered and discussed. Mr. Carbine questioned why the bill was proposing deletion of the word "arbitrarily" from subsection (a)(2). Mr. Davison stated that the word "arbitrarily" was not needed because of the word - "solely" in subsections (1), (2), and (3) of subsection (a)(2). Mr. Carbine questioned whether the words "residential premises" needed to be added to subsection (a)(2), since the retaliatory eviction statute was codified in Subtitle 2 of Title 8, RP Article, which is entitled "Residential Leases." Mr. Morrison stated that he was continually receiving inquiries as to applicability of the retaliatory eviction statute to commercial leases. Mr. Morrison stated that inclusion of the reference to "residential premises" in the statute would alleviate confusion among the public. Mr. Morrison indicated

that he favored the proposed amendment in the bill that would make award of attorneys' fees to a tenant mandatory where the landlord has been found to have acted retaliatory; he stated that he favored such a bilateral approach. Mr. Carbine stated that he opposed this bilateral approach, and stated that he believed that award of attorneys' fees should remain discretionary. Mr. Morrison and Mr. Piccinini stated that they opposed the proposal in the bill to delete subsection (d) of Section 8-208.1, which makes the defense of retaliatory eviction unavailable to tenants who have received certain numbers of summonses and complaints for unpaid rent. Mr. Davison stated that a similar provision had been deleted by the Commission in its proposed amendments to RP Article Section 8-401 (rent due and payable). Mr. Davison stated that in discussing the proposal to delete the same clause from Section 8-401, lawyers on the Commission had emphasized that such a section was probably unconstitutional as a violation of the due process clause of the Constitution. Mr. Davison also stated that subsection (d) of Section 8-208.1 was difficult to administer, since District Court records and judgments in rent due and payable cases are destroyed after 60 days, making official records unavailable for determination of the number of summonses and complaints previously served on particular tenants. Mr. Carbine stated that he had been responsible for drafting subsection (d) of Section 8-208.1 during lobbying for enactment of the retaliatory eviction statute; he stated that this section was a necessary compromise to assure passage of the bill. He stated that he was now opposed to this section, both on legal, constitutional grounds and because of its effect on tenants in Baltimore City. Mr. Carbine stated that his research indicated that rent due and payable suits were used almost like a rent notice in Baltimore City, and that consequently subsection (d) of Section 8-208.1 would make the retaliatory eviction statute inapplicable to most tenants in poor sections of Baltimore City. Mr. Morrison questioned whether the Commission should amend a bill to benefit only Baltimore City, since the Commission was charged with enacting state wide legislation. Mr. Piccinini and Mr. Braverman questioned the conclusions drawn by Mr. Carbine from court statistics, stating that the statistics were built up by the same individuals moving from rental unit to rental unit. Mr. Franquet supported the proposed amendment to change subsection (e) of Section 8-208.1 from a conclusive rule of law to a rebuttable presumption, citing an example where a landlord's retaliatory eviction was not proscribed by the statute because of the passage of 6 months. Mr. Carbine indicated that the proposal in the bill to add a new subsection "(E)" was unnecessary, since RP Article 8-208(b) already prohibited lease provisions by which a tenant waived any remedy provided by law. Mr. Carbine proposed deletion of subsection (g) of Section 8-208.1, which would

have the effect of repealing local retaliatory eviction laws in Baltimore City, Montgomery County, and Prince Georges County. He stated that the Commission should attempt to make laws that were uniform state wide as much as possible. Mr. Braverman and Mr. Morrison expressed strong opposition to extending the retaliatory eviction statute to a landlord's non-renewal of a lease, on the grounds that this was a modification of the estates in land concept of the landlord's reversion and also prevented landlords from removing bad tenants in situations where proof of wrongdoing is strongly suspected but cannot be proved in a court of law. Mr. Morrison objected strongly to the proposed addition to Subsection (a)(2) of the words "fail to renew," on the grounds that this might be interpreted as destroying a landlord's reversion. Mr. Carbine supported extension of the retaliatory eviction statute to a landlord's termination or failure to renew a lease, stating that this was only a limited intrusion upon a landlord's right of reversion, and that without such an application, a "retaliatory eviction" statute was essentially meaningless to a tenant. Mr. Davison stated that the statute at present was unlikely to be interpreted by the courts as restricting a landlord's right to terminate or fail to renew a lease. Mr. Braverman and Mr. Piccinini stated that subsections (1) and (2) of subsection (a)(2) of the retaliatory eviction statute should be amended to protect the tenant only where he has filed a "valid," "nonfrivolous," or "substantial" complaints or law suit, since otherwise a tenant could harass a landlord by continually filing baseless complaints.

a. Mr. Carbine moved to amend the bill by deleting subsection (g) of the present Section 8-208.1 and deleting the proposed new section (E) in the bill (with respect to lease provisions waiving the tenant's remedies under the Act). Mr. Laurent seconded. This motion passed by a vote of 10 - 0.

b. Mr. Morrison moved to amend the bill by deleting the brackets around subsection (d) in the bill, so that the proposed bill would retain subsection (d) (Conditions for Relief). Mr. Adams seconded. This motion passed due to a vote for the motion by the chairman, breaking a 5 - 5 tie vote.

c. Mr. Morrison made a motion which was seconded by Mr. Adams, to amend the bill by deleting from subsection (a)(2) of the bill the phrase: "TERMINATE OR FAIL TO RENEW A WRITTEN LEASE OF A TENANT OF ANY RESIDENTIAL PROPERTY." This motion was defeated due to a vote against the motion by the chairman, breaking a 5 - 5 tie vote.

d. Mr. Braverman made a motion to amend the bill by adding the words "non-frivolous" before the words "written complaint" in subsection (1) of section (a)(2) of the bill and before the words "law suit" in subsection (2) of section (a)(2) of the bill. Mr. Franquet seconded. The motion failed, the vote being 5 for and 5 against, with the chairman abstaining.

e. Mr. Piccinini made a motion, seconded by Mr. Adams, to amend subsection (1) of subsection (a)(2) of the bill to require that tenants must file written complaints by certified mail in order to have a remedy. Mr. Adams seconded. The motion failed, the vote being 4 for the motion and 5 against.

f. Ms. Dancey made a motion, which was seconded by Mr. Carbine, to amend the bill by deleting the brackets around the word "may" and deleting the word "SHALL" in subsection (c) of the bill. This motion passed by a vote of 9 - 0, with one abstention.

g. Mr. Olson made a motion, which was seconded by Mr. Franquet, to report the bill, as previously amended, favorably. The motion passed by a vote of 6 - 4. (A copy of the final draft form of the bill as approved is enclosed).

Mr. Morrison stated that the core of the approved bill was the language "fail to renew," which was added to section (a)(2). He stated that this was an infringement of the landlord's right of reversion, and would cause strong opposition to the bill in the legislature.

9. Mr. Piccinini and Mr. Adams recommended two individuals to be new members of the Commission: Mr. Michael Kalis, an attorney; and Mr. James Ackerman, a manager of 2200 apartment units in Prince Georges County and Montgomery County.

10. The meeting was adjourned at 10:15 p.m.

Steven G. Davison
Reporter

SGD/eg

GOVERNOR'S COMMISSION
ON LANDLORD-TENANT LAW REVISION

16 Francis Street
Annapolis, Maryland

NOTICE OF MEETING

The Governor's Commission on Landlord-Tenant Law Revision will hold a regular meeting on Tuesday, October 14, 1975, at 7:45 p.m., in the Hearing Room on the first floor of the State Highway Administration Building, 300 West Preston Street, Baltimore, Maryland. Please note that the meeting room has been changed from that used for previous meetings (room 801, 300 West Preston Street), and that the meeting will start 15 minutes later than usual.

The items on the agenda for the October 14th meeting, in the order to be considered, are as follows:

1) Discussion and vote on proposed amendments to prohibited lease provision law (RP 8-203.1) (copy enclosed).

2) Discussion on proposed amendment to RP Article Section 8-402(b)(4) with respect to notice to quit to week-to-week tenants (copy enclosed).

3) Discussion and vote on good cause eviction bill.

4) Discussion of Uniform Residential Landlord and Tenant Act.

5) Future business of the Commission.

Steven G. Davison
Reporter

SGD/eg

GOVERNOR'S COMMISSION

ON LANDLORD-TENANT LAW REVISION

Minutes of Meeting
of October 14, 1975

1. Present: Sallow (chairman), Piccinini, Carbine, Walsh, Franquet, Laurent, Offit, Carter, Everngam

2. The meeting started at 8:05 p.m.

3. The proposed bill to amend RP Article §8-203.1 (Provisions Prohibited in Leases) was discussed. Mr. Davison stated that the bill proposed deletion of §8-203.1(b) because it conflicted with RP Article §§8-208(a)(2) and (a)(6). Mr. Davison stated that §8-208(a)(6) prohibits provisions in any lease that authorizes the landlord to take possession of the premises or the tenant's personal property except pursuant to law. Mr. Davison stated that §8-208(a)(2) prohibits any provision in a lease, whereby a tenant waives any of his rights under law; §8-208(a)(2), in conjunction with the prohibitions against retaliatory evictions (RP Article §8-208.1), prohibits provisions in leases authorizing the landlord to evict for retaliatory reasons. RP Article §8-203.1(1)(b) also prohibits such lease provisions, but unlike §8-208, which applies to all leases, §8-203.1(b) applies only to landlords who offer "more than 4 dwelling units for rent as one parcel of property or at one location" and rent "by means of written leases...." Mr. Davison stated that §8-203.1(b) thus directly conflicts with §8-208 with respect to scope of coverage, and thus should be repealed. Mr. Laurent stated that the Commission should seek to repeal limitations with respect to the type of landlord subject to certain duties, such as the 4 or more dwelling unit limitation in §8-203.1. Mr. Carter stated that such limitations are valid in certain situations. The bill was passed by a vote of 9-0. A copy of the bill is enclosed.

4. The proposed bill to require landlords to give week-to-week tenants a month's notice to quit was discussed. Mr. Davison stated that he had drafted this bill at the request of Mr. Laurent. He stated that RP Article §8-402(b)(4) presently requires a landlord to give a week-to-week tenant only a week's notice to quit. Mr. Laurent stated that he had proposed this amendment because a week was insufficient time for a tenant to find new housing. Mr. Davison stated that the bill reflected the stylistic revisions to §8-402(b)(4) which were adopted by the Commission in Section 8-402(D) of the bill amending Section 8-402 (adopted 4/8/75). The bill was passed by a vote of 9-0. A copy of the bill is enclosed.

5. The good cause eviction will was discussed. Mr. Davison noted that the bill addressed two separate issues. He stated that the bill, if limited only to a landlord's right to evict a tenant during the term of the lease, would in effect standardize lease forms in Maryland by limiting the conditions in leases which could be grounds for eviction. Mr. Davison stated that such a lease standardization bill would not be too controversial with landlords. Mr. Davison stated, however, that landlords were intensely opposed to a good cause eviction bill that would limit the landlord's right to terminate or fail to renew a lease. Mr. Offit stated that any such bill seeking to limit a landlord's right to terminate or fail to renew a lease would face intense political opposition from landlords in the legislature. Mr. Walsh inquired as to the availability of empirical research with respect to the effects of the New Jersey good cause eviction statute upon landlords and tenants. Mr. Sallow requested Mr. Davison to obtain information from landlords and tenants in New Jersey with respect to the effect of the good cause eviction statute. Mr. Sallow suggested that the Commission's good cause eviction bill be tabled until such information is acquired. Mr. Walsh made a motion to table the good cause eviction bill, which was seconded by Mr. Franquet. The motion passed by a vote of 9-0.

6. The Uniform Residential Landlord and Tenant Act was discussed. Mr. Davison discussed the preliminary report on the Act. He noted that the Act applies contract principles to the lease. He stated that many of the rights and remedies of landlord and tenant under the Act are similar to the rights and remedies of sellers and buyers of goods under the Uniform Commercial Code. Mr. Davison stated that he had concluded that the Maryland statutory procedures with respect to Security Deposits and Retaliatory Eviction were generally more protective than provided under the Uniform Act, and that he recommended that the Commission delete the sections on Security Deposits and Retaliatory Eviction in any bill seeking to adopt the Uniform Act in Maryland. Mr. Davison stated a further report on landlord's duties and tenant's remedies and on tenant's duties and landlord's remedies would be mailed by the end of the month. In response to a question by Mr. Franquet, Mr. Davison stated that he did not believe that the Uniform Act was unconstitutional as a taking of property without due process. Mr. Davison also stated that the Uniform Act did not violate the equal protection clause of the Constitution, since the duties and remedies of landlords and tenants were similar and parallel.

7. The meeting adjourned at 9:05 p.m.

Steven Davison
Reporter

SGD/eg

GOVERNOR'S COMMISSION
ON LANDLORD-TENANT LAW REVISION

Minutes of Meeting of
November 11, 1975

1. Present: Sallow (chairman), Jenkins, Adams, Piccinini, Braverman, Laurent, Franquet, Everngam, Kalis, Olson.

2. The meeting started at 8:00 p.m.

3. Mr. Sallow introduced two new members of the Commission, Mr. Michael Kalis and Mr. Larry Jenkins. Mr. Sallow noted that the Commission was now composed of 18 members.

4. Mr. Davison noted that he had not yet received any empirical data with respect to the effects of the New Jersey good cause eviction statute.

5. Mr. Davison discussed a bill which he had drafted at the request of Mr. Piccinini to amend RP Article §§8-203(f) and (h) (Security Deposits). The proposed amendments are intended to make explicit that the landlord satisfies his duties to provide a tenant with a written list of damages to be withheld from the security deposit, and to return the security deposit less rightfully withheld damages, by posting them to the premises, unless the tenant has given the landlord a forwarding address in writing. Mr. Davison stated that this might be implied under §8-203, but that the landlord's duties under §8-203(f) and (h) were somewhat unclear. Mr. Davison also stated that the bill would also add new sections 8-203(f)(5) and 8-203(h)(3) to the security deposit statute, to modify the landlord's duties with respect to tenants who have abandoned the premises prior to the termination of the lease and with respect to tenants who have been evicted or ejected for breach of conditions or covenants of a lease. Mr. Davison stated that the bill would not require the landlord to provide such tenants with a written list of damages to be withheld from the security deposit, or to return the security deposit less rightfully withheld damages to such tenants, unless such tenants had provided the landlord with written notice of a forwarding address. Mr. Davison stated that a landlord will normally be entitled to recover damages against tenants who have abandoned the premises or who have been evicted or ejected for breach of the lease; the landlord's right to recover such damages, however, may not accrue until after he has provided the former tenant with the statutorily required list of written damages and the return of the security deposit less rightfully withheld damages. Mr. Davison stated that a landlord's ability to later recover damages against such tenants will be protected by requiring such former tenants to provide the landlord with a forwarding address.

6. Mr. Laurent proposed that the Reporter draft a bill that would require all landlords to provide prospective tenants with a copy of the form of the written lease used by the landlord. He noted that RP Article §8-203.1 places such a duty only upon landlords who offer "more than 4 dwelling units for rent on one parcel of property or at one location and who rent by means of written leases...." Mr. Davison suggested that §8-203.1 also be amended to permit a landlord to charge a reasonable fee, such as ten cents per page, to a prospective tenant who requests a copy of a lease form. Mr. Adams suggested that a landlord should have a duty to provide a lease form only to a prospective tenant who has satisfied a landlord's application requirements (such as filling out an application form and paying an application fee). Mr. Davison also noted that §8-203.1 does not provide any remedy to a prospective tenant where a landlord has refused to provide him with a copy of the lease form; he suggested that an appropriate remedy for enforcement of this duty would be to authorize equitable relief by the courts to require a landlord to deliver a copy of a lease form to prospective tenants, with provision for reasonable attorneys' fees and costs to a successful plaintiff in such suits.

7. Mr. Laurent proposed that the Reporter draft a bill to amend RP Article §8-208 (Prohibited lease provisions) to prohibit a lease from containing a clause exculpating a landlord's tort liability to persons injured in common areas of the dwelling. Mr. Davison noted that RP Article §8-105 makes such clauses void, but that §8-208 does not prohibit such a clause from being included in the lease. Mr. Davison stated that inclusion of such a clause in a lease may discourage an injured person from prosecuting a tort claim against a landlord, even though such a lease clause is void and unenforceable under §8-105.

8. Mr. Davison discussed a proposal by Mr. Carbine that the Reporter draft a bill that would uniformly govern periods of notice in landlord-tenant situations. Mr. Davison indicated that such a bill would specify whether a period following notice commenced upon receipt or sending of the notice, and whether Sundays, holidays, and the day of receipt or sending would be counted in the notice period. In the case of eviction for failure to pay rent due and payable, the common law rule is that the period of notice begins to run at the next due date for payment of rent, not upon the receipt of rent. Thus, if a month-to-month tenant's rent is due upon the first day of the month, a 30 days notice to quit under §8-401, sent to him on March 2nd, would not require him to vacate the premises until the last day of April. Mr. Davison stated that this common law rule could be specifically codified by statute. Mr. Franquet asked whether a tenant must pay a full term's rent where he must vacate the premises prior to the end of a periodic term but after the date when rent in advance is normally due. Mr. Davison stated that under the Uniform Residential Landlord and Tenant Act, rent is apportionable (URLTA §1.401(c); see URLTA

Report "Tenant Obligations and Landlord Remedies: Tenant's Absence from or Abandonment of the Premises,") so that a tenant would be liable for rent under URLTA only for the period that he actually resided on the premises, or until the lease was terminated. Mr. Laurent noted that problems may arise when a notice to quit for non-payment of rent arrives on the date that rent is due and payable.

9. Mr. Franquet introduced Mr. Frank Zappola, the President of the Montgomery County Tenant's Information Exchange.

10. Mr. Laurent inquired as to the possibility of holding dinner meetings at the expense of the state. Mr. Sallow requested Mr. Davison to discuss this possibility with the Governor's Office. Mr. Franquet suggested that dinner meetings might be appropriate for meetings held in various counties, rather than in Baltimore City.

11. Mr. Davison discussed the report prepared by him and his legal research assistants with respect to the Uniform Residential Landlord and Tenant Act. Mr. Davison noted that the initial part of the report, dealing with an overview of the URLTA, Security Deposits and Retaliatory Eviction, had been discussed at the October meeting. Mr. Davison stated that he recommended that the Commission delete the sections in the URLTA dealing with Security Desposits and Retaliatory Evictions, in favor of the Maryland statutes with respect to these areas. Mr. Davison discussed the part of the URLTA report with respect to the Tenant's Duty to Pay Rent. Members of the Commission generally agreed that the summary ejectment procedures of RP Article §8-401 were preferrable to §4.201(b) of the URLTA in a rent due and payable situation. Members of the Commission stated that the Maryland procedure, authorizing immediate filing of suit by a landlord under §8-401 where rent was due and payable and permitting a tenant to cure his default "at any time before actual execution of the eviction order," was preferrable to URLTA §4.201(b), which does not authorize a landlord to file suit against a tenant for rent due and payable, until the tenant has been given notice of default and a period in which to cure his default. Mr. Kalis stated that the landlord's remedy for distress for rent, which the URLTA would abolish, should be retained, even though distress for rent was not frequently used in the case of residential leases. Mr. Kalis stated that the potential use of this remedy by landlords may be a valuable deterrant against default in rent payments by tenants.

Mr. Davison then discussed a tenant's duty to maintain the premises under the URLTA and Maryland law. Mr. Davison, in response to a question by Mr. Laurent, stated that the URLTA did not provide for punitive damages against a tenant for willful commission of waste; Mr. Davison stated that only reasonable attorneys' fees and costs could be awarded under the URLTA where a tenant has willfully committed waste. Mr. Davison stated that the URLTA should be

amended to authorize award of punitive damages against a tenant who has willfully committed waste. Mr. Kalis suggested that the URLTA be amended to authorize award of punitive damages against a tenant whose culpable, or gross, negligence or recklessness causes waste to the premises. Mr. Sallow suggested that §4.202 of the URLTA be amended to define the term "materially affecting health and safety" (§4.202 authorizes the landlord to repair the premises at the tenant's expense, where a tenant breaches his duty to maintain the premises and creates a condition "materially affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning.)" Mr. Davison indicated that "materially affecting health and safety" might be defined in a manner similar to the definitions under the Maryland rent escrow statute with respect to the tenant's right to withhold rent when a landlord fails to maintain the premises. Mr. Davison stated that a **definition** of "materially affecting health and safety" should include conditons affecting the health and safety of other tenants. Mr. Sallow stated that the 14 days authorized by §4.202 of the URLTA for a tenant to cure his defects, except in the case of an emergency, may be too long a period; he suggested that a landlord be able to take action sooner in order to protect his rental building. Mr. Sallow requested members of the Commission to consider these problems under §4.202 of the URLTA; he stated that the Commission would continue discussing §4.202 at the next meeting.

Mr. Sallow requested that the Reporter begin to draft bills based upon the URLTA after the Commission finishes discussion of particular sections of the URLTA, rather than waiting to draft bills after the Commission finishes discussion of the entire URLTA.

12. The meeting was adjourned at 9:35 p.m.

Steven G. Davison
Reporter

SGD/eg

GOVERNOR'S COMMISSION
ON LANDLORD-TENANT LAW REVISION

16 Francis Street
Annapolis, Maryland

NOTICE OF MEETING

The Governor's Commission on Landlord-Tenant Law Revision will hold a regular meeting on Tuesday, December 9, 1975, at 7:45 p.m., in the Hearing Room on the first floor of the State Highway Administration Building, 300 West Preston Street, Baltimore, Maryland.

The items on the agenda for the December 9th meeting, in the order to be considered, are as follows:

1) Discussion and vote on proposed bill to amend RP Article Sections 8-203(f) and (h) (Security Deposits) (copy enclosed).

2) Discussion of proposed bill to amend RP Article §8-208 (Prohibited lease provisions) (copy enclosed).

3) Discussion of proposed bill with respect to periods of notice (copy enclosed).

4) Discussion of proposed bill to amend RP Article §8-203.1 with respect to landlord's duty to provide written copy of lease to prospective tenants (copy enclosed).

5) Discussion of Uniform Residential Landlord and Tenant Act report (Tenant Obligations and Landlord Remedies).

6) Discussion on any available empirical information with respect to the effect of the New Jersey good cause eviction statute.

7) Future business of the Commission.

Steven G. Davison
Reporter

SGD/eg

GOVERNOR'S COMMISSION

ON LANDLORD-TENANT LAW REVISION

Minutes of Meeting
of December 9, 1975

1. Present: Piccinini, Olson, Franquet, Walsh, Kalis, Laurent, Offit, Braverman, Carbine, Dancey, Jenkins, Everngam. The reporter, Mr. Davison, acted as ex officio chairman at the request of the chairman.

2. The meeting started at 7:50 p.m.

3. The proposed bill to amend the security deposit statute (RP Art. §8-203) was discussed. Mr. Davison noted that the proposed amendments to subsections (f)(4) and (h)(1) were intended to explicitly provide that the landlord fulfills his duties, with respect to directing the itemized list of damages and the security deposit less rightfully withheld damages, by sending them to the premises, unless the tenant has provided the landlord in writing with a change of address. Mr. Davison stated that this would require a tenant, after vacating the premises at the end of the term, to leave a forwarding address either with the post office or with the landlord. Mr. Walsh stated that he believed that such a requirement was implicit in the security deposit statute, and that such an insignificant amendment should not be sent to the legislature. Mr. Walsh made a motion, which was seconded by Mr. Offit, to delete from the bill the proposed amendments to subsections (f)(4) and (h)(1) of §8-203. This motion passed unanimously.

   Mr. Davison discussed the proposed addition to §8-203 of new sections (f)(5) and (h)(3). He noted that these proposed new sections provided that a landlord had no duty to provide an itemized list of damages or to return the security deposit less rightfully withheld damages, to a tenant who has been evicted or ejected for breach of the lease or who has abandoned the premises prior to the term of the lease, unless such tenant provided the landlord with a forwarding address. Mr. Davison noted that landlords often are entitled to recover damages against such tenants in amounts exceeding the security deposit, although such damages may often not accrue until after the date when the security deposit must be returned and thus cannot be deducted from the security deposit. If such tenants were required to provide landlords with a forwarding address before they were entitled to return of their security deposit, landlords would be able to locate such tenants when they attempt to collect damages that were not covered by the security deposit. Mr. Walsh stated that he was opposed to the proposal, since a security deposit was the tenant's property. Mr. Walsh stated that this proposal would unnecessarily change the limited right of the landlord under the security deposit statute to collect damages without resort to

the judicial process. Mr. Piccinini and Mr. Braverman stated that the proposed amendments would eliminate unnecessary paperwork for landlords. They stated that under present law, landlords must prepare itemized lists of damages for such tenants and post it to the premises, even though such tenants usually leave no forwarding address and usually owe damages in amounts exceeding the security deposit. Mr. Kalis stated that the tenants who are affected by the bill are those tenants who will normally owe the landlord at least a month's rent after they are evicted or ejected or abandon the premises; as a practical matter such tenants will owe the landlord at least the amount of the security deposit. Mr. Kalis noted that such tenants usually owe the landlord $300 - $500 in damages, although the amount of the security deposit rarely exceeds one month's rent (and may be only $100). Mr. Carbine suggested that the bill be amended to require the landlord to send such tenants written notice that they are entitled to an itemized list of damages and return of the security deposit less damages if the tenant provides the landlord with a forwarding address within a certain period of time. If the tenant, after such notice from the landlord, did not provide the landlord with a forwarding address, the landlord would have no duty to provide the tenant an itemized list of damages or to return the security deposit. If the tenant did provide the landlord with his forwarding address within a specified period of time, the landlord would then have to comply with the security deposit statute by providing the tenant with an itemized list of damages and by returning the security deposit less damages, within specified periods of time. Mr. Walsh stated that tenants who were "evicted or ejected for breach of a condition or covenant of lease" could be construed to include tenants who were evicted or ejected without a judicial determination of whether the tenant had breached the lease or had an affirmative defense. He noted that the word "evicted" was followed by the word "or," and that evicted might not be interpreted as being modified by the phrase "for breach of a condition or covenant of a lease." He also stated that tenants "who had abandoned the premises" might be construed to include tenants who had vacated the premises for good cause, such as lack of heat. Mr. Davison stated that the term "abandoned" had a precise legal definition and would not be interpreted to include situations where the tenants vacated the premises for good cause such as lack of heat; he noted that "constructive eviction" occurs where a tenant vacates the premises in such situations and that "abandonment" is not defined to include cases where the tenant has vacated the premises after being constructively evicted. Mr. Franquet stated that the manner in which (f)(5) and (h)(3) were worded might confuse the reader into believing that the statute was inapplicable to the defined classes of tenants. Mr. Davison noted that the sections might be reworded to state that landlords had no duties under the statute to such tenants unless the tenant notified the landlord of his forwarding address. Mr. Offit and Mr. Kalis suggested that the landlord not have to provide any

notice to the defined class of tenants where the damages exceeded the amount of the security deposit.

Mr. Olson made a motion, which was seconded by Mr. Everngam, Mr. Jenkins, and Mr. Franquet, that a subcommittee, consisting of Mr. Walsh, Mr. Carbine, Mr. Piccinini, and Mr. Kalis, and Mr. Davison as an ex officio member, meet to consider the proposed bill and report back to the Commission at the January 13th meeting. The motion was passed unanimously. The subcommittee will meet Monday, December 22nd, at 4:00 p.m. in Mr. Kalis' office.

4. The proposed bill to amend Section 8-208 (prohibited lease provisions) was discussed. Mr. Davison noted that ease clauses exculpating a landlord for tort liability to persons injured upon common areas were void and against public policy under RP Article Section 8-105, but that such lease clauses were not prohibited from being included in leases by Section 8-208. Mr. Laurent stated that he had been required to sign a lease containing such a clause, even though such clause was void pursuant to Section 8-105. Mr. Walsh stated that Section 8-208 should be amended to prohibit leases from containing any clauses that were void pursuant to statute. Mr. Laurent and Mr. Kalis stated that such a clause would be uncertain of meaning and would not apprise landlords and tenants as to which clauses were prohibited. Mr. Davison noted that Section 8-208 was very specific as to the types of lease clauses which were prohibited.

5. The proposed bill with respect to notice periods was discussed. Mr. Davison stated that Mr. Carbine had suggested a bill covering this subject matter, but that the substance of the bill was not necessarily agreed to by Mr. Carbine. Mr. Davison stated that proposed Section 8-117 would provide that Sundays, state holidays, and the day on which a notice period is tolled are not to be counted in computing a notice period. Mr. Davison stated that proposed Section 8-402(B)(6) would provide that the period following notice to quit, or notice by a tenant that he would not renew, would commence upon receipt of the notice; he stated that he had chosen "receipt" in drafting the bill, but that "sending" could be chosen instead. Mr. Kalis and Mr. Everngam indicated that the courts with which they worked commenced the notice period upon the sending of the notice. Mr. Walsh, however, stated that the courts with which he worked commenced the notice period upon the receipt of notice. Mr. Davison, Mr. Laurent, Mr. Walsh and Mr. Kalis noted that Section 8-402 and Maryland appellate court decisions were silent as to whether notice periods under Section 8-402 commenced upon the sending or receipt of notice. Mr. Davison noted that a specific statutory provision determining this issue one way or the other would be desirable. Mr. Davison indicated that he would research this question further and report back to the Commission at the next meeting.

6. The proposed bill to require landlords to provide prospective tenants with a copy of the written lease form was discussed. Mr. Davison noted that Section 8-203.1 placed such a duty upon landlords who offer "more than 4 dwelling units for rent on one parcel

of property or at one location and who rent by means of written leases." Mr. Davison noted that the proposed bill would apply this duty to all landlords who rent by means of written leases. Mr. Kalis suggested that proposed Section 8-213(c) be amended by deleting the phrase "NOT TO EXCEED FIFTEEN CENTS PER PAGE,." Mr. Carbine noted that the idea of a remedy of an injunction to enforce this duty seemed somewhat ludicrous. Mr. Davison noted that he agreed, but stated that a duty was meaningless without a remedy for violation of the duty; he stated that the remedy was a deterrant against violation of this duty, and would probably not have to be utilized. Mr. Davison noted that the only alternative remedy was punitive damages, but that such remedy would be unpalatable to landlords.

7. The meeting was adjourned at 9:50 p.m.

Steven G. Davison
Reporter

GOVERNOR'S COMMISSION

ON LANDLORD-TENANT LAW REVISION

16 Francis Street
Annapolis, Maryland

NOTICE OF MEETING

The Governor's Commission on Landlord-Tenant Law Revision will hold a regular meeting on Tuesday, January 13, 1976, at 7:45 p.m., in the Board Room located in the front of the third floor of Charles Hall at the University of Baltimore, 1420 North Charles Street, Baltimore, Maryland. (See attached note).

The items on the agenda for the January 13th meeting, in the order to be considered, are as follows:

1) Discussion and vote on subcommittee's proposed amendment to RP Article Section 8-203 (Security Deposits) (copy enclosed).

2) Discussion and vote on proposed amendment to RP Article Section 8-208 (Prohibited Lease Provisions) (copy enclosed).

3) Discussion and vote on proposed bill with respect to Notice Periods (copy enclosed).

4) Discussion and vote on proposed bill with respect to landlord's duty to provide copy of lease form to prospective tenants (copy enclosed).

5) Discussion of Uniform Residential Landlord and Tenant Act.

6) Discussion on any available empirical information with respect to the effect of the New Jersey good cause eviction statute.

7) Future business of the Commission.

Steven G. Davison
Reporter

Due to circumstances beyond control, it was necessary to move the meeting place to the University of Baltimore. This will be for the January meeting only. Enclosed is a parking permit permitting you to park free of charge on either of the two parking lots located directly across from the school entrance on Charles Street, or in back of the school on Maryland Avenue. Enclosed also is a map of the immediate area.

GOVERNOR'S COMMISSION ON

LANDLORD-TENANT LAW REVISION

Minutes of Meeting of
January 13, 1976

1. Present: Sallow (chairman), Jenkins, Kalis, Laurent, Walsh, Adams, Franquet, Piccinini, Olson, Braverman, Everngam.

2. The meeting started at 8:00 p.m.

3. The proposed bill to amend the security deposit statute was discussed. Mr. Adams suggested that the six month period in subsection (J)(2) was too long a period, since it required landlords to keep accounts open for too lengthly a period; he suggested a period of 30 to 45 days. Mr. Franquet replied that tenants would be more secure with the 6 month period. Mr. Sallow called for negotiation by members of the Commission with respect to the 6 month period. Mr. Walsh stated that he was still opposed to the bill on the grounds that a security deposit is the tenant's money and shouldn't be forfeited to the landlord without judicial process. Mr. Adams made a motion to amend the bill by changing the six month period in subsection (J)(2) to 45 days; this motion was seconded by Mr. Kalis. The motion passed by a vote of 4 to 3, with 2 abstentions. Mr. Davison discussed the bracketed material in subsection (J)(1)("The technical mailing requirements and remedies of ") and proposed subsection (J)(5). Mr. Davison stated that these changes had been proposed by Mr. Carbine in order to insure that the bill would be narrowly construed; he stated that the effect of the amendment to subsection (J)(1) would be to require the landlord to continue to pay interest on the security deposit until the 45 day period for the tenant to demand return of his security deposit had expired. Mr. Kalis made a motion to amend the bill by adding the bracketed material in subsection (J)(1)("The technical mailing requirements and remedies of") and subsection (J)(5). The motion was seconded and was passed by a vote of 5 to 2, with 2 abstentions. Mr. Adams made a motion, which was seconded by Mr. Everngam, to amend subsection (J)(2) by changing the word "delivers" to "give," by adding the word "written" before "notice," and by adding the phrase "by certified mail return receipt requested" following the word "notice." Mr. Davison noted that changing "delivers" to "gives" would provide that the tenant fulfilled his notice requirement by sending written notice by certified mail return receipt requested, rather than by actual receipt of notice by the landlord. Mr. Walsh questioned why notice by the tenant should be required to be given by certified mail; he noted that his legal aid clients were generally incapable of sending a letter by certified mail. Mr. Walsh also pointed out that Section 8-203 only required a landlord to send the written list of damages by first class mail. Mr. Sallow noted that a first class letter will follow a tenant if he has left a change of address, but that a certified letter, return receipt requested,

would be returned if the landlord was not at the posted address. Mr. Davison noted that the requirement of sending the notice by certified mail would protect tenants by insuring a record of the sending of notice; in the absence of such documented evidence, courts would be faced with conflicting testimony by landlord and tenant as to whether notice was sent or received. Mr. Adams called the question on his motion to amend subsection (J)(2). The motion passed by a vote of 8 to 0 with 2 abstentions. The Commission then turned to a general discussion of the bill. Mr. Adams made a motion, which was seconded by Mr. Piccinini, to adopt the bill as amended. Mr. Kalis asked if the bill would allow a landlord to send the written list of damages and withhold the security deposit with respect to the tenants covered by subsection (J), prior to the tenant sending a demand for the security deposit within 45 days. Mr. Davison noted that the written list of damages and return of the security deposit was required only after termination of the tenancy. He noted that a lease usually is terminated when a tenant is evicted for breach of the lease, but that a lease would terminate after the tenant vacates the premises only if the landlord accepts surrender of possession or if the tenant is evicted for nonpayment of rent. Mr. Davison noted that until the 45 day period, provided under subsection (J)(2) for the tenant to demand return of his security deposit, had expired, the landlord would have to keep the security deposit in a separate account as required by Section 8-203(e) and to pay interest on the account as required by Section 8-203(f), unless, after the lease terminated, the landlord sent the tenant a written list of damages and returned the security deposit less rightfully withheld damages. Mr. Franquet stated that the bill would substantially weaken the statute. Mr. Sallow stated that he viewed the bill as intending to save the landlord from paperwork with respect to two limited classes of tenants, for whom preparing such paperwork would prove to be futile in most cases. Mr. Walsh reiterated his opposition to the bill, stating that the bill violated the fundamental constitutional principle that a person should have notice and a right to a hearing before his property is forfeited. Mr. Walsh noted that the bill would allow a landlord to seize a security deposit where the landlord had actual knowledge of a tenant's new address, simply because a tenant hadn't given the landlord written notice of such address by certified mail. Mr. Walsh stated that there were many situations in which a lease may be forfeited that do not involve damages to the premises (i.e., eviction for violating no pet clause) and that are totally unrelated to the purposes of a security deposit. Mr. Davison noted that a landlord may withhold unpaid rent from a security deposit, but only after he has made reasonable, efforts to mitigate damages. Mr. Franquet stated that the bill would penalize tenants who have to enter a hospital during the term of the lease and the estates of tenants who die during the term of the lease. In such cases, it would be unlikely that a demand for return of the security deposit would be made within 45 days. Mr. Adams noted that tenants are not evicted or ejected without a court hearing, so that subsection (J)(1)(A) would not be applicable until a court had determined whether the tenant should be evicted or ejected for breach of the lease. The bill was passed, as amended, by a vote of 6 to 4. (Copy enclosed).

4. The bill to amend Section 8-208 (prohibited lease provisions) was discussed. Mr. Davison noted that Section 8-105 of the Real Property Article already 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. He stated that the bill simply amended Section 8-208 to provide that lease provisions that are void under Section 8-105 cannot be placed in a lease. He noted that even though such a clause was void, it might deter a tenant from seeking redress for injuries if contained in a lease. Mr. Laurent made a motion, which was seconded by Mr. Franquet, to adopt the bill. The motion passed unanimously.

5. Mr. Kalis requested the Reporter to draft a bill, to be considered at the next meeting, to amend Section 8-208 by repealing subsection (a)(2).

6. The bill with respect to notice periods was discussed. Mr. Davison noted that this bill was drafted at the request of Mr. Carbine, but that the substance of the bill was his (Mr. Davison's) drafting, for discussion purposes. Mr. Kalis noted that Sundays and legal holidays were presently counted in computing notice periods; he stated that confusion would occur if they were not counted in computing notice. Mr. Olson and Mr. Kalis stated that the word "tolled" in proposed Section 8-117 was uncertain of meaning either to a judge or to a layman; Mr. Davison noted that the bill could substitute "to commence" for "tolled." It was the sense of the Commission that the day on which the specified notice period is to commence should be counted in computing the notice period. Mr. Davison stated that because Sundays and legal holidays are presently counted in computing a notice period, they would not have to be mentioned in proposed Section 8-117. Mr. Davison stated that proposed Section 8-402(B)(6) would codify existing practice with respect to computing the notice period where a landlord gives a periodic tenant a notice to quit or where a tenant gives notice of intent to terminate a lease. The notice period would commence at the date at which the next payment of rent is due; for instance, if rent was due on the first of the month, and the landlord gave a notice to quit on August 1st, the tenant would not have to vacate the premises until September 30th (one month after the date on which the next payment of rent is due). Mr. Davison noted that under Section 8-402, a month's notice to quit was required, while Baltimore City and some counties, pursuant to public local law, required 30 days' or 60 days' notice. Mr. Adams suggested that Section 8-402(B)(6) in the bill be amended to make clear what happens when rent is due in the middle of the month. Mr. Sallow suggested that a month's notice be considered to run to the numerical date upon which rent is due the following month, regardless of how many days are in the month. Thus, if rent is due on the 15th of a month, a periodic tenancy would terminate on the 15th of the following month if a month's notice to quit was given prior to the date on which rent was due.

7. The bill with respect to the duty of a landlord to provide a copy of their lease form to prospective tenants was tabled until the next meeting.

8. Mr. Davison passed out copies of bills that had been prefiled in the legislature. He noted that 6 of the Commission's bills had not yet been run through the computer. Mr. Davison suggested that the Commission consider prefiled non-Commission bills at the next meeting and determine whether the Commission should support or oppose non-Commission bills. Mr. Sallow stated that the Commission should only testify in favor of its own bills, and with respect to bills that would amend bills previously adopted by the Commission. Mr. Kalis argued that the Reporter should only testify with respect to non-Commission bills after the Commission had a chance to consider the bills and agree to a position with respect to such bills. Mr. Davison stated that he would place on the February agenda consideration of non-Commission bills that would amend bills previously adopted by the Commission.

9. The meeting was adjourned at 9:45 p.m.

Steven G. Davison
Reporter

SGD/eg

GOVERNOR'S COMMISSION
ON LANDLORD-TENANT LAW REVISION

16 Francis Street
Annapolis, Maryland

NOTICE OF MEETING

The Governor's Commission on Landlord-Tenant Law Revision will hold a regular meeting on Tuesday, February 10, 1976, at 7:45 p.m., in the Board Room located in the front of the third floor of Charles Hall at the University of Baltimore, 1420 North Charles Street, Baltimore, Maryland. (Members of the Commission see attached note.)

The items on the agenda for the February 10th meeting, in the order to be discussed, are as follows:

1) Discussion and vote on proposal to repeal Commission bill that would repeal subsection (g) of the Retaliatory Eviction law, Section 8-208.1. ok to eliminate 1g] + leave in Table

2) Discussion and vote on proposed bill with respect to notice periods (copy enclosed).

3) Discussion and vote on proposed bill with respect to landlord's duty to provide copy of lease form to prospective tenants (copy enclosed).

4) Discussion on proposed bill to repeal Section 8-208(a)(2) (Prohibited Lease Provisions) (copy enclosed).

5) Discussion and vote on non-Commission pre-filed bills that would amend bills previously approved by Commission.

6) Discussion of Uniform Residential Landlord and Tenant Act.

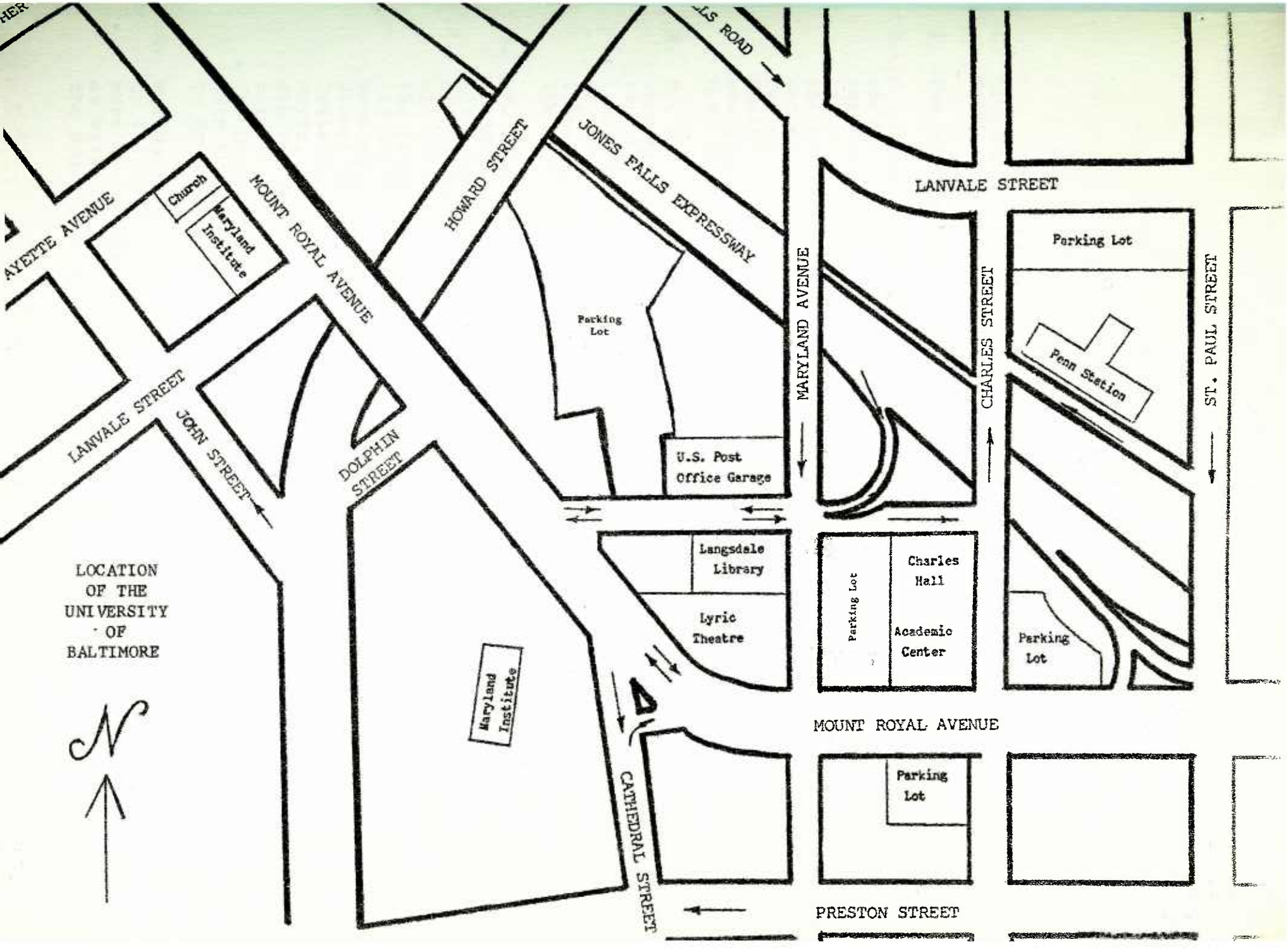
7) Discussion of any available empirical information with respect to the effect of the New Jersey good cause eviction statute.

8) Future business of the Commission.

Steven G. Davison
Reporter

To: Members of the Commission

Enclosed is a parking permit permitting you to park free of charge on either of the two parking lots located directly across from the University of Baltimore school entrance on Charles Street, or in back of the school on Maryland Avenue. Enclosed also is a map of the immediate area.


AYETTE AVENUE
Church
Maryland Institute
MOUNT ROYAL AVENUE
HOWARD STREET
JONES FALLS EXPRESSWAY
LS ROAD
LANVALE STREET
JOHN STREET
DOLPHIN STREET
Parking Lot
U.S. Post Office Garage
MARYLAND AVENUE
CHARLES STREET
Parking Lot
Penn Station
ST. PAUL STREET
Langsdale Library
Lyric Theatre
Parking Lot
Charles Hall
Academic Center
Parking Lot
LOCATION OF THE UNIVERSITY OF BALTIMORE
Maryland Institute
MOUNT ROYAL AVENUE
CATHEDRAL STREET
Parking Lot
PRESTON STREET

GOVERNOR'S COMMISSION

ON LANDLORD-TENANT LAW REVISION

Minutes of Meeting
of February 9, 1976

1. Present: Sallow (chairman), Jenkins, Laurent, Walsh, Adams, Carbine, Kalis, Olson, Carter, Dancey.

2. The meeting began at 7:45 p.m.

3. Mr. Davison discussed a letter he had sent to Delegate Martin Becker, Chairman of the House Economic Matters Committee, with respect to H.B. 322, the Commission's bill to provide warranties to purchasers of condominiums that have been converted from rental buildings. (copy enclosed). Mr. Davison asked if this letter expressed the sense of the Commission; Mr. Adams indicated that he believed that the letter accurately reflected the Commission's position. [See enclosed copy of letter from Chairman Becker stating that the House Economic Matters Committee has disapproved H.B. 322.]

4. Mr. Davison discussed a bill he had drafted at the request of Mr. Laurent to amend R.P. Article Section 8-208(c) to allow a tenant to terminate a lease, without liability except for breach of the lease or for non-payment of rent occurring prior to termination of the lease, where a lease contains a prohibited lease provision. (copy enclosed). This bill will be discussed and voted upon at the next meeting.

5. Mr. Sallow discussed the possibility of the Commission holding dinner meetings. Mr. Davison indicated that the Commission could allocate approximately $400 for dinner meetings before the end of the fiscal year June 30th. He indicated that this would permit the Commission to hold one dinner meeting before the end of the fiscal year allocating $20 per person maximum for the dinner (if drinks were included). Mr. Sallow decided that the dinner meeting should be held at the May meeting; he suggested that the dinner meeting be held in Annapolis. He indicated that he and Mr. Davison would plan the meeting. Mr. Davison noted that Mr. Hans Mayer, Administrative Officer in the Governor's office, has indicated that members of the Commission can obtain 12 cents per mile for travel to and from meetings, and lodging if necessary. Mr. Davison told members of the Commission to submit statements, with their name and address and mileage and any lodging claims, to Mr. Sallow at each meeting in order to obtain reimbursement.

6. Mr. Davison noted that except for one bill (H.B. 322) being heard by the House Economic Matters Committee, the Commission's bills were being heard by the House Judiciary Committee, whose chairman is Delegate Joseph Owens. The Commission's bills being heard by the House Judiciary Committee are H.B. 1100 (retaliatory evictions),

H.B. 421 (repeal of R.P. Art. Section 8-203.1(b)), H.B. 822 (stay of executions in holdover tenant cases), H.B. 823 (notice to quit to week-to-week tenants), H.B. 855 (appeal bill), H.B. 856 (amendments to R.P. Art. Section 8-401 (failure to pay rent), and H.B. 1049 (amendments to R.P. Art. Section 8-402 (holdover tenants). Copies of these bills are enclosed.

Mr. Sallow noted that Thomas Peddicord of the Governor's Office had discussed the urgency of filing the two bills passed at last month's meeting in this session of the General Assembly. Mr. Peddicord had indicated a reluctance to file these two bills (amendments to the security deposit statute (R.P. Art. Section 8-203) and to the prohibited lease provision statute (R.P. Art. Section 8-208). Mr. Kalis stated that he had understood that the bill to amend the security deposit statute would be introduced in this session of the General Assembly. Mr. Adams stated that if the bill to amend Section 8-203 was introduced in this session, the bill to amend Section 8-208 should also be introduced in this session. It was the sense of the Commission that Mr. Sallow should request Mr. Peddicord to introduce the two bills approved by the Commission at the January meeting into this session of the General Assembly.

7. The Commission reconsidered its vote at the September 22, 1975, meeting to repeal R.P. Art. Section 8-208.1(g) (Retaliatory Evictions) (H.B. 1100). This subsection of the retaliatory eviction statute provides: "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." Mr. Davison stated that repeal of Section 8-208.1(g) would have the effect of repealing the Baltimore City retaliatory eviction statute, which protects a tenant from retaliatory conduct when he has made a complaint by telephone, in person, or in writing to the landlord or to a public agency. R.P. Art. Section 8-208.1(g) the statewide retaliatory eviction statute, however, protects a tenant only if he has made a complaint in writing to a landlord or public agency. Mr. Sallow stated that the philosophy of the Commission has been that local jurisdictions should be permitted to enact laws that are stronger than the statewide public general laws; he stated that the Commission's earlier vote to repeal Section 8-208.1(g) would be opposed to this philosophy. Mr. Laurent indicated that he had been surprised when he learned several weeks ago that the Commission had voted to repeal Section 8-208.1(g); he state that he believed that the Commission had mistakenly voted to repeal Section 8-208.1(g) due to a misunderstanding of the motion being con sidered. Mr. Olson made a motion, which was seconded by Mr. Laurent that the Commission revoke and rescind the previous action of the Commission that would repeal Section 8-208.1(g) and that the Reporter immediately forward a letter to the Chairman of the House Judiciary Committee noting the Commission's action and indicate the change in the Commission's position at the hearing on H.B. 1100 before the House Judiciary Committee. Mr. Laurent asked the Reporte to tell the House Judiciary Committee that its earlier vote to repea

Section 8-208.1(g) had been a mistake. He noted that many tenants in Baltimore City need the protection afforded by the Baltimore City retaliatory eviction ordinance; he indicated that his office handles numerous cases in which landlords retaliate against tenants who make complaints by telephone or in person. Mr. Laurent stated that he hoped that the Commission would amend Section 8-208.1(g) to protect tenants who make complaints in person or by telephone. Mr. Olson's motion was approved by a vote of 8 - 0, with one abstention.

8. The Commission discussed the proposed bill with respect to notice periods. Members of the Commission expressed an inability to understand the proposed Section 8-117. Mr. Carter stated that the problem addressed in the bill was one that may have been addressed in interpreting other statutes and civil rules of procedure. Mr. Carbine suggested that the Reporter write the Rules Committee with respect to this problem. The bill with respect to notice periods was tabled and the Reporter was directed to contact the Rules Committee with respect to this problem.

9. The proposed bill to require a landlord to give a prospective tenant a copy of the leaseform was discussed. Mr. Kalis made a motion to delete the words "not to exceed fifteen cents per page" in proposed Section 8-213(c). He explained that inflation might make fifteen cents per page inadequate in the future because of rising printing costs. Mr. Adams seconded the motion. The motion was passed by a vote of 7 - 2. Mr. Carter criticized the bill on the grounds that a landlord could not successfully defend an action based upon a person's claim that he had orally requested a copy of the lease. Mr. Adams argued that a landlord should be able to require a prospective tenant to pay an application fee and to file an application fee before being entitled to a copy of the landlord's leaseform. He stated that an application form could have a box for a prospective tenant to check to indicate whether he wanted a copy of the leaseform. Mr. Carbine said that the worries expressed by Mr. Carter and by Mr. Adams were not realistic, since the only remedy provided is injunctive relief. Mr. Carter stated that injunctive relief was a remedy that the legislature would consider ludicrous. Mr. Davison stated that a remedy of actual damages would not be realistic since actual damages in such cases would be minimal or non-existent. He also stated that punitive damages would be a more extreme remedy than injunctive relief. Mr. Davison stated that the only other solution would be to require landlords to file copies of their leaseforms with the county clerk or with public libraries, but this would be inconvenient for prospective tenants. Mr. Kalis noted that a prospective tenant would not resort to an equity suit under the proposed bill unless he had trouble getting a copy of the leaseform. He noted that the threat and deterrant of the injunctive remedy under the bill, rather than the actual exercise of the remedy, would be what made the bill work. Mr. Carter stated that the word "provide" in proposed Section 8-213(A) may not afford a prospective tenant a right to leave the landlord's office with a copy of the leaseform; Mr. Davison stated that the word "provide" could be changed to "give." Mr. Laurent suggested that the proposed bill be amended to require a landlord to give a tenant a copy of a

written lease within a reasonable period of time after execution of the lease. Mr. Davison indicated that he would revise the bill to include such a provision. Mr. Adams proposed that the proposed bill be amended to delete the term "oral" in Section 8-213(A). Mr. Laurent responded by stating that most business between landlords and tenants is conducted orally; if a written request was required, a landlord should be required to inform the prospective tenant of right to obtain a copy of the leaseform. Mr. Olson and Mr. Walsh agreed with this position. Mr. Kalis and Mr. Carter stated that a prospective tenant, before filing for equitable relie under the bill, should be required to request a copy of the leasefo in writing from the landlord.

10. Mr. Davison discussed the bill he drafted at the request of Mr. Kalis to delete R.P. Art. Section 8-208(a)(2), which prohibits a lease provision "whereby the tenant agrees to waive or forego any right or remedy provided by applicable law." (copy enclosed). Mr. Davison stated that Mr. Kalis proposed this bill because he believed that Section 8-208(a)(2) was vague and did not prohibit an lease provision which was not prohibited by the other provisions of Section 8-208. Mr. Carbine responded that Section 8-208(a)(2) is deliberately vague so as to be elastic in order to prohibit a tenan from waiving any legal rights which he has. He indicated that with out Section 8-208(a)(2), Section 8-208(a) would have to be amended everytime tenants were accorded new rights.

11. The meeting was adjourned at 9:45 p.m.

GOVERNOR'S COMMISSION

ON LANDLORD-TENANT LAW REVISION

16 Francis Street
Annapolis, Maryland

The Governor's Commission on Landlord-Tenant Law Revision will hold a regular meeting on Tuesday, March 9, 1976, at 7:45 p.m., in the Board Room located in the front of the third floor of Charles Hall at the University of Baltimore, 1420 North Charles Street, Baltimore, Maryland. (Members of the Commission see attached note).

The items on the agenda for the March 9th meeting, in the order to be discussed, are as follows:

1) Discussion of status of Commission bills before Maryland General Assembly.

2) Discussion and vote on proposed revised bill with respect to landlord's duty to provide copy of lease form (copy enclosed).

3) Discussion and vote on proposed bill to repeal Section 8-208(a)(2) (Prohibited Lease Provisions) (copy enclosed).

4) Discussion and vote on proposed bill to allow tenants to terminate without penalty a lease which contains a provision prohibited by RP Art. Section 8-208 (copy enclosed).

5) Discussion of Uniform Residential Landlord and Tenant Act.

6) Discussion of any available empirical information with respect to the effect of the New Jersey good cause eviction statute.

7) Future business of the Commission.

Steven G. Davison
Reporter

SGD/eg

GOVERNOR'S COMMISSION

ON LANDLORD-TENANT LAW REVISION

16 Francis Street
Annapolis, Maryland

The Governor's Commission on Landlord-Tenant Law Revision will hold a regular meeting on Tuesday, April 13, 1976, at 7:45 p.m., in the Board Room located in the front of the third floor of Charles Hall at the University of Baltimore, 1420 North Charles Street, Baltimore, Maryland.

The items on the agenda for the April 13th meeting, in the order to be discussed, are as follows:

1) Discussion of status of Commission bills in 1976 Regular Session of Maryland General Assembly.

2) Discussion and vote on proposed revised bill with respect to landlord's duty to provide copy of lease form (copy enclosed).

3) Discussion and vote on proposed bill to repeal Section 8-208(a)(2) (Prohibited Lease Provisions) (copy enclosed).

4) Discussion of Uniform Residential Landlord and Tenant Act.

5) Discussion of any available empirical information with respect to the effect of the New Jersey good cause eviction statute.

6) Future business of the Commission.

Steven G. Davison
Reporter

SGD/eg

HB 1558 passed

a- Invite student researchers

b- Summer activity

GOVERNOR'S COMMISSION ON
LANDLORD-TENANT LAW REVISION

Minutes of Meeting
of April 13, 1976

1. Members present: Sallow (chairman), Kalis, Jenkins, Everngam Franquet, Olson, Braverman (lack of quorum).

2. The meeting started at 8:00 p.m.

3. Mr. Davison discussed the status of Commission bills in the 1976 Regular Session of the General Assemply. He stated that H.B. 1558, which would amend Real Property Article, §8-208 (prohibited lease provisions), to prohibit clauses in leases exculpating a landlord's tort liability for injury in the common areas, had been passed by the legislature. Mr. Davison stated that H.B. 421, which would repeal Real Property Article, §8-203.1(b), because it is inconsistent with Real Property Article, §8-208 (prohibited lease provisions), had been passed by the House of Delegates but had not been considered or passed by the Senate. The Commission's other bill's - H.B. 822 (amendment to Real Property Article, §8-402(b), to authorize stays of execution up to 30 days in hold-over tenant cases); H.B. 823 (amendment to Real Property Article, §8-402(b)(4), to require a landlord to give a week-to-week tenant a month's notice to quit); H.B. 855 (appeal bill); H.B. 856 (amendments to Real Property Article §8-401 (rent due and payable)); H.B. 1049 (amendments to Real Property Article, §8-402(holdover tenants); H.B. 1100 (amendments to Real Property Article, §8-208.1 (retaliatory eviction)); and H.B. 1662 (amendments to Real Property Article, §8-203 (security deposits)) - had received unfavorable reports from the House Judiciary Committee. [H.B. 322, the Commission's bill to regulate warranties in the sale of conversion condominiums, had earlier received an unfavorable report from the House Economic Matters Committee.]

Mr. Davison discussed some of the criticism of Commission bills which had been raised during hearings before the House Judiciary Committee.

(a) Mr. Davison noted that there had been criticism of the provisions of H.B. 856 and H.B. 1049 which would amend §8- 401 and §8-402 to require service of summons and complaint to both the tenant and the subtenant or assignee. A member of the House Judiciary Committee had questioned what would happen if the tenant, after assignment or subleasing, moved out of the state and therefore was not subject to service of summons and complaint. Mr. Davison stated that the Commission would have to address this problem if it reintroduced these bills in the next session of the legislature.

(b) Mr. Davison noted that line 114 of H.B. 856 would amend §8-401 to require that service of summons in a rent due and payable case be made at both the tenant's last known address and at the premises if neither the tenant nor subtenant or assignee can be personally served. During the hearings, it was pointed out that there may be cases in which there are no premises on the leased property. Mr. Davison stated that if H.B. 856 was reintroduced in the next session, this problem could be addressed by not requiring service at the premises when there are no premises.

(c) Mr. Davison also stated that questions had been raised with respect to lines 181-184 of H.B. 856, which would repeal the provision of §8-401(e) that makes the right of redemption inapplicable to tenants who have received more than three summons for rent due and payable in the preceding 12 months. He stated that he had explained that the Commission had proposed repeal of this section because the district courts destroyed records of rent due and payable cases after 60 days from date of judgment, and because tenants in prior rent due and payable cases may have raised, in good faith or even successfully, defenses such as those provided under the rent escrow and retaliatory eviction statutes. Mr. Davison stated that a member of the House Judiciary Committee had questioned whether a solution to this problem might be to require District Courts to maintain rent due and payable records for 12 months from date of judgment. Mr. Davison stated that he had told the Committee that the Commission previously had asked Ms. Margaret Kostrisky, Chief Clerk of the District Court, about this possible solution, but had been told that this would impose administrative problems. Mr. Davison indicated that he would readdress this problem to Ms. Kostrisky. He noted that one possible solution would be to make this exception to the right of redemption inapplicable where a tenant in previous rent due and payable cases had raised, either in good faith or successfully, a defense such as those under the rent escrow or retaliatory eviction statutes.

(d) Mr. Davison stated that some members of the House Judiciary Committee had misunderstood H.B. 822 as permitting holdover tenants to remain on the premises for more than one week pursuant to stay of execution without paying the landlord for possession of the premises. Mr. Davison stated that he believes that H.B. 822 clearly indicated that a holdover tenant would have to pay a landlord for the full time for which he remained in possession pursuant to a stay of execution. Mr. Kalis stated that he believed that even a week to week tenant should have to pay the landlord the full amount for possession for a stay of execution, even if the stay of execution exceeded one week and therefore required the tenant to pay in advance the equivalent of more than the one week's rent which he would normally be required to pay. Mr. Kalis stated that in order to be fair to landlords, holdover tenants should be required to pay in advance the full payment for possession for the period for which execution was stayed. Mr. Kalis also noted that H.B. 822 did not require payment of rent due and payable as a condition for stay of execution. Mr. Davison

indicated that Mr. Kalis' point was valid and that H.B. 822 should be appropriately amended if reintroduced in the next session of the legislature.

(e) Mr. Davison noted that a member of the House Judiciary Committee had questioned whether H.B. 855 should specifically require a tenant to post an amount to cover future rent in order to obtain stay of execution during appeal. Mr. Davison stated that he had not previously considered the question and had answered affirmatively; he noted, however, that Mr. Walsh, after the hearing, had argued that rent due in the future should not be required to be posted by a tenant for stay of execution because future rent is not yet due and payable. Mr. Davison noted that Mr. Walsh believes that a landlord has an adequate remedy under §8-401 if future rent is not paid when due and that therefore, deposit of rent due in the future should not be made a condition for a stay of execution during appeal of a rent due and payable judgment. Mr. Kalis disagreed with Mr. Walsh, stating that in order to obtain a stay of execution in a rent due and payable case, a tenant should have to post as deposit or bond at least two months' rent, and that the deposit or bond should have to be increased by the amount of another payment of rent when another payment of rent became due and payable during the pendency of an appeal. Mr. Kalis stated that if a tenant failed to post rent as it became due and payable during the pendency of the appeal, the landlord should be allowed to take the tenant's deposit and the stay of execution pending appeal should be dissolved and the tenant evicted. Mr. Kalis stated that this result could be accomplished by providing in H.B. 855 that if a tenant failed to post rent as it became due and payable during the pendency of appeal, the tenant would be considered not to have posted the required deposit or bond in order to stay execution of judgment. The landlord, therefore, could immediately obtain execution of judgment. Mr. Davison, in response to a question by Mr. Franquet, stated that Mr. Kalis' proposal might constitute a violation of due process by depriving a tenant of property rights without prior notice and hearing. Mr. Davison stated that due process ordinarily requires notice and hearing before a person may be deprived of property rights; in certain exceptional circumstances, such as where public health or safety was involved (i.e., seizure of adulterated or contaminated food or drugs), notice and hearing may occur after deprivation of a person's property rights has occurred. Mr. Davison stated that this issue had been raised before the legislature in conjunction with a bill, that would permit a court, without prior notice or hearing, to order a spouse from a home in which he had a property interest during the pendency of a divorce hearing, when necessary to protect the personal safety of the other spouse. Mr. Davison stated that an Assistant Professor of Law at the University of Maryland had filed a written memorandum with the House Judiciary Committee with respect to the constitutionality of this bill's provision authorizing eviction of a spouse without prior notice or hearing. Mr. Davison stated that the case law discussed in this memorandum would be applicable to the proposal

by Mr. Kalis. Mr. Davison stated that he believed that before stay of execution pending appeal could be dissolved and the deposit of bond forfeited to the landlord for failure of a tenant to pay rent due and payable, notice and hearing would have to be accorded to the tenant pursuant to the due process clause of the Constitution. Mr. Davison stated that he did not believe that there were any exceptional circumstances that would permit postponement of notice and hearing until after the stay of execution was dissolved and the tenant evicted. Mr. Kalis stated that the hearing with respect to the stay of execution should suffice if the tenant was apprised at such hearing that the stay would be dissolved and the deposit forfeited if he failed to pay rent when due during the pendency of the appeal. Mr. Davison disagreed with Mr. Kalis, stating that the tenant may have good cause under the rent escrow or retaliatory eviction statutes for not paying future rent but that such defenses would not have been raised in a prior hearing. Mr. Sallow stated that the Commission should consider the constitutionality of proposed bills before submitting them to the legislature. Mr. Davison stated that he would submit a report to the Commission with respect to the constitutionality of Mr. Kalis' proposal.

Mr. Davison also stated that members of the House Judiciary Committee had criticized line 103 of H.B. 855, which permits a court, in its discretion, to set the amount of the deposit or bond for stay of execution in an amount less than the full amount of the landlord's actual damages. Mr. Davison stated that he could not justify this provision during the hearing before the House Judiciary Committee; he recommended that the Commission reconsider this proposal.

Mr. Davison also recommended that the Commission reconsider the provision of H.B. 855 providing a right of appeal to the Court of Special Appeals in landlord-tenant cases. He stated that the justification for this proposal was the lack of appellate decisions in Maryland with respect to residential landlord-tenant problems; Mr. Davison noted that most Maryland landlord-tenant decisions involved commercial leases. He noted, however, that there was no right of appeal to the Court of Special Appeals in other civil cases, and that this made the Commission's proposal difficult to justify.

(f) Mr. Davison stated that Chairman Joseph Owens of the House Judiciary Committee had questioned whether the Commission's proposal in H.B. 1100 to prohibit a landlord from terminating or failing to renew a written lease (lines 93-94) was intended to prohibit a landlord, even for a retaliatory purpose, from causing a written lease to convert to an oral periodic tenancy after the end of the term of the written lease. Mr. Davison stated that he had told Chairman Owens that he did not believe this was the intent of the Commission. Mr. Davison noted that even if a landlord for a retaliatory purpose, was allowed to have a written lease convert to an oral periodic tenancy, the landlord could not evict a periodic tenant for a retaliatory purpose. Several members of the Commission stated that they did not believe that the

Commission had intended to prohibit a landlord, even for retaliatory reasons, from converting a written lease to an oral periodic tenancy at the end of the term of the written lease. Mr. Davison stated that if this was the intent of the Commission, H.B. 1100 should be specifically amended accordingly.

Mr. Davison also stated that the Commission, in considering re-enactment of H.B. 1100 for submission to the next session of the legislature, should consider amending H.B. 1100 to reflect the retaliatory eviction section of the Uniform Residential Landlord and Tenant Act (URLTA). Mr. Davison noted that while the Maryland statute only protects tenants who make written complaints to public agencies, the URLTA protects tenants who make complaints by telephone or in person. He noted, however, that the Maryland statute protects tenants who make frivolous complaints or who file frivolous law suits against the landlord, without good faith; or who, without good faith, make complaints to a public agency without jurisdiction over the complaint (i.e., the Maryland statute protects a tenant who makes a complaint against his landlord to the Department of Natural Resources). Mr. Davison noted that the URLTA only protects a tenant against retaliatory action by the landlord if the tenant's complaint involves a substantial violation of a health, safety, or building code and was made to an agency with jurisdiction over the complaint. He stated that adoption of these limitations of the URLTA might make the Commission's other proposals more politically acceptable to the legislature.

Mr. Kalis indicated that the Maryland statute prevented a landlord from evicting a tenant, who had joined a tenant's union, where the tenant had breached the lease such as by violating a pet clause or interferring with maintenance people. Mr. Davison disagreed with Mr. Kalis, noting that the Maryland statute only applied where the landlord acted "solely" for a retaliatory purpose.

Mr. Davison also noted that H.B. 1100 would change the absolute presumption against retaliatory action following a certain period of time to a rebuttable presumption, with the burden of proof upon the tenant to overcome the presumption against retaliatory conduct. Mr. Kalis expressed opposition to this provision of H.B. 1100, stating that a landlord, after a certain period of time, should be able to take certain action, even if for retaliatory reasons.

4. Mr. Davison discussed several landlord-tenant bills, not proposed by the Commission, which were considered by the legislature.

(a) Mr. Davison referred to the proposal by Mr. Louis Pohoryles to amend the condominium conversion provisions of Section 11-102(a). (See enclosed letter). Mr. Davison stated that this proposal was fair both to developers and tenants, since it permitted tenants, who wish to purchase their unit as a condominium, to purchase their unit at an earlier time than presently permitted under existing law. Mr. Davison stated that this proposal, as far as he knew, had not been amended. If it was

not enacted, Mr. Davison proposed that the Commission sponsor this proposal in the next session of the legislature.

(b) Mr. Davison discussed H.B. 1929, which would amend the security deposit statute (§8-203) to allow landlords, in lieu of depositing security posted by tenants in separate bank accounts, to obtain a surety bond for the amount of security posted by all tenants. Mr. Davison noted that H.B. 1929 would permit tenants to recover the amount owed to them by the landlord from the surety bond. Mr. Davison stated that he believed that H.B. 1929, as amended by the House Economic Committee, was a fair bill. He noted that §8-203 presently does not penalize a landlord who fails to deposit tenants' security in a separate bank account, provide a tenant with a remedy in such cases, or require a landlord to notify his tenants in which bank he has deposited his tenants' security. Mr. Braverman noted, however, that a condition for licensing of a real eastate broker is that the broker maintain tenants' security deposits in a separate bank account; if a broker fails to do so, he is subject to loss of his license. Mr. Braverman noted, however, that only persons managing property owned by another are subject to the real estate broker licensing requirements; a landlord who manages property he owns is not subject to these requirements. Mr. Davison suggested that because of this exception, the Commission should consider amending the security deposit statute to ensure that landlords, not subject to real estate license broker requirements, deposit and maintain tenants' security deposits in separate bank accounts as required by statute. Mr. Kalis noted that the surety bonds specified by H.B. 1929 could be obtained only by a few large landlords, and thus would have only limited impact.

5. Mr. Olson suggested that the Commission seek to improve their record before the legislature. Mr. Kalis noted that when Commission bills pass by close votes, the dissenting positions are expressed before the legislature, and cause the bills to be defeated. He suggested that the Commission seek to reach compromises in bills sent to the legislature, so that bills will not face opposition and defeat in the legislature. Mr. Olson suggested that the Commission seek to hear opposing viewpoints before adopting bills; Mr. Davison noted that many persons who oppose Commission bills before the legislature are on the Commission mailing list but do not appear before the Commission to express their positions.

6. Mr. Sallow indicated that the Commission would meet in Annapolis on May 11 for a dinner meeting at the Maryland Inn. Members of the Commission will have dinner, with liquor available, from 7:00 p.m. until 8:30 p.m. The dinner will be closed to members of the public, but members of the public may present any business to the Commission at 8:30 p.m. if they notify the Reporter in advance of the meeting that they wish to be heard. Mr. Sallow requested Mr. Davison to invite Mr. Peddicord and Mr. Wilner from the Governor's office. Mr. Sallow indicated that the dinner meetin

will have no agenda; the Commission will discuss future business. Mr. Sallow indicated that the Commission will reconsider the bills introduced but defeated in the legislature, and consider three new bills on the Commission agenda, at regular meetings in May, September, October, and November. Mr. Davison noted that bills passed as late as November could be pre-filed in the legislature. Mr. Sallow indicated that the Commission would not hold regular meetings in July and August; Mr. Davison suggested that the Commission might hold workshops in July and August to consider the Uniform Residential Landlord and Tenant Act.

7. Mr. Sallow, at Mr. Davison's suggestion, indicated that the Commission's three legal research assistants, who are law students at the University of Baltimore Law School, could be contacted directly by members of the Commission to request research on particular problems. Mr. Davison indicated that the research assistants would be researching the effects of the New Jersey good cause eviction statute. Mr. Sallow requested that Mr. Davison invite the three legal research assistants to the Commission's May dinner meeting so that they can meet members of the Commission.

8. The meeting was adjourned at 9:45 p.m.

Steven G. Davison
Reporter

The Governor's Commission on Landlord-Tenant Law Revision regrets to announce the death of Commission member Robert Franquet on April 21, 1976.

Governor's Commission on
Landlord-Tenant Law Revision

16 Francis Street
Annapolis, Maryland

NOTICE OF MEETING

The Governor's Commission on Landlord-Tenant Law Revision will hold a dinner meeting at the Maryland Inn, Annapolis, Maryland, on Tuesday, May 11, 1976, starting at 7:00 p.m. The meeting will be closed to members of the public from 7:00 p.m. until 8:30 p.m. Members of the public may present new business to the Commission at 8:30 p.m.; persons wishing to present new business at this time are requested to notify the Reporter, Steven Davison, in advance in writing, at the University of Baltimore School of Law, Charles and Mount Royal, Baltimore, Maryland, 21201. There will be no agenda for the meeting; the Commission will discuss future business.

Steven G. Davison
Reporter

SGD/eg

Commission Members:

The main course for the dinner will be rockfish. If a member of the Commission objects to rockish as a dinner choice, please call the Commission's secretary, Eunice Gladem, at 301/727-6350, extension 246, by the end of Tuesday, May 4. The menu cannot be changed after May 4.

Directions to Maryland Inn:

Coming from Baltimore, take route #2. Take the route #50 turnoff. Exit on Rowe Boulevard to the Maryland Inn, located on Church Circle. The dinner meeting will be held in the Crown and Crab Room.

GOVERNOR'S COMMISSION ON LANDLORD-TENANT LAW REVISION

Minutes of Meeting
of May 11, 1976

1. The meeting was held at the Maryland Inn as a closed dinner meeting. The Commission had cocktails and dinner between 7 p.m. and 8:30 p.m., and a business meeting between 8:30 p.m. and 9:00 p.m.

2. Members present: Sallow (chairman), Carbine, Kalis, Jenkins, Adams, Walsh, Laurent, Olson, Gorham. Also present: Steven Davision (Commission Reporter), Thomas Peddicord (Assistant Legislative Officer, Executive Office), Kevin O'Neill (Commission Research Assistant), Howard Carolan (Commission Research Assistant), and Weems Duvall (Commission Research Assistant).

3. Prior to dinner, Mr. Sallow asked those present to stand for a moment of silence in memory of Robert Franquet, a member of the Commission who died on April 21, 1976. At the beginning of the meeting, Mr. Sallow noted the regret of the members of the Commission at the death of Mr. Franquet. Mr. Sallow indicated that Mrs. Franquet had written Governor Mandel requesting that she be appointed to the Commission to take the place of her deceased husband. Mr. Sallow noted that a number of members and former members of the Commission had made a donation in the name of the Commission on behalf of Mr. Franquet to the Montgomery County Chapter of the American Cancer Society. Mr. Olson suggested that a letter of sympathy be sent to Mrs. Franquet on behalf of the Commission. Mr. Kalis suggested that the Commission introduce a House Resolution in the 1977 Regular Session reflecting the state's appreciation for Mr. Franquet's services.

4. Mr. Sallow noted that the Commission was low in membership. He noted that Mr. Morrison and Mr. Carter had indicated that they were resigning from the Commission. He also noted that Senator Byrnes had submitted his resignation over a year ago, contingent upon appointment of a replacement who is a member of the Maryland General Assembly. With the death of Mr. Franquet and with one opening, the Commission only has 14 members out of a maximum of 19 members. Mr. Sallow indicated that he would be working with the Governor's Office to have the required five new members appointed in the near future.

5. Mr. Davison introduced the Commission's three research assistants, Howard Carolan, Kevin O'Neill, and Weems Duvall, who have completed their second year at the University of Baltimore School of Law. Mr. Davison stated that they would be engaged in the following research projects during the summer:

    a) Study of New Jersey's experience with its good cause eviction statute.

b) Study of Mr. Franquet's proposal that out-of-state landlords post a bond to secure their compliance with housing, building and safety codes. Mr. Davison noted that Mr. Jenkins had studied this problem for Baltimore City.

c) The due process question concerning forfeiture of appeal bonds, which is discussed at pages 3-4 of the minutes of the meeting of April 13, 1976.

d) A study of other states' holdover tenant and rent due and payable statutes. Mr. Davision noted that Maryland's present holdover tenant statute (§8-402) and rent due and payable statute (§8-401) were historically derived from early English statutes, and were consequently written in a confusing and complicated manner. He noted that the Commission had unsuccessfully attempted to amend §8-401 and §8-402 in the previous two legislative sessions; he indicated that the legislature might be reluctant to amend these statutes because they have existed in nearly present form since the American Revolution. Mr. Davison suggested that the Commission might propose repeal of §§8-401 and 8-402 and enactment of modern holdover tenant and rent due and payable statutes modelled upon the law of other states.

e) Drafting of bills proposing enactment of the Uniform Residential Landlord-Tenant Act. Mr. Davison noted that he had authored, with the aid of the Commission's three research assistants, an article, to be published in the Spring 1976 University of Baltimore Law Review, analyzing the URLTA and comparing it with present Maryland landlord-tenant law. He noted that this article, copies of which will be sent to members of the Commission, refines and completes the report on the URLTA previously prepared for the Commission.

Mr. Davison stated that if members of the Commission desire research by the Research Assistants on other problems, they should contact him.

6. Mr. Olson made a motion, which was unanimously passed, to have the Commission express its appreciation to Thomas Peddicord and the three Research Assistants for the efforts on behalf of the Commission.

7. Mr. Laurent noted that Baltimore Neighborhoods, Inc., had voted the Commission as this year's recipient of BNI's Public Service Award. The award will be accepted by Mr. Sallow.

8. Mr. Sallow indicated that the Commission, at its June and September meetings, will consider the three new bills on its agenda; and reconsider the bills introduced by the Commission in the 1976 Regular Session, in light of the criticism of these bills reflected in the minutes of the April 13, 1976 meeting. Mr. Sallow noted that the Commission was not planning on holding meetings in July and August, although workshops on the Uniform Residential Landlord and Tenant Act may be held in July and August.

9. The meeting was adjourned at 9:00 p.m.

Steven G. Davison
Reporter

SGD/eg

13 B 40

ROBERT F. SWEENEY
CHIEF JUDGE

MARGARET KOSTRITSKY
CHIEF CLERK

DISTRICT COURT BUILDING
ROWE BOULEVARD AND TAYLOR AVENUE
ANNAPOLIS, MARYLAND 21401
267-5486

May 17, 1976

Steven G. Davison, Reporter
Governor's Commission on
Landlord-Tenant Law Revision
University of Baltimore Law School
1420 North Charles Street
Baltimore, Maryland 21201

Dear Mr. Davison:

You are correct that the statutory provision is that the landlord tenant action shall be dismissed if no warrant of restitution has been issued within sixty (60) days of Judgment.

I thought that was splendid but the Rules Committee saw fit to adopt Maryland District Rule 1299 which required that I keep these cases for twelve (12) years and I am so doing. I do not like the record keeping system that we have and I am concerned about the most recent Attorney General opinion which states very clearly that if the defendant is served by first class mail and the premises are affixed then a money judgment is to be entered and accordingly these are then subject to recordation.

I find the entire section of 8-401 in need of revision and, as I have said many times, it is not a patch up job that is required right now.

Sincerely,

Margaret Kostritsky

MARGARET KOSTRITSKY
Chief Clerk

MK/abs

GOVERNOR'S COMMISSION ON LANDLORD-TENANT LAW REVISION

16 Francis Street
Annapolis, Maryland

NOTICE OF MEETING

The Governor's Commission on Landlord-Tenant Law Revision will hold a regular meeting on Tuesday, June 8, 1976, at 7:45 p.m., in the Board Room located at the front of the third floor of Charles Hall at the University of Baltimore, 1420 North Charles Street, Baltimore, Maryland.

The items on the agenda for the June 8th meeting, in the order to be discussed, are as follows:

1) Discussion and vote on proposed revised bill with respect to landlord's duty to provide copy of lease form (copy enclosed).

2) Discussion and vote on proposed bill to repeal Section 8-208(a)(2) (Prohibited Lease Provisions) (copy enclosed).

3) Discussion and vote on proposed bill to allow tenants to terminate without penalty a lease which contains a provision prohibited by Section 8-208 (copy enclosed).

4) Discussion and vote on re-approval of amended consolidated version of H.B. 822, H.B. 823, and H.B. 1049 (1976 Regular Session) (Holdover Tenants) (copy enclosed).

5) Discussion and vote on re-approval of amended version of H.B. 856 (1976 Regular Session) (Rent Due and Payable) (copy enclosed).

6) Future business of the Commission.

Steven G. Davison
Reporter

SGD/eg

GOVERNOR'S COMMISSION ON
LANDLORD-TENANT LAW REVISION

Minutes of Meeting
of June 8, 1976

1. Present: Sallow (chairman), Carbine, Olson, Laurent, Dancey, Kalis, Everngam (lack of quorum).

2. The meeting began at 8:00 p.m.

3. Mr. Charles Fischbach, Chairman of the Baltimore City Tenants' Association Legislation Committee, presented Mr. Sallow with a copy of the Committee's Quarterly Report. (A copy of this report is enclosed for Commission members).

4. Mr. Sallow announced that Mr. Carter had resigned from the Commission. Mr. Sallow stated that the matter of vacancies on the Commission would be handled promptly. Mr. Sallow indicated that the Commission presently has 8 landlord members (counting Mrs. Gorham as a landlord representative; and including Mr. Morrison, who has indicated he will resign, but who has not yet submitted a letter of resignation); 5 tenant members; and 3 neutral members (Sallow, Jenkins, Byrnes (Senator Byrnes has resigned contingent upon the appointment of a replacement member from the General Assembly).

5. Mr. Sallow noted that he had accepted the Baltimore Neighborhood's, Inc. Public Service Award on behalf of the Commission. A copy of BNI's citation letter is enclosed.

6. Mr. Warren Brooks, of the Baltimore City Urban Renewal and Housing Agency, discussed Section 8 of the new Federal Housing Act, which provides for federal rent subsidies. This program has been in effect in Baltimore City since October 1975, and is presently providing rent subsidies to 175 families. Under this program, a tenant pays 25% of his income for rent, and Baltimore City forwards the remainder of the rent due to the landlord. This program is funded entirely by federal government. Mr. Brooks indicated that federal funds may be forthcoming to provide rent subsidies for an additional 325 tenants. He noted that 27 landlords were now included under the program. Mr. Brooks stated that some landlords would not participate in the program, either because they did not want to be subject to the required inspection, or because they did not want to deal with the federal government. Under the federal rent subsidy program, 30% of the tenants receiving subsidies must be on public assistance, 30% must be employed, and 40% must be handicapped or elderly (62 years or older). Mr. Brooks indicated that 2 aides in the Agency would be contacting landlords to explain the program. Mr. Kalis stated

that the real problems with the program were the large amount of paperwork required for a small number of tenants; and that tenants get a property interest under Section 8, which creates problems in eviction of tenants, since such tenants can demand a jury trial. Mr. Kalis stated that under this program, landlords lose control of their development.

7. Mr. Davison stated that the House Judiciary Committee would be holding a hearing on June 30, at 2:00 p.m., to consider Baltimore City landlord-tenant and housing matters; and landlord-tenant matters generally. See the attached notice of this meeting.

8. Mr. Laurent stated that the Commission should table the proposed bills to amend R.P. Art. §8-401 (Rent Due and Payable) and R.P. Art. §8-402 (Holding Over), since they have been received unfavorably by the legislature the last two years and are non-controversial Mr. Laurent suggested that these bills should receive further study. Mr. Davison noted that the Commission's research assistants would be studying rent due and payable and hold over tenant statutes in other states to determine whether there are modern statutes that would be preferrable to attempting to amend Maryland's present statutes. At Mr. Kalis' suggestion, Mr. Davison stated that he would also have the research assistants contact judges, court clerks, landlords and tenants to obtain their criticisms of these statutes and their recommendations for improvements and amendments of these statutes. Mr. Carbine suggested that these bills be tabled to await meaningful reform; he stated that he would prefer that the Commission not submit these bills to the next session of the General Assembly. Mr. Davison stated that he would place, as the first items on the agenda for the September meeting, motions to table the bills to amend §8-401 (Rent Due and Payable) and §8-402 (Holding Over). Mr. Davison also stated that he would place on the agenda for the September meeting, a motion to table HB 322 (Warranties in Sales of Conversion Condominiums), because of the reasons stated by Chairman Martin Becker of the House Economic Matters Committee in his letter of February 10, 1976. (This letter was previously mailed to members of the Commission). Mr. Kalis stated that he would like the Commission to continue to work on amendments to §8-402, since some of the proposed amendments were substantive and would be helpful to landlords. Mr. Laurent requested Mr. Davison to place on the agenda for the September meeting the bill that would require landlords to give week-to-week tenants a month's notice to quit, rather than one week's notice as is presently required. Mr. Davison stated that the Commission's research assistants will prepare a report on amendment of §8-401 and §8-402 to be presented to the Commission in the fall.

9. Mr. Sallow stated that the Commission would not meet in July or August, but would meet twice in September to catch up on the Commission's agenda. The Commission will meet on September 14 and September 28.

10. Mr. Davison stated that he would be drafting bills to implement the Uniform Residential Landlord and Tenant Act (URLTA), for consideration by members of the Commission over the summer. He stated that he would be drafting two bills to amend the retaliatory eviction statute; one bill would incorporate changes to H.B. 1100 recommended by members of the House Judiciary Committee; while the other bill would incorporate the proposed amendments in the first bill as well as the requirements of the URLTA's retaliatory eviction section.

11. Mr. Olson stated that he would like to have the Commission reconsider the good cause eviction statute once it had cleared its agenda in the fall. Mr. Davison stated that he would draft a revised good cause eviction bill incorporating amendments suggested by Stuart Wilcox and others.

12. Mr. Carbine stated that there had been no attempt by members of the Commission themselves to be responsible for the drafting of bills introduced in the General Assembly. He proposed that the Commission establish a legislative drafting subcommittee, consisting of one non-lawyer, to assist the Reporter in the final drafting of bills before they are forwarded to the General Assembly. Mr. Carbine suggested that the subcommittee have authority to make non-substantive changes in bills that have been approved by the Commission, prior to submitting approved bills to the General Assembly. Mr. Kalis stated that he did not see what purpose would be served by such a subcommittee; he noted the problems that the subcommittee that worked on the proposed amendments to the security deposit statute (H.B. 1553) had had in drafting a bill acceptable to the full Commission. Mr. Laurent stated that Mr. Kalis was referring to a subcommittee with authority to deal with drafting of substantive amendments. Mr. Carbine stated that this subcommittee that he was proposing would review the language used in any bills passed by the Commission before the bills were sent to the legislature. Mr. Laurent recommended that such subcommittee be required to return to the full Commission if any substantive changes were to be made in bills passed by the full Commission. Mr. Davison suggested that the Reporter could first draft bills after passage by the Commission for consideration by the subcommittee; the subcommittee could review the draft bills and meet with the Reporter if any changes were necessary in the Reporter's draft bills. Mr. Sallow, based upon the consensus of the Commission as to the need and authority of a legislative drafting subcommittee, established such a subcommittee, and appointed Mr. Carbine and Mr. Kalis to be co-chairmen of the subcommittee, with Mr. Sallow to be the third member of the subcommittee.

13. The meeting adjourned at 9:00 p.m.

Steven Davison
Reporter

SD/eg

GOVERNOR'S COMMISSION ON

LANDLORD - TENANT LAW REVISION

Minutes of Meeting

of September 14, 1976

1. The meeting commenced at 8:00 p.m.

2. Present: Jenkins (Acting as Chairman by designation of Mr. Sallow), Carbine, Franquet, Kalis, Everngam, Dancy, Fischbach, Adams, Ackerman, Laurent.

3. Mr. Davison announced that the Governor had appointed Lloyd Fitzpatrick, Ruth Franquet, Charles Fischbach, and James Ackerman as members of the Commission. Mr. Davison noted that Paul Olson was resigning from the Commission because he has to move to the state of Washington for business reasons. Mr. Davison also noted that John Carroll Byrnes had resigned from the Commission, subject to appointment of a successor who is a member of the General Assembly. Counting these two resignations, the Commission has 17 members, two under the authorized number.

4. Mr. Davison noted that the Commission has a new secretary, Ms. Leslie Varga, who can be reached during working hours at the Admissions Office of the University of Baltimore School of Law, (301) 727-6350 X. 245. Mr. Davison noted that his phone number at the Law School is 727-6350 X. 297. (Mr. Davison is in his office on Tuesdays and Thursdays in the afternoon and early evenings).

5. Mr. Davison stated that during the summer he had drafted a bill to adopt the Uniform Residential Landlord and Tenant Act. He indicated that a typed copy of this bill should be ready for consideration at the December meeting, although he could make copies of the rough draft available to interested members of the Commission or the public. Mr. Davison also distributed copies of a law review article which he had authored with respect to the common law of landlord and tenant, Maryland statutory landlord tenant law, and the Uniform Residential Landlord and Tenant Act.

6. Mr. Davison stated that the Governor's office has imposed a November 1 deadline for submitting bills to his office for pre-filing in the 1977 Session of the General Assembly. Consequently, any bills which the Commission desires to have considered by the 1977 Session of the General Assembly must be considered and approved by the Commission at meetings in September and October. Mr. Davison indicated that Mr. Sallow may therefore call a second meeting for the thrid Tuesday in October.

7. HB 322 of the 1976 Session, dealing with warranties on converted condominiums, was discussed. Mr. Davison noted that the Commission had originally introduced

a bill in the 1974 Session of the General Assembly that would have imposed warranties on conversion condominiums that could not be waived or modified, and also would have required developers of converted condominiums to have a professional engineer certify that the building had no significant defects. Mr. Davison noted that this bill was strongly opposed by both lobbyists and members of the legislature because its effect would have been to cause financers not to invest in conversion condominiums; thus in effect absolutely barring conversion of rental buildings to condominiums. Consequently, the Commission revised its approach and submitted HB 322 to the 1975 Session of the General Assembly. HB 322 would apply the express and implied warranties that are applicable to new homes and condominiums under Title 10, Subtitle 2, of the Real Property Article, to conversion condominiums. These express and implied warranty sections, however, may be excluded or modified by the seller. Mr. Carbine stated that he was troubled by the bill's attempt to impose warranties on the older buildings that are converted from rental facilities to condominiums. Mr. Carbine also stated that the practical effect of the bill would be meaningless, because a developer of a conversion condominium could modify or exclude the warranties and would probably do so. Mr. Davison referred to Delegate Becker's letter to the Commission, which indicated that H.B. 322 was unnecessary because of Section 11-124(a)(11) of the Real Property Article, which requires a seller of a condominium which is more than five years old to disclose to the purchaser of a condominium, prior to settlement, any defects in the building. Mr. Davison noted that this provision would allow a pruchaser to rescind the contract for fraud if the seller failed to comply with this section, but would not allow the buyer to force the seller to repair the defects, as in the case of breach of a warranty. Mr. Carbine's motion to table the bill, which was seconded by Mr. Laurent, was unanimously defeated. Mr. Carbine's subsequent motion to defeat the bill, which was seconded by Mr. Laurent, was unanimously approved. H.B. 322 was defeated.

8. The motion to table the holding over tenant bill, that would consolidate H.B. 822, 823, and 1049, was discussed. Mr. Davison noted that the Commission would separately consider H.B. 823 as agenda item number 8. Mr. Kalis asked Mr. Davison if he would place H.B. 822 on the agenda for separate consideration; Mr. Davison indicated that he would place H.B. 823 on the agenda for the October 12 meeting. Mr. Kalis requested Mr. Davison to include as an amendment to H.B. 823 a provision specifying that a holdover tenant could not remain on the premises for more than two days unless the court ordered the tenant to pay the landlord for reamining on the premises for more than two days. Mr. Davison recommended that the Commission table both the consolodated version of H.B. 822, 823, and 1048, and the amended version of H.B. 856 (rent due and payable), so that the Commission could give appropriate consideration to the Uniform Unlawful Detainer Act. Mr. Davison noted that the Uniform Unlawful Detainer Act was supposed to have modern, simplified procedures for both holdover tenant suits and rent due and payable suits, which are presently covered in Maryland by §8-401 and §8-402. Mr. Davison indicated that 13 states had adopted the Uniform Act, and that Ms. Patricia Kastrisky, Chief Clerk of the District, had strongly recommended the Uniform Act for approval by the Commission. Mr. Davison indicated that he would present a copy of the Uniform Act to the Commission at its September 28 meeting so that it could be considered by the Commission at its October meeting. He also noted that a research assistant was preparing a report on modern and simplified procedures for rent due and payable and holdover tenant suits that have been adopted by other states. Mr. Laurent made a motion, which was seconded by Mr. Carbine, to table the bill consolidating H.B. 822, 823 and 1049, for consideration, and comparison

with the Uniform Unlawful Detainer Act, by a subcommittee. This motion passed by a vote of 8-0, with one abstention.

9. The motion to table the amended version of H.B. 856 (Rent Due and Payalbe) was discussed. Mr. Laurent made a motion, which was seconded by Mr. Carbine, to table the bill and refer it for consideration, and comparison with the Uniform Unlawful Detainer Act, by a subcommittee. This motion passed unanimously.

10. The bill with respect to a landlord's duty to provide a copy of the leaseform was discussed. Mr. Laurent stated that a lot of small landlords refuse to give prospective tenants a copy of the leaseform. Mr. Kalis criticized the remedy in proposed Section 8-213 on the grounds that it would be considered ludicrous by the legislature. Mr. Davison stated that a right without a remedy would not provide any help to prospective tenants who were denied a copy of a leaseform, although the courts might fashion appropriate remedies as needed. Mr. Laurent stated that he believed that this remedy would be useful as a deterrent, although it might never be utilized; he stated, however that the remedy was not crucial to the bill. Mr. Carbine indicated that he would like to amend the bill; his amendments would include a requirement that a landlord give a tenant a copy of a written lease executed by the tenant. Mr. Carbine's motion to amend the bill first called for deleting proposed Section 8-213, instead of amending Section 8-203.1(a) by deleting the phrases "After January 1, 1975," and "who offers more than 4 dwelling units for rent on one parcel of property or at one location and." The motion, as amended, also called for adding a new section after Section 8-203.1(a)(1), to read as follows:

> "(2) Provide every tenant an exact copy of the lease, as signed by the tenant, within 15 days of the date of occupancy."

There was discussion of whether the landlord should be required to deliver an executed copy of the lease within 15 days of the effective date of the lease, or within 15 days of occupancy by the tenant. Mr. Kalis argued that it should be based upon the date of occupancy by the tenant, because the computer systems used by landlords can't absorb a tenant under a new lease until the old tenants leave and the new tenants move into the premises. Mr. Fischbach asked whether an existing tenant who was asked to execute a new lease would be considered a "prospective applicant" under the bill who would be entitled to a copy of the new leaseform. Mr. Carbine and Mr. Davison agreed that an existing tenant would be considered to be a "prospective applicant" within the meaning of the bill. Mr. Carbine's motion to amend the bill was seconded and was passed unanimously. Mr. Carbine's motion to pass the bill as amended was seconded and was passed unanimously. The Reporter was requested to draft the amended bill and to submit it to the legislative drafting subcommittee for review, and to submit the amended bill as passed to the Commission at the September 28 meeting.

11. The bill proposing to repeal Section 8-208(a)(2) (Prohibited Lease provisions) was discussed. Mr. Kalis stated that this section, which prohibits any lease provision "whereby the tenant agrees to waive or to forego any right or remedy provided by applicable law," was too indefinite and general a provision and that a landlord could not ascertain what provisions are prohibited by this clause. Mr. Carbine argued that this provision was a fundamental protection for tenants and was the most important provision of Section 8-208; he indicated that a

landlord would be in knowing violation of this provision if he included lease provisions using words such as "waive" or "exclude" with respect to a tenant's rights. Mr. Laurent also supported this provision on the grounds that it would protect a tenant's rights in the future, without the need to amend Section 8-208. Mr. Carbine called the question, which was seconded by Mr. Laurent. The bill was defeated by a vote of 5 to 3, with on abstention.

12. The meeting was adjourned at 9:45 p.m.

Steven G. Davison
Reporter

GOVERNOR'S COMMISSION ON

LANDLORD-TENANT LAW REVISION

Minutes of Meeting

of September 28, 1976

Present: Sallow (Chairman), Jenkins, Franquet, Kirkpatrick, Adams, Ackerman, Laurent, Braverman, Fischback, Kalis.

The meeting began at 7:50 p.m.

Mr. Adams stated that he would like the Commission to consider Virginia's residential landlord-tenant act, which is a modified version of the Uniform Residential Landlord and Tenant Act. Mr. Adams provided copies of the Act for distribution to members of the Commission. Mr. Davison indicated he would distribute a William & Mary Law Review article on the Virginia statute, and would prepare an analysis of the Virginia statute for members of the Commission. Mr. Adams indicated that he would like to see uniformity in the Maryland, Virginia and District of Columbia landlord-tenant statutes.

Mr. Sallow scheduled an additional meeting for Tuesday evening, October 26.

Mr. Davison presented his draft of the bill passed by the Commission at the previous meeting with respect to the duty of a landlord to provide copies of leaseforms and executed leases. He indicated that the format of the bill, which would repeal RP Art §8-203.1(a)(1) with respect to providing a copy of a leaseform to an applicant and would enact a new RP Art. §8-213, had the approval of Mr. Carbine and Mr. Kalis of the Legislative Drafting Subcommittee. Mr. Davison indicated that the bill repealed §8-213, rather than simply delete in §8-203.1 the phrase "who offers more than 4 dwelling units for rent on one parcel of property or at one location and," because an overall amendment of §8-203.1 would create other problems. Mr. Davison noted that the Commission would be considering reapproval of HB 421 at the next meeting. He noted that dropping the "more than 4 dwelling units" language from §8-203.1 would eliminate the conflict between §8-203.1(b), but as a separate bill. Mr. Davison noted that a second conflict, between §8-203.1(a)(2)(i) (implied warranty of habilitability) and §8-211 (rent escrow statute), would arise if the "more than 4 dwelling units" phrase in §8-203.1 was repealed. Mr. Davison noted the rent escrow statute, which applies to serious helath and safety defects, does not specifically prohibit a landlord from providing in a lease for waiver or modification of a tenant's rights under the rent excrow statute. Mr. Davison noted that §8-208(a)(2) (prohibited lease, provisions, which prohibits lease clauses whereby a tenant waives any of his rights under law, would prohibit a lease clause whereby a tenant waives any of his rights under the rent escrow statute. Mr. Davison noted, however, that §8-203.1(a)(2)(i), although requiring landlords who rent "more than 4 dwelling units" at one location and who rent by means of written leases, to include in the lease a written warranty that the premises are "in a condition permitting habitation, with reasonable safety." permits landlords to waive or modify this warranty of habitability. Mr. Davison noted that the warranty of habitability under §8-203.1(a)(2)(i) may apply

defects which are also subject to the rent escrow statute. In such cases, Mr. Davison noted that a landlord, under §8-203.1(a)(2)(i), could have a tenant waive rights under the rent escrow statute by waiving or modifying the implied warranty of habitability under §8-203.1(a)(2)(i) thus allows a landlord to waive or modify a tenant's rights under the rent escrow statute, while §8-208(a)(2) prohibited a landlord from doing so. Mr. Davison consequently recommended that the Commission propose that §8-203.1(a)(2)(i) be repealed. The Commission asked the Repprter to draft a bill, for consideration at the next meeting, which would repeal §8-203.1(a)(2)(i).

Mr. Kalis noted that the bill requiring landlords to furnish copies of lease forms to prospective tenants failed to include a provision allowing a landlord to charge prospective applicants a reasonable fee for a copy of the leaseform. Members of the Commission agreed that no set fee should be specified, although a maximum charge should be established. Mr. Kalis made a motion to amend the bill to allow a landlord to charge a reasonable fee for a leaseform, not to exceed a dollar. This amendment was passed by a vote of 6-2, with one abstention. A copy of the bill, amended, is enclosed.

6. Mr. Davison distributed 4 bills that will be on the agenda for the October meetings in addition to items remaining on the agenda from the September meetings. One of these bills was HB 822, with a proposed amendment (Stay of execution in holdover tenant cases). Another bill would regulate deposits required as a requirement of application for tenancy. The remaining two bills would define rent as not including late charges, damages to the premises, or damages from breach of the lease.

7. The Commission considered the proposed bill that would amend RP Art. §8-208 (Prohibited Lease Provisions) to permit a tenant to terminate a lease that contained a prohibited lease provision. Mr. Laurent stated that he had proposed this bill because §8-208 had no real "teeth" in it to punish landlords who placed prohibited lease provisions in leases. Mr. Laurent stated that many landlords had not cleared up their leases to remove prohibited lease provisions; he stated that this bill would be an incentive for landlords to do so. Mr. Adams stated that the existing remedies in §8-208--making prohibited lease provisions void and awarding tenants actual damages and reasonable attorneys fees where a lease contains a prohibited lease provision--was adequate. Mr. Kalis and Mr. Adams disagreed with Mr. Laurent, stating that most landlords had changed their leases to remove prohibited lease provisions in leases given to new tenants. Mr. Kalis stated that he doesn't have existing tenants sign new leases at the end of each term; he simply sends out a letter stating that the initial lease is reaffirmed. He stated that Mr. Laurent's bill would impose a hardship on him by requiring him to issue new leases for tenants everytime the law was changed. Mr. Kalis also noted that the bill would penalize small landlords, who unlike large landlords, do not have staff attorneys. Mr. Davison questioned how many tenants would want to exercise this remedy under bill to terminate the lease and move from the premises. Mr. Kalis suggested that the only tenants who might utilize this remedy would be tenants who had bought a house and were looking for a loophole to break the lease. Mr. Adams made a motion, which was seconded by Mr. Adams, to call the question. The Bill was defeated by a vote of 5 Against, 3 For, and 1 abstention.

8. Re-approval of HB 1662 (security deposits) was considered. Mr. Davison noted this bill was suggested by landlords in order to save them the often unnecessary expense of sending an itemized list of damages to tenants who have abandoned the premises prior to the end of the term of who have been evicted for breach of the lease. Mr. Davison noted that such tenants usually owe the landlord damages in

an amount greater than the security deposit, so that preparing and sending such itemized statement of damages to such tenants as required by the security deposit is generally a futile exercise. Mr. Davison noted that HB 1662 would require landlords to send the itemized list of damages and to return the amount if any, of the security deposit less damages to such tenants if such tenants provided the landlord with written notice of his new address. This would allow the landlord to serve process upon such tenants to recover damages exceeding the amount of the security deposit. Mr. Adams noted that such tenants have moved out of the premises and that an itemized list of damages sent to the premises will be returned unless the tenant has left a forwarding address. Mr. Adams made a motion, which was seconded by Mr. Jenkins, to call the question. HB 1662 was re-approved by a vote of 5 to 3, with one abstention. (copy enclosed).

9. Re-approval of HB 823 (30 days notice to week-to-week tenants) was discussed. Mr. Kalis noted that in Baltimore City, week-to-week tenants effectively had 60 days notice to quit. Mr. Davison noted that RP Art. §8-402 required landlords to give month-to-month tenants a month's notice to quit, but only a weeks notice to quit to week-to-week tenants. Mr. Laurent stated that he had suggested HB 823 because he believed that a week was too short a time for a week-to-week tenant to find a new place to live. Mr. Kalis questioned whether the sentence, "The same provisions shall apply to cases of forcible entry and detainer", would require a landlord to give a trespasser or squatter notice to quit. Mr. Kalis stated that no notice to quit should have to be given to trespassers or squatters. Mr. Kalis made a motion, which was seconded by Mr. Jenkins, to amend the bill by adding a sentence at line 99 stating: "No notice to quit is required in a forcible entry and detainer action to remove a trespasser or squatter."

The bill, as amended, was approved unanimously. A copy of the approved, as amended, is enclosed.

10. Re-approval of HB 855 (Appeal Bill0, with proposed amendments, was considered. Mr. Davison noted that the proposed amendments are in response to objections made by the House Judiciary Committee in hearings on the bill last year. Mr. Davison noted that the Committee strongly opposed the provisions in the bill authorizing a court to set an appeal bond for stay of execution in an amount less than the landlord's actual damages; and establishing a right of appeal to the Court of Special Appeals in landlord-tenant cases. Mr. Davison noted that there is no automatic right of appeal to the Court of Special Appeals in other civil actions. Mr. Laurent questioned whether the bill would serve in purpose if the provision establishing a right of appeal to the Court of Special Appeals was deleted. Mr. Kalis noted that the original purpose of the bill had been to provide a right of appeal to the Court of Special Appeals in landlord-tenant cases, but that it was politically impossible to have this provision enacted. Mr. Jenkins indicated that the bill would still serve a useful purpose by simplifying and uniformizing the appeal procedure in landlord-tenant cases; he noted that it would provide a trial de novo in the circuit court in all landlord-tenant cases, whereas a trial de novo is presently provided only if the amount in controversy is less than $500. (Otherwise, the appeal in the circuit court is heard on the district court record.). Mr. Kalis questioned whether the proposed amendment to line 98 would be interpreted so that tenants in holdover tenant cases would not have to deposit an appeal bond in amount to cover all actual damages that the landlord might sugger on appeal. Mr. Davison stated that this amendment was intended to apply only to rent due and payable cases, and could be specifically amended to so provide. Mr. Adams made a motion, which was seconded by Mr. Kirkpatrick, to vote on each amendment

separately. This motion was approved by a vote of 5-1, with 3 abstentions. Mr. Kalis made a motion, which was seconded, to amend the proposed amendment to line 98 to refer to rent due and payable actions under §8-401. This amendment was passed unaminously. The proposed amendment to line 103, to delete the phrase "The court may provide for a lesser deposit or appeal bond", was approved unanimously. The proposed amendment to lines 109-110, to delete Section 8-118(c) providing a right of appeal to the Court of Special Appeals, was approved unanimously. The bill, as amended, was approved unanimously. A copy of the approved bill, as amended, is enclosed.

11. The meeting adjourned at 9:35 p.m.

Steven G. Davison,
Reporter

GOVERNOR'S COMMISSION ON

LANDLORD - TENANT LAW REVISION

Minutes of Meeting

of October 12, 1976

1. Present=Jenkins(Acting Chairman), Walsh, Laurent, Fischbach, Ackerman, Adams, Franquet, Carbine, Kalis, Dancey.

2. The meeting started at 7:45 p.m.

3. David Norken of the Maryland Public Interest Research Group discussed the Group's Good Cause Eviction Project.(see enclosure) Mr. Davison noted that he has proposed having the Commission work jointly with Maryland PIRG in conducting research on New Jersey's experience with its good cause eviction statute. Mr. Davison stated that he had proposed to Maryland PIRG that the Commission pay travel and lodging expenses of groups of students (including law student members of Maryland PIRG two of the Commission's research assistants, and several law students in Mr. Davison's landlord-tenant law course) for travel to New Jersey to do empirical research with respect to the New Jersey good cause eviction statute. Mr. Norken stated that the student researchers would interview judges, court administrators, legal aid attorneys, landlords, and tenants in New Jersey. Mr. Davison stated that on-the-scene research in New Jersey was necessary because attempts by the Commission's research assistants to obtain written responses from groups in New Jersey had been unsuccessful. Mr. Davison stated that interviews would be lined up prior to students traveling to New Jersey, and that written material would be obtained where possible in lieu of making trips for interviews. Mr. Carbine stated that the Commission should not fund expenses of travel and lodging for Maryland PIRG researchers until a schedule of persons to be interviewed was presented to the Commission by Maryland PIRG and reviewed by the Commission. Mr. Carbine made a motion, which was seconded, that the Commission reimburse Maryland PIRG for postage and phone calls to line-up interviews in New Jersey with respect to the good cause eviction statute and that Maryland PIRG present the schedule of interviews to the Commission for its review before the Commission commits itself to paying travel and lodging expenses for travel by student researchers to New Jersey. Mr. Kalis and Mr. Adams questioned whether the research would be conducted fairly by the Maryland PIRG researchers, since Maryland PIRG was supporting enactment of a good cause eviction statute in Maryland. Mr. Jenkins and Mr. Davison stated that the research could be conducted fairly, since most of the research would involve documentation of interviews by persons with potentially diverse opinions, and the interviews and any interpretation of court statistics and records would be subject to review by the Commission. Mr. Ackerman asked Mr. Norken if the researchers would ask each person interviewed the same questions; he noted that the form of the questions asked might bias the results obtained in interviews. Mr. Norken noted that the questions asked persons representing different interest groups might have to be different. Mr. Davison noted that members of the Commission could prepare questions to be asked of persons representing particular interest groups, which could be used by the researchers. Mr. Carbine's motion was passed by a vote of 8-0, with 2 abstentions.

4. The proposal to re-approve HB 1100 (1976 Regular Session), (Retaliatory Eviction), with proposed amendments, was considered by the Commission.

a. Mr. Davison noted that the Commission last year had originally voted to repeal §8-208.1(g), which permits local counties to enact their retaliatory eviction statutes, but had later reversed their vote. Mr. Davison stated that in order to reflect this change, HB 1100 should be amended by deleting the phrase "and repealing a provision concerning the effect of certain local ordinances." in line 47, and by deleting lines 60-68 and 139-156. Mr. Kalis made a motion, which was seconded by Mr. Carbine, to amend HB 1100 by deleting the phrase "and repealing a provision concerning the effect of certain local ordinances." in line 47 and by deleting lines 60-68 and 139-156. This motion passed unanimously.

b. Mr. Davison discusses lines 86-96 of HB 1100, which would amend §8-208.1 (a)(2) to more clearly define what retaliatory actions by a landlord were prohibited. Mr. Davison noted that the words "TERMINATE OR" should be deleted in line 94 and placed between the words "OR" and "DECREASE" in line 95. Mr. Davison stated that the proposed amendment to subsection (a)(2) in HB 1100 would specifically make §8-208.1 applicable to a landlord who brings or threatens to bring an action for possession, or who terminates or fails to renew a written lease, for a retaliatory purpose. Mr. Walsh stated that the original intent of the Commission when they approved the retaliatory eviction statute was to prohibit a landlord from failing to terminate a lease for retaliatory reasons, but that this intent was not clearly reflected in the language of the statute. Mr. Kalis objected to this proposed change because it would force landlords to renew written leases for an extended term where the six month period under §8-208.1(e) had not passed at the time the term of a written lease expired. Mr. Davison noted that the proposed amendment to lines 91-96 of HB 1100 would delete the reference to termination or failure to renew a written lease. Mr. Kalis made a motion, which was seconded by Mr. Adams, to replace lines 91-96 of HB 1100 with the proposed amendment that would delete the phrase "TERMINATE OR FAIL TO RENEW A WRITTEN LEASE OF A TENANT OF ANY RESIDENTIAL PROPERTY" at lines 93-94 of HB 1100. This motion was defeated, with 3 votes in favor, 6 votes against, and one abstention.

c. Mr. Laurent proposed that the word "written" be deleted from line 99 of HB 1100. Mr. Laurent stated that this would follow the Baltimore City retaliatory eviction statute, which protects a tenant who makes a complaint by telephone or in person. He stated that the tenant would still have to prove that he had made a complaint by telephone, which would require him to produce an agency record or log of his complaint. Mr. Laurent argued that the protection of the statute should not be limited to tenants who have made written complaints. Mr. Laurent made a motion, which was seconded by Mr. Fischback, to delete the word "written" at line 99 of HB 1100. This motion passed by a vote of 7-2, with one abstention.

d. Lines 121-130 of HB 1100, which would change the passage of 6 months from disposition of a tenant's complaint or law suit from an absolute defense for a landlord to a rebuttable presumption, were discussed. Mr. Davison noted that the proposed amendment to lines 121-130 simply improved the style. Mr. Walsh stated that he was satisfied with the language in the existing bill. No motion was made to change lines 121-130 of HB 1100.

e. Mr. Davison discussed the amendments to HB 1100 that were proposed in the

proposed bill to amend §8-208.1 to follow the Uniform Residential Landlord and Tenant Act (URLTA).

(1) Mr. Davison noted that §8-208.1 protects tenants who make frivolous complaints or complaints to agencies without jurisdiction. Mr. Davison noted that the URLTA bill would require that the URLTA bill would only protect tenants who complained to an agency charged with enforcement of a building or housing code of a violation of a code which materially affects health or safety. Mr. Carbine opposed this change on the grounds that it would significantly weaken the protection afforded to tenants. Mr. Laurent noted that tenants would be protected only if they made complaints of material health and safety violations, although tenants might make complaints of violations that might not be found by a court to materially affect health and safety. Mr. Kalis made a motion, which was seconded by Mr. Adams, to amend lines 98-100 of HB 1100 as provided by the URLTA bill but leaving in the words "solely because" which are in the present statute. This motion was defeated, with 4 votes for the motion, and 6 votes against the motion. Mr. Davison noted that the other proposed changes to §8-208.1(a)(2) in the URLTA bill tracked the proposed amendment which had just been defeated. The Commission consequently did not separately consider these proposed amendments.

(2) Mr. Walsh made a motion to repeal §8-208.1(d), as proposed by the URLTA bill. §8-208.1(d) 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. Walsh opposed this provision because the filing of a summonses for rent due and payable is at the discretion of the landlord and can be done arbitrarily, and because the tenant may have a valid defense under the rent escrow statute and thus be legally entitled to withhold rent. Mr. Walsh stated that he believed that §8-208.1(d) was consequently unconstitutional. Mr. Davison noted that he previously found that this section was unconstitutional. Mr. Kalis suggested that subsection (d) be amended to protect tenants who had valid defenses to rent due and payable summonses. Mr. Walsh noted, however, that records in rent due and payable cases were destroyed after 60 days. Mr. Davison also noted that records of rent due and payable cases might not disclose whether a tenant had successfully defended the summons. Mr. Davison noted that Margaret Kastrisky, Chief Clerk of the District Court, had concluded that there was no feasible way to implement an amended subsection (d) that would not apply to tenants who had successfully defended rent due and payable summonses. Mr. Walsh's motion to repeal §8-208.1(d) was passed by a vote of 5-4, with one abstention.

(3) No motion was made to change §8-208.1(e) to follow the URLTA bill, which would presume that action by a landlord within 6 months of a complaint or filing of a lawsuit by a tenant was retaliatory action.

(4) The commission discussed proposed subsection (F) in the URLTA bill, which would make the retaliatory action defense inapplicable where defects in the premises were caused by the tenant, the tenant was in default in rent, or repair of defects required the tenant to move from the premises. Mr. Walsh noted that the Commission's retention of the word "solely" in subsection (a)(2) would make this proposed amendment

unnecessary. No motion was made to amend HB 1100 to add subsection (F) of the URLTA bill.

e. A motion was made by Mr. Jenkins, and seconded by Mr. Carbine, to pass HB 1100 as amended. This motion passed by a vote of 6-3, with one abstention.

5. The meeting adjourned at 9:30 p.m.

Steven G. Davison,
Reporter

GOVERNOR'S COMMISSION ON

LANDLORD-TENANT LAW REVISION

Minutes of Meeting

of October 26, 1976

1. The meeting started at 7:45 p.m.

2. Present: Sallow (Chairman), Kirkpatrick, Cox, Carbine, Walsh, Ackerman, Adams, Piccinini, Laurent, Braverman, Fischbach, Weisengoff, Jenkins (came in during discussion of agenda item number 4).

3. Mr. Sallow announced that William Cox, President of the Baltimore City Tenants' Association, had been appointed as a member of the Commission to fill the vacancy created by the resignation of Paul Olson.

4. The Commission discussed the bill to amend Section 11-102.1 of the Real Property Article (Condominium Conversion). Mr. Davison noted that this bill had been drafted at the request of Attorney Louis Pohoryles, and had been supported by Senator Steinberg in the 1976 Regular Session. Mr. Davison stated that this bill would help both landlords and tenants, since it would permit landlords to convert residential rental buildings without having to wait for at least 180 days after notice to his tenants of his intent to convert to a condominium regime; and would thus allow tenants in the building who wished to purchase their unit as a condominium to do so immediately after the building is subjected to a condominium regime, and the tenants are given notice of conversion. Mr. Davison noted that under the existing statute, a tenant cannot purchase his unit as a condominium for at least 180 days after notice to the tenants of conversion to a condominium regime, because the landlord cannot subject the building to a condominium regime (by filing a declaration and plat) until at least 180 days after giving his tenants notice of conversion. Mr. Davison noted that the bill would continue to give tenants at least 180 days to remain in the building after receiving notice of conversion to a condominium regime. Mr. Laurent made a motion to approve the bill, which was seconded by Mr. Fischbach. The bill passed unanimously. (A copy of the bill is enclosed).

5. The bill to regulate deposits as a condition of application for tenancy was discussed. Mr. Laurent stated that he had suggested a bill to require prompt return of money required to be deposited as a condition of application for tenancy. Mr. Laurent stated that he had received complaints from persons who deposited substantial sums of money, up to a month's rent, as an application requirement, but had not had the money returned to them until three or four weeks after their application had been rejected. These persons needed this deposit money to use as a security deposit or application deposit for another rental unit; they were thus unable to apply for or obtain a rental unit until their application deposit was returned by the landlord who had rejected his application. Mr. Piccinini suggested that a tenant be required to pick up his application deposit at the office of the landlord or his agent; he stated that an applicant often paid the deposit in cash, and he kept this money in his safe. Mr. Piccinini stated that he did not want to be required to send

checks out through the mail. Mr. Ackerman and Mr. Adams stated that a landlord should be given 20 days, rather than 15 days, to return an application deposit after denial of an application, since the landlord's home office in another state often processes the application deposit. Mr. Ackerman and Mr. Adams recommended that a landlord be entitled to charge up to a month's rent as an application deposit. Mr. Adams stated that when he rents houses, the applicant is required to post a month's rent as an application deposit; he then takes the house off the rental market until the application is processed. If he accepts the applicant, he credits the month's rent as a security deposit. Mr. Adams also recommended that a landlord be able to charge a reasonable fee for the credit reference check, which usually is $7.50. Mr. Piccinini stated that he usually does not charge a tenant for the credit reference check. Mr. Adams also stated that he tells an applicant, and puts in writing in the receipt for the application deposit, that the applicant may forfeit the security deposit if he backs out and fails to sign the lease. Mr. Adams objected that the bill would prohibit this practice, although he stated that he does sometimes return all or part of an application deposit if an applicant backs out. Mr. Davison stated that this practice described by Mr. Adams was in effect an option contract, the validity of which would be regulated by the law of contracts and need not be subject to a landlord-tenant statute. Mr. Carbine stated that because he did not belieive that the areas which were addressed by sections (A) and (C) of the bill have been an area of abuse, he was making a motion to amend the bill by deleting sections (A) and (C). This motion was seconded by Mr. Piccinini. Mr. Walsh stated that he had heard of some landlords charging non-refundable entrance fees, but that he was not sure that these fees were application deposits within the meaning of the bill. Mr. Fischbach objected to Mr. Carbine's motion, stating that he did not believe that a tenant should have to put up an application deposit. Mr. Piccinini stated that he required application deposits (usually $15) to insure that an applicant was serious. Mr. Adams reiterated that when an applicant to rent a house gives him the application deposit, he takes the house off the rental market until completion of the credit check. Mr. Piccinini stated that he thought that the bill should provide for forfeiture of the application deposit of the applicant backs out. Mr. Weisengoff stated that he thought that the bill should regulate the amount of the deposit. Mr. Carbine's motion to amend the bill by deleting sections (A) and (C) was passed by a vote of 7-4, with one abstention. Mr. Piccinini made a motion, which was seconded by Mr. Braverman, to amend line 2 of section (B)(1) of the bill by adding the phrase ", BY MAIL OR AT THE OFFICE OF THE LANDLORD OR HIS AGENT," after the word "APPLICANT" and before the word "WITHIN;" and to amend line 3 of section (B)(1) by adding the word "BUSINESS" after "5" and before "DAYS." Mr. Piccinini explained that this amendment would allow the landlord to choose to return the application deposit to a rejected applicant either at his office or through the mail by check. This motion was passed by a vote of 10-0, with 2 abstentions. Mr. Ackerman made a motion, which was seconded by Mr. Adams, to amend section (B)(1) by deleting the period at the end of the fourth line and adding the following at the the end of the fourth line: ", LESS A REASONABLE PROCESSING FEE AND CREDIT CHECK FEE." Mr. Walsh stated that he believed that this amendment was unnecessary, since the landlord would not be prohibited by the bill from charging such fees, since they are not "MONEY OR PROPERTY DEPOSITED BY THE APPLICANT AS A CONDITION OF APPLICATION." Mr. Braverman suggested that the amendment proposed by Mr. Ackerman would be unnecessary if the word "DEPOSITED" in the fourth line of Section (B)(1) was changed to "PAID AS A DEPOSIT." Mr. Ackerman withdrew his motion in favor of Mr. Braverman's motion to change

"DEPOSITED" to "PAID AS A DEPOSIT" in the fourth line of section (B)(1). This motion passed by a vote of 10-1, with one abstention. A motion to change "15 DAYS" in the sixth line of Section (B)(1) to "15 BUSINESS DAYS" passed unanimously. Mr. Carbine stated that he was opposed to the bill, since it would give statutory sanction to withholding of application deposits by landlords for up to a month after denial of an application. Mr. Laurent stated that he wished to withdraw the bill, since it was too combersome. A motion to pass the bill, as amended, was defeated by a vote of 0-10, with 2 abstentions.

6. The proposed bills to amend Section 8-208 (Prohibited Lease Provisions) and Section 8-401 (Rent Due and Payable) to define the term "rent"were discussed. Mr. Walsh stated that there was confusion in Maryland as to the definition of "rent." He stated that Section 8-401 should be allowed to be used only for collection of rent, not ohter types of charges such as late fees and damages, since Section 8-401 does not require personal service of process upon a tenant because it is a summary proceeding. Mr. Walsh noted that these charges could be recovered in a separate contract. Mr. Ackerman noted that the Prince George's County ordinance does not permit collection of late charges or damages in summary rent due and payable suits. Mr. Carbine suggested that the Commission approve the bill to amend Section 8-401, but defeat the bill to amend Section 8-208. He stated that this would prohibit a landlord from using the summary rent due and payalbe procedur3 to collect late fees and damages, but would allow the landlord to define such terms as "rent" in a written lease. He stated that this would allow the landlord to threaten a tenant with summary eviction for failure to pay such charges, even though the landlord could not legally do so, but stated that he believed that some intimidation of tenants by landlords to get tenants to pay such non-rent charges was permissible. Mr. Davison stated that a landlord could evict a tenant under the summary procedures of Section 8-402 for failure to pay non-rent charges if such failure to pay constituted a material breach of the lease; after the tenant was evicted under Section 8-402, the landlord could withhold non-rent charges from the security deposit. Mr. Braverman objected to the prohibition against collecting late charges in an action under Section 8-401; he stated that these charges were related to rent and should be collectible under Section 8-401. He made a motion to delete the phrase "THE PAYMENT OF RENT OR" from the bill to amend Section 8-401. This motion was seconded by Mr. Adams. The motion was defeated by a vote of 4-7 with 2 abstentions. Mr. Weisengoff recommended that the bill to amend Section 8-401 include an affirmative definition of rent; he noted that the bill stated what was not rent, but did not define what was rent. Mr. Walsh agreed with this statement. The bill was consequently tabled until the next meeting so that the Reporter could amend the bill to amend Section 8-401 to include a definition of rent.

7. The commission discussed the proposal to re-approve and amend HB 822 (1976 Regular Session), which would amend Section 8-402(b)(2) 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. Mr. Adams made a motion, which was seconded by Mr. Ackerman and Mr. Adams, to re-approve HB 822, subject to the proposed amendment being added at line 106 of HB 822. This motion passed by a vote of 10-2, with one abstention. A copy of the bill as approved is enclosed.

8. The meeting adjourned at 9:45 p.m.

Steven G. Davison,
Reporter

Absent Wasserott Gorham Jenkins Ollit Piccinini

GOVERNOR'S COMMISSION

ON

LANDLORD - TENANT

LAW REVISION

Minutes of Meeting

of

November 9, 1976

1. The meeting commenced at 7:45 p.m.

2. Present: Sallow (Chairman, Carbine, Cox, Franquet, Kirkpatrick, Everngam, Fischbach, Dancy, Braverman, Adams, Ackerman, Laurent, Walsh, Kalis.

3. The good cause eviction research project was discussed. Mr. Davison distributed copies of a letter to Ms. Colette Coolbaugh, New Jersey Director of Civil Practice, requesting permission for the Commission to interview judges in New Jersey who are handling or who have handled cases under the good cause eviction statute in New Jersey. Mr. Davison also stated two researchers, David Norken of Maryland PIRG and Tom Duvall, a Commission research assistant, were planning on attending a dinner meeting of the New Jersey Property Owner's Association on November 10 in New Jersey. This Association has 213 landlord members. Mr. Duvall indicated that he had discussed the research project with Mr. Sam Herzog, an officer of the Association, and had established a good rapport with him. Mr. Herzog had invited Mr. Duvall and Mr. Norken to attend and address the meeting, and had indicated that the Association would distribute the Commission's questionnaire to its members if the questions were acceptable. The list of questions to be distributed to landlords at the Association's meeting were examined and discussed. Mr. Carbine requested that the landlords also be asked to state the size of their rental projects, as well as the location and number of their projects. Mr. Adams suggested that the Commission also contact and work with the Association's Legislstive Committee, since the Commission might not receive the desired response to its questionnaire. Mr. Kalis stated that the effect of the New Jersey good cause eviction project should not be examined in a vacuum, but should be studied in the context of all pro-tenant New Jersey legislation affecting landlords.

4. The bills to define rent were discusses. Mr. Davison distributed a revised draft of the bill to define rent for purposes of rent due and payable suits under Section 8-401. Mr. Davison stated that the bill had been revised to include an affirmative definition of rent, which definition of rent was based upon the common law. He also noted that the bill followed the common law and the Uniform Residential Landlord and Tenant Act in providing that where the landlord and tenant have not agreed to the amount of rent, rent is a reasonable amount for the use, occupation and enjoyment of the premises. Mr. Carbine made a motion, which was seconded by Mr. Laurent, to approve the bill to define rent for purposes of Section 8-401. Mr. Carbine reiterated his position at the October 26 meeting that the Commission should approve the bill to amend Section 8-401 to define rent, but not to approve

the bill to amend Section 8-208 to define rent. Mr. Carbine stated that a landlord could recover late charges and damages in a contract action, but should not be allowed to recover them in the summary proceeding under Section 8-401. In response to a question by Mr. Adams, Mr. Davison stated that the provision defining the amount of rent in the absence of agreement between landlord and tenant would apply in a situation where the tenant's term under a written lease had expired and the tenant became a periodic tenant. Mr. Davison stated that the bill to amend Section 8-401 would permit a landlord to bring a separate civil action to recover late charges or damages, and to eject a tenant for non-payment of late charges or damages if such non-payment was a material breach of the lease. Mr. Ackerman opposed the bill, arguing that a landlord should be entitled to recover attorney's fees and late charges in an action under Section 8-401. Mr. Kalis stated that the bill should not apply to commercial leases. Mr. Walsh noted that Baltimore City courts do not allow late charges to be recovered in summary rent due and payable actions. Mr. Carbine argued that Section 8-401 was not a collection statute for landlords. Mr. Carbine made a motion to amend the bill to define rent under Section 8-401 to make it applicable only to residential leases. Mr. Walsh seconded the motion. The motion passed unanimously. Mr. Walsh supported on the bill, on the grounds that rent is normally payable in advance, although the tenant hasn't received the consideration of possession and use of the premises for the period for which rent is paid. He argued, that a landlord therefore should not be able to evict a tenant for failure to pay late charges. Mr. Kalis disagreed with Mr. Walsh, stating that as a practical matter a landlord cannot evict a tenant immediately for non-payment of rent, so that a tenant can remain in possession for a considerable period although he has not paid rent when due and payable. Mr. Kalis also argued that because late charges are small in amount, the landlord would have no practical method to collect late charges if he couldn't do so in an action under Section 8-401, because of the cost of a separate suit for a small late charge. Mr. Ackerman stated that in Baltimore City, it takes 5 to 6 weeks after filing for a rent due and payable suit to be heard. Mr. Braverman made a motion to amend the bill to define rent under Section 8-401 to delete the reference to late charges. Mr. Braverman, at Mr. Everngam;s suggestion, amended his motion to propose that the bill also be amended to affirmatively state that a landlord could collect late charges and attorney's fees in a suit under Section 8-401 if the written lease defined such charges and fees as rent. The motion was seconded by Mr. Everngam. Mr. Carbine opposed this motion, stating that it would be a radical change to suits for rent due and payable under Section 8-401. Mr. Adams supported the motion, saying it was a practical change. Mr. Kalis also supported the motion, noting that most landlords define late charges as rent in written leases. Mr. Braverman's amended motion was defeated, 6 members voting in favor and 7 members voting against. Mr. Adams then made a motion to table the bill to define rent under Section 8-401. This motion was seconded by Mr. Ackerman. The motion to table the bill was defeated by a vote of 7-5, with one abstention. The motion to approve the bill, to define rent under Section 8-401, as amended, was passed by a vote of 8-4, with one abstention.

5. Mr. Kalis, in response to the approval of this bill, stated that the legislature should be told what the vote was on bills where the Commission was closely divided on an approved bill upon landlord-tenant lines. Mr. Kalis noted that he had refrained from testifying against Commission bills in the last Session of the General Assembly in the belief that the Commission was required to present a unfform position of support for approved bills. Mr. Carbine noted that Rule 10 of the Commission's Rules of Order provides that "Any member or group of

members dissenting from any final action of the Commission may file a minority report which shall be forwarded with the final action of the Commission." Mr. Sallow stated that the Commission cannot refuse to consider bills because they are controversial and will result in a close vote. Mr. Davison noted that the Commission could amend its Rules of Order to require greater than a majority vote to approve bills.

6. The Commission considered agenda items 2 and 3, bills which would repeal Sections 8-203.1(b) and 8-203.1(a)(2)(i). Mr. Davison stated that HB 421 proposed repeal of Section 8-203.1(b) because it prohibited lease provisions that were already prohibited by Section 8-208(a)(2) (in conjunction with the retaliatory eviction statute, Section 8-208.1) and Section 8-208(a)(6). However, Section 8-203.1 only applied to landlords who have 4 or more dwelling units at one building or parcel, while Section 8-209 applies to all landlords. Mr. Davison noted that if Section 8-203.1 was amended to delete the "4 or more dwelling unit" language, Section 8-203.1(b) would duplicate Section 8-208, and should still be repealed. Mr. Davison stated that he had proposed repeal of Section 8-203.1(a)(2)(i) because it allowed a landlord to include a provision in a lease whereby the tenant agreed to accept the premises in a condition not permitting habitation with reasonable safety. Section 8-203.1(a)(2)(i) would thus permit a landlord to waive or modify a landlord's duty under the rent escrow statute, Section 8-211, to provide housing free from defects substantially affecting health or safety. Mr. Davison stated that although the rent excrow statute did not prohibit or permit a landlord to waive or modify his duties under the section, Section 8-208(a)(2), which prohibits a landlord from including a provision in a lease whereby the tenant agrees to waive or to forego any right or remedy provided by applicable law, would prohibit a landlord from including a provision in a lease whereby the tenant waives or modifies his rights under the rent escrow statute by agreeing to accept the premises in a condition not permitting habitation with reasonable safety. Section 8-203.1(a)(2)(i) thus conflicts with Sections 8-211 and 8-209(a)(2). Mr. Kalis stated that the purpose of Section 8-203.1(a)(2)(i) had been to permit a landlord and tenant to agree to have the tenant fix up and repair the premises if they were defective. Mr. Laurent stated that repeal of Section 8-203.1(a)(2)(i) would permit a landlord and tenant to agree to have the tenant repair non-safety defects not within the scope of the rent escrow statute, but that the law should not permit a landlord to require a tenant to fix or repair life, safety and health hazards. Mr. Laurent stated that the rent escrow statute was not intended to permit landlords to transfer their duties to the tenant. Mr. Walsh noted that Section 8-203.1(a)(2)(ii), by specifying that a lease must specify a tenant's duties to repair the premises, also conflicted with the rent escrow statute, since it would authorize a landlord to require a tenant to repair defects subject to the rent escrow statute. Mr. Kalis made a motion to amend items 2 and 3 on the agenda by deleting from Section 8-203.1(a) the language "After January 1, 1975" and "who offers more than 4 dwelling units for rent on one parcel of property or at one location and", and by amending Section 8-203.1(a)(2)(ii) by deleting the words "of the premises" and adding after the word "repair" the language "OF DEFECTS NOT SUBJECT TO RENT EXCROW STATUTES OR ORDINANCES." Mr. Davison noted that this amendment would remove conflicts with the state and Baltimore City rent excrow statute, but would allow tenants to agree to repair defects not subject to the rent excrow defense. Mr. Sallow stated that Baltimore City Housing and Community Development Administration holds a landlord responsible for housing code violations regardless of whether the tenant has agreed to responsible for repair of such defects; Mr. Kalis stated, however, that where HCD is shown such an agreement, they will give notice of violation to both the landlord and the tenant. Mr. Walsh stated that Mr. Kalis' motion would still cause Section 8-203.1(a)(2)(ii) to conflict with Baltimore City's implied warranty of habitability ordinances, P.L.L. 9-14.1 and 9-14.2. Mr. Walsh suggested that the

reference to repairs be deleted in Section 8-203.1(a)(2)(ii). Mr. Carbine stated that Mr. Walsh's proposal would not hurt landlords, because under the common law the tenant has the duty to repair the premises, and, except for defects subject to the rent excrow statute, tenants would continue to have responsibility to repair the premises after repeal of Section 8-203.1 unless there was a contrary agreement. Mr. Carbine stated that if Mr. Walsh's proposal was followed, the Commission might as well repeal Section 8-203.1 in its entirety. Mr. Davison stated that if Mr. Walsh's proposal was accepted, Section 8-203.1 would only require a landlord to specify in the lease the landlord's and tenant's responsibility as to heat, gas, electricity and water. Mr. Davison stated that leases do this at present, so repeal of this section would have no effect. Mr. Kalis withdrew his motion in favor of a motion by Mr. Carbine to amend the Commission's previously approved bill, with respect to duty to provide a copy of the leaseform and lease, to repeal Section 8-203.1 in its entirety and to enact the new section with respect to duty to provide leaseform and lease which the Commission previously approved on Sept. 14 and Sept. 28. Mr. Kalis seconded this motion. Mr. Carbine's motion was passed unanimously. A copy of the bill, repeal Section 8-203.1 and to enact a new section with respect to duty to provide leaseform and lease, is enclosed.

7. The Commission discussed the proposed bill with respect to validity of leases to amend Sections 4-101(a) and 4-103 to provide that a written lease is presumed valid if executed. Mr. Davison stated that this bill was drafted in response to an Attorney General's opinion which concluded that a written lease is not presumed valid unless acknowledged by a notary. Mr. Carbine stated that the bill should apply only to written leases for residential premises. Mr. Carbine stated that he would like to investigate the economic consequences of the bill, and any problems with the language of the bill. The Commission voted unanimously to approve in concept a bill that would provide that written leases for residential premises need not be notarized, but left the exact drafting to the legislative drafting subcommittee. A copy of the final draft of the bill is enclosed.

8. The meeting adjourned at 10 p.m.

Steven Davison,
Reporter

1- Approve Minutes

2- Entertain consideration for change in Voting Rule to require greater than a simple majority.

a- Will hamper Commission

b- Can Submit Minority Report

3- Entertain consideration to suspend from Commission any member who shall fail to appear for 3 cons. mtgs without justification to be approved by 2/3 vote of members present

4 – Meeting cancelled ½ hr. if quorum is lacking!

GOVERNOR'S COMMISSION

ON

LANDLORD-TENANT

LAW REVISION

16 Francis Street

Annapolis, Maryland

NOTICE OF MEETING

The Governor's Commission on Landlord-Tenant Law Revision will hold a regular meeting on Tuesday, December 14, 1976, at 7:45 p.m., in the Board Room located at the front of the third floor of Charles Hall at the University of Baltimore, North Charles Street and Mt. Royal Avenue, Baltimore, Maryland.

The items on the agenda for the December 14 meeting, in the order to be discussed, are as follows:

1. Good Cause Eviction Research Project - report on research conducted to date.

2. Discussion and vote on alternative bills either to:

   (a) repeal provisions of Section 8-402(a) (holding over) permitting landlords to recover against a holdover tenant in a summary suit for possession under Section 8-402 (copy enclosed); or

   (b) repeal provisions of Section 8-402(a) limiting the amount of damages which a landlord may recover against a holdover tenant in a summary suit for possession under Section 8-402 (copy enclosed).

3. Discussion and vote on proposed bill with respect to tenant's right to redeem under Section 401(e) (copy enclosed).

4. Discussion and vote on corrections and amendments proposed by Mr. Carbine to previously approved appeal bill (copies of proposed amendments to be forwarded later).

5. Discussion of revised draft of Good Cause Eviction bill.

6. Discussion of Uniform Residential Landlord and Tenant Act.

7. Future business of the Commission.

Steven G. Davison,
Reporter

GOVERNOR'S COMMISSION

ON

LANDLORD - TENANT

LAW REVISION

Minutes of Meeting

of

December 14, 1976

1. The meeting commenced at 7:45 p.m.

2. Present: Sallow (Chairman), Cox, Laurent, Franquet, Kirkpatrick, Kalis, Jenkins (lack of quorum).

3. Mr. Cox asked that the minutes for the October 26, 1976, meeting be corrected to show that he is president of the Baltimore County Tenants' Association, not the Baltimore City Tenants' Association.

4. Because of problems in obtaining a quorum for meetings, Mr. Sallow requested that the Reporter in the future send to members of the Commission an early notice of the meeting, without copies of bills on the agenda, and a stamped postcard to be returned to the Reporter on which a member can indicate whether he can attend the meeting. This early notice would be sent immediately after the prior meeting. The regular mailing, including the notice of meeting and copies of bills on the agenda, would be forwarded later. Mr. Sallow also requested that on the Monday before each meeting, the Reporter or the Commission's secretary should contact members of the Commission who have returned the postcard and have indicated they will attend the meeting, and members of the Commission who have not returned the postcard. If the telephone calls do not indicate that a quorum will be present at the meeting, the meeting will be calcelled; the Reporter or the Secretary will telephone all members who have not indicated that they will not attend to inform them that the meeting has been cancelled.

5. Mr. Davison noted that the number of people on the Commission's mailing list was constantly increasing. This is making it difficult to get the mailing out early enough so that members receive the mailing at lease a week before the scheduled meeting as required by the Commission's by-laws. Mr. Sallow directed that the Reporter, in the next mailing, notify all persons on the Commission's mailing list unless they send a letter to the Reporter requesting that they be retained on the mailing list. Mr. Sallow stated that he was taking this action because many people on the Commission's mailing list presently are not interested in the Commission's business.

6. Mr. Sallow proposed, for discussion at the January meeting that the Commission's by-laws be amended to require a higher percentage of affirmative votes to pass a bill than the presently required majority. He stated that such a change might obviate the need for the provision for minority reports in the Commission's by-laws.

7. Mr. Sallow proposed, for discussion at the January meeting, that the Commission's by-laws be amended to provide that the Commission, by a two-thirds vote of members present at a meeting, may suspend from the Commission a member who has missed 3 or more consecutive meetings.

8. Mr. Sallow stated the Commission would adjourn a meeting at 8:15 p.m. if a quorum was not present.

9. Mr. Davison noted that members of the Commission may be reimbursed by the state at 12¢ a mile for their travel to and from Commission meetings. Commission members may file their mileage claims with the Reporter.

10. The meeting was adjourned at 8:25 p.m.

Steven G. Davison,
Reporter

GOVERNOR'S COMMISSION

ON

LANDLORD - TENANT

LAW REVISION

16 Francis Street

Annapolis, Maryland

NOTICE OF MEETING

The Governor's Commission on Landlord-Tenant Law Revision will hold a regulat meeting on Tuesday, January 11, 1977, at 7:45 p.m. in the Board Room located at the front of the third floor of Charles Hall at the University of Baltimore, North Charles Street and Mt. Royal Avenue, Baltimore, Maryland.

The items on the agenda for the January 11 meeting, in the order to be discussed, are as follows:

1. Discussion of proposal to amend by-laws to provide that the Commission, by a two-thirds vote of members present at a meeting, may suspend from the Commission a member who has missed 3 or more consecutive meetings.

2. Discussion of proposal to amend by-laws to require a higher percentage of affirmative votes to pass a bill than the presently required majority.

3. Godd Cause Eviction Project-report on research conducted to date.

4. Discussion and vote on alternative bills either to:

   (a) repeal provisions of Section 8-402(a) (holding over) permitting landlord to recover damages against a holdover tenant in a summary suit for possession under Section 8-402 (copy enclosed); or

   (b) repeal provisions of Section 8-402(a) limiting the amount of damages which a landlord may recover against a holdover tenant in a summary suit for possession under Section 8-402 (copy enclosed).

5. Discussion and vote on proposed bill with respect to tenant's right to redeem under Section 8-401(e) (rent due and payable (copy enclosed).

6. Discussion on proposal by Mr. Carbine to amend appeal bill to delete requirement that a tenant, in order to continue stay of execution pending appeal of a judgment in a rent due and payable action under Section 8-401, must deposit with the court future rent as it becomes due and payable (copy enclosed of the appeal bill).

7. Discussion of revised draft of Good Cause Eviction bill.

8. Discussion of Uniform Residential Landlord and Tenant Act.

9. Future business of the Commission.

Steven G. Davison, Reporter

GOVERNOR'S COMMISSION ON

LANDLORD - TENANT LAW REVISION

Minutes of Meeting

of

January 11, 1977

1. Present: Jenkins (Acting Chairman), Carbine, Laurent, Ackerman, Adams, Picccinini, Braverman, Fischbach, Walsh, Kirkpatrick, Franquet, Cox, Kalis.

2. The meeting commenced at 8:00 p.m.

3. Agenda Item #1, which proposed amending the by-laws to authorize the Commission to suspend, by a two-thirds vote, a member who had missed 3 or more successive meetings, was discussed. Mr. Carbine questioned whether the Commission had the power to enforce such a by-law, since it would conflict with the Governor's exclusive power to appoint and remove members of the Commission. Mr. Laurent suggested as an alternative that the Commission request the Governor to remove members of the Commission who had a bad attendance record. Mr. Adams suggested that the Commission propose this change in the by-laws to the Governor for his approval. Mr. Walsh stated that the legislative member of the Commission usually doesn't attend the Commission's meetings. Mr. Walsh stated that the Governor clearly wants a legislative member of the Commission; if the Commission removed a legislative member because of a poor attendance record, it would be acting contrary to the Governor's desire to have a legislative member of the Commission. Mr. Walsh stated that if the proposed amendment implicity did not apply to absences for "good cause", it was deficient because it did not define "good cause". Mr. Walsh also criticized the proposal on the grounds that it would be inapproporiate to place members with poor attendance records on "trial" before the Commission to justify their absences. Mr. Carbine suggested that the Commission vote to request the Governor to give the chairman the power to remove a member who has missed 5 or 6 meetings in succession, although it would be within his discretion whether to use such power. Mr. Laurent stated that it was a farce to have a legislative member of the Commission who did not attend the Commission's meetings. Mr. Laurent suggested that removal of a member for poor attendance should be based upon overall attendance for the previous year, rather than upon a number of successive meetings missed, since a member could avoid removal by periodically attending a Commission meeting. Mr. Piccinini stated that a legislative member should attend Commission meetings even when the Legislature was in session, since other Commission members had schedules as busy as a member of the legislature. He argued that a member of the Commission who misses 3 consecutive meetings should be subject to removal. Mr. Laurent made a motion to have the Commission submit the proposed by-law to the Governor for his approval. Mr. Cox seconded this motion. Mr. Walsh stated that this issue was a sensitive problem; he suggested a step-by-step approach, commencing with the chairman discussing the problem with the Governor's staff and seeking to work out a policy with the Governor's office. Mr. Laurent withdrew his motion in favor of a motion to have the chairman discuss the attendance problem with the Governor's office and report a proposal or proposals to the Commission at its next meeting. This motion was seconded and passed unanimously.

4. Agenda Item #2, which proposed increasing the required number of members to pass a bill, was discussed. Mr. Piccinini made a motion to require a 2/3 vote of members present at a meeting to pass a bill and send it to the legislature. Mr. Adams seconded this motion. Mr. Piccinini stated that tenant members of the Commission do not consult with landlord members to determine the economic impact of bills prior to introducing them before the Commission. Mr. Laurent stated that it was not the practice for members to consult other members before introducing bills; he stated that the Commission served as the forum for members to discuss bills and that consultation with other members priot to introduction of a bill was not required. Mr. Kalis stated that the problem was where a bill passed by only a vote or two at a meeting where there was a bare quoroum; an absolute majority of members of the Commission, or that the required number of members for a quorum be increased. Mr. Walsh stated that he was against these proposals because they would immobilize the Commission. Mr. Walsh suggested that the Commission utilize subcommittees so that bills would be thoroughly studied and well-drafted. Mr. Laurent stated that he was against these proposals because it would place the Commission in the hands of "no-shows". He argued that such a proposal would put the Commission out of business, but would not stop the ontroduction of pro-tenant bills to the legislature. This would be bad, Mr. Laurent stated, because the Commission provided a forum for debating bills and improving the drafting of bills before the bill is introduced to the legislature. Mr. Kalis proposed that bills before the Commission be handled on a three-reader approach, whereby the bill would be introduced at a meeting, explained by the Reporter, and referred to a subcommittee (if appropriate). At the next meeting following introduction, members of the Commission would debate a bill, but would not vote on it. At the second meeting following introduction of a bill, the Commission would further debate the bill and vote on it. Mr. Carbine suggested amending Mr. Kalis' motion to provide that the Commission could use a two reader procedure for a bill if to voted by the Commission; Mr. Kalis accepted this amendment to his motion. The motion was seconded by Mr. Adams and Mr. Piccinini, and was passed unanimously. Mr. Carbine stated that the proposals to increase the number of members required to pass a bill or for a quorum would kill controversial bills; he stated that the Commission was purposefully set up with equal numbers of landlords and tenants so that votes on bills would be close. Mr. Davison stated that a change in the quorum requirement should not occur unitl the attendance situation was straightened out; he noted that the highest number of members attending a meeting in the last 2 1/2 years was 13 or 14. If the quorum was raised from the present 10 member requirement to 12 or 13, the Commission would be unlikely to obtain a quorum, he stated, since there are approximately 5 or 5 members of the Commission who rarely attend meetings. Mr. Davison suggested that the Commission defer raising the quorum requirement until the Commission had straightened out the attendance problem and had all members attending almost every meeting. Mr. Adams, agreeing with Mr. Davison's proposal, made a motion to amend the motion passed under Agenda Item #1 to also have the chairman discuss with the Governor's office the proposals to raise the quorum requirement and the necessary number of members required to pass a bill. Mr. Ackerman seconded the motion. The motion was passed unanimously. Mr. Adams suggested that the Reporter number bills consecutively each year as they are introduced. Mr. Davison agreed to do so and stated that bills will henceforth show the date of drafting and a number indicating its sequence of introduction during a calendar year (i.e., "77-1" would indicate that the bill was the first bill introduced in 1977) on the left hand top, and the agenda item number on the right-hand top. Mr. Davison also agreed to prepare memorandums analyzing bills that have been introduced; these memorandums would be distributed prior to second readers of bills.

5. The Good Cause Eviction Research Project was discussed. Mr. Davison distributed

a report by David Norken of Maryland PIRG discussing New Jersey landlords' reactions to the New Jersey statute, and a revised good cause eviction bill, with an accompanying cover letter, prepared by Maryland PIRG. Mr. Piccinini objected to the Commission involving itself with Maryland PIRG in this project, since Maryland PIRG was biased in favor of good cause eviction and could not be expected to do unbiased research. Mr. Davison stated that he was seeking to insure that Maryland PIRG's research was not biased; he also noted that Commission research assistants were also involved in doing research for the project. Mr. Davison noted that Tom Duvall, a Commission research assistant, would be submitting a report summarizing his conversations with New Jersey landlords, and stated that Mr. Duvall's report could be compared with Mr. Norken's report.

6. Agenda Items 4(a) and 4(b) were discussed. Mr. Davison noted that bill 4(a) reflected H.B. 1049 of the 1975 Regular Session, in which the Commission proposed repealing the limitations in Section 8-402 (Holding Over) on the amount of damages that a landlord could recover against a holdover tenant. Mr. Davison stated that H.B. 1049 would have repealed the limitations on damages recoverable against a holdover tenant, but would have required the landlord to recover damages in a normal civil action, not in a suit for possession against a holdover tenant under Section 8-402(b) (as is presently permitted under Section 8-402(a)(2)(v). Mr. Davison stated that this latter provision had been included in H.B. 1049 to insure personal service of process against holdover tenants. Mr. Kalis and Mr. Carbine stated, however, that Maryland courts hold as a matter of due process that personal service of process is required in suits for damages. Mr. Carbine stated that bill 4(b) would be acceptable to him if it provided that personal service of process was required in a suit for damages against a holdover tenant. Mr. Kalis agreed to this, but stated that the amendment should clearly state that personal service of process is not required in a suit for possession against a holdover tenant under Section 8-402(b). Mr. Davison agreed to amend bill 4(b) to reflect these suggestions and to place the amended bill on the agenda for the following meeting.

7. The meeting was adjourned at 9:30 p.m.

Steven G. Davison,
Reporter

GOVERNOR'S COMMISSION ON

LANDLORD - TENANT LAW REVISION

16 Francis Street

Annapolis, Maryland

NOTICE OF MEETING

The Governor's Commission on Landlord-Tenant Law Revision will hold a regular meeting on Tuesday, February 8, 1977, at 7:45 p.m., in the Board Room located at the front of the third floor of Charles Hall at the University of Baltimore, North Charles Street and Mt. Royal Avenue, Baltimore, Maryland.

The items on the agenda for the February 8 meeting, in the order to be discussed, are as follows:

1. Discussion by chairman of his discussions with Governor's office with respect to Commission policy towards Commission members with bad attendance records, and with respect to amendment of Commission by-laws to increase the required number of members for a quorum.

2. Report on research conducted to date on Good Cause Eviction Project.

3. Discussion by Reporter of proposed bill to amend Section 8-402(a) by repealing the limit on the amount of damages which a landlord may recover against a holdover tenant in a summary suit for possession under Section 8-402, and by requiring personal service of process in a suit under Section 8-402(a) to recover damages against a holdover tenant. (copy enclosed)

4. Discussion by Reporter of proposed bill with respect to tenant's right to redeem under Section 8-401(e) (rent due and payable). (copy enclosed)

5. Discussion by Reporter of proposal by Mr. Carbine to amend appeal bill to delete requirement that a tenant, in order to continue stay of execution pending appeal of a judgment in a rent due and payable action under Section 8-401, must deposit with the court future rent as it becomes due and payable. (copy of appeal bill enclosed, with bracket indicating proposed deletions)

6. Discussion by Reporter of proposed bill requiring uniform enforcement of rules and regulations by landlord. (copy enclosed)

7. Discussion by Reporter of revised draft of Good Cause Eviction bill.

8. Discussion by Reporter of proposed bill to enact amended version of Uniform Residential Landlord and Tenant Act.

9. Future business of the Commission.

Steven G. Davison,
Reporter

GOVERNOR'S COMMISSION ON

LANDLORD - TENANT LAW REVISION

Minutes of Meeting

of February 8, 1977

1. Present: Sallow (chairman), Jenkins, Walsh, Cox, Kirkpatrick, Franquet, Piccinini, Dancey, Offit, Everngam, Adams, Kalis.

2. The meeting started at 8 p.m.

3. Mr. Davison distributed copies of the 8 bills (H.B. 426, 427, 552, 553, 554, 658, 778 and 779) which the Commission has introduced in the 1977 Regular Session of the General Assembly. Mr. Davison noted that hearings on these bills would be held by the House Judiciary Committee, but none had yet been scheduled. Mr. Davison told members that they could receive notice of the date of scheduled hearings by giving their name and address to the House Judiciary Committee (269-3224); the Committee will send out written notice of scheduled hearings to them in the preceding week. Mr. Davison also stated that members could determine the latest status of legislative bills by contacting legislative reference (269-2871).

   Mr. Davison also distributed copies of a letter he had sent to Delegate Joseph Owens, Chairman of the House Judiciary Committee, which contains written summaries of the Commission's eight bills.

   Mr. Davison also summarized legislative bills in the landlord-tenant area that had been filed by other members of the legislature. He noted that a computer printout listing all landlord-tenant bills, and copies of the bills, could be obtained by telephoning Legislative Reference.

4. Mr. Davison also distributed a draft bill that would enact, with amendments, the Uniform Residential Landlord and Tenant Act (URLTA). He stated that the bill amends the URLTA to reflect present Maryland statutory law. Mr. Davison noted that the bill used brackets to indicate the origin of amendments to the URLTA; these brackets do not indicate that the bracketed words are to be deleted, which is the normal use of brackets in bills. Mr. Davison indicated that Comments follow each section of the bill, explaining the origin of the section and any proposed amendments to the URLTA or Maryland statute.

   Mr. Davison also distributed a memorandum, which had been requested by Mr. Adams, that analyzes the Virginia Residential Landlord and Tenant Act (which is a modified version of the URLTA).

5. The Good Cause Eviction Research Project was discussed. David Norken of Maryland PIRG discussed his report, which had been distributed at the January 11 meeting, with respect to the experiences of New Jersey landlords under the New Jersey good cause eviction statute. Mr. Norken answered questions asked by members of the Commission about his report. Mr. Norken reiterated that the principal concern of New Jersey landlords is not the provisions of the good cause eviction statute, but rather the delays associated with bringing a rent due and payable action against a tenant.

Mr. Norken noted that New Jersey, unlike Maryland, required personal service of process to be initially attempted upon a tenant in a rent due and payable action. The landlord, in New Jersey, must also give a tenant three days notice, and a right to pay rent due and payable, before the landlord could file an eviction action for rent due and payable. In New Jersey, if personal service cannot be effected, an affidavit must be filed with the court, and then personal service can be given by registered mail. This process results in considerable more delay in the hearing of rent due and payable cases in New Jersey than in Maryland.

Mr. Davison also distributed a report prepared by Mr. Daniel Leeds, as part of academic requirements in a law school course taught by Mr. Davison, which presents the views of New Jersey tenant representatives on the New Jersey good cause eviction statute. Mr. Davison stated that he would attempt to have Mr. Leeds present at the Commission's March 8 meeting to answer questions about his report.

6. The Commission discussed Agenda Item #1. Mr. Sallow stated that he had discussed this itme with the Governor's Office. Mr. Sallow told the Commission that the Governor's office had informed him that the Commission had the authority to run the Commission as they saw fit. Mr. Sallow indicated that the Governor's Office had told him that the Commission can adopt whatever rules for its internal operation as it see fit, including rules with respect to attendance, suspension and removal of members of the Commission. Mr. Sallow, however, cautioned the Commission against adopting a rule authorizing the Commission to suspend members of the Commission.

Mr. Piccinini, addressing the second part of Agenda Item #1, recommended that the Commission require more than a majority to approve a bill for submission to the legislature; he suggested that a vote of two-thirds or three-quarters of members present be required to approve a bill for submission to the legislature. Mr. Sallow replied that the Commission membership is divided between landlords and tenants. Mr. Sallow noted that the Commission has completed work on non-controversial bills, and that remaining bills awaiting consideration by the Commission are controversial bills that will cause the Commission to split along landlord-tenant lines, with the 3 neutral members having to make the decision as to whether the Commission should approve the bill. Mr. Sallow stated that if the Commission changed its rules with respect to how bills are approved for submission to the legislature, the approval of bills would hinge upon who shows up at a meeting. Mr. Sallow concluded that a requirement that two-thirds or three quarters of members present approve a bill would result in most bills considered by the Commission not being approved; the consequence would be the demise of the Commission. Mr. Davison noted that even if Mr. Piccinini's proposal was adopted, bills disapproved by the Commission would be introduced to the legislature by a member of the legislature.

Mr. Adams proposed, as an item to be included on the agenda for the March 8 meeting, that the by-laws be amended to provide that the Commission may remove a member if the member (excluding legislative members) misses three consecutive meetings without good cause (good cause to be determined by the chairman) and misses the next meeting after written notice from the Commission that he will be removed from the Commission if he doesn't attend the next meeting.

Mr. Adams also proposed, as an item to be included on the agenda for the March 8 meeting, that 14 members be required to be present to establish a quorum. Ms. Dancey argued that raising the quorum requirement at a time when the Commission was having problems with attendance of members would cause more meetings to be cancelled because of lack of a quorum.

It was suggested by members of the Commission that he poll members of the Commission to determine if there might be a better night for meeting than the second Tuesday of the month.

Mr. Jenkins proposed, as an item to be included on the agenda for the March 8 meeting, that a vote of two-thirds of members present at a second reader meeting (the meeting at which the Commission first discusses a proposed bill) be required to waive the three reader requirement on the bill and to allow the Commission to vote on a bill at the second reader meeting. Mr. Sallow stated that there would be no waiver of the three reader requirement on bills at the next meeting in March.

7. The Reporter discussed Agenda Item #3 (first reader). Mr. Davison noted that subsection 8-402(A)(3) of Bill #3 should be amended to read as follows:

"(3) ANY ACTION TO RECOVER DAMAGES UNDER THIS SUBSECTION MAY BE BROUGHT BY SUIT SEPARATE FROM THE REMOVAL PROCEEDING OR IN AN ACTION FOR POSSESSION UNDER SECTION 8-402(B), IN ANY COURT HAVING JURISDICTION OVER THE AMOUNT IN CONTROVERSARY." Mr. Davison also noted that the word "LAND'S" in line 3 of Section 8-402(A)(1) should be "LANDLORD'S." Mr. Davison stated that the only substantive amendment to §8-402 that would be effected by the bill would be to permit a landlord to recover all actual damages from a holdover tenant.

Mr. Walsh argued, that the bill should be amended to also provide for discovery and for an expedited hearing. He noted that no discovery is permitted by the Maryland Rules of Procedure if the amount in controversy is less than $500. He also noted that if the amount in controversy is over $500, the case is not heard until 30 to 45 days after filing. Mr. Walsh recommended that the bill be amended to provide for an expedited hearing and discovery in actions by landlords to recover damages from holdover tenants. Mr. Davison stated that he would research these two proposals and report back to the Commission at its next meeting. (Bill #3 will be held on first reader at the March 8 meeting).

8. The Reporter discussed Agenda Item #4 (first reader). Mr. Davison stated that the bill as drafted was probably unconstitutional, because requiring a tenant to pay rent in order to redeem, other than rent which was owing under the judgment which was being executed, would violate a tenant's due process rights to notice and hearing before he could be required to pay such rent. Mr. Davison stated that a constitutional bill could not be drafted to achieve Mr. Ackerman's purpose.

9. The Reporter discussed Agenda Item #5 (first reader). Mr. Davison stated that Mr. Carbine proposed deletion of the sentence in the appeal bill requiring a tenant, in order to continue stay of execution on appeal in a rent due and

payable action, to increase the amount of the appeal bond by the amount of future rent as it became due and payable during the appeal. Mr. Davison stated that Mr. Carbine made this proposal because he believed that this provision, like Mr. Ackerman's proposal in bill #4, would violate a tenant's due process rights to notice and hearing before he could be requires to pay rent. Mr. Davison stated that he agreed with Mr. Carbine's opinion; Mr. Davison also criticized the sentente that Mr. Carbine proposed to delete because it required the tenant to pay future rent into the court as an appeal bond, but made no provision for the court to pay the money to the landlord. Mr. Davison noted that the effect of the sentence would be to deprive a landlord of all future rent payments from a tenant while appeal of a rent due and payable action was pending against a tenant who filed an appeal bond to stay execution of judgment.

10. The Reporter discussed Agenda Item #6 (first reader). Mr. Davison noted that the bill would allow any tenant to prevent a landlord from changing any rule or regulation that was in effect when the tenant first occupied the premises. He stated that landlords would certainly strongly oppose this provision, although a bill only permitting a tenant to recover damages or terminate a lease, where a landlord waived or failed to enforce rules and regulations against other tenants, would be less objectionalbe. Mr. Davison, however, noted that the latter type of bill would not aid a tenant in Mr. Cox's situation.

11. Mr. Davison distributed a copy of a letter from Mr. Laurent, dated January 21, 1977, which raised two areas for consideration by the commission. The first area involves the type of tenancy created when a landlord consents to continued occupancy by a holdover tenant. The second area concerns landlords whose negligence causes interruption of essential services to tenants. Mr. Davison stated that these items would be placed on the agenda of the March 8 meeting for discussion by the Commission.

12. The meeting was adjourned at 9:30 p.m.

Steven G. Davison,
Reporter

GOVERNOR'S COMMISSION ON

LANDLORD - TENANT LAW REVISION

16 Francis Street

Annapolis, Maryland

NOTICE OF MEETING

The Governor's Commission on Landlord - Tenant Law Revision will hold a regular meeting on Tuesday, March 8, 1977, at 7:45 p.m. in the Board Room located at the front of the third floor of Charles Hall at the University of Baltimore, North Charles Street and Mt. Royal Avenue, Baltimore, Maryland.

The items on the agenda for the March 8 meeting, in the order to be discussed, are as follows:

1. Discussion of and vote on proposal by Mr. Adams to amend by-laws to require 14 members for a quorum.

2. Discussion of and vote on proposal by Mr. Adams to amend by-laws to authroize Commission to remove a member of the Commission (excluding legislative members) who misses three consecutive meetings without good cause (good cause to be determined by the chairman), ~~and who misses the next meeting after written notice from the Commission that he will be removed from the Commission if he doesn't attend the next meeting.~~

3. Discussion of and vote on proposal by Mr. Jenkins to amend the by-laws to require a two-thirds vote at the first second reader meeting to waive the three reader requirement for approval of bills.

4. Discussion of and vote on proposal by Mr. Piccinini to require approval of 60% of members present to submit a bill to the legislature.

5. Report on research conducted on Good Cause Eviction Project.

6. Discussion by Reporter of Mr. Walsh's proposal to amend proposed bill to repeal the limit on the amount of damages which a landlord may recover against a holdover tenant (Agenda item #3 at February 8 meeting), to provide for discovery and to expedite the hearing.

7. Discussion by Commission of proposed bill with respect to tenant's right to redeem under Section 8-401(a) (rent due and payable) (second reader).

8. Discussion by Commission of proposal by Mr. Carbine to amend appeal bill to delete requirement that a tenant, in order to continue stay of execution pending appeal of a judgment in a rend due and payable action under Section 8-401, must deposit with the court future rent as it becomes due and payable (second reader).

9. Discussion by Commission of proposed bill requiring uniform enforcement of rules and regulations by landlord (second reader).

10. Discussion by Commission of Mr. Laurent's letter of Jan. 21, 1977, and its enclosures.

11. Discussion by Reporter of proposal by Mr. Piccinini to adopt bill to amend Art. 43, Sec. 427A, to provide that water charges do not become a lien on a one family home where the tenant is responsible under the lease for payment of the water charges.

12. Future business.

Steven G. Davison,
Reporter

GOVERNOR'S COMMISSION

ON

LANDLORD - TENANT LAW REVISION

Minutes of Meeting

of

March 8, 1977

1. Present: Sallow (chairman), Jenkins, Cox, Laurent, Carbine, Dancey, Braverman, Kirkpatrick, Offit, Ackerman, Kalis.

2. The meeting started at 7:50 p.m.

3. Mr. Sallow announced that Mr. Fischbach had resigned because he was moving out-of-state to accept a new job.

4. Mr. Sallow announced that in the future meetings will be scheduled to commence at 7:30 p.m.

5. Mr. Davison noted that Mr. Homa, representing mobile home park owners, had drawn his attention, at the March 1 hearing of the House Judiciary Committee, to the question of whether the statutory provisions of Title 8 of the Real Property Article apply to the relationship between mobile home park owners and residents. Mr. Davison noted that although the last session of the General Assembly enacted a statute specifically regulating the relationship between mobile home park owners and residents, it was unclear whether some or all of the provisions of Title 8 of the Real Property Article also applied to the mobile home park owner-resident relationship. Mr. Davison noted that the retaliatory eviction statute specifically applied to mobile home park owners and residents, but that other sections of Title 8 were silent on this point. Mr. Davison stated that Mr. Homa had suggested that the Commission study the applicability of Title 8 to mobile home park owners and residens, and draft a bill to settle the question. Mr. Davison suggested that the Commission also might wish to review the Maryland mobile home part statute and propose amendments to strengthen the rights of mobile home park residents. Mr. Carbine requested the Reporter to prepare a report on the problem of the applicability of Title 8 of the Real Property Article to mobile home park owners and residents. Mr. Sallow stated that any meetings by the Commission on mobile home parks should include representatives of mobile home park residents as well as representatives of mobile home park owners. Mr. Laurent requested that the Commission defer meeting on mobile home park problems until after it has completed its study of good cause eviction and the Uniform Residential Landlord and Tenant Act.

6. Mr. Carbine requested the Reporter to draft a bill of basic definitions to apply to Title 8; he suggested that tenant be drafted to include subtenant and assignee, so that repeated references to subtenants and assignees in §§8-401 and 8-402 would be unnecessary.

7. Mr. Davison noted that the House Judiciary Committee had held hearings on the Commission's 8 bills (HB 426, 427, 552, 553, 554, 658, 778 and 779), but had

not yet voted on the bills.

8. Mr. Sallow stated that 10 members of the Commission had indicated that they wished to continue to meet on the second Tuesday of each month, so the Commission would continue to meet on the second Tuesday of each month.

9. The Commission discussed Agendat Item #2, which would establish a procedure for removal of members of the Commission with bad attendance records. Mr. Ackerman stated that he and Mr. Adams now believed that it would be better to base the attendance requirement on a percentage of meeting attended each year, rather than on the number of consecutive meeting missed, because a member of the Commission could avoid removal under the proposal on the agenda simply by attending every fourth meeting. Mr. Carbine disagreed, stating that the original proposal is a better way of removing members who are no longer interested in serving on the Commission. Mr. Laurent suggested that the proposal be amended to trigger the warning after a member has missed two consecutive meetings, with a member being subject to removal if he missed 3 meetings in a row without good cause. Mr. Carbine opposed Mr. Laurent's proposal on the grounds that it would apply too often. Mr. Sallow suggested amending the proposal to provide for removal of a member if he misses 3 consecutive meetings without good cause (good cause to be determined by the chairman). Mr. Carbine stated that he was being persuaded to follow Mr. Ackerman's percentage proposal; he suggested a 70% attendance requirement. Mr. Sallow suggested leaving the problem to an ad hoc, case-by-case determination. Mr. Davison stated that removing members for poor attendance on a case-by-case basis, without a uniform rule, might be regarded as arbitrary, and a violation of due process and equal protection. Mr. Laurent suggested that there be an attendance sheet which would have to be initiated by members in attendance at each meeting; this attendance sheet would be passed around at each meeting for inspection by each member, and a copy would be sent to each member in each monthly mailing. The Reporter stated that he would begin doing so at the April meeting; he also stated that he would prepare an attendance chart shwoing the attendance of members from the September 1976 meeting through the March 1977 meeting, and include copies in the next mailing. Mr. Laurent suggested that at the end of each year, the chairman should talk with those members whom he determines have poor attendance records, and discuss with them whether they intend to become active members the following year.

   Mr. Carbine made a motion that the by-laws be amended to provide that a member may be removed by the Commission if he misses 3 consecutive meetings without good cause (good cause to be determined by the chairman). Mr. Laurent seconded this motion. Mr. Laurent made a motion to amend Mr. Carbine's motion to provide also that the chairman should review the attendance record of each member every June, and discuss a member's status with each member who he determines to have a poor attendance record. Mr. Carbine accepted this amendment to his motion. The motion was passed unanimously by a vote of 9-0, with one abstention.

10. The Commission voted, without discussion, on Agenda Item #1, which would require 14 members, present to constitute a quorum. The proposal was defeated by a vote of 9 Against, 0 For, and 2 Abstentions.

11. The Commission discussed agenda item #3, which would amend the by-laws to require a two-thirds vote at the second reader meeting to waive the three reader requirement for approval of bills. At Mr. Davison's suggestion, Mr. Jenkins amended the proposal to provide that the three reader requirement at either the first or

second reader meeting. Mr. Offit made a motion to amend the proposal, which was accepted by Mr. Jenkins, to specify that a bill could not be voted on at a first reader meeting, but could only be voted on at a second or third reader meeting. The motion as amended was seconded and approved by a vote of 9-0, with 2 abstentions.

12. The Commission discussed Agenda Item #4, which would require approval of 60% of members present at a meeting in order to submit a bill to the legislature. Mr. Cox opposed the proposal, stating that a majority of a quorum should be sufficient to approve a bill for submission to the legislature. Mr. Davison noted that a quorum presently constituted 10 members, so 5 members could approve a bill if the chairman abstained. Mr. Davison noted that the proposal would thus require a minimum of 6 members, rather than 5 as at present, to approve a bill for submission to the legislature. Mr. Kalis supported the proposal, stating that approval of 5 members (25% of the members of the Commission) should not be sufficient to send a bill to the legislature. Mr. Laurent opposed the proposal, stating that it would allow bills to defeated simply by members not attending meetings. Mr. Sallow recommended that a vote on this proposal, and on a proposal to raise the number of members constituting a quorum, be tabled until it is seen what effect the new attendance rule will have upon the number of members attending a meeting. Mr. Laurent agreed with this recommendation. Mr. Kalis, also agreeing with the chairman's suggestion, made a motion to table Agenda Item #4 until September, at which the effect of the attendance rule can be evaluated and agenda items #1 and #4 could be reconsidered. Mr. Laurent seconded the motion. The motion was passed by a vote of 9-1, with one abstention.

13. Mr. Davison had no new reports on the good cause eviction project, although he stated that a report on periodical and newspaper articles on the New Jersey statute and a report by Tom Duvall, Commission research assistant, on his discussions with New Jersey landlords, should be distributed in several months. He noted that Daniel Leed's telephone number was on his report, and that members could telephone him if they wished to discuss his report with him. Mr. Davison stated that Mr. Leeds has given him a list of New Jersey tenant representatives (with their addresses and telephone numbers) whom he contacted in preparing his report; a copy of this list is available from the Reporter.

14. Agenda Item #6 was discussed. Mr. Kalis noted that Mr. Walsh's concern with discovery and expedited hearings in suits by landlords against holdover tenants to recover damages was based upon situations when the landlord joined his suit for damages with his claim for possession in the same suit. Mr. Kalis noted that the rules for discovery and time of the hearing were different for suits for damages against holdover tenants than for suits to recover possession from a holdover tenant. Mr. Davison explained under Maryland District Rule 401(a) (copy enclosed), there are no rights of discovery for either landlord or tenant in a suit seeking to recover possession from a holdover tenant under §8-402, but that both landlord and tenant have discovery rights in a suit by the landlord seeking to recover more than $500 damages from a holdover tenant. There are, however, no discovery rights where a landlord seeks less than $500 damages from a holdover tenant. Mr. Carbine stated that he didn't believe that the Commission had any authority to propose an amendment to the rules governing discovery; he stated this was a matter for the Bar Association Rules Committee. Mr. Davison stated that the Commission might, however, be able to make recommendations for changes in the Rules to the Rules Committee. Mr. Carbine and Mr. Kalis opposed extending discovery rights to suits seeking possession from a holdover tenant under §8-402, stating that this would interfere with the summary nature of the procedure. Mr. Carbine stated that he opposed discovery in suits under §§8-401 and 8-402. He stated that there were good reasons for not allowing discovery in district court

actions; he noted that on appeal a trial de novo is held in circuit court, and that discovery can be ordered by the district court when necessary.

Mr. Davison noted that a summary suit for possession against a holdover tenant is an expedited hearing under §8-402, with the hearing set very soon after the filing of the summons and complaint, whereas a suit for damages against a holdover tenant cannot be heard sooner that 48 days after the date of filing pursuant to Maryland District Rule 101(a)(copy enclosed).

Because of these conflicts, Mr. Davison recommended that the bill be amended to require that a suit for damages against a holdover tenant be filed separately from the suit for possession against a holdover tenant, and not be allowed to be joined for trial with the suit seeking possession.

Mr. Davison also discussed the question of a tenant's right to a jury trial in a suit seeking damages and/or possession against a holdover tenant. Under the Maryland Constitution, a landlord or tenant has a right to a jury trial only if the amount in controversy exceeds $500. Art. XV, §6. For a party in a landlord-tenant action to be entitled to a jury trial, there must either be a claim for money damages exceeding $500, or a claim that the value of the right to possession exceeds $500. Bringe v. Collins, 274 Md. 338, 335 A.2d 670 (Court of Appeals 1975). If a jury trial request is properly made, the case is transferred from District Court to Circuit Court or Baltimore City Supreme Bench for a jury trial. Where the landlord brings a suit for possession, without a claim for damages, against a holdover tenant, the tenant may not have a jury trial unless he makes a claim for money damages exceeding $500 or claims that the value of the right to possession exceeds $500, and elects a jury trial in accordance with Maryland District Rule 343. Bringe v. Collins, supra. Where the landlord brings a suit in district court under §8-402 to recover both possession, and rent and costs in excess of $500, the tenant is entitled, if he elects a jury trial, to have a jury trial on both the claim for possession and the claim for rent and costs, without the need to allege that the right to possession exceeds $500. Mulchansingh v. Columbia Management, Inc., 364 A.2d 78 (Court of Special Appeals, 1976).

Mr. Davison also noted that the district courts have juridsiction of landlord's suits to collect rent or damages if the amount claimed does not exceed $5000, but that the circuit courts have jurisdiction if the landlord's claim against the tenant exceeds $5000. Greenbelt Consumer v. Acme Mkts., 272 Md. 222, 322 A.2d 521 (Court of Appeals 1974).

The Commission tabled the bill, but placed the question of a landlord's suit against a holdover tenant for damages on the agenda for the April meeting for general discussion by the Commission.

15. Agenda Item #15 was discussed. Mr. Ackerman stated that his bill is seeking to address a problem in Prince George's County that occurs when a tenant seeks to redeem a judgment for rent due and payable by tendering the rent, late fees and costs due under the judgment, where the tenant also owes rent that has become due since the judgment was entered. In such situations, the constables in Prince George's County permit the tenant to redeem under Section 8-401(e) by tendering only the amount due under the judgment, even though the landlord claims that the tenant owes other rent that has become due and payable since entry of the judgment. Mr. Ackerman stated that the intent of his bill was to require a tenant to pay all rent that has become due and payable since entry of the judgment in order to redeem and prevent execution of judgment. Mr. Davison stated that

the bill as drafted was probably unconstitutional because it doesn't provide notice and opportunity for a judicial hearing to the tenant, to determine whether he legally owes rent that has become due and payable since entry of the judgment, prior to requiring him to pay rent that has become due and payable since entry of the judgment in order to redeem and prevent execution of the judgment. Mr. Kalis stated that in Baltimore City the practice was to have the constable or sheriff return the warrant of execution to the court where the landlord claims that the tenant owes rent in addition to the rent due under the judgment and the tenant denies this or refuses to pay the additional amount claimed. In such cases, the constable or sheriff doesn't allow the tenant to redeem by paying only the amount of rent due under the judgment. After the constable or sheriff returns the warrant of execution, the court holds a hearing that afternoon or the next day to determine if the tenant owes rent in addition to the amount due under the judgment. If the court determines that the tenant owes rent in addition to that due under the previous judgment, the tenant is required to pay such rent, in addition to the amount of the previous judgment, in order to redeem and prevent execution of judgment. Mr. Ackerman stated that this procedure would be difficult to implement in Prince George's County, because the court hears rent due and payable cases only on Fridays. Mr. Carbine stated that Mr. Ackerman's problem was more suitable for disposition by the court through a procedural rule or administrative policy rather than through enactment of a statute by the legislature. The Commission decided to table the bill and discuss this problem with Margaret Kostrisky, Chief Clerk of the District Court, to determine if the Baltimore City practice could be extended to Prince George's County and other counties. Mr. Davison was asked to report back to the Commission at the April meeting on his discussions with Ms. Kostrisky on this problem.

16. Mr. Kalis noted that in several cases in Baltimore City where a landlord sued for rent due and payable for the present month, as well as for unpaid rent from previous months, the court had held that only the rent owed for the present month could be collected in a rent due and payable action; the court treated the rent owed for previous months as a past due contractual debt, and required the landlord to bring a separate action in contract to collect the past due rent. Mr. Kalis asked the reporter to draft a bill to amend §8-401 to make clear that past due rent is rent collectible under §8-401 and not a past due debt collectible in a separate contract action. Mr. Davison noted that the Commission had a bill before the legislature to define "rent" under §8-401; if this bill was passed, Mr. Kalis' proposal could be drafted as a proposed amendment to that section. If the bill was defeated, it could be amended to include Mr. Kalis' proposal.

17. Agenda Item #8 was discussed. Mr. Davison distributed a memorandum that he distributed to the House Judiciary at its hearing on HB 779 on March 1, in which he made a personal recommendation that the following sentence be deleted from HB 779 at lines 265-267 on p. 6: "IN AN APPEAL UNDER §8-401, THE DEPOSIT OR BOND INCLUDES RENT DUE AND PAYABLE AS SUCH AMOUNTS BECOME DUE AND PAYABLE." Mr. Davison stated that he made this recommendation because he believes that the sentence denies a tenant due process and deprives a landlord of all future rent payments pending disposition of an appeal by a tenant in a rent due and payable case. Mr. Carbine stated that he wasn't so sure about Mr. Davison's due process argument, but that he opposed the sentence because it would place an administrative burden on the district courts by making them the depository for rent becoming due and payable during an appeal; he stated that it would be an administrative burden even if the court was required to turn the rent money to the landlord after it was paid into court by the tenant.

18. Mr. Sallow stated that Agenda Items #9, 10, and 11 would be the first three items on the agenda at the next meeting.

19. The meeting was adjourned at 9:35 p.m.

Steven G. Davison,
Reporter

March, 1977
Agenda Item #11

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 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 1976 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 1976 Supplement) be and they are hereby repealed and re-enacted, with amendments, to read as follows:

Article 43

427A.

(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 charged 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 SERVICES 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 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.

GOVERNOR'S COMMISSION

ON

LANDLORD - TENANT LAW REVISION

16 Francis Street

Annapolis, Maryland

NOTICE OF MEETING

The Governor's Commission on Landlord-Tenant Law Revision will hold a regular meeting on Tuesday, April 12, 1977, at 7:30 p.m. (the time of meeting has been permanently moved up from 7:45 p.m.), in the Board Room located at the front of third floor of Charles Hall at the University of Baltimore, North Charles Street and Mt. Royal Avenue, Baltimore, Maryland.

The items on the agenda for the March 8 meeting, in the order to be discussed, are as follows:

1. Discussion by Commission of proposed bill requiring uniform enforcement of rules and regulations by landlord (second reader).

2. Discussion by Commission of Mr. Laurent's letter of Jan 21, 1977, and its enclosures.

3. Discussion by Reporter of proposed bill to amend Art. 43, Sec. 427A, to provide that water and sewer charges do not become a lien on a one family home where the tenant is responsible under the lease for payment of the water or sewer charges (first reader).

4. Discussion by Reporter of proposed bill, suggested by Mr. Carbine, to provide basic definitions of landlord, tenant, and residential property within meaning of Real Property Article, Title 8 (first reader).

5. Report by Reporter of his discussions with Ms. Margaret Kostrisky, Chief Clerk of the District Court, with respect to procedure to require tenant to pay all rent due and payable in order to redeem and prevent execution of judgment under §8-401(e); and discussion by Commission of this problem.

6. Discussion by Commission of procedures to be followed by landlord in seeking to recover damages from holdover tenant. Discussion will center on whether suit for damages against holdover tenant may be joined with a suit for recovery of possession from a holdover tenant, with consideration of problems with discovery, time of hearing, jurisdiction, and jury trials.

7. Discussion and vote by Commission on proposal by Mr. Carbine to amend appeal bill, HB 779, by deleting 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."

8. Future Business.

Steven G. Davison, Reporter

GOVERNOR'S COMMISSION ON

LANDLORD - TENANT LAW REVISION

Minutes of Meeting

of April 12, 1977

1. Present: Jenkins (Acting Chairman), Adams, Cox, Franquet, Kirkpatrick, Walsh, Laurent, Piccinini, Dancey, Ackerman.

2. The meeting started at 7:45 p.m.

3. Mr. Davison reported on the status of the 8 Commission bills before the 1976 Regular Session of the General Assembly. He noted that HB 427, HB 658, HB 778, and HB 779 were reported unfavorably by the House Judiciary Committee. HB 426 was passed by the House of Delegates, but was reported unfavorably by the Senate Judicial Proceedings Committee. HB 552 and HB 554 were passed with amendments, by the House of Delegates, but were reported unfavorably by the Senate Judicial Proceedings Committee. HB 553 was passed with an amendment by the House of Delegates; the Senate passed HB 553, but adopted amendments different than those adopted by the House. [HB 553 died in Conference Committee when the House and Senate would not agree to the other's amendments]. Mr. Davison stated that these bills would be placed on the agenda at the May meeting for discussion by the Commission on second reader, so that they could be voted on at the June meeting.

4. Agenda Item #1 was discussed. Mr. Cox stated that he was only concerned with enforcing lease clause provisions against all other tenants in the same building. Mr. Cox, in response to a question by Mr. Piccinini, stated that the problem addressed by the bill was a statewide problem. Mr. Davison explained that a tenant, under contract law, cannot enforce a lease provision against another tenant if the landlord fails to do so, since Maryland does not recognize a tenant as a third party beneficiary to a lease between the landlord and other tenants. Mr. Davison stated that a bill permitting an aggrieved tenant to enforce a lease provision against another tenant where the landlord didn't do so might be an unconstitutional interference with the contract rights of the landlord and other tenants. Mr. Cox stated that he would be satisfied with a bill giving a tenant the right to terminate his lease where he is aggrieved by the landlord's waiver of or failure to enforce, a lease clause in the tenant's lease and the other tenant's lease. Mr. Davison stated that he would amend the bill in this manner for consideration on third reader at the next meeting. Mr. Piccinini asked whether the state anti-discrimination statute would apply to the problem; members of the Commission agreed that the statute would not apply to arbitrary non-enforcement of lease provisions by a landlord.

5. Agenda Item #2 was discussed.
   a. The Commission discussed the status of a holdvoer tenant after the landlord has consented to continued occupancy by the holdover tenant (such by accepting rent from the holdover tenant), Mr. Davison stated that under Maryland common law, the holdover tenant would become a periodic tenant after the landlord has consented (such as by accepting rent) to continued occupancy; the type of of periodic tenancy would be determined by the period for which rent is paid under the lease. As an example, if the tenant was required to pay rent monthly,

he would become a month-to-month tenant if the landlord consented to his continued occupancy after he held over. However, if the lease specified rent on a yearly basis, the tenant would become a year-to-year tenant, even though the lease required installment payments of rent each month. Mr. Davison stated that under Maryland common law, the holdover tenant would not be held to the fixed term (such as a year) under his now-terminated written lease. Mr. Davison noted, however, that the holdover tenant who was permitted to stay on would be governed by the lease provisions of his previous written lease, unless the landlord and tenant mutually agreed upon changes. Mr. Davison stated that Maryland common law provided a satisfactory solution to the problem raised by Mr. Laurent's letter, so that a bill addressed to the problem was not necessary.

b. The Commission discussed Mr. Laurent's proposal to impose criminal penalties upon a landlord who denied essential services to his tenants. Mr. Laurent stated that he favored criminal penalties because criminal penalties would be a strong deterrant against landlords denying essential services. Mr. Davison noted that the Uniform Residential Landlord and Tenant Act contained two sections that provided civil remedies to tenants who were denied essential services. He stated that he would draft a bill for consideration at the next meeting that provided for both civil remedies for tenants (based upon the URLTA) and criminal penalties when a landlord denied essential services to his tenants.

6. Agenda Item #3 was discussed. Mr. Piccinini stated that Baltimore City now uses water meters, and makes sewer charges the same amount as the water charges. He stated that water and sewer services are metered utilities, and that charges for such utilities should be paid by a tenant if he has agreed to do so in the lease. Mr. Piccinini stated that political subdivisions are not complying with Art. 43, Sec. 427A, by turning off water when bills are unpaid after the required time period (10 days in Baltimore City, 60 days statewide). He noted that some tenants run up $400-$500 water bills. Mr. Piccinini noted that the rent escrow statute requires the landlord to provide water and sewer services, even though such services are actually supplied by political subdivisions. Mr. Laurent stated that he was sympathetic to this problem faced by landlords. Mr. Walsh raised the problem of the tenant's liability for water charges when water is lost due to a defect or leak in plumbing owned by the landlord. Mr. Walsh proposed an amendment to the bill, to which Mr. Piccinini agreed, to make the tenant not liable to a political subdivision for water charges that are due to defects that are the responsibility of the landlord and that have been brought to the landlord's attention, to make such water charges a first lien on the property if the landlord has been notified of such defects or leaks. Mr. Ackerman suggested that the bill also be amended to require a tenant to file an application and pay a deposit prior to initiation of water service, and to give notice to the political subdivision when he leaves to cutoff service. Members of the Commission discussed this proposal; the consensus was that such a proposal was politically unfeasible, and was also not necessary since landlords had the water meter checked prior to occupancy by a tenant and after the tenant vacates the premises.

7. Agenda Item #4 was discussed. Mr. Davison noted this definition bill would include a "roomer" within the definition of tenant. Mr. Walsh stated that the definition of "roomer" was confusing and should be clairifed. Mr. Davison agreed with Mr. Walsh, although he noted that this was the definition of "roomer" used in the Uniform Residential Landlord and Tenant Act.

8. Agenda Item #5 was discussed. Mr. Walsh objected to the proposal contained

in Mr. Davison's letter to Ms. Kostritsky, stating that the proposal was an unconstitutional denial of due process because it did not give the tenant enough time between notice and hearing to prepare his case. Mr. Walsh stated that he believed that the Baltimore City procedure referred to in the letter had been declared unconstitutional by a Maryland circuit court. He stated that the landlord had an adequate remedy under §8-401 by bringing a separate suit for rent due and payable. Mr. Davison stated that he had not intended in the letter to propose an unconstitutional procedure; he stated that he assumed that the District Court and Constables Committee would structure such a procedure so as to comply with due process requirements. Mr. Walsh stated that he would report back to the Commission at the next meeting with respect to the current procedure in Baltimore City. Mr. Davison stated that he would research case law with respect to the constitutional issue raised by Mr. Walsh, and report back to the Commission at the next meeting.

9. Agenda Item #6 was discussed. Mr. Walsh noted, as an addition to the discussion in the minutes of the March meeting, that no discovery is permitted when a suit joins a claim for possession and a claim for damages in the same action. Mr. Jenkins stated that the Commission agreed that the possession suit should be kept summary in nature. Members of the Commission noted that the landlord was entitled under existing law to bring a separate suit for damages, with an opportunity for discovery. The Commission agreed that the proposed bill was consequently unnecessary because existing law gave the landlord this option of a separate suit for damages.

10. The Commission decided to postpone consideration of Agenda Item #7, with HB 779 at the next meeting.

11. The meeting was adjourned at 9:15 p.m.

Steven G. Davison,
Reporter

GOVERNOR'S COMMISSION

ON

LANDLORD - TENANT LAW REVISION

NOTICE OF MEETING

The Governor's Commission on Landlord-Tenant Law Revision will hold a regular meeting on Tuesday, May 10, 1977, at 7:30 p.m. (the time of meeting has been permanently moved up from 7:45 p.m.) in the Board of Trustees Room located at the front of the third floor of Charles Hall at the University of Baltimore, North Charles Street and Mt. Royal Avenue, Baltimore, Maryland.

The items on the agenda for the May 10 meeting, in the order to be discussed, are as follows:

1. Discussion and vote by Commission on amended bill to permit tenant to terminate lease when tenant is aggrieved by landlord's waiver, in the case of another tenant, of a lease clause in the tenant's lease (third reader).

2. Discussion by Commission of bill with respect to failure of landlord to provide essential services (second reader).

3. Discussion by Commission of amended bill to amend Art.43, Sec. 427A, to provide that water and sewer charges do not become a lien on a single family home when the tenant is responsible under a lease for payment of the water or sewer charges, (second reader).

4. Discussion by Commission of bill to provide basic definitions of landlord, tenant, and residential property within meaning of Real Property Article, Title 8 (Second reader).

5. Discussion by Commission of due process requirements of notice and hearing that should be followed with respect to procedure to require tenant to pay all rent due and payable in order to redeem and prevent execution of judgment under §8-401(e).

6. Discussion by Commission of whether to re-approve HB 426 of the 1977 Regular Session (month notice to quit to week-to-week tenant) (second reader).

7. Discussion by Commission of whether to re-approve HB 427 of the 1977 Regular Session (security deposits) (second reader).

8. Discussion by Commission of whether to re-approve HB 552 of the 1977 Regular Session (Definition of Rent) (second reader).

9. Discussion by Commission of whether to re-approve HB 553 of the 1977 Regular Session (Condominium Conversion) (second reader).

10. Discussion by Commission of whether to re-approve HB 554 of the 1977 Regular Session (Duty to provide copy of leaseform and lease (second reader).

11. Discussion by Commission of whether to re-approve HB 658 of the 1977 Regular Session (Notarization of leases) (second reader).

12. Discussion by Commission of whether to re-approve HB 778 of the 1977 Regular Session (Retaliatory Eviction) (second reader).

13. Discussion by Commission of whether to re-approve HB 779 of the 1977 Regular Session (Appeals) (second reader), including discussion of Mr. Carbine's proposal to delete from lines 265-267 on p. 6 the sentence: "IN AN APPEAL UNDER §8-401, THE DEPOSIT OR BOND INCLUDES RENT DUE AND PAYABLE AS SUCH AMOUNTS BECOME DUE AND PAYABLE."

14. Future business.

Steven Davison,
Reporter

GOVERNOR'S COMMISSION

ON

LANDLORD - TENANT LAW REVISION

Minutes of Meeting

of May 10, 1977

1. Present: Sallow (chairman), Laurent, Piccinini, Ackerman, Kirkpatrick, Everngam, Weisengoff (lack of quorum).

2. Mr. Davison apologized for the late mailing of the Notice of Meeting. He stated that heavy workload in the Law School Admissions Office was making it difficult for the Commission's Secretary, Leslie Varga, to get the mailing out early. He also noted that a great number of items, which he distributed, had to be prepared for the meeting. Mr. Davison noted that the mailings could be sent out earlier if the Commission purchased a typewriter which the Secretary could keep at her home, so that she could work on the mailings at her convenience at home. Mr. Sallow stated, however, that Mr. Hans Mayer of the Governor's office had told him that the Commission could only purchase a manual typewriter, but not an electric typewriter.

3. Mr. Sallow stated that because of a lack of a quorum, the Commission would have to hold an extra meeting either in June or September. He asked the Reporter to poll the Commission members to determine which month would be preferrable for holding the extra meeting.

Steven G. Davison,
Reporter

GOVERNOR'S COMMISSION

ON

LANDLORD - TENANT LAW REVISION

NOTICE OF MEETING

The Governor's Commission on Landlord-Tenant Law Revision will hold a regular meeting on Tuesday, June 14, 1977 at 7:30 p.m. (the time of meeting has been permanently moved up from 7:45 p.m.), and a special meeting on Tuesday, June 28, 1977, at 7:30 p.m., in the Board of Trustees Room located at the front of the third floor of Charles Hall at the University of Baltimore, North Charles Street and Mt. Royal Avenue, Baltimore, Maryland.

The items on the agenda for the June 14 and June 28 in the order to be discussed, are as follows:

1. Discussion and vote by Commission on amended bill to permit tenant to terminate lease when tenant is aggrieved by landlord's waiver, in the case of another tenant, of a lease clause in the tenant's lease (thrid reader) (Agenda Item #1 - May meeting).

2. Discussion by Commission of bill with respect to failure of landlord to provide essential services (second reader) (Agenda Item #2 - May meeting).

3. Discussion by Commission of amended bill to amend Art. 43, Sec. 427A, to provide that water and sewer charges do not become a lien on a single family home when the tenant is responsible under a lease for payment of the water or sewer charges, (second reader) (Agenda Item #3 - May meeting).

4. Discussion by Commission of bill to provide basic definitions of landlord, tenant, and residential property within meaning of Real Property Article, Title 8 (second reader) (Agenda Item #4 - May meeting).

5. Discussion by Commission of due process requirements of notice and hearing that should be followed with respect to procedure to require tenant to pay all rent due and payable in order to redeem and prevent execution of judgment under §8-401(e) (Agenda Item #5 - May meeting).

6. Discussion by Commission of whether to re-approve HB 426 of the 1977 Regular Session (month notice to quit to week-to-week tenant) (second reader) (Agenda Item #6 - May meeting).

7. Discussion by Commission of whether to re-approve HB 427 of the 1977 Regular Session (security deposits) (second reader) (Agenda Item #7 - May meeting).

8. Discussion by Commission of whether to re-approve HB 552 of the 1977 Regular Session (Definition of Rent) (second reader)(Agenda Item #8 - May meeting).

9. Discussion by Commission of whether to re-approve HB 553 of the 1977 Regular Session (Condominium Conversion) (second reader) (Agenda Item #9 - May meeting).

10. Discussion by Commission of whether to re-approve HB 554 of the 1977 Regular Session (Duty to provide copy of leaseform and lease) (second reader) (Agenda Item #10 - May meeting).

11. Discussion by Commission of whether to re-approve HB 658 of the 1977 Regular Session (Notarization of leases) (second reader) (Agenda Item #11 - May meeting).

12. Discussion by Commission of whether to re-approve HB 778 of the 1977 Regular Session (Retaliatory Eviction) (second reader) (Agenda Item #12 - May meeting).

13. Discussion by Commission of whether to re-approve HB 779 of the 1977 Regular Session (Appeals) (second reader), including discussion of Mr. Carbine's proposal to delete from lines 265-267 on p. 6 the sentence: "IN AN APPEAL UNDER §8-401, THE DEPOSIT OR BOND INCLUDES RENT DUE AND PAYABLE AS SUCH AMOUNTS BECOME DUE AND PAYABLE." (Agenda Item #13 - May meeting).

14. Duscussion by Commission of proposed bill to amend Section 8-402 (holdover tenants) to permit a landlord to recover all actual damages from a holdover tenant (second reader) (Agenda Item #6 - March meeting).

15. Future business.

16. Agenda Items that are on second reader at the June 14 meeting will be discussed and voted upon by the Commission on third reader at the June 28 meeting.

Steven G. Davison,
Reporter

GOVERNOR'S COMMISSION ON

LANDLORD-TENANT LAW REVISION

Minutes of Meeting of

June 14, 1977

1. Present: Sallow (chairman), Jenkins, Carbine, Walsh, Laurent, Piccinini, Braverman, Ackerman, Adams, Kirkpatrick, Everngam, Franquet, Cox, Kalis.

2. The meeting commenced at 7:45 p.m.

3. Mr. Piccinini stated that he was resigning because he didn't think that the Commission had approved meaningful bills during his two years on the Commission. He said that he didn't intend any personal criticism, but believed that the Commission had not addressed matters of importance to landlords and tenants. Mr. Sallow later noted that Mr. Offit was resigning from the Commission, and that new members, Mr. Summers and Mr. Stoloff, had just been appointed to the Commission.

4. Agenda Item #1 was discussed. Mr. Cox noted that the bill would not apply to a landlord who deleted a no-pet clause in future leases with new tenants. He proposed amending the bill by deleting in the last sentence the words "and" and "and the other tenant's lease;" and adding in the second sentence, after "enforce" and before "in the," the words "failure to include in a new lease". Mr. Jenkins seconded the motion. Mr. Davison noted that this amendment would make the bill applicable to the problem raised by Mr. Cox. Mr. Adams opposed the bill, stating that it wouldn't have any credibility in Annapolis, because it only addressed one tenant's problem. Mr. Laurent stated that a broader problem which encompasses the bill is the proposal to make leases two-way contracts by making lease covenants mutually dependent. Mr. Davison stated, however, that the bill was not really a mutually dependent covenant bill, because it addressed situations where a landlord's actions towards one tenant adversely affected another tenant --not a situation where a landlord breaches a covenant in that tenant's lease. Mr. Carbine asked what effect the bill would have upon landlords; Mr. Adams stated that it would have an insignificant effect upon landlords. Mr. Cox stated that physicians had told him that many people suffer allergic asthmatic reactions to animal hairs; Mr. Adams, however, questioned how many tenants suffered such reactions in situations similar to that of Mr. Cox's wife. Mr. Ackerman noted that the problem suffered by Mr. Cox and his wife was aggravated because of the amount of time it takes a landlord to evict a tenant who has breached his lease, particularly if the landlord must resort to a court suit and the tenant raises defenses and contests the suit. Mr. Laurent suggested that the bill should be amended to provide that a tenant could not terminate his lease if the landlord has issued a notice to quit to the offending tenant or had taken other good faith action to stop the actions of a tenant whose breach of his lease was adversely affecting other tenants.

Mr. Carbine states that such a change was not needed since the reference to "waiver" or "failure to enforce" in the bill would be interpreted in this manner. Mr. Davison suggested that the bill might be amended to require a tenant to give the landlord written notice of the problem caused by another tenant and reasonable opportunity to stop the other tenant's conduct, before the tenant could terminate his lease. Mr. Everngam made such a motion, which was seconded by Mr. Jenkins. Mr. Everngam asked whether a tenant could terminate his lease because another tenant did not pay his rent. Mr. Davison answered no, noting that a tenant could terminate his lease only if he was adversely affected by another tenant's breach of his lease, such as by endangerment of health or safety. Mr. Carbine stated the problem addressed by the bill might be one which is impossible to resolve by legislation, since it would require a highly complex and detailed bill. Mr. Walsh agreed with Mr. Carbine, stating that the bill would be impossible to enforce. Mr. Walsh stated that landlords need to have flexibility in their dealings with individual tenants; he stated that the bill, however, might make landlords too rigid in their dealings with tenants, to the disadvantage of tenants. Mr. Cox stated that as a result of these last remarks, he was withdrawing the bill from the Commission's consideration, although he stated that he would try to have it introduced before the legislature.

5. The Commission next discussed Agenda Item #2. Most of members of the Commission stated that they were generally satisfied with the bill. Mr. Carbine, however, questioned whether the Commission had the authority to propose a bill with criminal penalties. Mr. Davison stated that he believed the Commission did have such authority, since Title 8 of the Real Property Article (landlord-tenant statutes) does contain some criminal penalties. Mr. Walsh questioned why a tenant should have to give the landlord notice under Section (A)(1)(A) when the landlord has intentionally deprived the tenant of essential services. Mr. Davison noted that the remedies under Section(A)(1)(A) are available if the landlord acts either intentionally or negligently. He stated that if the tenant was denied essential services because of the landlord's negligence, the landlord might not have actual knowledge that the tenant was being denied essential services. Mr. Davison stated that the tenant should therefore be required to give the landlord notice before invoking the remedies under this section, because the remedies under this section, because to not require notice if the landlord intentionally denies essential services would make the tenant have to make a legal judgment as to whether the landlord acted intentionally or negligently. Mr. Davison noted this bill provided remedies that are not provided by the rent escrow statute. He noted, however, that the availability of the rent escrow remedies depend simply upon the existence of defective conditions, while the remedies under the bill are available only if denial of essential services was caused by an intentional (willful) act of the landlord or because of the landlord's failure to use reasonable care (negligence).

6. Agenda Item #3 was discussed. Mr. Walsh questioned whether the Commission had jurisdiction to propose this bill, since it would regulate the relationship between the landlord and government. Mr. Davison stated that the bill also regulated the relationship between tenants and landlords; he noted that the Commission had proposed landlord-tenant bills, such as the condominium conversion bill, which affected statutes not within Title 8 of the Real Property Article. Mr. Sallow stated that this was a proper bill for the Commission to sent to the legislature; he stated that jurisdictional problems should not stop the Commission from sending

needed legislation to the General Assembly for their consideration. Mr. Piccinini stated that the problem addressed by the bill was a statewide problem. Mr. Laurent stated that he supported the bill on the grounds that a tenant should be just as responsible for his water and sewer charges as he is for his gas and electricity charges. Mr. Kalis said that he also supported the bill, but that he didn't think it would be passed by the General Assemb y because it might affect the ability of county and city governments to sell their sewer and water bond issues. Mr. Carbine suggested that the bill be amended to provide that a governmental agency not be permitted to cut off a tenant's water where the landlord was responsible for the water bill. Several members of the Commission suggested that such a proposal would face strong political opposition, and would impose a great administrative burden on governmental agencies. Mr. Piccinini noted in Baltimore City, and under the Agenda Item #2 bill, a landlord would face criminal penalties if he didn't pay the water bill and the tenant's water was shut off. Mr. Davison also noted that civil remedies, such paying the water bill and deducting the amount from rent, would be available to a tenant in this situation under the Agenda Item #2 bill. Mr. Walsh proposed that the bill be amended to provide that if a landlord fails to pay a water bill for which he is responsible, the landlord's water, not the tenant's, should be shut off. Mr. Kalis asked how this would be enforced if the landlord was a corporation. Mr. Davison also noted that such a provision would also be difficult to enforce if the landlord lived in a multi-unit high-rise apartment. Mr. Davison suggested that the bill might be amended to provide that a governmental agency must give a tenant prior notice before shutting off his water because the landlord has not paid the water bill for which the landlord is responsible. Mr. Adams argued that such a requirement would be strongly opposed because it would be difficult to administer.

7. The Commission discussed Agenda Item #4. Mr. Kalis argued that roomers should be excluded from the definition of tenant, because their status and problems were different from those of tenants. Mr. Carbine agreed with Mr. Kalis stating that giving roomers the same rights as tenants would effect a substantive change in the law. Mr. Carbine stated that the definition bill should not effect substantive changes in the law. Mr. Walsh asked what effect the exemption of geriatric institutions from the scope of the bill by Section 8-201(B)(1)(A) would have upon the rights of elderly tenants residing in Section 202 projects and other HUD-assisted housing projects. Mr. Davison agreed that such tenants should not be excluded from the bill; he stated that the bill should be amended to make this clear. Mr. Walsh also asked about the status under the bill of ground rents, which appear to be regulated by Sections 8-109 and 8-111 of the Real Property Article. Mr. Davison suggested that if the definition of "dwelling unit" excluded ground rent property, the bill would not substantively affect ground rents. Mr. Carbine also questioned whether the bill needed to include a definition of "organization." He noted this definition might affect the retaliatory eviction statue (i.e., tenant's organizations). Mr. Davison noted that the definition of "organization" was drawn from the Uniform Residential Landlord and Tenant Act. He stated, however, that courts could probably provide a definition of "organization" if the bill did not include one. Mr. Carbine also asked whether the bill should include a definition of lease. Mr. Davison stated that the Uniform Residential Landlord and Tenant Act defined "rental agreement" rather than "lease", and that he had not included this URLTA definition because it might affect a substantive change in Maryland law. [Reporter's Note: Title 1 of the Real Property Article does include a definition of lease, which indicates when an oral lease, as opposed to a written lease, is valid.]

8. Agenda Item #5 was discussed. Mr. Davison noted that Ms. Kostrisky's letter indicated that Judge Sweeney and Ms. Kostrisky opposed Mr. Ackerman's proposal, stating that the landlord must file a new action to recover rent that becomes due after entry of a judgment for prior rent. Mr. Davison also noted that his memorandum on Lindsey v. Normet concluded that Mr. Ackerman's proposal was probably unconstitutional, or at least raised serious constitutional problems. Mr. Walsh stated that the problem involved amendment of a judgment, as opposed to amendment of pleadings. Mr. Davison stated that Lindsey v. Normet would probably require a tenant to be given at least four days after notice of the landlord's desire to amend the judgment before hearing could be held. He noted that Section 8-401 required 5 days notice; Mr. Kalis noted that the legislature had recently amended 8-401 to require 5 days notice rather than 3 days notice, and thus would not likely approve a bill seeking to shorten this peiord. Although Mr. Davison stated that he believed that Lindsey v. Normet precluded any satisfactory solution to Mr. Ackerman's problem, he agreed to work with Mr. Ackerman and Mr. Kalis as a subcommittee to attempt to come up with a solution.

9. Agenda Item #6 (HB 426) and Agenda Item #7 (HB 427) were discussed.

10. The Commission agreed to consider Agenda Items 8-14 on third reader at the June 28 meeting.

11. The meeting was adjourned at 9:30 p.m.

Steven G. Davison,
Reporter

GOVERNOR'S COMMISSION

ON

LANDLORD - TENANT LAW REVISION

Minutes of Meeting on

June 28, 1977

1. Present: Sallow (chairman), Cox, Piccinini, Offit, Kirkpatrick, Braverman, Ackerman, Walsh, Jenkins, Kalis.

2. The meeting commenced at 7:50 p.m.

3. Mr. Sallow introduced Jack Stollof and Milton Sommers, potential members.

4. Mr. Sallow announced that Charles Fischbach had resigned from the Commission. Mr. Sallow stated that although no organization is entitled to a position on the Commission, he was considering a request by the Baltimore City Tenants Association to replace Mr. Fischbach, a member of the Association, with Steve Meridith, also a member of the Association.

5. Mr. Sallow stated that he would discuss the Governor's veto of SB 150, which was based upon a belief that the Commission had rejected SB 150, with John N. Ruth of the State's Attorney General's Office.

6. Agenda Item #2 (essential services bill) was discussed. Mr. Offit made a motion to amend the third line of Section (A) to require a tenant to give written notice by certified mail. This motion was seconded by Mr. Jenkins. Mr. Walsh opposed this proposed amendment, stating that it would impose a hardship on many tenants, because many tenants don't know to send a letter by certified mail. He stated that the proposed amendment would make the remedies under the bill unavailable to most tenants. Mr. Sommers stated that tenants won't be able to prove that they have given written notice if they simply mailed a letter, but that the certified mail requirement will help tenants to prove their case under the bill. Mr. Offit stated that the certified mail requirement is not too sophisticated a requirement for most tenants; he noted that Baltimore City requires landlords to give eviction notices to tenants by certified mail. Mr. Walsh argued that certified mail would take several days to reach the landlord. Mr. Offit's proposed amendment to the bill passed unanimously. Mr. Braverman noted that under the bill, a landlord might be liable if the tenant is denied essential services because the tenant fails to pay water or other essential services for which the tenant is responsible under the lease. Mr. Davison and Mr. Walsh argued, however, that the landlord would not be liable under the bill under these circumstances, because the landlord would not have acted willfully or negligently to have denied essential services to the tenant. Mr. Kalis stated, however, that he had received summonses for criminal violations of the Baltimore

City essential services ordinance when the denial of essential services was due to the tenant's failure to pay essential services charges for which the tenant is responsible for the lease. Mr. Braverman also stated that this had happened to him. Mr. Sallow, however, disagreed that a landlord would be criminally liable under Baltimore City P.L.E. 9-15 under these circumstances. Mr. Braverman made a motion, which was seconded by Mr. Kalis, to add a Section (C) to the bill providing that a landlord will not be considered to have acted willfully or negligently in denying essential services if the denial of essential services to a tenant is due to the tenant's failure to pay charges for essential services for which the tenant is responsible under his lease. Mr. Braverman's motion was passed by a vote of 8-1. Mr. Walsh proposed amendments to Sections (A) and (B) to provide the bill's remedies to tenants when a landlord has denied ingress or egress to the premises to a tenant, such as by a lockout. Mr. Jenkins seconded this motion. Mr. Braverman stated that under this proposed amendment a landlord would be liable when a tenant appears to have abandoned the premises and the landlord locks up the apartment or changes the lock, but the tenant has not actually abandoned the premises or moved out. Mr. Davison noted that the landlord would not be liable under these circumstances, because the tenant has to give the landlord written notice of the denial of ingress or egress, and the landlord would have to fail to correct the situation, before the landlord would be liable under the bill. Mr. Walsh's proposed amendment to the bill passed unanimously. The bill, as amended, passed unanimously.

7. The Commission discussed Agenda Item #3 (amendments to Art. 43, Sec. 427A). Several landlord members of the Commission suggested that the bill be amended to require that tenants give written notice by certified mail. Mr. Kalis stated that he opposed the amendments to the bill that are based on Mr. Walsh's suggested amendments at the April meeting, which deal with a tenant's liability for water charges that result from water which is lost due to defects in plumbing facilities owned by the landlord. Mr. Kalis noted that the original purpose of the bill was to protect landlords from first liens on their property for unpaid water and sewer charges for which the tenant is responsible under his lease with the landlord. He stated that the amendments proposed by Mr. Walsh, however, affected the liability between a tenant and his landlord and between a tenant and the governmental agency supplying water and sewer service. Mr. Kalis argued that Mr. Walsh's proposed amendments should consequently be considered in a separate bill. Mr. Piccinini made a motion; which was seconded by Mr. Offit, to amend Sections (d), (e) and (f) of the bill by deleting in these sections the language beginning with "; THIS EXCEPTION, HOWEVER, DOES NOT APPLY TO CHARGES..." Mr. Piccinini's proposed amendment passed by a vote of 5-2, with 2 abstentions. The bill, as amended, was passed by a vote of 7-2.

8. Agenda Item #4 (Definition bill) was discussed. Mr. Kalis argued that roomers should be excluded from the definition of tenants under the bill, since defining tenants to include roomers would be a substantive extension of existing law, and the definition bill was intended to be non-substantive. Mr. Kalis' motion to exclude roomers from the definition

of tenants was seconded by Mr. Jenkins and was passed by a vote of 7-1. Mr. Walsh questioned whether the exclusion of geriatric institutions from the definition of "dwelling unit" on p. 3 of the bill would exclude rental buildings financed under Section 236 of the Federal Housing Act and other HUD programs which have primarily elderly tenants. Mr. Walsh consequently made a motion to exclude the word "geriatric" from Section 8-201 (B)(1)(A) on p.3 of the bill. This motion was seconded by Mr. Jenkins and was passed unanimously. Members of the Commission agreed that mobile home parks should be addressed in a separate bill, and should not be incorporated in the definition bill. Mr. Walsh noted, however, that a rental of a mobile home should be treated the same as any other landlord-tenant situation; he noted that mobile home parks required separate treatment because in such parks the park owner rents a plot of land to a person who owns his mobile home. The Commission unanimously passed an amendment to the bill to delete all references to mobile home parks, but to continue to include mobile homes in the definition of "dwelling unit". Mr. Walsh made a motion to delete the definition of "organization" (Section 8-117(B)) on the grounds that it was unnecessary. This motion was seconded by Mr. Jenkins and was passed unanimously. The Commission unanimously approved the bill as amended.

9. The Commission unanimously re-approved Agenda Item #6, HB 426 of the 1977 Regular Session (month notice to quit to week-to-week tenant).

10. The Commission re-approved, by a vote of 8-1, HB 427 of the 1977 Regular Session (security deposits).

11. The Commission discussed HB 552 of the 1977 Regular Session (Definition of Rent). Mr. Kalis made a motion to amend the bill to define late charges and damages as rent under Section 8-401. Mr. Ackerman seconded the motion. Mr. Walsh argued that it was unconstitutional to have damages collected under Section 8-401 without personal service of process upon the tenant. Mr. Kalis replied that even though personal service of process might be required in order to collect damages from a tenant under §8-401, his amendment would permit a tenant to be evicted under §8-401 for failure to pay late charges or damages without personal service of process. Mr. Walsh noted, however, that under this proposed amendment a tenant would have to pay damages under §8-401 in order to redeem and prevent eviction by execution of the judgment. Mr. Kalis' motion was passed by a vote of 5-4 and the bill as amended was passed by a vote of 5-4.

12. The next regular meeting was scheduled for September 20 because of Rosh Hashana on September 13.

Steven G. Davison,
Reporter

GOVERNOR'S COMMISSION

ON

LANDLORD - TENANT LAW REVISION

NOTICE OF MEETING

The Governor's Commission on Landlord-Tenant Law Revision will hold a regular meeting on Tuesday, September 20, 1977, at 7:30 p.m., in the third floor of Charles Hall at the University of Baltimore, North Charles Street and Mt. Royal Avenue, Baltimore, Maryland.

The items on the agenda for the September 20 meeting, in the order to be discussed, are as follows:

1. Discussion and vote by Commission on whether to re-approve HB 553 of the 1977 Regular Session (Condominium Conversion) (third reader)(copy enclosed).

2. Discussion and vote by Commission on whether to re-approve HB 554 of the 1977 Regular Session (Duty to provide copy of leaseform and lease)(third reader)(copy enclosed).

3. Discussion and vote by Commission on whether to re-approve HB 658 of the 1977 Regular Session (Notarization of Leases) (third reader) (copy enclosed).

4. Discussion and vote by Commission on whether to re-approve HB 778 of the 1978 Regular Session (Retaliatory Eviction) (Third reader) (copy enclosed).

5. Discussion and vote by Commission on whether to re-approve HB 779 of the 1977 Regular Session (Appeals), including discussion of Mr. Carbine's proposal to delete from lines 265-267 on p. 6 the sentence: "IN AN APPEAL UNDER §8-401, THE DEPOSIT OR BOND INCLUDES RENT DUE AND PAYABLE AS SUCH AMOUNTS BECOME DUE AND PAYABLE." (third reader) (copy enclosed).

6. Discussion and vote by Commission of proposed bill to amend Section 8-402 (holdover tenants) to permit a landlord to recover all actual damages from a holdover tenant (third reader) (copy enclosed).

7. Future business.

Steven G. Davison,
Reporter

GOVERNOR'S COMMISSION

ON

LANDLORD - TENANT LAW REVISION

Minutes of Meeting

of September 20, 1977

1. Present: Sallow(Chairman), Walsh, Cox, Kirkpatrick, Dancey, Everngam, Jenkins. The meeting commenced at 7:35 p.m.

2. Mr. Sallow ammounced that Mr. Carbine had resigned from the Commission; and that he had dropped Ms. Gorham from the Commission because of poor attendance, pursuant to the by-laws.

3. Mr. Sallow announced that Neil Meyerhoff, 110 E. 39th St., Balto., MD 21210, had been appointed to the Commission. He also stated that he had recommended Kenneth Pilla to be appointed to the Commission. Mr. Sallow stated that he believed that Mr. Offit and Mr. Piccinini had resigned from the Commission and that Jack Stoloff and Milton Sommers had been appointed to the Commission in their place.

4. Mr. Sallow stated that he was considering resigning as chairman and as a member of the Commission, and that if he did so he would recommend Larry Jenkins to be appointed chairman of the Commission.

5. Mr. Sallow discussed a letter he had written the Governor's Office with respect to the Governor's veto of SB 150, and the letter he had received from Thomas Peddicord in reply (copies enclosed). Mr. Davison stated that the Commission had never discussed or voted upon SB 150, although the Commission had discussed and rejected a similar bill with respect to application deposits during several meetings in the spring of 1977.

6. Mr. Walsh expressed his concern with the Definition of Rent bill passed by the Commission at the June 28 meeting. He stated that the amendments to the bill had totally changed the concept of the bill, and that the bill as finally passed raised serious constitutional and policy issues that should have been discussed more thoroughly by the Commission. He stated that since the amendments in effect made the bill a different bill, it should not have been voted upon until the following meeting. Mr. Walsh made a motion to withdraw the bill from the General Assembly and to have the Commission reconsider it. Mr. Sallow agreed to place this motion on the agenda for the October 11 meeting for discussion and vote.

7. Mr. Walsh also made a motion to amend the by-laws to provide that if amendments are proposed to a proposed bill at the third reader meeting for that bill, the amendments and the bill itself cannot be voted upon by the Commission until the next meeting. Mr. Sallow stated that he believed that the third reader meeting on a bill should involve only only discussion and the vote on the bill, and that if amendments are proposed to a bill at third reader, neither the amendments nor the

bill should be voted upon until the next meeting. Mr. Sallow stated that the intent of the by-laws was to require the Commission to discuss a bill during a minimum of two meetings before voting on it, and that the same procedure should apply to proposed amendments to a bill. Mr. Davison noted that the by-laws, however, were unclear as to how the three reader procedures for bills applied to proposed amendments to a bill. Mr. Sallow agreed to place this motion on the agenda for the October 11 meeting for discussion and vote.

8. The meeting adjourned at 8:15 p.m.

Steven Davison,
Reporter

GOVERNOR'S COMMISSION

ON

LANDLORD - TENANT LAW REVISION

Minutes of Meeting

of

October 11, 1977

1. Present: Jenkins(acting chairman), Walsh, Laurent, Everngam, Sommers, Cox, Meyerhoff, Kalis (quorum). The meeting began at 7:50 p.m.

2. Mr. Sallow announced that he has tendered his resignation from the Commission and had recommended that Mr. Jenkins be appointed as the new chairman of the Commission. After Mr. Sallow's departure, Mr. Jenkins acted as chairman for the meeting.

3. The Commission decided that the future procedure to notify members of Commission meetings will be to send a written notice of the meeting, without the agenda, approximately two weeks before the meeting, and to send out the regular notice, with the agenda, subsequently, just prior to the meeting. The initial notice of the meeting would request Commission members promptly to inform the Reporter or Secretary of whether they will attend the meeting, either by returning an enclosed stamped postcard or by phoning the Reporter or Secretary. The Reporter or Secretary would phone members who don't so respond on the day before the meeting in order to insure that a quorum will be present at the meeting.

4. The Commission discussed agenda item #2. Mr. Walsh stated that the purpose of his proposed amendment to the by-laws was to insure that the Commission carefully considered the constitutionality and policy implications of proposed amendments before they were adopted by the Commission. Mr. Walsh referred to the amendments to the definition of rent bill passed at the June 28 meeting, which he argued completely changed the bill and also made §8-401 unconstitutional by allowing landlords to serve process by mail or posting in a suit to collect damages when damages are defined as rent. Mr. Sommers stated that he agreed with the concept of having the Commission carefully consider proposed amendments to bills, but noted that Mr. Walsh's proposed amendment to the by-laws would permit members to prevent a bill from being voted upon by proposing amendments to the bill on third reader, thus causing the bill to revert to second reader for consideration of the proposed amendment. Mr. Sommers consequently made a motion to amend the by-laws to provide that a two-thirds vote is required to pass an amendment to a bill which is proposed at a third reader meeting; if an amendment to a bill proposed at a third reader meeting does not receive a two-thirds vote it is defeated.

Mr. Sommers' motion was seconded by Mr. Walsh. Mr. Sommers' stated that his proposal would not cause an amendment to a proposed bill that is offered at third reader to delay the vote on the bill. Mr. Sommers' motion was approved unanimously.

5. The Commission discussed agenda item #1. Mr. Walsh stated that he had proposed that the Commission recall and withdraw the definition of rent bill which it passed at the June 28 meeting because the amendments to the bill approved at the June 28 meeting totally changed the bill and presented constitutional and policy issues which had not been carefully and fully considered by the Commission. Mr. Walsh stated that although the approved change in the by-laws would prevent this type of action occurring in the future, he believed that the Commission should recall and reconsider the bill. Mr. Sommers and Mr. Kalis, noting that the bill had been approved by one vote with the Commission splitting along landlord-tenant lines, stated that it would be a dangerous precedent for the Commission to permit an approved bill to be recalled at a later meeting, when members changed their minds or the number of opponents of the approved bill outnumbered the proponents at a subsequent meeting. Mr. Davison agreed that the Commission should not recall a bill simply because the number of its opponents outnumbered the proponents at a subsequent meeting. Mr. Davison, however, suggested that the bill be recalled for the limited purpose of correcting what he stated to be were unconstitutional provisions with respect to the collection of damages defined as rent in a suit under §8-401. Mr. Davison stated that by amending §8-401 to define damages as rent, the bill made §8-401 unconstitutional because §8-401 permits service of process by mail or posting, whereas Maryland courts require personal service of process in suits to collect damages. Mr. Kalis stated that the recall issue was related to the larger issue of whether a bill should be able to be submitted to the legislature by a vote of a bare majority of members constituting a quorum at a meeting. He argued that bills should not be able to be approved for submission to the General Assembly by a bare majority of a quorum. He stated that he would vote to recall the definition of rent bill if the Commission amended the by-laws to require more than a bare majority of a quorum to approve a bill. Mr. Jenkins stated that he agreed that more than a bare majority of a quorum should be required to approve a bill. Mr. Jenkins directed the Reporter to place the question of amending the by-laws to require more than a bare majority of a quorum to approve a bill on the agenda for the November 8 meeting for discussion by the Commission. Mr. Sommers stated that if the definition of rent bill was unconstitutional, he thought that the bill should be withdrawn. Mr. Sommers consequently made a motion to recall the definition of rent bill and to not have the Commission re-consider the bill for submission to the 1978 Session of the General Assembly. This motion was seconded and approved unanimously.

6. The Commission discussed agenda item #3 (HB 553 of the 1977 Regular Session (Condominium Conversion)). Mr. Davison noted that under present Maryland law a landlord cannot convert a rental building to a condominium (by filing the declaration and plat) until 180 days after he has given notice of his intent to convert to his tenants. Mr. Davison stated that HB 553 would change Real Property Article §11-102.1 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 the conversion. HB 553 thus would permit tenants

to purchase their units as a condominium at least 180 days earlier than under present law, therefore allowing them to have 6 months rent become equity, while still giving tenants in a converted rental building at least 180 days to vacate if they do not wish to purchase their units as a condominium. Mr. Davison noted that HB 553 also would amend present law to permit any tenant in a converted building to purchase his unit as a condominium after he receives notice of the conversion. Mr. Meyerhoff noted that the House Judiciary Committee had voted to amend HB 553 to provide that the tenant must notify the landlord of whether he intends to purchase his unit as a condominium within 90 days of receiving the notice of conversion from the landlord. The Commission voted unanimously to re-approve and re-submit HB 553 as amended by the House of Delegates.

7. Agenda item #4 was discussed. (HB 554 of the General Assembly (Duty to Provide Copy of Leaseform and lease)). Mr. Davison noted that under Real Property Article §8-203.1, a landlord is required, upon written request, to give a copy of a leaseform to a prospective tenant if the landlord rents 4 or more dwelling units at the location. Mr. Davison stated that HB 554 would extend this duty to all landlords, and would also require landlords to give tenants a copy of the lease after the tenant had occupied the premises. Mr. Meyerhoff noted that the House Judiciary Committee had amended HB 554 to give the landlord 30 days, instead of the 15 days under HB 554, to give the tenant a copy of his lease after the tenant occupies the premises. Mr. Kalis stated that 30 days sometimes was necessary for final approval and processing of a lease. In response to a question by Mr. Sommers, Mr. Cox stated that some landlords have refused to give prospective tenants a copy of the leaseform. Mr. Laurent stated that tenants may wish to have an attorney examine the leaseform before the tenant signs it. Mr. Meyerhoff stated that the provision permitting a landlord to charge up to one dollar for a leaseform was unnecessary, because they could be runoff in large numbers at little cost. Mr. Laurent stated that this provision had been included to cover the costs of small landlords and to protect landlords from harassment by groups whose members might request large numbers of leaseforms. Mr. Sommers and Mr. Kalis also agreed that the provision allowing a landlord to charge up to one dollar for a copy of his leaseform was unnecessary. The Commission unanimously agreed to amend HB 554 by changing "15" in line 101 to "30", and by deleting the sentence "A LANDLORD MAY IMPOSE A CHARGE, NOT TO EXCEED $1, FOR EACH COPY OF THE FORM.", at lines 98-99. The Commission unanimously approved HB 554 as amended.

8. The Commission discussed agenda item #5 (HB 658 (Notarization of Leases)). Mr. Davison noted that the Commission had approved HB 658 in response to an opinion of the Maryland Attorney General which states that any written lease (whether for commercial or residential property) that is not notarized is not presumed valid with respect to its execution and delivery. Mr. Davison and Mr. Jenkins noted that under this opinion, a landlord suing to enforce an unnotarized lease would have to specifically prove that the lease was validly executed and delivered. If the lease is notarized, the lease is presumed to be validly executed and delivered; the validity of the execution and delivery of the lease would not be at issue unless one party produced evidence to overcome the presumption and validity of the lease's execution and delivery. Mr. Davison noted that HB 658 provides 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 provisions of law, recorded. HB 658 also specifies that a written lease for residential property is sufficient if it contains the names of the landlord and tenant, a description of the leased property, and term of the tenancy. Mr. Davison suggested that HB 658 be amended to require that a written lease for residential property, to be sufficient, also must specify the rent. The Commission voted unanimously to amend HB 658 by adding the words "THE RENT" to line 80 and unanimously approved HB 658 as amended.

9. The Commission discussed agenda item #8 (Holdover Tenants). Mr. Davison noted that this bill would amend §8-402(a) to permit a landlord to recover all actual damages that he suffers due to a tenant illegally holding over. Mr. Davison noted that 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. Mr. Davison also noted that under the bill, the landlord would be required to give the holdover tenant personal service of process, and that the suit would be handled like any other civil suit seeking damages. He noted that the bill would not affect a landlord's right to seek a summary eviction of a holdover tenant under Section 8-402(b). Mr. Walsh moved that in order to make Section 8-402(a) a new Section 8-402.1 and re-number Sections 8-402(b) and (c). The Commission unanimously approved Mr. Walsh's proposed amendment to the bill, and unanimously approved the bill as amended.

10. The meeting adjourned at 9:15 p.m.

Steven G. Davison,
Reporter

GOVERNOR'S COMMISSION

ON

LANDLORD [illegible]

Minutes of [illegible]

of

[illegible]

1. Present: Jenkins (chairman), [illegible], Cox, Franquet, Sommers, Stoloff, Weisengoff [illegible].

2. The meeting began at 7:45 p.m.

3. Mr. Robert Cottom discussed his letters [illegible] previously been distributed to the Commission, [illegible] of a landlord offering lower rents to new [illegible] present tenants; and the time when a landlord should notify [illegible] the rent under a lease for a new term will be increased. Mr. Meyerhoff disclosed that the complex in which Mr. Cottom lived was one of his projects. Mr. Jenkins and Mr. Davison stated that they had been aware that Mr. Meyerhoff was involved in the complex in which Mr. Cottom lived. Mr. Sommers noted that because there is not a shortage of rental housing in Baltimore County, tenants that did not like these policies of their landlord could express their dissatisfaction by moving to another complex. Mr. Meyerhoff stated that he offered lower rents to new tenants as a method of filling up the large number of vacancies in his projects; he stated that he would be happy to note that the rents offered to new tenants were a "special" if that would mollify present tenants.

The Commission then addressed the question of how much notice a landlord should give tenants of a proposed rent increase under a renewal of the tenant's lease. Mr. Meyerhoff noted that his present tenants are required to renew their leases 90 days before the end of the term; he stated that tenants were usually notified of the amount of the proposed rent increase under the renewal of the lease approximately 15 days before the tenant is required to sign the renewal lease. Mr. Cottom stated that 15 days was not enough time for tenants to find new housing if they did not want to pay the proposed rent increase under the renewal lease. Mr. Stoloff asked Mr. Meyerhoff if he could give tenants 30 days notice of the amount of proposed increases in rent before they are required to sign the renewal lease. Mr. Stoloff noted that large rental complexes would make their decision as to the amount that rent under a renewal lease will be increased more than 30 days before tenants must sign their renewal leases; he suggested that the paperwork required to notify tenants of the proposed rent increase was the reason for the lack of timely notice. Mr. Meyerhoff stated that in order to give 30 days notice he would have to hire additional staff. Mr. Jenkins, Mr. Cox, and Mr. Sargeant observed that the problem of landlords failing to give tenants timely notice of proposed rent increases under renewal leases was a general problem throughout the state. Mr. Davison suggested

4. [illegible] services [illegible] ... however, that [illegible] ... office objected to [illegible] ... word of the words in the bill [illegible] ... places, in Title M, [illegible] ... Members of the Commission, including Mr. Weisengoff, however, that they did not believe that a [illegible] ... the [illegible] ... would be favorably received; the [illegible] ... separate bills addressing separate sections of [illegible] ... have better chances of being enacted.

5. The Commission discussed methods by which [illegible] ... its record before the General Assembly. Mr. Weisengoff [illegible] ... the Commission seek meetings with the Baltimore [illegible] ... delegations to seek their support of Commission bills. Mr. [illegible] ... made a suggestion, which was approved by a consensus of the Commission, to have the Commission send representatives to talk with the Governor to seek his active support of Commission bills by having the Governor's lobbyists lobby for Commission bills. Mr. Davison noted that the Governor's lobbyists have not actively supported Commission bills in the past. Mr. Weisengoff stated that the Governor's lobbyists were selective with respect to the bills they supported because they did not want to support bills that were likely to be defeated. Mr. Weisengoff said that he would attempt to get such support from the Governor's office, but stated that, based on a recent conversation with a member of the Governor's staff, he doubted that the Commission would get such active support from the Governor.

6. Article Item #1 was discussed. Mr. Davison [illegible] ... Commission last meeting had discussed, but defeated, proposed [illegible] ... to increase the number of members required for [illegible] ... bill. Mr. Laurent stated that passage of [illegible] ... would be unwise if the Commission did not have [illegible] ... attending meeting. Mr. Laurent disagreed [illegible] ... that proxy votes on bills be permitted [illegible] ... would help the discussion [illegible].

voting on a bill. Mr. [illegible] requested the Commission staff
to submit to the [illegible]
[illegible] with
[illegible] to approve [illegible]
[illegible]

7. [illegible]
[illegible]
[illegible] the Commission
[illegible] future.

8. [illegible] are
[illegible] in futur[illegible] [illegible] to
[illegible] of Mr. [illegible] [illegible] A and the
[illegible] for enactment of the [illegible] Commission
so that they can read them for the next meeting. [illegible] to be able
to decide what sections of the [illegible] the Commission should consider.

9. Meeting adjourned at 9:30 p.m.

Steven G. [illegible],
Reporter

GOVERNOR'S COMMISSION

ON

LANDLORD - TENANT LAW REVISION

Minutes of Meeting

on January 11, 1978

1. Present: Pilla, Walsh, Meyerhoff, Adams, Ackerman, Dancey, Stoloff, Sommers, Laurent, Cox, Kalis, Everngam, (quorum).

2. The meeting started at 7:45 p.m.

3. Mr. Laurent asked that the Commission consider a bill to govern the renewal of a lease without an automatic renewal clause. He noted that §8-208 of the Real Property Article required a tenant to initial a renewal clause in a lease, but did not govern the period or term of a new lease when an existing lease does not contain a renewal clause. Mr. Laurent asked the Reporter to draft a bill that provided that a renewal lease would be a month-to-month periodic tenancy if the present lease is silent with respect to renewal, if the present lease is for a term of one year or more or for a period of a year.

4. Mr. Sommers asked what the status was of a holdover tenant if the landlord consents to the tenant remaining on the premises. Mr. Davison noted that a landlord must not accept rent from a holdover tenant if he wishes to evict the holdover tenant under §8-402 of the Real Property Article. He stated that if the landlord accepts rent from the holdover tenant or otherwise consents to the holdover tenant remaining on the premises, the holdover tenant becomes a periodic tenant, with the period of the tenancy measured by the period for which rent is reserved under the lease. Mr. Sommers asked what would occur if a tenant with a lease for 3 years became holdover tenant and the landlord accepted rent from him after the holdover. Mr. Davison stated that if rent was reserved on a yearly basis, even though payable in monthly installments, the holdover tenant would become a year-to-year tenant if the landlord consented to his remaining on the premises. Mr. Davison stated that a holdover tenant could not become a periodic tenant for a period greater than a year, even if the prior lease was for a term of greater than a year and rent was payable for the entire term. Mr. Davison stated that he would prepare a memorandum with respect to this matter for members of the Commission.

5. Agenda Item #2 was discussed. Mr. Walsh stated that he opposed excluding pass-through costs from the definition of increased rent because it would make the effect of the bill insignificant. Mr. Sommers and Mr. Meyerhoff stated that they had never heard of a residential lease which varied the amount of rent from month-to-month, or made exact amount of rent depend upon the landlord's costs for utilities each month. They stated, however, that some leases for a term of more than a year may increase a tenant's rent if the landlord's taxes increase. Mr. Laurent proposed that the bill should be amended to require the landlord to give advance notice of any proposed rent

increase, not just a rent increase that would exceed a certain percentage of the existing rent. Mr. Stoloff stated that very few landlords increase rent by greater than 10% per year. Mr. Meyerhoff stated that a survey of his tenants had indicated that less than 25% of his tenants who moved out did so because of the amount of the rent; he stated that most tenants who move out of a rental building do so for reasons other than the amount of the rent. Mr. Meyerhoff noted in a "soft" market with a large number of vacancies in rental units in the area, a landlord will not immediately rent the premises of a tenant who fails to renew the lease within the prescribed time; he stated that in such a situation, the tenant may have up to 2 months to sign the new lease. Because the consensus of the Commission was that this problem was a difficult one to regulate and was not subject to wide-scale abuse, the Commission unanimously decided to drop further consideration of this proposed bill.

6. Agenda Item #1 was discussed. Amending the by-laws to permit members to vote on bills by proxy was suggested by several members, but other members of the Commission argued that a proxy could not be used when amendments to a bill were offered at a meeting. Mr. Walsh argued that Mr. Kalis' proposal to require a majority of the Commission to approve a bill should not be adopted until the members of the Commission have established good attendance record at meetings. Mr. Davison noted that the proposal would not preclude bills from being passed by close votes such as 10-9. Mr. Kalis stated that he was more concerned with the number of members of the Commission approving a bill, not the margin of passage of a bill. The Commission decided to defer consideration of Mr. Kalis' proposal for several months.

7. Mr. Davison stated that he would include the agenda without enclosures, with the advance notice of meeting, and would mail out the enclosures at a later time.

8. Agenda Item #3 was discussed. Mr. Kalis noted that §8-212, which he was proposing to be repealed, prohibited liquidated damages clauses in leases in Anne Arundel County and Baltimore City, and also limited the maximum amount of damages that a landlord may recover from a tenant in those counties to an amount less than actual damages. Mr. Kalis argues that this limitation on recovery of damages to an amount less than actual damages was unconstitutional. Mr. Davison noted that the Commission had voted to repeal a similar limitation under §8-402 on the amount of damages recoverable by a landlord from a holdover tenant. Mr. Kalis also argued that liquidated damages clauses often benefitted tenants, because it allows tenants to know exactly how much it will cost them if they abandon the premises prior to the end of the term of the lease. Mr. Davison noted that courts, under common law hold liquidated damages clauses to be void where the amount of damages are easily ascertainable in a given situation; he noted that damages are usually easily ascertainable in the residential lease situation, so that if §8-212 was repealed courts in Maryland would usually invalidate liquidated damages clauses in residential leases. Mr. Walsh proposed that only §8-212(a) be repealed; this action would repeal the limitation on the maximum amount of damages recoverable by the landlord, but would continue to prohibit liquidated damages clauses. Mr. Kalis stated that he would accept this compromise although he still favored repeal of §8-212 in its entirety.

9. Agenda Item #4 was discussed. Mr. Davison stated that one possibility was to

amend §8-105 to make it clear that it applied to exculpatory clauses applying to negligent conduct by the landlord both in the commons areas and the tenant's apartment; he noted that it was unclear in §8-105 as to whether the phrase "and not within the exclusive control of the tenant" modified the phrase "on or about the leased premises" so that §8-105 would apply to most tenants' apartments. As an alternative approach, Mr. Davison suggested enactment of a general provision, similar to that in the Uniform Residential Landlord and Tenant Act, prohibiting any lease provision whereby the tenant "agrees to the exculpation or limitation of any of liability of the landlord arising under law or to indemnify the landlord for that liability or the costs connected therewith." URLTA §1.403; §8-216, p.7, of Proposed Bill to Enact the URLTA. Mr. Laurent favored the former approach of only amending §8-105 to clarify the extent of its applicability. Mr. Davison stated that he would draft such a bill for the next meeting.

10. Agenda Item #6 was discussed. Mr. Davison noted that HB 779 would establish uniform appeal procedures in landlord-tenant cases, and would authorize a judge to stay execution of judgment against a holdover tenant for up to 30 days if the holdover tenant payed all rent in arrear and an initial payment equivalent to rent. Mr. Davison noted that as drafted, HB 779 would require a week-to-week tenant who held over only to initially pay one weeks rent to gain a 30 day stay of execution; if the tenant failed to pay subsequent weekly payments during the stay of execution, the landlord would have to take the tenant back to court. Mr. Kalis argues that any holdover tenant should be required to make a full payment equivalent to rent prior to issuance of a stay of execution. Mr. Davison suggested that lines 265-267 of HB 779 be deleted to amend the sentence: "IN AN APPEAL UNDER §8-401, THE DEPOSIT OR BOND INCLUDES RENT DUE AND PAYABLE AS SUCH AMOUNTS BECOME DUE AND PAYABLE.". He stated that the effect of this provision was to require a tenant to pay future rent payments into court in order to stay execution of judgement pending his appeal of a judgment in a §8-401 suit involving an earlier rent payment. Mr. Davison noted that HB 779 did not provide for the court to turn these future rent payments over to the landlord. He also argued that the tenant would be required to pay future rent in to court even though he might be entitled to withhold the rent under the rent escrow statute. Mr. Davison argued that a tenant's failure to pay future rent should involve a separate and distinct law suit, and should not become involved in an appeal of a suit involving a prior rent payment.

11. Mr. Everngam suggested that the Commission hold a dinner meeting in Silver Springs in May.

12. The meeting adjourned at 9:15 p.m.

Steven G. Davison,
Reporter

GOVERNOR'S COMMISSION

ON

LANDLORD - TENANT LAW REVISION

Minutes of Meeting

of February 14, 1978

1. The meeting started at 7:55 p.m.

2. Present: Jenkins (Chairman), Laurent, Meyerhoff, Kalis, Pilla, Sommers, Stoloff, Meredith (lack of quorum). Gary Everngam, son of Gregg Everngam, attended the meeting because his father was away on a trip. Mr. Davison said that Ms. Franquet and Mr. Cox had told him that afternoon that they would attend the meeting.

3. Mr. Davison said that the House Environmental Matters Committee had voted HB 419 (Sewer Assessments) unfavorably after a hearing. Mr. Davison said that he had not attended the hearing because the committee's staff had failed to inform him that the bill was scheduled for a hearing. Mr. Davison noted that the House Judiciary Committee would hold a hearing February 22 on 6 Commission bills, HB 310 (month's notice to week to week tenants), 311 (security deposits), 343 (copy of lease and leaseform), 376 (notarization of leases), 1135 (essential services), and 1136 (ingress and egress). Mr. Davison distributed copies of position statements on the Commission's bills which he said had been sent to the house Judiciary Committee and would be sent to the Baltimore City, Baltimore County, Anne Arundel County, Montgomery County, and Prince George's County delegations. Mr. Davison stated that he had also requested meetings with the delegations to discuss the Commission's bills.

4. Mr. Davison distributed copies of a memorandum discussing the status of a holdover tenant if the landlord consents, by accepting rent or otherwise, to the holdover tenant remaining on the premises. Mr. Davison stated that in such a case the holdover tenant becomes a periodic tenant, but that the period of the tenancy is uncertain under Maryland law. He recommended that the Commission consider a bill addressing this problem. Mr. Laurent asked whether agenda item #4 addressed this problem. Mr. Davison stated that agenda item #4 addressed the period of a new tenancy when landlord and tenant agree, prior to the end of the present term or period, to renew a lease when the present written lease is silent as to the period or term if the lease is renewed or is silent as to renewal itself. Members of the Commission agreed that the bill or agenda item #4 should be amended to also address the status of a holdover tenant if the landlord consents to his remaining on the premises. The Commission agreed that the bill should be amended to provide that if a week to week tenant holds over with the landlord's consent, the holdover tenant would continue to be a week to week tenant; and that in all other cases tenants who held over with the landlord's consent would become month to month tenants. Mr. Davison said that he would amend the bill in this manner and place it on next month's agenda.

5. Agenda item #3 (amendment of §8-105, exculpatory clauses) was discussed. Mr. Davison suggested that §8-105 also be amended to delete the words "fault", "omission" and "other misconduct", because these terms were encompassed within the term "negligence". Mr. Pilla said that these other terms might encompass intentional conduct by the landlord, which "negligence" alone would not encompass. Mr. Davison stated that a specific reference to negligent and intentional acts by the landlord would be preferrable to the present language of §8-105.

6. Agenda item #2 (§8-212, liquidated damages clauses) was discussed. Mr. Laurent stated that he does not object to liquidated damages clauses in leases. Mr. Davison noted that liquidated damages clauses might be beneficial to tenants because they would know in advance what their liability will be if they abandon the premises prior to the end of the term of the lease. Mr. Davison also noted that courts under the common law will invalidate liquidated damages clauses if the amount of damages are easily ascertainable. The members of the Commission agreed that the bill on third reader should propose repeal of §8-212 in its entirety to remove the limitation on the maximum amount of damages a landlord can recover, (which Mr. Kalis said had been declared unconstitutional by a Baltimore City judge in an unwritten opinion), and to repeal the prohibition against liquidated damages clauses in leases.

7. Mr. Jenkins said that Mr. Everngam had proposed holding a dinner meeting in the Silver Springs area in May; he said that he supported the suggestion. Mr. Davison suggested that the sole topic on the agenda at this meeting be the Uniform Residential Landlord and Tenant Act. He said that he would give a presentation summarizing the URLTA and comparing it with Maryland law; the Commission could then decide what sections of the URLTA they would concentrate upon. Mr. Laurent requested Mr. Davison to prepare a chart that would compare the URLTA with Maryland law and would give the Reporter's recommendations of which sections of the URLTA the Commission should adopt. The Commission agreed to hold a dinner meeting in May in the Silver Springs area, with the URLTA the sole item on the agenda.

8. Agenda item #1 (HB 779 Appeals of the 1977 Regular Session) was discussed. Mr. Stoloff said that he would support the provisions authorizing 2 to 30 day stay of executions in holdover tenant cases if the landlord could get a prompt hearing at the end of the stay of execution. Mr. Davison explained that several years ago the Commission had investigated the feasibility and constitutionality of such a provision for prompt hearings; he noted that the court administrators had stated that such a procedure could not be established. Mr. Davison also stated that the Supreme Court decision of Lindsey v. Normet, by requiring reasonable notice before a hearing in landlord-tenant cases, probably make unconstitutional a provision for an immediate hearing after expiration of a stay of execution.

9. The meeting adjourned at 9:15 p.m.

Steven G. Davison,
Reporter

GOVERNOR'S COMMISSION

ON

LANDLORD - TENANT LAW REVISION

Minutes of Meeting

of March 21, 1978

1. Present: Jenkins (Chairman), Cox, Dancey, Pilla, Ackerman, Meredith, Everngam (lack of quorum). The meeting began at 8:00 p.m.

2. Mr. Davison stated that the meeting scheduled for March 14 had been cancelled and rescheduled for tonight because of a lack of a quorum. He stated that he had expected a quorum for tonight's meeting; he said that Ms. Franquet, Mr. Stoloff, and Mr. Walsh stated that they would attend tonight's meeting.

3. Several members complained that they were not receiving notices of the meetings, or were receiving them only several days before the scheduled meeting. Mr. Davison apologized for this and stated that he would attempt to have the notices of meetings mailed earlier. Mr. Davison said that a major cause of this problem appeared to be that either the Post Office or the University mail room were losing entire mailings of the notice of meeting or a good number of the notices. He said that in the future Commission mailings would be mailed from the main Baltimore post office or from Virginia.

4. Mr. Davison stated that HB 376 (Notarization of written leases) had passed the House Judiciary Committee, but that HB 310 (month's notice to week to week tenants), HB 311 (security deposits), HB 343 (duty to provide copy of lease and leaseform), HB 1135 (essential services) and HB 1136 (ingress and egress) had been defeated. Mr. Davison stated that several of the bills defeated by the Committee had been passed by the Committee in the previous session. Mr. Davison stated that one of the reasons for the defeat of the bills had been the testimony of Mr. Meyerhoff, who had identified himself as a member of the Commission and then had attacked the Commission by arguing that the Commission had not considered certain amendments to one bill, that at many meetings the Commission could not get a quorum, and that many of the bills passed by the Commission were passed by narrow margins. Mr. Davison noted that he had tried to repair the damage accomplished by Mr. Meyerhoff's testimony by pointing out to the Committee that the Bills had been passed by the Commission by unanimous votes, with some abstentions. Mr. Davison noted that Mr. Meyerhoff had admitted that he had not been a member of the Commission at the time the bills had been passed by the Commission. Mr. Davison noted that at the previous meeting of the Commission, prior to the House Judiciary Committee's hearing, he and the chairman had noted at the end of the meeting, while Mr. Meyerhoff was present, that the policy of the Commission was that only the Reporter, the chairman, or another member authorized by the Commission to speak on its behalf, could identify themselves as a member or representative of the Commission when testifying on

Commission bills at legislative hearings. Mr. Davison stated that it had also been pointed out to Mr. Meyerhoff and other members of the Commission at that meeting that if a member of the Commission testified at a legislative hearing in a private capacity in support of or against a Commission bill, he was not supposed to identify himself as a member of the Commission. Mr. Meredith confirmed that this policy had been expressed at the previous meeting, and that he was sitting next to Mr. Meyerhoff when this policy was stated. Mr. Jenkins read letters he had received from an attorney for Maryland PIRG and from Mr. Laurent expressing concern with Mr. Meyerhoff's conduct at the hearing.

A motion was made proposing that the by-laws be amended to explicitly provide that a member of the Commission may not testify or lobby before the General Assembly either in support of or against a Commission bill, unless expressly authorized by the Commission to do so on behalf of the Commission. Mr. Davison stated that he would put this proposal on the agenda for the next meeting.

5. Mr. Davison noted that the Commission's final two bills, HB 359 (Condominiums) and HB 378 (holdover tenants), had been heard by the House Judiciary Committee that afternoon.

6. Mr. Jenkins and Mr. Everngam said that the Commission would hold a dinner meeting in the Silver Spring area on May 11. Members of the Commission suggested that the Commission should invite members of the legislature, landlord-tenant officials from Montgomery and Prince George's County, judges, court clerks, and landlords and tenants. Mr. Davison said that he would check with the Governor's office to see if this was permissible and to check on the amount of money which the Commission could spend on a dinner meeting. Mr. Davison stated that at the meeting he would give a general presentation on the Uniform Residential Landlord and Tenant Act, and the Commission could decide what areas of the Act they wished to concentrate on. He also stated that Ms. Kostrisky, the chief clerk of the District Court, would be present at the dinner meeting to discuss a package of bills (SB 290, SB 303, SB 304, SB 305, SB 306, SB 309, SB 315, and SB 1017), which had been sponsored by the District Court and the Constables Committee, that would amend §8-401 (rent due and payable) and §8-402 (holdover tenants).

7. The Commission discussed the future of the Commission. Mr. Jenkins said that he would send a questionnaire to the members of the Commission to ask their opinions on how the Commission might be changes or improved. He said that he would like to know whether members of the Commission think that the Commission should be abolished, although he said that he would not want to make this recommendation to the Governor so soon after becoming chairman. Mr. Ackerman and Mr. Pilla stated that the Commission had too many items on the agenda at each meeting, which made it time consuming to study all items on the agenda prior to each meeting. Mr. Davison stated that one reason for the large number of items on the agenda was that the policy of the Commission has been to allow any member of the Commission to put an item on the agenda for a meeting by asking the Reporter to draft a bill or a proposal or to make a report, and to place it on the agenda for the next meeting for first reader. Mr. Pilla proposed an amendment to the by-laws to provide that a majority of the Commission has to approve a request by a member of the Commission to have an item placed on the agenda.

Mr. Davison stated that Mr. Leonard Homa, who represents the Maryland Mobile Home Association, had expressed interest in having the Commission and Association

work together on bills to amend Title 8A (mobile home parks) of the Real Property Article and to specify which sections of Title 8 (landlord-tenant) of the Real Property Article apply to mobile home parks. Mr. Davison noted that previously he had prepared memoranda for the Commission addressing these questions.

Mr. Davison and Mr. Jenkins said that they would place the bills passed by the Commission but defeated by the House Judiciary Committee during this session on the agenda for the next meeting for consideration as to whether to resubmit these bills to the 1979 Session of the General Assembly.

8. The meeting adjourned at 9:00 p.m.

Steven G. Davison,
Reporter

GOVERNOR'S COMMISSION

ON

LANDLORD - TENANT LAW REVISION

Minutes of Meeting

of April 11, 1978

1. Present: Jenkins (Chairman), Pilla, Dancy, Laurent, Meredith, Meyerhoff, Kalis, Stollof, Walsh, Cox, Sommers, Ackerman, Everngam (quorum).

2. The meeting started at 7:45 p.m.

3. Mr. Jenkins and Mr. Everngam discussed plans for the May 9 meeting which will be a dinner meeting (with cash bar; dinner will be chicken kiev) starting at 7:00 p.m. at the Silver Spring Holiday Inn, 8777 Georgia Avenue. The agenda will be brief; Ms. Kostrisky, Chief Clerk of the District Court, will discuss proposed bills to amend Sections 8-401 (rent due and payable) and 8-402 (holdover tenants). Mr. Davison distributed copies of the bills in question and a short memorandum analyzing these bills. Mr. Davison said that he would briefly review the provisions of the Uniform Residential Landlord and Tenant Act at the May 9 meeting in order to get an indication of which sections of the URLTA the Commission is interested. He distributed a summary outline comparing the URLTA with Maryland statutes.

4. Agenda Item #1 was discussed. Mr. Pilla and Mr. Sommers supported the proposed amendment by-laws. Mr. Sommers said that members of the legislative knew who were members of the Commission even if a Commission member did not identify himself as such. Mr. Pilla said that he was sure that a Commission member could find someone else to testify or lobby for or against a bill on behalf of an organization to which the Commission member belongs. Mr. Stollof opposed the proposal, stating that he believed that it would violate the right of free speech of members of the Commission. Mr. Laurent suggested that the proposal be amended to provide that a Commission member, without identifying himself as a Commission member, could testify or lobby in support of a bill, but not against a bill. Mr. Kalis said that opponents of a bill which is approved for submission to the General Assembly should have a right to file a minority report opposing the bill with the Committee of the General Assembly hearing the bill. Mr. Jenkins made a motion for the Commission to reaffirm its existing policy, as a Resolution rather than as an amendment to the By-Laws, that a member of the Commission who lobbies or testifies for or against a Commission bill cannot identify himself or herself as a member of the Commission. This motion passes unanimously.

5. Agenda Item #2 was discussed. Mr. Laurent said that he opposed the proposal; he said that a member of the Commission should have a right to request the Reporter to draft a bill or prepare a report. Mr. Walsh suggested that the Reporter should send a requested bill or report to the Commission member who requested it, noting that in the past Commission members have withdrawn the

report or proposal before placing it on the agenda after further considering the matter. Ms. Dancy said that the problem was that the agenda usually contained more items than the Commission could act upon at a meeting; she suggested that the agenda for a meeting only contain items upon which the Commission can be expected to act. Mr. Davison noted that the present policy is to place on the agenda for a meeting all matters that are awaiting Commission action. Mr. Jenkins and Mr. Davison agreed that they would limit the agenda for each meeting to matters which the Commission is likely to be able to act upon. Mr. Jenkins said that he would reserve the last part of each meeting for discussion of outstanding matters awaiting Commission action and for obtaining the Commission's viewpoint as to which matters should be put on the agenda for the next meeting.

6. Agenda Item #3 (HB 779 of the 1977 Regular Session) was discussed. Mr. Davison stated that the bill addressed two separate issues. One part of the bill would provide uniform appeal procedures for all Landlord-tenant cases. Mr. Davison noted that there were appeal procedures for idstress for rent cases (§8-332), rent due and payable cases (§8-401), and holdover tenant cases (§8-402), but not for cases involving other landlord-tenant matters such as security deposits. Mr. Davison said that HB 779 would make the procedures for appeal under §§8-332, 8-401, and 8-402 uniform, and would apply the same uniform appeal procedures to all landlord-tenant cases. Mr. Davison said that the second part of the bill would amend §8-402 (holdover tenants) to authorize a court to stay execution of judgment for 2 to 30 days, provided that the holdover tenant made a payment to the landlord in an amount equivalent to rent for the period of the stay of execution. Mr. Davison said that many judges have permitted a holdover tenant to remain on the premises for up to 30 days after judgment because they believe the holdover tenant needs that amount of time to find a new place to live but did not require the holdover tenant to pay the landlord damages in an amount equivalent to rent during the stay. Mr. Davison argued that a holdover tenant should not receive such a windfall at the expense of the landlord, because the holdover tenant would otherwise have to be paying rent to a new landlord. Mr. Walsh requested more time to consider the bill. The bill was consequently tabled until a later meeting.

7. The Commission decided that the Commission would consider whether to resubmit the Commission's bills defeated by the 1978 Regular Session of the General Assembly. Mr. Davison noted that the General Assembly passed HB 376 (acknowledgement of leases) and HB 378 (damages against holdover tenants), but defeated the Commission's other bills (HB 310, 311, 343, 359, 419, 1135, and 1136).

8. The meeting adjourned at 9:15 p.m.

Steven Davison,
Reporter

GOVERNOR'S COMMISSION

ON

LANDLORD - TENANT LAW REVISION

Minutes of Meeting

on June 13, 1978

1. Present: Meyerhoff, Sommers, Ackerman, Adams, Meredith, Laurent, Pilla, Weisengoff, Everngam (quorum). The Reporter acted as Chairman.

2. The meeting started at 7:45 p.m.

3. Mr. Davison noted that the Governor is requiring the Commission to have its bills into the Governor's Office by October 1, even though bills will not be prefiled this year. Mr. Davison pointed out that because the Commission was not scheduled to meet in July and August, the Commission would have to approve bills for submission to the 1978 session of the General Assembly at this meeting and at the September meeting.

4. The Commission decided that the following bills would be included on the agenda for the September meeting for discussion and vote:

   a. H.B. 779 of the 1977 Session (Appeals and Stays of Execution in Holdover Tenant Suits).

   b. Bill to repeal §8-202 (Limitation of amount of damages a landlord can recover and prohibition on liquidated damages clauses in Anne Arundel County and Baltimore City).

   c. Bill to amend §8-105 (Exculpatory clauses).

   d. Bill to Specify status of holdover tenant after landlord agrees to holdover, and status of tenant after landlord and tenant agree to renew a lease without a renewal clause.

   The Commission SB 1017 and SB 304 (bills introduced last session by Margaret Kostrisky and Judge Sweeney to amend §8-401 (rent due and payable). The Commission decided not to place these items on the Commission's agenda. SB 1017 would require a landlord to notify a tenant that rent is in arrears, and give the tenant a chance to pay the rent, before the landlord could file a rent due and payable action under §8-401. SB 304 would modify the redemption clause of §8-401 to make it inapplicable only if there have been 3 prior judgments in rent due and payable cases; §8-401 at present makes the right of redemption inapplicable if there have been 3 prior summonses in rent due and payable cases.

5. Mr. Davison expressed to Mr. Everngam the Commission's appreciation for arranging the May dinner meeting and for insuring that it was such an excellent event.

6. The Commission discussed HB 310 of the 1978 Session (months notice to week to week tenants). Mr. Laurent noted that the House Judiciary Committee had passed this bill during the 1977 Session, although the Senate Judicial Proceedings Committee defeated the bill, apparently because they erroneously believed that the bill would require notice to quit to roomers. Mr. Davison noted that Mr. Koonz had opposed the bill, even though it specifically provides as does existing law, that it doesn't apply to Baltimore City. The Commission voted 6-0, with 3 abstentions, to resubmit HB 310 to the 1979 Session.

7. HB 311 (security deposits) of the 1978 Session was discussed next. Mr. Sommers said that he believed that the provision in the bill requiring the specified class of tenants to give written notice of new address by certified mail in order to have satisfactory proof that such notice was actually given. Mr. Pilla argued that the term "vacating the premises" was too vague; he said that this term would apply to tenants who had a legal right to vacate the premises (such as in cases of constructive eviction or violation of the rent excrow statute). Mr. Pilla made a motion which was seconded by Mr. Adams to change the term "vacates" to "abandons without good cause or legal right". Mr. Sommers pointed out that there might be a question both by tenants and landlords as to whether a tenant who vacated had good cause or legal right to do so, and that consequently in such cases the landlord would send the itemized list of damages or the tenant would send the notice of change of address even if later it was determined the statute didn't require such action. Mr. Pilla, with Mr. Adams concurrence, withdrew his motion. Mr. Davison noted that the House Judiciary Committee had defeated this bill the previous two sessions. Mr. Weisengoff noted, however, that there might be a significant change in the composition of the Committee as a result of the elections. Mr. Laurent argued that the Commission should not consider the legislature's previous disapproval of bills; he noted some of the Commission's bills had been defeated for a number of years before being enacted. He stated that if the Commission thought a bill was a good one, they should submit it to the legislature. Mr. Adams disagreed, stating that he would prefer not to submit bills that didn't have a realistic chance of passage so that the Commission would have a higher perdentage of passage of its bills. The Commission voted 7-0, with 2 abstentions, to resubmit HB 311 to the 1979 session.

8. The Commission discussed HB 343 of the 1978 session (duty to provide copy of leaseform and lease). Mr. Davison said that the only criticism of the bill at the hearing before the House Judiciary Committee was that the bill did not allow landlords to charge a fee for providing a copy of a leaseform. Mr. Laurent noted that the previous version of the bill had permitted a landlord to charge up to a dollar for a leaseform, and that he would be willing to amend HB 343 to include such a provision. Mr. Sommers said that landlords did not need to charge for providing a leaseform, since they didn't cost very much. Mr. Davison noted that some landlords were afraid that tenants organizations might harass them by sending in large numbers of people to request leaseforms if they couldn't charge for leaseforms. Mr. Laurent stated that there was a need for the bill, since

prospective tenants are often denied copies of a leaseform and tenants often do not receive copies of their lease. The Commission voted 9-0 to resubmit HB 343 to the 1979 session.

9. HB 359 of the 1978 Session (condominium conversion) was discussed. Mr. Davison noted that one provision of the bill would change the existing statute to allow owners of rental buildings to convert to a condominium, provided they gave tenants 180 days to vacate after giving notice of conversion. The statute presently prohibits a rental building from being converted to a condominium until 180 days after the owner gives his tenants notice of his intent to convert to a comdominium. Mr. Davison said that HB 359 proposed this change because an attorney representing some owners of rental buildings indicated that the present law made it difficult to obtain financing to convert rental buildings, and also cost tenants who wanted to purchase their premises as a condominium 180 days of equity, that had to continue to be paid as rent until the building was converted to a condominium. Mr. Davison said that other attorneys had told him at the House Judiciary Committee hearing on HB 350 that the present statute did not make it difficult to obtain financing for conversion, and that property owners did not want this change enacted. Mr. Davison said that if this proposed amendment to the existing statute was deleted from HB 359, the only effect of the bill would be to give a tenant in a rental building being converted to a condominium the first right of refusal to purchase his premises as a condominium. Mr. Adams argued that this provision was not necessary, because developers already give tenants the first right of refusal to buy their premises as a condominium. The Commission voted 9-0 not to resubmit HB 359 to the 1979 General Assembly.

10. The Commission discussed HB 419 of the 1978 session (exempting Water and Sewage Service Charges as first liens on single family rented house where tenant is responsible for water and sewer charges under lease). Mr. Sommers noted that the bill would never be enacted because in Baltimore City a necessary condition for issuing water and sewer bonds is that water and sewer service charges are required to be first liens. The Commission voted 7-0, with 2 abstentions, not to resubmit HB 419 to the 1979 session.

11. HB 1135 (denial of essential services) and HB 1136 (denial of ingress and egress) of the 1978 session were discussed. Mr. Laurent stated that he had advocated a bill that provided only for criminal penalties for denial of essential services ingress or egress, similar to the provisions in the Baltimore City and Baltimore County housing codes. Mr. Davison stated that such a criminal penalty provision should be proposed as an addition to Article 27 (Crimes) of the Code, rather than as an amendment to Title 8 (landlord and Tenant) of the Real Property Article. Mr. Davison noted that the civil remedies under the bills probably could be ordered by a judge as an appropriate remedies under the rent escrow statute; he noted that one problem with the bills was that they permitted tenants to use these remedies without a judicial order, thus making a tenant assume the risk that a court might later determine that he was not entitled to use these remedies. Mr. Meyerhoff argues that a landlord should not be subject to imprisonment for this type of violation; Mr. Laurent agreed to have the bills amended to make a fine the only punishment for their violation. Mr. Weisengoff asked if the bills would apply to Baltimore City and Baltimore County thus superceding their existing similar housing code provisions. Mr. Laurent said that he wouldn't oppose exempting them, since their ordinances are similar to the bills. Mr. Meyerhoff argued that Commission bills should apply uniformly throughout the state. Mr. Davison

agreed that this has been the Commission's policy, unless a Commission bill amends an existing statute that already exempts particular counties or Baltimore City. Mr. Meyerhoff argued that the bills should be amended to protect only a tenant, subtenant, or a member of the tenant's or subtenant's family who were listed in the lease as having a right to use the premises. Mr. Meyerhoff also asked whether a landlord would violate HB 1135 where a third person, such as a vandal, caused denial of essential services. Mr. Davison said the bill was supposed to impose criminal penalties only for willful, but not negligent, denial of essential services, by the landlord, which would thus not apply where a third person caused denial of essential services. He noted that this could be further clarified by providing that a landlord was guilty under the statute where a third person caused denial of essential services only if the landlord had knowledge of this and failed to correct the situation in a reasonable period of time. Mr. Laurent proposed that the definition of essential services be amended to include reference to furniture and furnishings agreed to be provided by the landlord in the lease. It was also suggested that essential services be defined simply as services agreed to be provided by the landlord in an oral or written lease. Mr. Adams made a motion that the Reporter amend the bills in accordance with these suggestions, and that the amended bills be placed on first reader on the agenda for the September meeting. Mr. Davison noted that this would prevent the bills from being submitted to the Governor's Office by the October 1 filing deadline. Mr. Sommers suggested that if the bills passed they could be privately filed and supported by the Commission at the hearing. Mr. Laurent agreed to support Mr. Adams' motion if it was understood that the bills would be privately filed in the 1979 session and supported by the Commission at hearings on the bills. Mr. Adams' motion was seconded and approved unanimously.

12. The meeting adjourned at 9:15 p.m.

Steven Davison,
Reporter

GOVERNOR'S COMMISSION

ON

LANDLORD - TENANT LAW REVISION

Minutes of Meeting of

October 24, 1978

1. Present: Jenkins (chairman), Pilla, Walsh, Laurent, Braverman, Martin, Ackerman, Dancy, Stollof, Meyerhoff, Everngam, Kalis (quorum).

2. The meeting started at 8:10 p.m.

3. Agenda item number one (criminal penalties for willful denial of essential services) was discussed. Mr. Jenkins asked whether the absence of punishment by imprisonment under the bill will cause the bill to fail to deter landlords from violating it. Mr. Davison noted that judges in Baltimore City have never imprisoned landlords who violate the City's housing code provision with respect to denial of essential services, and that one of the reasons for opposition to the bill last year was its provision for punishment by imprisonment. Mr. Laurent noted that the bill was necessary, because there are numerous instances of landlords willfully denying tenants essential services. Mr. Stollof asked whether landlords with more than 4 dwelling units denied tenants essential services, or whether this was done only by small landlords. Mr. Walsh replied that landlords of all sizes intentionally denied tenants essential services. Mr. Laurent stated, however, that "top-line" management landlords do not intentionally deny tenants essential services. Mr. Laurent noted that Judge Bell has interpreted Baltimore City's provision as requiring a landlord to have intended to deny essential services for the purpose of evicting the tenant. Mr. Laurent hoped that if this bill was passed, it would not be interpreted in this manner. Mr. Davison asked whether the bill should be amended to exempt Baltimore City and Baltimore County, which have similar provisions, and in some cases, stricter requirements (Baltimore City has a possible punishment of imprisonment). Mr. Stollof asked how the bill would apply to changing locks, where the tenant had left a few items on the premises after apparently abandoning the premises. Mr. Davison stated that the bill required a landlord to willfully deny essential services, which would not be the case when a landlord thought a tenant had abandoned the premises. Mr. Walsh made a motion, which was seconded by Mr. Jenkins, to amend the bill to add a section providing that the bill does not pre-empt any public local law or ordinance of a similar nature. Mr. Meyerhoff argued that Commission bills should apply uniformly throughout the state. Other members of the Commission stated, however, that the bill would face strong opposition from Baltimore City and Baltimore County legislators if the bill pre-empted the existing law in those jurisdictions. Mr. Walsh's motion was passed unanimously, and the bill was passed unanimously with one abstention. Mr. Davison noted that although the bill does provide a civil remedy, a court might recognize one.

4. Agenda item number two was discussed. Mr. Kalis argued that the bill should be amended to prohibit a judge from issuing a stay of execution against a holdover tenant when the landlord has leased the premises to a new tenant for the period for which the holdover tenant seeks a stay of execution. Mr. Davison suggested that instead of Mr. Kalis' proposal, a holdover tenant should be required, in order to obtain a stay of execution, to pay a landlord for damages for which he would be liable to the new tenants, in addition to past due rent and an amount equivalent to rent for the period of the stay of execution. Mr. Jenkins noted that under the bill, issuance of a stay of execution against a holdover tenant is within the discretion of the judge, and that a judge probably wouldn't issue a stay of execution if a landlord showed that he had rented the premises for a period beginning during the proposed stay of execution. Mr. Walsh stated that the proposed changes to lines 184-192 would require a holdover tenant to pay all rent due under the lease, although the tenant might be entitled to abatement of rend under rent escrow, Baltimore City's implied warranty of habitability, or other legal provision reducing the holdover tenant's prior rent. Mr. Walsh made a motion to amend the proposed amendments to lines 184-192 by changing "rent in arrears" to "rent due" and "rent equivalent to that due under the prior lease" to "rent that would have been due under the prior lease", in order to make clear that a holdover tenant would have to pay only rent lawfully due under the prior lease or an amount equivalent to rent lawfully due under the prior lease in order to obtain a stay of execution. Mr. Walsh's motion to amend the bill was seconded by Mr. Laurent and was passed unanimously. HB 779, as amended by Mr. Walsh's motion and by subsection b of item 2 of the agenda, was passed unanimously with one abstention.

5. Agenda item number 3 (proposed repeal of §8-212) was discussed. Mr. Walsh asked whether the major objection to §8-212 was the limitation on a landlord's recovery of damages to an amount less than actual damages; he stated that if sim §8-212 should be amended by deleting the second sentence of §8-212(a), retaining the prohibition on liquidated damages clauses. Mr. Davison explained that at prior meetings, landlord and tenant representatives had agreed that a landlord and tenant should be able to agree to a liquidated damages clause, because it let the tenant know exactly how much he would have to pay the landlord to break his lease. Mr. Stollof also noted that a tenant who wishes to terminate his lease in order to buy a house usually is precluded from doing so in the absence of a liquidated damages clause. Mr. Ackerman added that landlords also may wish to have a liquidated damages clause in order to avoid the trouble and expense of litigation, or when vacancy rates are low and he can expect to relet the apartment in a short period of time. Mr. Davison noted that under the common law, courts will invalidate liquidated damages clauses if the amount of damages was unreasonable or if the exact amount of damages can be easily ascertained at the time of breach. Mr. Davison also noted a landlord, in the absence of a liquidated damages clause, has to worry about whether he is properly mitigating damages in compliance with §8-207. Mr. Walsh stated that he had been persuaded to support the bill as drafted. The Commission passed the bill unanimously.

6. Agenda item number 4 (amendments to §8-105) was discussed. Mr. Davison noted that the bill was intended to amend §8-105 to make it clear that a landlord could not exculpate his liability for intentional or negligent acts or acts of omission in common areas or the tenant's premises. He noted that this was the original intent of the legislatiure in enacting §8-105, but that its wording did not explicitly manifest this intent. The bill was passed unanimously.

7. Agenda item number 6 (period of tenancy after renewal of lease, and status of holdover tenant after landlord agrees to his remaining) was discussed. Mr. Davison noted that subsection (a) was intended to specify the period of renewal of a tenancy where the prior lease did not have a renewal clause or had a renewal clause which does not specify the term or period of the new tenancy. Mr. Walsh made a motion, which was seconded and passed unanimously, to amend subsection (a) either by punctuating it or redrafting it to make it easier to read. Mr. Davison noted that subsection (b) would resolve conflicting Maryland case law (discussed in a memorandum previously distributed to Commission members) with respect to the status of a holdover tenant after the landlord consented, usually by accepting rent, to the tenant remaining on the premises. Mr. Davison noted that if the landlord didn't consent to the holdover tenant remaining, he could eject under §8-402(b) and collect a judgment for actual damages against the holdover tenant under §8-402(a). Mr. Davison noted that under the bill, a tenant for a term or period of a year who held over with the landlord's consent would become a month-to-month tenant, not a year to year tenant. Mr. Davison also noted that subsection (a) would apply to renewal of the tenancy of a lease for a term of a year or more or a periodic tenancy of a year; he explained that there was a difference under the common between a written lease for a term of a year (which automatically expires at the end of the term) and an oral tenancy for a period of a year (which automatically is renewed for a new period unless terminated by the landlord or tenant giving notice to the other). The bill, as amended by Mr. Walsh's motion to simplify the wording of subsection (a), was passed unanimously.

8. Mr. Davison noted that there would be no items on the agenda for the November meeting except future business; he asked members of the Commission to be prepared to discuss proposed new bills for future attention of the Commission, possibly from the Uniform Residential Landlord and Tenant Act.

9. The meeting adjourned at 9:40 p.m.

Steven G. Davison,
Reporter

GOVERNOR'S COMMISSION

ON

LANDLORD - TENANT LAW REVISION

Minutes of Meeting

of

December 12, 1978

1. Present: Jenkins (chairman), Walsh, Laurent, Martin, Everngam, Pilla, Kalis (quorum).

2. The meeting began at 8:10 p.m.

3. Mr. Jenkins said that Mr. Braverman had resigned from the Commission. The Commission now 14 members, with 5 vacancies - 2 for tenant members, 2 for landlord members, and 1 for a neutral member. Mr. Jenkins requested nominations of persons to be new members of the Commission.

4. Agenda items #1 (the landlord's and tenant's responsibilities for repairing damages and defects that occur during the tenancy) and #2 (implied warranty of habitability) were discussed. Mr. Kalis brought up the related problem of a landlord's eviction of a tenant for breach of the lease. Mr. Davison noted that the 1978 Session of the General Assembly had enacted section 8-402.1 of the Real Property Article, effective July 1, 1978, which provides a landlord a summary remedy for eviction of a tenant who has substantially breached the lease. Mr. Kalis noted that the major problem landlords face is proving that a tenant has breached the lease; he noted that tenants are usually unwilling to testify in court against another tenant because of fear of retaliation. It was noted that landlords attempt to overcome this problem by having maintenance personnel observe tenants' conduct to obtain evidence to prove a breach of lease. Mr. Davison noted that such suits usually require the court to decide whether to believe the testimony of the landlord or the tenant. He noted that this problem of proof had been discussed by the Commission when it was studying good cause eviction bills, and that the Commission had not been able to devise a solution.

   Mr. Walsh said that the sections of the Uniform Residential Landlord and Tenant Act dealing with a landlord's and tenant's responsibilities for maintaining and repairing the premises and remedies for breach of these responsibilities (sections 2.104, 3.101, 3.102, 4.101, 4.103, 4.104, 4.105, 4.107, and 4.202) to some extent duplicated or conflicted with existing Maryland statutes or Baltimore City public local laws. He referred to the statewide and Baltimore City rent escrow statutes, and the Baltimore City implied warranty of habitability statutes (Baltimore City Public Local Laws §§9-14.1, 9-14.2). Mr. Walsh noted that the latter two statutes addressed disrepair of the premises at the beginning of the tenancy and

maintenance of the premises during the tenancy. He said that the rent escrow statutes and the implied warranty of habitability statutes were alternative approaches to the problem, and that the provisions of the Uniform Residential Landlord and Tenant Act provided a third alternative approach to the problem. He said that the Baltimore City implied warranty of habitability statutes, however, were poorly drafted and somewhat overlapped with the rent escrow statutes. He suggested that he and Mr. Davison work together on a bill that would synthesize the rent escrow statutes, the implied warranty of habitability statutes, and the Uniform Residential Landlord and Tenant Act. The Commission accepted this proposal, and decided to consider this bill at its February, 1979, meeting.

Mr. Kalis said that tenants were being awarded unreasonable damages by the Baltimore City rent court against a landlord for breach of a landlord's duty to maintain or repair the premises; he argued that such damage claims don't belong in rent court. Mr. Davison said that he believed that the statewide rent escrow statute authorized a court to award a tenant damages. Mr. Pilla said that he wasn't sure that the Baltimore City rent escrow statute gave a court such authority. He also said that in Baltimore City a court needed a landlord's consent prior to hiring a contractor to repair the premises; Mr. Davison said that he thought that the statewide rent escrow statute gave a court the power to hire a contractor to repair the premises without the landlord's consent.

5. Agenda item #2 (rent control) was discussed. Mr. Davison distributed letters from Mayor Schaefer and Governor Lee with respect to rent control. Mr. Laurent argued that rent control was emergency legislation with which the Commission should not get involved. Ms. Martin said that she didn't think that there was any need for rent control in Maryland at the present time. Mr. Davison noted that there was no rent control in Maryland at the present time, although there had been statewide rent control from July 1, 1974, to June 30, 1975, and Prince George's County and Montgomery County had had rent control between 1973 and 1977. He noted, however, that New York City, many communities in New Jersey, and some communities in Massachusetts, presently had rent control. Mr. Walsh noted that HUD'S regulations pre-empting state or local rent control in housing which had federally subsidized or financed mortgages had been declared invalid by the United States Court of Appeals for the First Circuit. Mr. Jenkins noted that a proposed bill in Baltimore City would permit increases in rent only if they reflected increased costs and if there are no housing code violations in the premises. Ms. Martin said that rent control programs allowing landlords to pass on increased costs can result in annual rent increases of 13-15%. Mr. Kalis noted that when a rent control program establishes a maximum annual percentage rent increase, many landlords will raise rent the maximum amount each year although they would have raised rent a lesser amount in the absence of rent control. The Commission decided not to take any present action on rent control.

6. Mr. Pilla said that landlords are significantly prejudiced in suits against holdover tenants when the defendant requests a jury trial, alleging that the amount in controversy is the value of the right of possession and exceeds $500. The case is then transferred from district court to circuit court for the jury trial. Although section 8-402 specifies that the action should be tried within 10 days of the issuance of the summons, the cases usually

usually are not tried for several months. Mr. Pilla noted that during this delay, the tenant cannot be required to pay rent or damages into escrow or to the landlord; furthermore, one judge has said that a landlord cannot obtain damages from a holdover tenant if he obtains a judgment for possession, even though section 8-402 authorizes a landlord to obtain a judgment for both damages and possession against a holdover tenant. Mr. Laurent argued that the problem and solution was one of court administration. Mr. Davison suggested as a solution a bill establishing a statewide housing court modeled after the Boston housing court; Mr. Laurent and Mr. Walsh argued, however, that such a proposal would be infeasible. The Commission decided not to consider a bill to establish a state housing court.

Mr. Walsh recommended that the Commission consider regulation of the mobile home park owner-resident relationship. He discussed unreasonable restrictions imposed by park owners upon mobile home owners residing in mobile home parks. Mr. Laurent said that Baltimore Neighborhoods receives many calls from mobile home owners about problems they are having with mobile home park owners. Mr. Davison noted that park owners are able to impose unreasonable restrictions upon park residents because spaces in mobile home parks are scarce, because of zoning ordinances requiring mobile home owners to reside in mobile home parks and restricting the number of mobile home parks in a county. Mr. Davison said that he had just completed a law review article on the mobile home park owner-resident relationship. He said that the article discussed the Maryland Mobile Home Park Act; he said that the Act needed amendment with respect to the type of lease provisions, rules and regulations that a park owner can impose upon park residents; the types and amounts of fees and charges that can be imposed by park owners; and the grounds and procedures for eviction and ejectment of park residents. He said he would distribute ... copies of this article to members of the Commission. Mr. Laurent requested Mr. Davison to prepare a chart comparing the Maryland statute to mobile home park statutes of other states. Mr. Walsh suggested that the Commission hold hearings around the state to hear testimony about problems of mobile home park residents. Mr. Kalis argued that the Commission should not hold hearings that involved park residents and park owners arguing about individual disputes. Mr. Laurent and other members of the Commission agreed with Mr. Kalis; Mr. Laurent suggested that instead the Commission invite representatives of park resident associations and park owner associations to testify before the Commission. Mr. Laurent noted that there were mobile home park tenant associations in Howard County and Baltimore County; Mr. Davison noted that mobile home park owners were represented by the Maryland Mobile Home Association. The Commission agreed with Mr. Walsh's proposal as modified by Mr. Kalis' and Mr. Laurent's suggestions.

Mr. Jenkins raised the problem of apartment buildings with adults-only policies prohibiting tenants with children. Mr. Kalis argued that the Commission shouldn't attempt to regulate this type of policy; he noted that many tenants don't want to have children as neighbors. Ms. Martin noted that a bill being considered in Prince George's County would permit apartment buildings to be registered as "adults-only" buildings; she said most landlords make their buildings "adults-only" byattrition. Mr. Laurent said that "adults-only" apartment buildings shouldn't be prohibited as long as there were adequate supplies of rental housing for tenants with children. Mr. Jenkins suggested a legislature solution to the problem would be to require landlords who are converting to "adults-only" to give tenants with children notice of eviction a certain period of time

before they are required to quit the premises; this would be similar to the procedure landlords must follow in evicting tenants in order to convert their building to a condominium. The Commission requested Mr. Davison to obtain statistics on the number of "adults-only" apartment buildings in Maryland from the Washington Area Council of Governments and Baltimore Regional Planning.

9. Mr. Pilla raised the question of the legality of lease provisions authorizing self-help eviction or ejectment by the landlord; he said that he had encountered some leases with such clauses in his law practice. Mr. Walsh said that such lease provisions were prohibited by the provision in section 8-208 which prohibits lease provisions that waives a tenant's rights under law. Mr. Davison noted that section 8-208 also has a clause explicityly prohibiting lease clauses authorizing self-help eviction or ejectment by a landlord without legal process. He also noted that a Maryland court decision in the 1800's held that a landlord could not seize a tenant's goods for purposes of distraint for rent without legal process; he noted that the court's reasoning would also prohibit ejectment or eviction of a tenant by a landlord without legal process. He noted that this was the modern, majority common law approach.

10. The meeting adjourned at 9:15 p.m.

Steven G. Davison,
Reporter

GOVERNOR'S COMMISSION

ON

LANDLORD - TENANT LAW REVISION

Minutes of Meeting

of November 14, 1978

1. Present: Jenkins (Chairman), Laurent, Martin, Pilla, Evernham, Dancy, Sommers, Meyerhoff, Ackerman (quorum).

2. The meeting started at 8:10 p.m.

3. The Commission discussed the issue of the right to jury trial in landlord-tenant cases that was raised by Senator Byrnes in his letter of October 11, 1978, and in Mr. Davison's letter of reply of November 1, 1978. Members of the Commission noted that the court of appeals in Bringe v. Collins did not specify what is meant by the "value of the right to possession" in determining what is the "amount in controversy" in a landlord-tenant action. This might refer to the amount of damages a landlord might suffer until a tenant is evicted by court order for failing to pay rent, breaching the lease, or holding over after the termination of the tenancy. Such damages might include lost rent, and damages that must be paid to a new tenant if the landlord cannot deliver possession of the premises at the beginning of the new tenant's lease. On the other hand, "the value of the right to possession" might be interpreted as referring to the market value of the leased premises. This uncertainty in the meaning of the "value of the right to possession" needs to be clarified. Another question that was raised by members of the Commission is whether the amount in controversy can be determined by the "value of the right to possession" when the landlord is seeking only to collect rent or damages in a suit against a tenant, but not to regain possession of the premises. Both Bringe v. Collins and Mulchansingh v. Columbia Management, Inc., involved suits to recover possession, and consequently did not address this question Some members of the Commission argued that a bill should be approved that would specify that when a landlord is seeking to collect more than one rent payment in a suit against a tenant, the amount in controversy would be one rent payment, rather than the total amount of all rent payments sought to be collected in the suit. Such a bill would overrule the approach of the court in Mulchansingh of determining the amount in controversy by aggregating all the rent payments for which the landlord is suing. Other members of the Commission questioned whether such a bill should prohibit the amount in controversy from being determined by the "value of the right to possession", particularly in a suit seeking both to collect rent and to regain possession of the premises. It was pointed out that if a tenant is

successful in obtaining a jury trial, it can delay the landlord's recovery of possession of the premises several weeks to several months because there are no jury trials in district court and the case must be transferred to circuit court, where the court calendars are congested. Several members of the Commission questioned whether the Maryland General Assembly would have the constitutional authority to enact a bill defining the amount in controversy for purposes of the right to jury trial in landlord-tenant cases; and whether a bill prohibiting consideration of the value of the right of possession in determining the amount in controversy would be constitutional. The Commission decided to have the Reporter write Senator Byrnes and suggest that he request the Attorney General to issue an opinion with respect to these constitutional questions.

4. Mr. Laurent proposed that the Commission consider adopting a bill that would specify the landlord's and tenant's responsibilities to repair defects and damages in the premises which occur during the term of tenancy, such as broken windows, plumbing, problems, or doors broken by a burglar. Mr. Laurent noted that the Baltimore City housing code makes landlords responsible for repairing defects and damages in the premises, although it doesn't specify whether the landlord or tenant is financially responsible for such repairs. Mr. Davison noted that under the common law, a tenant was responsible for all defects in the premises that occurred during the tenancy and which were not caused by the landlord (if unsafe defects or conditions were caused by the landlord, a tenant could terminate the lease under the doctrine of constructive eviction). Mr. Davison noted that Maryland has not recognized an implied warranty of habitability. Mr. Pilla noted that Maryland's rent escrow statute makes the landlord responsible for defects occurring during the tenancy which threatens health or safety. Mr. Davison noted, however, that the statute doesn't cover defects such as broken windows or doors or plumbing problems. Mr. Davison noted that section 2.104 of the Uniform Residential Landlord-Tenant Act (URLTA) makes the landlord responsible for repairing defects in the premises that occur during the tenancy, although a landlord and tenant of a single family home can agree that the tenant will be responsible for repairing minor defects. Mr. Davison also noted that section 4.105 of the URLTA provides a tenant a self-help remedy to repair minor defects and damages in the premises and deduct the cost of the repairs from the rent. Mr. Meyerhoff noted that section 3.101 of the URLTA specified a tenant's duties with respect to maintaining the premises, and section 3.102 of the URLTA specifies the rules and regulations that a landlord can require tenants to follow. Mr. Sommers stated that a bill addressing a landlord's duty to repair defects during the tenancy would receive substantial political opposition.

5. Mr. Jenkins suggested that the Commission examine the mobile home park situation. Mr. Laurent noted that residents of mobile home parks are charged high entrance and exit fees, and that owners of mobile homes have difficulty in finding space in mobile home parks because the number of parks are limited due to zoning restrictions. Mr. Davison noted that he was writing a law review article addressing this area, and would distribute copies to members of the Commission when it was completed. Mr. Davison noted that Maryland has enacted a statute to protect mobile home park residents from abusive rules and fees, but that it was not as strong as statutes in California and Florida; he stated that he would distribute

copies of the Maryland, California and Florida statutes, and of a law review article comparing mobile home park statutes of other states. He also stated that he would distribute copies of bills introduced in the Maryland General Assembly last session that would amend Maryland's act to be as strong as California's and Florida's. Mr. Laurent suggested that the Commission draft a bill to amend Maryland's act, and then have a meeting to hear criticism from park owners and residents.

6. Mr. Jenkins stated that he had received copies of letters from Mayor Schaefer and Governor Lee with respect to rent control, which would be distributed and discussed at the next meeting.

7. Mr. Laurent and Mr. Jenkins suggested that the Commission discuss at the next meeting a bill to establish an implied warranty of habitability in residential leases.

8. The meeting adjourned at 9:10 p.m.

Steven Davison,
Reporter

GOVERNOR'S COMMISSION

ON

LANDLORD - TENANT LAW REVISION

Minutes of Meeting

on February 27, 1979

1. Present: Jenkins (chairman), Pilla, Walsh, Laurent, Everngam, Sommers, Stollof, Kalis, Martin (quorum).

2. The meeting started at 7:50 p.m.

3. Mr. Jenkins introduced Chief Judge Sweeny of the District Court; Judge Ciotola, who recently presided over Baltimore City's Housing Court; and Judge Cardash, who hears rent cases in Baltimore County. Judge Bell, who presently presides over Baltimore City's Housing Court, arrived at the end of the meeting.

4. Mr. Davison noted that 7 of the Commission's 8 bills were scheduled to be heard by the House Judiciary Committee on Tuesday, March 6, beginning at 1:00 p.m. He indicated that the 7 bills scheduled for hearing were HB 445 (security deposits), HB 448 (month's notice to quit to week-to-week tenants), HB 482 (amendments to exculpatory clause statute), HB 483 (criminal penalties for denial of essential services), HB 484 (duty to provide leaseform and lease), HB 486 (appeals), and HB 487 (lease renewal). The Commission's other bill is HB 1199 (repeal of §8-212 (liquidated damages)).

5. Mr. Davison distributed a copy of a draft of his law review article on mobile home park regulation; a copy of statistics on mobile home parks in Maryland; a copy of a proposed bill to amend the Maryland Mobile Home Park Act; a copy of the Prince George's County "adults-onlu" ordinance; and a copy of San Francisco's "adults-only" ordinance.

6. Judge Sweeny discussed SB 203, a bill sponsored by the Maryland Judicial Conference that would amend §8-401 (rent due and payable) to require landlords to give tenants 3 days notice that rent is overdue prior to filing a summary ejectment suit under §8-401. (Mr. Davison noted that the Senate Judicial Proceedings Committee had heard SB 203 and had requested the position of the Commission on the bill). Judge Sweeny said that §8-401 makes the courts favor landlords. He noted that 300,000 summary ejectments suits were filed under §8-401 last year in Maryland, with 130,000 such suits filed in Baltimore City. He noted that statewide these suits resulted in 50,000 warrants of restitution being issued by the courts, with 8500 actual evictions of tenants resulting (2.5% of the number of suits filed under §8-401). He indicated that a large

number of these suits are filed on the first and second days of the month after rent becomes due. He said that many landlords don't give a tenant notice that he is delinquent in paying rent priot to filing suit under §8-401; filing suit under §8-401 is the first and only attempt to collect rent by many landlords. Judge Sweeny said that he believed that SB 203 would reduce the number of suits filed under §8-401. He indicated that Philadelphia, a city much larger than Baltimore which requires landlords to give tenants 30 days notice prior to filing suit for summary ejectment for non-payment of rent, had only 30,000 rent suits filed last year. He indicated that most states require a landlord to give a tenant notice prior to filing a summary ejectment suit for failure to pay rent; Maryland is one of 10-12 states that don't require a landlord to give a tenant notice prior to filing a summary ejectment suit. He indicated that the City Housing Authority has decreased the number of summary ejectment suits it files per month from 1200/month to 500/month since it began giving tenants 14 days notice that rent was unpaid prior to filing suit under §8-401. He noted that §8-401 causes the court to be viewed by tenants as a representative of the landlords. He referred to SB 582 (Senator McGuirk), which would amend §8-401 to allow a landlord to obtain costs when he obtains a writ of restitution when rent is not also awarded because of lack of personal service on the tenant. Judge Sweeny said that he opposed SB 582 if SB 203 isn't enacted because he thought landlords shouls pay costs if they are resorting to the courts in the first instance to collect rent.

7. Judge Ciotola said that he supported SB 203 because there is a need to reduce the number of rent cases in the district court in order to avoid long delays in bringing §8-401 suits to trial. He noted that this problem will become even more severe as more tenants demand jury trials in summary ejectment suits under §8-401. He said that if this problem was not resolved, landlords would face long delays in collecting rent because of delays in bringing summary ejectment suits to trial. Judge Ciotola agreed with Judge Sweeny that §8-401 causes the court to be viewed as the landlord's representative.

8. Judge Cardash noted that the 15000-16000 summary ejectment suits filed in Baltimore County each year was straining the capacities of the 6 clerical personnel and 3 constables handling these cases. He noted that although the number of summary ejectment suits filed increases each year, the court's budget to handle these cases is not increased. Judge Cardash said that because of the large number of suits filed under §8-401, the requirement of §8-401 that service be made within 5 days of filing is violated in almost every case. He concluded by saying that summary ejectment suits under §8-401 are physically straining the court.

9. Mr. Davison said that the landlords are concerned that SB 203 would add further delays to collection of rent because it would continue to allow a tenant to redeem up until execution. He noted that the Uniform Residential Landlord and Tenant Act, which requires a landlord to give a tenant notice before filing a summary ejectment suit for failure to pay rent, does not give a tenant a right of redemption after the landlord files suit. He indicated that approximately 12 states, including Virginia have enacted this provision of the Act, although the period of notice varies from 5 days

(Virginia) to 14 days as opposed to the 3 days notice provided in SB 203. Judge Sweeny said that he believed a tenant should have the right of redemption and that he would not repeal the right of redemption in order to eanct SB 203. Judge Ciotola noted that defendants in other civil cases have the right of redemption after filing of suit. Mr. Stollof noted that the Social Services Agency will not give economic assistance to a tenant who is unable to pay his rent until the tenant is servied with a summons and complaint under §8-401. Mr. Stollof asked Judge Sweeny how many tenants were sued under §8-401 within 3 days of the due date for the rent; he questioned whether many landlords make rent due at the end of the month rather than at the first of the month. He suggested that an laternative approach would be to prohibit a landlord from filing suit under §8-401 until 3 days after rent was due. He said that if SB 203 was enacted, most landlords as a matter of course would send the required notice to all tenants at the first of the month with a statement to idsregard the notice if they had paid their rent. Judge Sweeny said he knew of no jurisdiction that followed such an approach, whereas the approach of SB 203 had a demonstrated record of reducing the number of summary ejectment suits filed in the courts. Mr. Stollof said that many landlords give tenants a period after rent is due to pay before filing suit under §8-401; he argued that SB 203 might cause landlords to reduce the grace period they are presently giving to tenants who are delinquent in paying rent. Judge Cardash said that he had not seen any leases that required rent to be paid at the end of the month; he said that most leases provide a grace period for paying rent late which is tied to a late charge if the grace period is exceeded. He indicated that landlords with such leases do not file suit under §8-401 until late charges accrue, so that how much grace period the landlord gives to his tenants is immaterial in reducing the large number of suits filed under §8-401. Judge Sweeny said that judges resent being placed in the role of seeming to favor landlords in §8-401 suits. He said that §8-401 is flooding the courts with paperwork, and delaying the trial of cases filed under §8-401. Mr. Walsh said that tenants represented by Legal Aid view the housing court as agent of the landlords, although this perception has been changing due to the performance of Judge Ciotola and Judge Bell in Housing Court. Mr. Walsh said that he didn't think §8-401 authorized a court to award late charges to a landlord, but Judge Cardash said that he does so in many §8-401 suits. Judge Ciotola indicated that delays in trial of §8-401 suits would increase because many suits under §8-401 were becoming more complex by rent escrow issues being raised and jury trials being demanded. Mr. Davison noted that the Commission had recently discussed the problem of jury trials in §8-401 suits; he gave Judge Ciotola copies of the two letters he had written to Senator Byrnes on the question.

10. Judge Sweeny said that he had proposed an amendment to SB 203 that would allow a landlord to give notice by any one of four methods: personal service, posting, certified mail, or first class mail.

11. Mr. Pilla suggested as an alternative approach that a landlord be required to show that he had waited 7 to 10 days after rent was due before filing suit under §8-401. Judge Sweeny said that he preferred SB 203's approach.

12. In response to a question from Mr. Pilla, Judge Sweeny said that he prefers that judges try landlord-tenant cases rather than administrative hearing officers until he was satisfied as to the appointment process and the competency of such hearing officers. He said that such an administrative approach might require an amendment to the state constitution.

13. Mr. Kalis suggested that a solution to the problem of trial delays in §8-401 cases would be to assign more judges to housing court or to distribute landlord-tenant cases among all judges hearing civil cases. He recommended establishment of a "blue-ribbon" commission, composed of representatives from the courts, the bar, the commission, landlords and tenants, to study the problem.

14. Judge Sweeny noted that other civil cases cannot by law be tried earlier than 42 days after filing (except for some small calim actions), while suits filed under §8-401 are supposed to be tried within 5 days of filing. He said that this quickness in trial of §8-401 suits weighs in the landlord's favor.

    He noted that only Baltimore City has one judge assigned exclusively to landlord-tenant cases. He said that the reason for doing this was to allow a judge to develop expertise in landlord-tenant law. He said that Baltimore City Housing Court was the toughest judicial job in Maryland.

15. Mr. Jenkins asked how many §8-401 suits involve a dispute over how much rent is due. Judge Bell said very few suits under §8-401 involved such an issue. Judge Bell said that landlords use housing court as a collection agency. He added that very few tenants appear to defend in summary ejectment suits. He said that he was uncertain as to whether the notice that SB 203 would require cause tenants to pay rent.

16. Mr. Laurent said that he had encountered a number of suits in which a landlord desiring to eject a tenant consequently refuses to accept rent tendered by the tenant and then files a summary ejectment suit to evict the tenant for non-payment of rent. He suggested that a landlord be required to swear under oath that he had not refused to accept rent before he could file suit under §8-401. Judge Ciotola said that he would present this suggestion to the Forms Committee. Judge Bell said that such a change in the forms was unnecessary; he said that he would dismiss summary ejectment suit in these circumstances on the grounds that rent was not due. Judge Bell said that he was watching for such cases since being alerted to the problem.

17. Mr. Sommers said that the notice required by SB 203 would require additional clerical work and postage to be paid by landlords, and that these increased costs will be passed onto tenants in the form of higher rent.

18. Mr. Stollof argued that before SB 203 is enacted, the effectiveness of its notice procedure should be tested by its voluntary adoption by 2 or 3 landlords, to test whether the notice procedure would decrease the number of suits filed under §8-401. He also argued that SB 203 should not be enacted without consideration of statistics as to how long landlords wait for rent to be paid after the due date before filing a summary ejectment suit; such statistics might suggest that the appropriate solution would be to require landlords

to wait a certain period after rent is due before filing suit under §8-401. He also questioned whether it is the landlord's responsibility to remind a tenant that rent is due and unpaid, particularly when many landlords are giving tenants grace periods to pay rent after the due date. He also noted that Social Services will not assist tenants who cannot pay rent until they receive a summons and complaint under §8-401, although Mr. Walsh stated that Legal Aid would be willing to attempt to get Social Services to change this requirement.

19. Mr. Pilla said that he was unsure whether SB 203 will solve the problem of court congestion; he suggested as an alternative solution that a landlord be required to wait a certain period after rent is due before being able to file suit under §8-401.

20. Mr. Kalis said some tenants who understand the right of redemption under §8-401 routinely wait until just before execution to pay rent, while other tenants are unable to pay rent until they receive assistance from Social Services after suit is filed under §8-401.

21. The Commission unanimously voted to have the Chairman write Senator Curran chairman of the Senate Judicial Proceeding Committee, to inform him that the Commission had had a short period of notice to consider SB 203, that the Commission had discussed SB 203, and that the Commission had taken no position on SB 203 because it is Commission policy not to take action on proposed legislation without more time for consideration.

22. The Commission voted, with one dissenting vote, to propose to amend HB 445 to substitute "abandoned" for "vacated".

23. The meeting adjourned at 10:00 p.m.

Steven Davison,
Reporter

GOVERNOR'S COMMISSION

ON

LANDLORD - TENANT LAW REVISION

Minutes of Meeting

on March 13, 1979

1. Present: Jenkins(chairman), Pilla, Meyerhoff, Zerwitz, Dancy, Laurent, Stollof, Ackerman, Everngam, Kalis. (quorum).

2. The meeting started at 7:35 p.m.

3. Mr. Jenkins said that he had submitted the names of Mr. Abrams and Mr. Oaks to the Governor's Office as nominees for appointment as members of the Commission.

4. Mr. Jenkins read a letter that he had sent to Senator Curran, chairman of the Senate Judicial Proceedings Committee, that states the position that the Commission took at the last meeting with respect to SB 203.

5. Mr. Davison discussed the hearing of the House Judiciary Committee on March 6 on seven of the Commission's bills (HB 445, 448, 482, 483, 484, 486, 487).

   a. HB 445 (Security deposits). Mr. Davison said that he had proposed that the bill be amended by changing the word "vacated" on line 97 and the line after line 101 to "abandoned", as approved at the Commission's last meeting. He stated that Mr. Koonz supported the bill, telling the Committee that every list of itemized damages that he has sent to a tenant who had been evicted for breach of the lease or who had abandoned has been returned to him because of lack of a forwarding address. He said that Legal Aid opposed the bill on the grounds that it was contrary to the principle that a security deposit is the tenant's property.

   b. HB 448 (month's notice to quit to week-to-week tenants). Mr. Davison said that this bill did not receive much opposition.

   c. HB 482 (exculpatory clauses). Mr. Davison said that an amendment to the bill was proposed, to add the phrase "WITHIN THE SCOPE OF THEIR EMPLOYMENT" following the "EMPLOYEES" on line 77. The effect of this amendment would be to not allow a landlord to exculpate his liability for acts of his employees outside the scope of their employment. Mr. Davison said that this amendment would codify the common law doctrine of <u>respondeat superior</u>, under which landlords are liable for tortious acts of their employees within the scope of their employment.

d. HB 483 (criminal penalties for denial of essential services). Mr. Davison said that there had been a number of meritorious criticisms of, and proposed amendments to the bill, which would probably cause it to be defeated. He recommended that if the bill was defeated, these proposed amendments should be adopted by the Commission for resubmission to the next session of the General Assembly.

1. Mr. Davison said that one member of the Committee was concerned that the word "INCLUDES" in line 74 of the bill would allow courts to define the term "essential services" to include other services not explicitly mentioned in the bill. Mr. Davison said that substituting the word "MEANS" for "INCLUDES" in line 74 would make it clear that the essential services mentioned in subsection (a) is an exclusive list.

2. Mr. Davison said that a member of the Committee was also concerned with the word "KNOWLEDGE" in line 83 of subsection (b)(2), which would make the statute applicable to a landlord who failed to restore essential services after receiving notice of interruption orally or by telephone. Mr. Davison said that if the Commission desired to amend the bill to require written notice the language in the rent escrow statute, §8-212(g), might be followed. This would change "KNOWLEDGE" to "HAVING RECEIVING NOTICE BY A WRITTEN COMMUNICATION SENT BY CERTIFIED MAIL LISTING THE ASSERTED CONDITIONS OR DEFECTS OR A WRITTEN VIOLATION, CONDEMNATION OR OTHER NOTICE FROM AN APPROPRIATE STATE, COUNTY, MUNCIPAL OR LOCAL GOVERNMENT AGENCY STATING THE ASSERTED CONDITIONS OR DEFECTS."

3. Mr. Davison also said that the bill had been criticized on the grounds that it would make the landlord criminally liable where the tenant has contracted in writing to pay for the essential services and the interruption or failure to supply is the direct result of the failure of the tenant to pay for such essential services; where the tenant and landlord have agreed in writing that the landlord will not provide the essential service in question; and where the landlord turns off the essential service for a reasonable period of time to make repairs to the system, equipment, or facilities providing the essential services. Mr. Davison said the bill should be amended to make it inapplicable in either of these three situations.

4. Mr. Davison said that an amendment had been proposed to delete the words "OR MANAGER" on lines 77 and 89, so that a property manager would not be subject to criminal liability under the bill. This amdnement was proposed on the grounds that "a manager operates only as the agent of the owner and in many cases does not have the authority to restore an essential service when the owner has not authorized payment for the same." (See enclosed letter to Mr. Sommers).

5. Mr. Davison said that the bill, contrary to what the Commission had voted and what he had sent to the Governor's office, contained a provision for criminal punishment. He said that he had proposed deletion of the words "OR IMPRISONMENT FOR NOT MORE THAN 10 DAYS OR BOTH" on lines 90 and 91 to correct this mistake.

6. Mr. Davison also noted that the bill had omitted a subsection approved by the Commission that would provide that it did not preempt public local laws or ordinances of a similar nature. He said that he had proposed this amendment, so that Baltimore City's and Baltimore County's similar housing code provisions would not be preempted by the bill.

e. HB 484 (duty to provide copy of leaseform and lease). Mr. Davison said that Legal Aid and the Consumer Protection Division of the Attorney General's Office had opposed the bill because it would repeal §8-203.1. He said that they interpreted §8-203.1 as requiring written leases to contain an implied warranty of habitability; he noted, however, that §8-203.1 allows a landlord to disclaim an implied warranty of habitability and implicitly permits a landlord to waive his duties under the rent escrow statute. He said that his written statement to the Committee explained the Commission's reasons for proposing repeal of §8-203.1, and that he had given copies of the statement to the representatives of Legal Aid and the Attorney General's Office.

f. HB 486 (Appeals). Mr. Davison said that Legal Aid had opposed the sections of the bill that would establish uniform appeal procedures in landlord-tenant cases, on the grounds that such uniform procedures were not necessary. He said landlords had opposed the sections of the bill that would authorize stays of execution in holdover tenant suits under §8-402 if the holdover tenant payed an amount equivalent to rent for the period of the stay. He said he had explained to the Committee that judges were routinely granting stays of execution against holdover tenants of up to 30 days, with the landlord not receiving rent or compensation for the period of the stay. Mr. Laurent said that the appeal section of the bill had not been initiated by the Commission and had not been fervently supported by the Commission. He recommended that if the bill was defeated, the Commission should not resubmit the appeals section, since it had been defeated several times before.

g. HB 487 (lease renewal and status of holdover tenant after consent to holdover). Mr. Davison said that one landlord had opposed subsection (b) of the bill, because this landlord uses a clause that makes a tenant a year-to-year tenant if he holds over after the term of the lease without having given the landlord a notice of intent not to renew the lease. Mr. Laurent indicated that he had requested a bill that only would have included subsection (b)'s resolution of the status of a holdover tenant after the landlord has consented to the holdover. Members of the Commission agreed that the situation addressed by subsection (a) was rare and that its language was difficult to interpret; the consensus was that subsection (a) of the bill should be deleted if the bill is resubmitted.

6. Mr. Davison noted that HB 1525 (Dels. Kopp and Goldwater) would amend the security deposit statute to require payment of 5% interest on security deposits. He also noted that a Senate bill would tie the security deposit interest rate to the interest paid on passbook accounts by savings and loan associations.

7. Mr. Davison passed out copies of Prince George's County and San Francisco "adults-only" ordinances. He said that the only statistics he had been able to obtain were from Prince George's County, where there are 8350 "adults-only" units-representing 8.6% of the rental housing in the county. Mr. Meyerhoff said that "adults-only" policies were not a problem in Baltimore City and County; he noted that all tenants in Prince George's and Montgomery County are having trouble finding rental housing because there is a lack of newly constructed rental housing. The Commission voted not to further consider "adults-only" policies until available statistics indicate it is a problem in Maryland.

8. Mr. Davison said that he hoped to have the implied warranty of habitability bill)s) ready for consideration at the next meeting. He said that the bill which he had drafted, which would integrate the state rent escrow statute with Baltimore City's implied warranty of habitability law, had been referred by Mr. Walsh to Legal Aid's Lawyer Advisory Panel. He said Mr. Walsh had indicated that the panel favored retaining the rent escrow statute and enacting a separate implied warranty of habitability statute.

9. The Commission requested the Reporter to draft a report discussing the method of evicting a roomer and the rights of a roomer. Mr. Kalis said a bill requiring a court order to evict a roomer would be defeated; he noted that many roomers resided with homeowners, who evict roomers by self-help or by changing locks.

10. The Commission requested the Reporter to prepare a report discussing who has the responsibility to correct defects in the premises during the tenant's term or period of occupancy of the premises. Mr. Zerwitz noted that the Baltimore City Housing Code makes a tenant responsible for repairing broken windows in the premises.

11. Mr. Davison noted that SB 1011 and SB 1065, which would amend the Maryland Mobile Home Park Act, would be heard by the Senate Judicial Proceedings Committee on March 14. He said he would attempt to obtain a list of the witnesses who testify at the hearing. He recommended that the Commission defer consideration of amendments to the Act until it learns what action is taken on these bills.

12. Mr. Jenkins asked if Mr. Everngam would arrange a dinner meeting in May in Silver Spring similar to the one held last year. Mr. Everngam agreed to do so.

13. Members of the Commission and the Reporter suggested that Mr. Pilla raise the following issues during his presentation to the Maryland Judicial Conference:

    (a) increased courtesy by judges to tenants in court hearings (Laurent);
    (b) court delays due to continuances (Kalis);
    (c) jury trials (Davison);
    (d) assignment of more judges to hear landlord-tenant cases (Stollof).

14. The meeting was adjourned at 9:15 p.m.

Steven G. Davison,
Reporter

February 27, 1979

Mr. Milton Sommers
824 Park Avenue
Baltimore, Maryland - 21201

RE: H. B. 483 - Landlord and Tenant - Essential Services

Dear Mr. Sommers:

The Property Owners Association of Baltimore City, Inc. objects to House Bill 483 as written. This bill provides it is a misdemeanor if a landlord knowingly and willfully interrupts supply of essential services. Many times it is necessary to interrupt the supply of essential services in order to repair or replace defective facilities used for heat, electricity, etc. The landlord should ONLY be responsible when he interrupts service and then fails within a reasonable time to restore the service. This could be corrected by: (1) Fail to supply or interrupt the supply of essential services to the leased premises EXCEPT IN THOSE CASES WHERE THE TENANT HAS CONTRACTED IN WRITING TO PAY FOR THE ESSENTIAL SERVICES AND THE INTERRUPTION OR FAILURE IS THE DIRECT RESULT OF THE FAILURE OF THE TENANT TO PAY FOR SAID ESSENTIAL SERVICES, AND .....

OR THE TENANT AND LANDLORD HAVE AGREED IN WRITING THAT THE LANDLORD WILL NOT PROVIDE THE ESSENTIAL SERVICE IN QUESTION

We also object to the use of the words "having knowledge" on line 83 and would recommend the bill be amended so it would require HAVING WRITTEN KNOWLEDGE BY CERTIFIED MAIL of any interruptions. This bill is a criminal bill with criminal penalties and it would be unfair for a landlord to be found guilty simply by a tenant's oral statement they notified the landlord of interruption in service. The only way to insure against any controversary whether the landlord did or did not know of interruption of service would be to require the notice due the landlord by in writing and sent certified mail.

We also recommend on lines 77 and 89 the words "or manager" be stricken in view of the fact that a manager operates only as the agent of the owner and in many cases does not have the authority to restore an essential service when the owner has not authorized payment for the same.

Exception for furnishing of essential services to [illegible]

Please [illegible] copy to [illegible]

GOVERNOR'S COMMISSIONS

ON

LANDLORD - TENANT LAW REVISION

Minutes of Meeting

on April 10, 1979

1. Present: Jenkins (chairman), Walsh, Laurent, Martin, Zerqitz, Meyerhoff, Dancy, Ackerman (quorum).

2. The meeting started at 7:40 p.m.

3. Mr. Davison noted that HB 445 (security deposits) was the only Commission bill that had been passed by the General Assembly. He said that HB 487 (lease renewal) had been passed by the House, but had been reported unfavorably by the Senate Judicial Preceedings Committee. The Commission's other six bills had received unfavorable reports from the House Judiciary Committee.

   Mr. Davison noted that bills (SB 1011, SB 1065) to amend the Maryland Mobile Home Park Act had not passed, although SB 1065 had passed the Senate and had been referred by the House Economic Matters Committee to its Policy Committee for further study during the summer. He suggested that the Commission present testimony with respect to mobile home park regulation to the Policy Committee this summer.

4. The Commission decided to hold a dinner meeting in Prince George's County on May 22, rather than hold a regular meeting on May 8. It was decided not to invite guests, and to have as the agenda, third reader consideration of the Commission's bills that were not passed by the General Assembly.

5. The Commission unanimously agreed to amend HB 487 for third reader consideration at the May 22 meeting, by deleting subsection (A) of §8-214 (lines 69-73), and by adding the words "UNLESS STATED OTHERLESS IN A WRITTEN LEASE AND INITIALED BY THE TENANT", at the beginning of subsection (B) on line 74. It was agreed that subsection (A) of the bill confused persons reading the bill and addressed a problem that rarely exists so that it should be deleted from the bill.

6. Mr. Davison noted that HB 484 (Duty to Provide Leaseform and Lease) had been opposed by Legal Aid and the Consumer Protection Division of the Attorney General's Office, because it would repeal §8-203.1 in its entirety. Mr. Davison said that the Attorney General's office asserted that §8-203.1 requires written leases to include an implied warranty of habitability clause, although he said that §8-203.1 allows the landlord to provide that the tenant takes the premises "as is". He said that §8-203.1 would allow a landlord to waive his duties under the rent escrow statute - which is

not permitted by the rent escrow statute (§8-211) and prohibited lease provision statute (§8-208). Mr. Walsh stated that since the rent escrow statute and prohibited lease provision statutes were enacted subsequent to §8-203.1, they would supercede §8-203.1 to the extent §8-203.1 conflicted with §8-211 and §8-208. The Commission consequently decided that although §8-203.1 was somewhat repetitious of, and superficially inconsistent with, other statutory provisions, HB 484 should be amended so that it would only repeal §8-203 (1)(a). The Commission unanimously agreed that this amendment would probably eliminate opposition to the bill, and would accomplish the major purpose of the bill to require all landlords to provide copies of written leaseforms and written leases if they use written leases. HB 484 as amended was placed on the May 22 agenda for third reader.

7. The Commission unanimously voted to place HB 448 (Month's Notice to Quit to Week-toWeek Tenant) on the May 22 agenda for third reader.

8. The Commission unanimously agreed to amend HB 482 (Exculpatory Clauses) by drafting the bill only to delete from §8-105 the phrase: "and not within the exclusive control of the tenant", without adding any new language to §8-105. This amendment would make it clear that §8-105 applied to a tenant's apartment, regardless of whether the landlord reserved a right of access or entry, as well as to commons areas. The bill as amended was placed on the May 22 agenda for third reader.

9. Mr. Meyerhoff said that members of the Baltimore City and Anne Arundel County delegations were strongly opposed to repeal of sections 8-212(b), (c), and (d), which prohibit liquidated damages clauses. He said that repeal of §8-212(a), to allow landlords to recover all actual damages, was not strongly opposed. He consequently suggested that HB 1199 (repeal of §8-212) be amended to propose repeal only of §8-212(a). Mr. Davison noted that although Judge Resnick had declared §8-212 unconstitutional in its entirety (copy enclosed), the Attorney's General Office had apparently issued an opinion stating that §8-212 was unconstitutional. The Commission voted to postpone consideration of HB 1199 until the Attorney General's opinion could be obtained by the Reporter and compared by the Commission with Judge Resnick's opinion.

10. The Commission unanimously agreed to amend HB 486 (Appeals) by deleting the appeals provisions (lines 88-163 and lines 242-273) and retaining the stay of execution provisions under §8-402(b)(2) (lines 166-238). Mr. Davison noted that the appeal procedures had been opposed by Legal Aid, had been rejected several times by the House Judiciary Committee, and had never been supported strongly by the Commission. HB 486, as amended, was placed on the May 22 agenda for third reader.

11. Mr. Davison discussed the amendments to HB 483 (Criminal Penalties for Essential Services) that are discussed in the minutes of the March 13, 1979, meeting. Mr. Laurent and Mr. Walsh suggested that the Commission consider the language of the similar Baltimore County and Baltimore City as an alternative to the proposed amended version of HB 483. The Commission agreed to defer further action on HB 483 and proposed amendments thereto until the next meeting, so that they can be compared with the Baltimore City and Baltimore County housing code provisions.

12. Mr. Davison distributed copies of and discussed a memorandum with respect to the common law duty of landlords to repair the premises during the tenancy. He noted that the common law has been modified by the rent escrow statute, by Baltimore City public local law, and by some housing and building codes, but otherwise remains in effect in Maryland.

13. Mr. Davison distributed a copy of a memorandum dealing with the common law with respect to lodgers, roomers, and boarders.

14. Mr. Davison distributed a copy of his implied warranty of habitability bill. He noted that the bill would incorporate the rent escrow statute, although he noted that Legal Aid's attorney advisory panel was drafting a bill that would leave the rent escrow statute in effect and would enact a separate implied warranty of habitability statute. Legal Aid's version of an implied warranty of habitability bill will be distributed when it is finalized.

15. Mr. Ackerman proposed that the Commission consider a bill that would amend §8-208(a)(3) to raise the maximum late charge that can be collected, either by raising the maximum charge or by repealing the present maximum charge. Mr. Walsh said that he opposed late charges altogether, because rent is paid at the beginning of the term of tenancy, not at the end of term. The Commission decided to further discuss Mr. Ackerman's proposal at the May 22 meeting.

16. Mr. Ackerman proposed amending §8-203(e) to permit a landlord to post a performance bond in lieu of placing security deposit funds in a banking or savings institution. Mr. Davison noted that such a bill was introduced several years ago but was reported unfavorably. The Commission decided to further discuss Mr. Ackerman's proposal at the May 22 meeting.

17. The meeting adjourned at 9:10 p.m.

Steven G. Davison,
Reporter

GOVERNOR'S COMMISSION

ON

LANDLORD - TENANT LAW REVISION

Minutes of Meeting

on May 22, 1979

1. Present: Jenkins (chairman), Ackerman, Martin, Zerwitz, Meyerhoff, Jenkins, Dancy, Laurent, Kalis, Pilla (quorum).

2. The meeting started at 9:00 p.m. after dinner. The dinner and meeting were held at the Port of Italy Inn in Temple Hill, Maryland.

3. The Commission unanimously passed the first bill on the agenda (period of tenancy after landlord consents to holdover tenant remaining on the premises), subject to an amendment by Mr. Meyerhoff that would allow a written lease to provide otherwise if initiated by the tenant.

4. The Commission unanimously passed the second bill on the agenda, which would amend §8-203.1(a) to require all landlords who use written leases to provide, upon written request, a prospective tenant with a copy of the leaseform, and to provide tenants a copy of an executed written lease.

5. The Commission unanimously voted to resubmit HB 448 of the 1979 Regular Session, which would require a month's notice to quit to a week-to-week tenant and would not require notice to quit to be given to a trespasser or squatter prior to seeking their eviction under §8-402.

6. The Commission unanimously passed the fourth bill on the agenda, which would amend §8-105 (exculpatory clauses) to make it clear that lease clauses exculpating a landlord from injuried to tenants or other persons are void whether the injury occurs in common areas or the tenant's apartment, regardless of whether the landlord retains any control of or right of access or entry to such premises.

7. Mr. Davison said that he had received a phone call from a member of the Governor's staff asking questions about HB 445 (amendments to security deposit statute). He said that the staff member appeared to be against HB 445, and that therefore was a possibility that the Governor might veto the bill. He suggested that members of the Commission contact the Governor's office to express support for the bill.

8. Mr. Davison distributed a copy of Judge Resnick's opinion holding §8-212 unconstitutional, and an opinion of the Attorney General's office concluding that §8-212 was constitutional.

9. The Commission requested the Reporter to order copies of the Real Property Article for each member of the Commission.

10. Mr. Ackerman asked Mr. Davison to inquire as to whether members of the Commission could be paid for attendance at meetings.

11. The meeting adjourned at 9:30 p.m.

Steven Davison,
Reporter

GOVERNOR'S COMMISSION

ON

LANDLORD - TENANT LAW REVISION

Minutes of Meeting

on June 12, 1979

1. Present: Jenkins (chairman), Meyerhoff, Stollof, Zerwitz, Ackerman, Kalis (lack of quorum).

2. The meeting started at 8:00 p.m.

3. Mr. Jenkins introduced Mr. Jay Lenrow, an attorney with the Attorney General's Consumer Protection Division, who he has nominated to be a neutral member of the Commission. Mr. Jenkins said that Governor Hughes has not yet taken any action to fill the vacancies on the Commission.

4. Mr. Davison said that he had ordered copies of the Real Property Article for members of the Commission. When they arrive from Michie Company, he will send them to members of the Commission.

5. Mr. Jenkins said that future meetings will be scheduled to start at 7:45 p.m. The Commission requested Mr. Davison to send out a schedule of next year's meetings during the summer. Mr. Jenkins said that the Commission would schedule a meeting on the first Tuesday of October, and, if necessary, also on the third Tuesday of October. Otherwise the Commission will meet on the second Tuesday of each month except July and August.

6. Mr. Lenrow distributed an outline of the Attorney Generals office's interpretation of the Real Property Article.

7. Mr. Davison said that the House Economic Matters Committee was planning to hold a policy committee hearing during the summer to consider regulation of mobile home parks, although Mr. Lenrow said the date of the hearing has not yet been scheduled. The Commission authorized Mr. Davison to attend this hearing to obtain a list of witnesses who might be invited to testify before the Commission on the subject of mobile home parks, and to report to the Commission about the testimony at the hearing at the Commission's September meeting. Mr. Davison was also authorized to present his personal opinions, including his law review article on mobile home parks, to the House Economic Matters Committee.

8. The denial of essential services bill was discussed. Mr. Meyerhoff proposed that the bill be amended to make clear that the definition of "essential services" was limited to the services explicitly mentioned. Mr. Kalis asked whether the bill would apply to a landlord who did not provide essential services because he was unable to pay his bills. Mr. Jenkins said that he did not think the bill would apply to such a landlord if he made reasonable attempts to make payments; several members of the Commission said that utilities would not cut off essential services if a landlord made some payment on his bill and made arrangements to pay off the balance. Mr. Stollof asked if the bill would apply if a landlord could not provide essential services due to the unavailability of parts or equipment; Mr. Davison said the bill gives the landlord a reasonable period of time to obtain necessary parts and to make repairs in order to restore essential services. Mr. Ackerman proposed amending line 92 of HB 483 to take into account the amendments discussed in the minutes of the March 13 meeting and at this meeting, for third reader consideration at the September meeting.

9. The Commission requested the Reporter to draft a bill to amend section 8-208(a)(3) to remove the maximum amount of late charges that can be charged each month, for consideration at the September meeting.

10. Mr. Laurent's letter of June 4, 1979, discussing whether a landlord can withhold from a security deposit damages to furniture furnished to a tenant, and discussing how a tenant can recover a wrongfully withheld security deposit, was discussed.

11. Mr. Ackerman's proposal to amend the security deposit statute, to allow a landlord to obtain a performance bond in lieu of placing security deposits in a bank account, was discussed. Mr. Ackerman said that presently there was no source that would provide such performance bonds. Mr. Lenrow said that it is difficult to execute on performance bonds, and that tenants would want to be paid a higher rate of interest on their security deposit if such a bill was passed.

12. The meeting adjourned at 9:00 p.m.

Steven Davison,
Reporter

GOVERNOR'S LANDLORD - TENANT

LAWS STUDY COMMISSION

Minutes of Meeting of

September 11, 1979

1. Present: Jenkins (chairman, Zerwitz, Meyerhoff, Laurent, Ackerman, Dancy, Stollof, Everngam, Kalis (quorum). Mr. Lenrow also attended the meeting.

2. The meeting began at 7:55 p.m.

3. Mr. Jenkins noted that Milton Sommers had resigned, and that the Property Owner's Association had recommended a replacement. Mr. Jenkins said that Mr. Everngam had submitted his resignation, which is contingent upon his son Gary being named to replace him. Mr. Jenkins said that the Governor's Office still has not taken action to make appointments to fill the vacancies on the Commission.

4. Mr. Jenkins said that he would be running meetings with more formality. He asked members and the Reporter not to speak unless recognized by him, so that the meetings could proceed more efficiently and without numerous people speaking at the same time.

5. Mr. Jenkins said that the Commission would appoint a subcommittee, consisting of him, a landlord, and a tenant, to testify before legislative committees, and to lobby members of the General Assembly, in support of Commission bills. Mr. Jenkins said that he (the chairman) would present the Committee's testimony, with the Reporter being present to assist in answering questions, and that the subcommittee would be authorized to speak for the Commission in addressing amendments to Commission bills proposed by members of legislative committees. Mr. Davison noted that in the past he has testified in support of Commission bills before legislative committees and answered questions about suggested amendments; he said that although he usually states that he is only giving his personal opinions about proposed amendments, a Committee may take his statements as being the Commission's position.

6. Mr. Davison discussed two recent court decisions. He noted that Shell Oil Co. v. Ryckman, 403 A.2d 379 (Md. App. 1979), held that section 8-105 (exculpatory clauses) of the Real Property Article does not apply to any lease wherein the lessee or tenant has "exclusive control" of the premises. He noted that the Commission had previously interpreted §8-105 the same way in proposing amendments to §8-105 to remove this "exclusive control" exception to the applicability of §8-105.

   Mr. Davison also noted that Millison v. Clarke, 403 A.2d 384 (Md. App. 1979),

held that a commercial landlord has no duty to mitigate damages, refusing to apply section 8-207 of the Real Property Article to commercial landlords. Millison also reiterated that a commercial landlord may mitigage by reletting without relinquishing his claim against the breaching tenant for the unmitigated rental.

7. Agenda item #1 (amendment of §8-212) was discussed. The Commission voted unanimously to approve the bill, which would repeal the second sentence of §8-212(a), of the Real Property Article to allow landlords in Baltimore City and Anne Arundel County to collect all actual damages from tenants who have breached the lease.

8. Agenda item #2 (amendments to §8-402 with respect to stays of execution against holdover tenants) was discussed. Mr. Meyerhoff made a motion, which was seconded to amend the second line from the top of page 2 of the bill by adding the words "NOT MORE THAN" before "30 DAYS." He said that this would make it clear that a judge could not issue successive days that would total more than 30 days. Mr. Meyerhoff also made a motion, which was seconded, to delete the sentence on page 2 of the bill beginning: "IF THE COURT DECIDES TO STAY EXECUTION OF THE JUDGMENT FOR MORE THAN TWO DAYS,...." Mr. Meyerhoff said that this language was repetitious and unnecessary. Mr. Meyerhoff made a motion, which was seconded, to amend the last sentence in capital letters on page 2 of the bill by adding the words "THE HOLDOVER AND" after the word "DURING THE PERIOD OF"; and by adding the words "THE PERIOD OF THE HOLDOVER" after the words "APPORTIONED FOR". Mr. Meyerhoff made a motion, which was seconded, to amend the first sentence in capital letters in the bill by adding the following phrase at the end of the sentence: ", AND SHALL ORDER THE HOLDOVER TENANT TO PAY THE LANDLORD ALL RENT DUE AND 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." The bill, as amended by Mr. Meyerhoff's motions, was passed unanimously by the Commission.

9. Agenda item #4 (late charges) was discussed. Mr. Laurent suggested that the bill be amended by lowering the late charge for week-to-week tenants to $3; he noted that $5 was too high for most week-to-week tenants, who have low incomes, tight budgets, and weekly rents usually of $25-$40. He noted that the bill, if amended as he suggested as well as by deleting the limit on the maximum amount of late charges that could be collected in a month, would allow landlords to collect $12-15 in late penalties from week-to-week tenants (depending on whether rent was due 4 or 5 times in a month) as opposed to $10 under present law. Mr. Stollof noted that a landlord's administrative costs in collecting rent payments that are late will be more per month for week-to-week than for month-to-month tenants if a week-to-week tenant (who pays rent 4 or 5 times a month) is late in paying rent two or more times in a month. Mr. Kalis argued that putting fixed dollar amounts in legislation was wrong, because these dollar amounts would constantly have to be raised to keep pace with inflation. Mr. Ackerman suggested that late penalty charges be set for all tenants as a percentage of rent that is late. Mr. Stollof noted that 5% of a weekly rent would not cover a landlord's administrative costs in collecting a late rent payment; he noted, however, that very few landlords charge rent on a week-to-week basis. He said that most tenants prefer to pay rent monthly rather than weekly if given a choice. Mr. Lenrow said that the Attorney General's Office interprets the last sentence of §8-208(a)(3),

which specifies the maximum amount of late charges that can be collected per month, as applying only to week-to-week tenants. It was noted, however, that judges in Prince George's and Montgomery Counties interpret that sentence's limit on late charges than can be collected each month as applying to all tenants. Mr. Jenkins made a motion, which was seconded, to amend the bill as suggested by Mr. Laurent to lower the late charge for week-to-week tenants from $5 to $3. He said that this would be a compromise, since the bill would increase the total amount of late charges that a landlord could collect from a week-to-week tenant in one month. The bill, as amended by Mr. Jenkins' motion, was passed unanimously.

10. Agenda item #3 (criminal penalties for denial of essential services) was discussed. Mr. Davison, in response to comments by Mr. Meyerhoff and Mr. Laurent, said that the present draft of the bill contained the essence of language in the Baltimore City provision, but also reflected amendments suggested by members of the Commission at the March and June meetings, as directed by the Commission at the June meeting. Mr. Laurent said that he favored a more simplified bill; he objected to the requirement of notice by certified mail or by written violation notice. Mr. Lenrow said that the earlier version of the bill was preferrable; he said that the explicit exceptions in the present draft of the bill are implicit in the terms "willfully" and "knowingly." Mr. Kalis argued that imposition of criminal penalties for this type of conduct by landlords is inappropriate. He also said that it has become very difficult and time-consuming for a landlord to obtain replacement parts for essential services equipment; he argued that a landlord should not be subject to criminal penalties for his inability to restore essential services because of such delays in obtaining ordered parts. Mr. Jenkins appointed a subcommittee, consisting of Mr. Laurent, Mr. Kalis, Mr. Meyerhoff and Mr. Lenrow, to draft a compromise bill to be placed on the agenda for third reader at the next meeting.

11. Mr. Meyerhoff discussed his letter of August 20, 1979, with respect to proposed amendments to section 8-213 (application fees from perspective tenants) of the Real Property Article. Mr. Kalis and Mr. Stollof suggested that the proposed bill be amended to provide that the prospective tenant has the right to cancel his application prior to approval of the application or lease by the landlord, or within 7 days after the landlord notifies the prospective tenant of his approval. Mr. Meyerhoff agreed to amend the bill as suggested. The Commission agreed to consider the bill on second reader for the October 2 meeting, with the possibility under the by-laws of considering the bill on third reader with a 2/3 vote of the members present.

12. Mr. Ackerman discussed his letter of August 31, 1979, which proposes to amend section 8-203 (security deposits) of the Real Property Article to exempt landlords from the requirement of placing a security deposit in a banking or savings institution if the landlord obtains a corporate surety bond or letter of credit. He noted that surety bonds are presently unavailable in Maryland, but that large landlords with good credit can obtain letters of credit (which are similar to a certified check). The Commission agreed to consider this bill on second reader at the October 2 meeting, with the possibility under the by-laws of considering the bill on third reader with a 2/3 vote of the members present.

13. Mr. Laurent's letter of June 4, 1979, with respect to section 8-203 (security deposits) of the Real Property Article. The Commission agreed to consider the issues addressed in the letter on second reader at the October 2 meeting, with

the possibility of considering the bill on third reader with a 2/3 vote of the members present.

14. The meeting adjourned at 9:55 p.m.

Steven Davison,
Reporter

GOVERNOR'S LANDLORD - TENANT

LAWS STUDY COMMISSION

Minutes of Meeting

of October 2, 1979

1. Present: Jenkins (chairman), Laurent, Welsh, Ackerman, Martin, Meyerhoff, Dancy, and Kalis (quorum). Mr. Jay Lenrow was also present.

2. The meeting started at 8:00 p.m.

3. Agenda item #2 (amendments to security deposit statute,(§8-203) - bill number 80-10, was discussed. Mr. Ackerman said that only a bank's better clients would be issued a letter of credit; he noted that corporate surety bonds are presently unavailable in Maryland. He said that a letter if credit cannot be cancelled and that a bank which issues a letter of credit is responsible if the landlord defaults on the oblogation secured by the letter of credit. In response to a question by Mr. Walsh, Mr. Ackerman said that he did not know what would happen if a letter of credit was destroyed by fire or disappeared. He said he would find out for the next meeting. Mr. Ackerman said that the collateral for a letter of credit would be either the landlord's personal guarantee or a security interest in the landlord's property. Mr. Walsh questioned whether the bill would be of any benefits to tenants if landlords could use a tenant's security deposit for speculative investments. Mr. Meyerhoff said that the bill would allow landlords to make repairs and capital improvements which they might not otherwise be able to afford because of present high interest rates or the inability to get a loan. Mr. Davison said that even if a landlord was able to get a loan at the present time to make repairs or capital improvements, the high interest rates that a landlord would have to pay would be passed on to tenants in the form of higher rent, a result which could be avoided under the bill. Mr. Lenrow urged that the bill be amended to limit the use of security deposits under the bill for maintenance or for making capital improvements or repsirs to the property where the tenants in question live, as opposed to investing the security deposits or using security deposits for new construction. Mr. Ackerman asked how this limitation would be enforced; Mr. Davison suggested that the bill could be amended to provide that use of a security deposit for a purpose other than those specified under section 8-203 would be an unfair and deceptive trade practice under section 13-301 of the Commercial Law Article, and thus subject to enforcement by the Consumer Protection Division of the Attorney General's Office. Mr. Laurent said that if the bill was approved in its present state, tenants would argue that landlords since are enabled to make a profit by investing the tenant's security deposit, tenants should be paid a higher rate of interest on their security deposits than the present rate of 3%. Mr. Walsh and Mr. Lenrow argued that since a security deposit is the tenant's money, a landlord shouldn't be able to invest the tenant's money at a highers investment rate than the tenant is paid as interest on his

security deposit. Mr. Jenkins said that tenants are not concerned with the security deposits, but with the fact that under the bill a landlord would be permitted to invest the tenant's money at a higher rate of return than the rate of interest paid to the tenant. Ms. Martin said that the public members of the Prince George's County Landlord-Tenant Commission don't favor the bill in its present form. Mr. Walsh recommended that section (2)(A)(3) of the bill to allow a landlord to obtain a blanket bond, regardless of the amount of security deposits which the bond would cover. Mr. Lenrow indicated that the Consumer Protection Division of the Attorney General's Office would not welcome the additional administrative burdens that the bill would impose on it. Mr. Davison suggested that this problem could be avoided by amending the bill to provide that a bank shall hold a bind or letter of credit, issued under this section and that a landlord must notify the Attorney General's Office, and the tenants whose security deposits are covered by a bond or letter of credit, when a letter of credit or bond is obtained pursuant to the bill or when a bond or letter of credit issued pursuant to the bill is revoked. Several landlord representatives opposed the suggestion that tenants be notified, arguing that such notice would be expensive. Mr. Jenkins said that such notice should be given to tenants, because security deposits are their money and the bill, with suggested amendments, would require that their security deposits be used for maintenances, capital improvements or repairs to their complex. Mr. Davison noted that section (8) of the bill could be deleted, and the limitation proposed by Mr. Lenrow on the permissible use of security deposits could be implemented, by amending section (2)(A)(1) of the bill to provide that: "A LANDLORD MAY UTILIZE PART OR ALL OF A TENANT"S SECURITY DEPOSIT FOR REPAIRS, MAINTENANCE, OR CAPITAL IMPROVEMENTS TO THE TENANT'S PREMISES, COMMON AREAS APPURTENANT THERETO, OR FACILITIES OF THE COMPLEX WHERE THE TENANT RESIDES WHICH BENEFIT THE TENANT'S PREMISES OR COMMON AREAS, IF THE LANDLORD OBTAINS AND MAINTAINS A BOND, CONDITIONED ON THE RETURN OF THE AMOUNT OF THE TENANT'S SECURITY DEPOSIT REMOVED FROM AN INTEREST BEARING ACCOUNT IN A BANKING OR SAVINGS INSTITUTION FOR SUCH PURPOSE IN THE EVENT THE TENANT BECOMES ENTITLED TO THE RETURN OF ALL OR PART OF SUCH AMOUNT." Mr. Laurent argued that if bonds are required to be posted with the state, the bill would cost the taxpayers substantial money to enforce the bill's requirements. Mr. Ackerman noted that the security deposit statute has no enforcement mechanism to insure that landlords place security deposits in interest bearing accounts in banks or savings institutions. Ms. Martin said that she supported the bill with the amendment to limit the use of security deposits, because rental complexes need capital improvements which are not being provided. Mr. Jenkins said that landlords need the bill in order to finance needed improvements. Mr. Lenrow recimmended that the bill's definition of "bond" should specify that a letter of credit or bond should be non-negotiable; and that the bill be amended to require a bank to keep the bond in its possession, and to notify the Attorney General's office when a bond is ussed and that funds have been removed from a security deposit account, and to require landlords to notify tenants when a letter of credit is issued. Mr. Jenkins agreed that tenants should be individually notified when a letter of credit is obtained pursuant to the bill. Mr. Ackerman argued that banks would oppose having such a notification duty imposed upon them. The Reporter was requested to redraft the bill to incorporate the suggested amendments, so the bill could be placed on third reader. Mr. Davison said he would request the Governor's Office for a waiver of the filing deadline so that the bill could be introduced into this session of the General Assembly if it is approved by the Commission.

4. Agenda item #1 (Bill #8 - Criminal Penalties for Denial of Essential Services) was discussed. The subcommittee discussed the bill which they had drafted. Mr. Walsh said that the reference to "proper legal notice" in section (B)(1) was unclear; Mr. Kalis said the intent of the subcommittee was that the term refer to situations where the landlord and tenant had amended the lease to make the landlord not responsible for providing a particular essential service. Mr. Walsh said that this was covered by the definition of "essential services", which referred to the terms of the tenancy. Mr. Kalis suggested that "without proper legal notice" in action (B)(1) could be deleted if the terms "to which under the express or implied terms of the tenancy may be entitled" was changed to "to which a tenant is entitled under the express or implied terms of his lease or amended lease." The Commission agreed to this amendment to the bill. Mr. Kalis noted that the term in (D)(2) referring to "even where the landlord has notice of the intention of a utility company to interrupt the essential service" was included because in Baltimore City a landlord is required to provide utilities even though a tenant is responsible under the lease for paying the utility bill and has failed to pay it, causing the utility company to shut off the essential service. It was noted, however, that the bill would not apply to Baltimore City, so this phrase in section (D)(2) was deleted by the Commission. Mr. Kalis suggested that section (E) of the bill be deleted, so the bill would apply uniformly statewide. The Commission, however, decided to keep section (E), because Baltimore City and Baltimore County would oppose the bill if it repealed their existing essential services laws. The Commission unanimously approved the bill, as amended.

5. The Commission discussed agenda item #3 (Bill 80-9 - Application for Leases). Mr. Meyerhoff suggested that the term "prospective tenant" in the bill be changed to applicant throughout the bill. The Commission agreed to this amendment. Mr. Lenrow suggested that section 8-213(a) of the existing statute be kept and the last sentence of section (B)(1) of the bill be deleted (since existing section 8-213(a)(2) says the same thing). The Commission agreed to this proposal, with the additional amendment that the words "subsections (b), (c), and (d) of" in existing section 8-213(a)(2) be deleted. Mr. Lenrow argued that a non-refundable application fee of 10% of one month's rent was excessive; he argued that $25 was a sufficient application fee. Several landlord representatives argued that credit checks on applicants may cost $25. Mr. Davison noted that a non-refundable application fee would also cover administrative and personnel costs and lost rent while the premises are held off the market pending processing of an applicant's application. Mr. Lenrow said that sections (B)(1) and (B)(2) of the bill should be amended to delete reference to a landlord being allowed to withhold "direct expenses" from a non-refundable application, since such expenses are recovered under the non-refundable application fee. Mr. Walsh supported amendment, noting that sections (B)(1) and (B)(2) allowed a landlord to withhold money from the tenant without legal process, which no other litigant has the right to do (except a landlord withholding damages from a security deposit under section 8-203). Mr. Lenrow argued that the phrase "direct expenses" in sections (B)(1) and (B)(2) would give the landlord too little guidance and too much discretion as to what expenses could be withhold from a non-refundable application fee. The Commission agreed to delete the terms "direct expenses" from sections (B)(1) and (B)(2). At this point (10:30 p.m.), Commissioners Jenkins, Laurent, Martin, Dancy, and Kalis had to leave, but authorized Commissioners Walsh, Ackerman, and Meyerhoff, and Mr. Davison, to act as a subcommittee on behalf of the Commission to complete action on the bill.

The subcommittee adopted the following additional amendments to the bill, and approved the bill as amended on behalf of the Commission:

(a) Sections "(B)", "B" and "C" of the bill were changed to sections "B", and "C" and "D", respectively.

(b) The language of section (B)(1) was changed to read: "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."

(c) The language of section (B)(2) was changed to read: "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 OBLOGATION 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."

(d) The language of section (B)(3) was changed to read: "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."

(e) The language of section (C) was changed to read: "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 ATTORNEYS FEES."

6. The meeting adjourned at 11:00 p.m.

Steven Davison,
Reporter

GOVERNOR'S LANDLORD - TENANT

LAWS STUDY COMMISSION

Minutes of Meeting

of November 13, 1979

1. Present: Jenkins (chairman), Meyerhoff, Dancy, Everngam, Ackerman, Stollof, Kalis, Laurent. Mr. Lenrow also attended the meeting.

2. The meeting started at 7:55 p.m.

3. Agenda item #2 (security deposits) was discussed first. Mr. Laurent said that a Baltimore City judge had held that a landlord can not deduct damages to furniture in a furnished apartment from a security deposit. Mr. Davison said that the security deposit statute permits a landlord to deduct "damages to the premises" from a security deposit; he said that only personal property that is a fixture (attached to the premises) would be considered part of the "premises" within the meaning of the security deposit statute. He said that furniture and a refrigerator would therefore not be considered part of the premises, while a gas stove (but possibly not an electric stove) might be considered to be part of the premises. Mr. Jenkins suggested that landlords coult protect themselves by including a clause in a lease for a furnished apartment requiring the tenant to pay a separate deposit to cover damages to the furnishings. Mr. Davison said that such a deposit would not be subject to the security deposit statute, because the statute defines "security deposit" to include only a deposit to cover "damages to the premises." Mr. Jenkins recommended that the Commission not consider proposed legislation addressing this problem, since the problem involves personal property rather than real property and can be covered by an appropriate lease clause. The sense of the Commission was to accept Mr. Jenkin's recommendation.

Mr. Laurent also raised the issue of how a tenant can recover a judgment against a landlord under the security deposit statute for a wrongfully withheld security deposit and damages therefore. He said that many tenants have had difficulty in recovering such judgments. He noted a potential problem for tenants seeking to recover a judgment under the security deposit statute from a landlord who becomes bankrupt and hasn't put tenants' security deposits in an escrow account in a banking or savings institution as required by the statute. It was noted that the security deposit statute has no penalties and no enforcement mechanism to insure that landlords keep security deposits in a banking account as required by the statute. Mr. Lenrow noted, however, a licensed real estate agent or broker could lose his license for failing to comply with the statute in this respect. Mr. Lenrow suggested that one solution would be to enact legislation to give tenant's judgments for security deposits priority in bankruptcy above all other creditors of a landlord except the mortgagee. Mr. Lenrow also said that if a tenant records a judgment against a landlord under the security deposit statute, a landlord could not sell his property until he paid the judgment. Mr. Kalis also noted

that a tenant can have the landlord's property seized and sold to satisfy a judgment under the security deposit statute pursuant to a fie fae. It was the sense of the Commission that existing remedies for execution of a judgment under the security deposit statute were adequate and that no bill to amend existing remedies should be considered.

Mr. Laurent asked that his letter of July 13, 1979, addressing the question of penalties to be imposed against landlords who fail to perform duties imposed upon them by the security deposit statute.

4. Agenda item #1 (bill to allow landlords to use tenants' security deposits for capital improvements if they obtain a letter of credit) was discussed. Mr. Davison said that he and Mr. Walsh recommended that section (2)(A)(1) be amended to change the words "repairs, maintenance" in the second sentence to read "repairs or maintenance necessitated by acts of god or civil orders where not reimbursed by insurance", to make it clear that landlords could not utilize security deposits for normal upkeep and maintenance. Mr. Stollof said that he opposed the bill and the proposed amendment; he noted that the bill would not be utilized by landlords who presently deposit tenants' security deposits in large certificates of deposits paying 14 to 15% interest. Mr. Davison asked whether a certificate of deposit would be an "account" within the meaning of the security deposit's requirement that tenants' security deposits be included in an "account" in a banking or savings institution. Several landlord members of the Commission said that certificates of deposits would be "accounts" within the meaning of the security deposit statute. Mr. Kalis agreed with Mr. Stollof's conclusion that the bill would not serve any useful purpose. Mr. Ackerman said that landlords in Montgomery and Prince Georges County would utilize bill, because they don't want to pay high interest rates for capital improvement loans. Mr. Davison said that landlords who did obtain high interest loans to make capital improvements would probably pass the costs of the loans to tenants in the form of higher rent. Mr. Laurent said that the bill might be viewed as special interest legislation and that the Commission might have difficulty in explaining why it was supporting the bill. Mr. Stollof proposed, as an alternative to the bill, a bill that would allow a landlord to remove tenants' security deposits from a bank account and to use it for investment or any other purpose, if the landlord obtains a letter of credit in the amount of the security deposits removed from the account and pays tenants 6% interest (as opposed to 3% as required by the statute) on the amount of the deposit removed from the account from the date the deposit was removed from the account. Mr. Ackerman and Mr. Kalis noted that a letter of credit costs at least 1% of its face amount, so the cost of a letter of credit under Mr. Stollof's proposal would be at least 7% of the security deposits removed from a bank account. Mr. Meyerhoff made a motion to amend the bill by deleting the words "repair" and "maintenance" from the second sentence of section (2)(A)(1). Mr. Ackerman made a motion to amend Mr. Meyerhoff's motion by substituting "renovation" for "repair" and "maintenance". Mr. Jenkins said that renovate means upgrade the premises, which is a step above normal maintenance. Mr. Meyerhoff accepted Mr. Ackerman's amendment, and Mr. Ackerman seconded the amended motion. The amended motion was passed by a vote of 5-1, which was later changed to a vote of 8-0. Mr. Stollof made a motion to amend the bill to allow a landlord to use tenants' security deposits for any purpose provided they obtained a letter of credit

and paid tenants 6% interest on the amount of the deposits removed from bank accounts. Mr. Laurent proposed an amendment to Mr. Stollof's motion, which Mr. Stollof accepted, to require landlords to give tenants written notice that their security deposits have been removed from bank accounts under the bill. Mr. Ackerman seconded the amended motion; Mr. Stollof's motion as amended was defeated by a vote of 5-3. Mr. Lenrow made a motion, which was seconded by Mr. Kalis, to amend the definition of "bond" to add "irrevocable" before "letter of credit." This motion was approved by a vote of 8-0. Mr. Ackerman noted that Virginia allows a landlord to use tenants' security deposits for any purposes, and doesn't require deposits to be placed in a bank account. After discussion, the consensus of the Commission was to redraft the bill as proposed by Mr. Stollof for third reader consideration at the next meeting. Mr. Davison said he would redraft the bill and send copies to Mr. Stollof and Mr. Ackerman before distributing it to the entire Commission.

5. Mr. Jenkins said that he had decided to replace Mr. Meredith on the Commission. He noted that the Governor was expected to appoint Mr. Lenrow and other nominees to the Commission any day.

6. Mr. Jenkins raised, as new business, a problem presented when a tenant holds over after being given notice to quit. When a suit is filed against the holdover tenant under section 8-402, the holdover tenant may demand a jury trial for delay purposes. The holdover tenant is usually entitled to a jury trial under the Maryland constitution upon demand, but it may take 4 to 5 months to get a jury trial, during which time the landlord collects no rent on the premises. It was noted that if the landlord collects rent from the holdover tenant, he consents to the holdover tenant remaining as a tenant. Mr. Jenkins suggested a bill that would require a holdover tenant to post a bond or money equivalent to rent in order to have a jury trial. Mr. Kalis said that a holdover tenant may demand a jury trial as a stalling tactic to get a reduced rate of rent as a concession for a settlement. Mr. Lenrow argued that it would be unconstitutional to require a holdover tenant to post a bond or an amount equivalent to rent in order to obtain a jury trial to which he is entitled under the Maryland Constitution. Mr. Davison suggested that a bill be drafted that would define amount in controversy in suits against holdover tenants to be only the amount equivalent to one month's rent under the prior lease. He noted that the Commission had previously discussed the problem created by a tenant's right to jury trial, and that he had asked Senator Byrnes, in two letters, to request an opinion from the Attorney General's Office as to whether such a bill would be constitutional. Mr. Lenrow suggested a bill requiring that holdover tenant suits be tried within a certain time period, but it was argued by several members that the courts might not comply with such a requirement. Mr. Lenrow suggested as an alternative proposal that a holdover tenant be required to pay an amount equivalent to rent under his prior lease into escrow until the suit is tried. Mr. Davison said that the holdover tenant prior to trial could be called a tenant at sufferance, and might be required to pay an amount equivalent to rent that he would have lawfully owed under the prior lease, which allow rent to be abated to the extent permitted by rent escrow or imploed warranty of habitability legislation. It was the sense of the Commission that the Reporter should draft bills to define

amount in controversy in landlord-tenant suits and to implement Mr. Lenrow's latter proposal.

7. The meeting adjourned at 9:30 p.m.

Steven Davison,
Reporter

GOVERNOR'S LANDLORD - TENANT

LAWS STUDY COMMISSION

Minutes of Meeting

on December 11, 1979

1. Present: Jenkins (chairman), Walsh, Zerwitz, Everngam, Pilla, Meyerhoff, Stollof, Laurent, Kalis (quorum).

2. The meeting started at 8 p.m.

3. Agenda item #1 (amendments to security deposit statute) was discussed.

   a. Mr. Laurent initially asked what type of protection tenants had for their security deposits if the landlord goes bankrupt. Mr. Davison noted that §8-203(e)(3) makes a successor in interest to a landlord after receivership or bankruptcy personally liable for the landlord's security deposits. Mr. Walsh and Mr. Stollof noted, however, that security deposits are not a lien on the landlord's property. Mr. Pilla noted, however, that a tenant who had a judgment against a landlord for an unreturned security deposit would have low priority as a creditor in bankruptcy if the landlord went bankrupt, even though a bankrupt landlord's successor in interest is personally liable to the tenants for their security deposits.

   b. Mr. Davison noted that the security deposit statute did not provide any means to enforce 8-203's requirement that a landlord place his tenants' security deposits in an interest-bearing account in a banking or savings institution. Mr. Stollof said that many landlords earn 12-13% interest on tenants' security deposits by placing them in a long term certificate of deposit in a banking or savings institution. He also said that landlords would probably use the bill only as an alternative to obtaining a high interest loan to make capital improvements to rental property; he noted that only landlords who could obtain a letter of credit would be able to obtain such loans from a banking or savings institution. Mr. Kalis said that a landlord who might go bankrupt would not be given a letter of credit. Mr. Walsh said that he favored an earlier version of the bill that would allow a landlord to use tenants' security deposits only for making capital improvements to the rental property. Mr. Davison noted that this bill would require a landlord to pay his tenants 6% interest on their security deposits, which is more than tenants probably could earn by placing their security deposits in an interest-bearing account in a banking or savings institution; and also would protect tenants' security deposits with a letter of credit. Mr. Laurent said that the Commission's reputation with the

General Assembly might be damaged if it submitted this bill, since it might be viewed as a special interest bill and it would be difficult for the Commission to explain why it was sponsoring the bill.

c. Mr. Davison discussed several amendments to the bill which were proposed by Mr. Ackerman. Mr. Davison said that these bills would provide that a blanket bond would protect all of a landlord's tenants, regardless of whether the landlord covered all his security deposits by a letter of credit. He said that the bill would not require a blanket letter of credit to individually list each tenant and the amount of his security deposit; if individual listing was required, a letter of credit would have to be constantly changed to remove and add tenants' names, and banks probably would not issue such a letter of credit. Mr. Davison said that the bill instead would establish the minimum amount of a blanket letter of credit as the amount of tenants' security deposits not placed in an interest-bearing account in a banking or savings institution as of July 1 of each calendar year. Mr. Davison said Mr. Ackerman had also proposed to amend the bill by requiring a landlord to give his tenants written notice if a letter of credit is revoked; and to provide that a letter of credit would be payable to the state for the use and benefit of a landlord's tenants whose security deposits have not been returned wholly or in part as required by section 8-203. The sense of the Commission was to revise the bill to include these amendments. Because Mr. Ackerman was not present to discuss the bill, Mr. Stollof made a motion, which was seconded by Mr. Meyerhoff, to table the bill until the next meeting. Mr. Jenkins said that if the motion was passed, he would limit discussion of the bill at the next meeting to Mr. Ackerman, and would then have the Commission vote on the bill. Mr. Stollof agreed to amend his motion to include this limitation. The motion passed unanimously.

4. Mr. Walsh asked Mr. Davison to draft a bill that would raise the interest rate paid by landlords on tenants' security deposits; and that would provide a means of enforcing the requirement that a landlord place tenants' security deposits in an interest-bearing account in a banking or savings institution.

5. Agenda item #2 (definition of amount in controversy) was discussed. Mr. Pilla said that the definition of amount in controversy in the bill might be found to violate the right to jury trial under the state constitution. Mr. Walsh said that the Court of Appeals had issued a decision yesterday defining amount in controversy in landlord-tenant cases to be the value of the right of possession of the premises, which contradicts the bill's definition of amount in controversy as one rent payment. The consensus of the Commission was to drop consideration of this bill.

6. Agenda item #3 (holding over) was discussed. Mr. Davison said that he didn't think the bill violated due process, since it only required a holdover tenant to make payments into court and didn't pay the money to the landlord until after a court hearing. He said that the bill was analogous to a Louisiana statute upheld by the Supreme Court which authorized pre-trial sequesteration by the court of property in dispute in the litigation. Mr. Walsh argued that the bill was unconstitutional, since it required a holdover to pay money sought by the landlord in the litigation prior to trial, a procedure which did not apply to other defendants in civil litigation. Mr. Jenkins and Mr. Davison noted that a defendant in a holdover tenant suit will owe

the landlord the amount of money required to be paid into court by the bill, either as a tenant if he is found not to be a holdover tenant, or as the minimum amount of damages required to be paid under section 8-402(a) as amended by the Commission last year. Mr. Kalis noted that a holdover tenant subject to the bill, unlike other civil litigants, has possession of the landlord's property-the leased premises. Mr. Meyerhoff noted that a landlord cannot accept rent from a holdover tenant, because he would be held to have consented to the holding over; he argued that the bill was simply providing that in this situation the bill is simply having the defendant pay the rent money into court so that the court can determine if the defendant is a tenant who owes rent or a holdover tenant who owes damages. Mr. Stollof said that the bill would only adversely affect judgment proof holdover tenants, not tenants who are willing and able to pay rent due under their lease or prior lease. Mr. Jenkins, Meyerhoff and Laurent suggested dropping the contempt of court provision from the bill, although Mr. Stollof asked what other enforcement mechanism was available. Mr. Kalis said an alternative, existing remedy would be for a landlord to file a motion seeking to require compliance by the defendant; he said that a hearing on the motion would occur before the hearing of the holdover tenant suit itself. Mr. Pilla said Mr. Kalis' remedy might infringe upon the defendant's right to jury trial where the holdover tenant seeks a jury trial but doesn't have the money required to be paid into escrow. Mr. Pilla said the solution might be to require a holdover tenant to post a bond in the amount of the right of possession, which would be similar to the procedure in a replevin case. Mr. Jenkins said that Mr. Pilla's remedy presumed that the defendant did not have the right to possession of the premises, which would not be the case if the defendant was held to be a tenant (with the right to possession of the premises). Mr. Pilla and Mr. Walsh suggested that an alternative remedy would be for the landlord to obtain a protective order, which might include a requirement that the holdover tenant pay an amount equivalent to rent into court. Mr. Pilla said that Maryland, however, provided for protective orders only in discovery proceedings, although the District of Columbia provides for such protective orders in landlord-tenant cases. The Commission asked Mr. Davison to provide members of the Commission with copies of this District of Columbia provision. Mr. Walsh said the District Courts could handle hearings on such protective orders, although the Circuit Courts would have difficulty in doing so because their calendars are backed up.

7. Mr. Zerwitz said that he was resigning from the Property Owners Association as a member and a director, but would remain on the board of the Citizens Planning and Housing Association, where he would be representing tenant interests more than landlord interests. Mr. Jenkins said that he saw no problem with Mr. Zerwitz remaining a landlord representative on the Commission, since his business remains that of a landlord and landlord's agent.

8. The meeting adjourned at 9:45 p.m.

Steven Davison,
Reporter

GOVERNOR'S LANDLORD - TENANT

LAWS STUDY COMMISSION

Minutes of Meeting

on January 22, 1980

1. Present: Jenkins (chairman), Ciotola, Ackerman, Martin, Meyerhoff, Kalis, Stollof, Dancy (lack of quorum). Mr. Lenrow was also present.

2. The meeting started at 8:10 p.m.

3. Mr. Jenkins announced that the Governor had appointed three new members to the Commission: Judge Joseph A. Ciotola of Baltimore; Ms. JoAnn Asparagus of Easton, Maryland; and Mr. Carl O. Snowden of Annapolis, Maryland. Mr. Jenkins said that the Governor had rejected his nominees (which included Mr. Jay Lenrow). Mr. Jenkins said that the Governor's Office was contacting Mr. Meredith to determine if he would be resuming work on the Commission or should be replaced. Mr. Jenkins also said that Mr. Weisengoff had told him that he wished to remain on the Commission, but would resign if requested to do so. Mr. Jenkins said that there were still 2 vacancies on the Commission. Mr. Stollof questioned whether the Commission now had an equal number of landlord representatives and tenant representatives. Mr. Davison said that he would check the General Assembly resolution that created the Commission to determine if the Commission is required to have an equal number of landlord and tenant representatives.

4. Agenda item number 1 (letter of credit bill) was discussed. Judge Ciotola raised the question of what would happen if the bank which issued a letter of credit failed; he asked if letters of credit were insured. Judge Ciotola also asked what was meant in the bill by the reference to a "nonnegotiable corporate surety bond." Mr. Kalis said that the bill should specify the required rating of a bond. The Reporter was asked to investigate these questions and report back to the Commission at the next meeting.

5. Agenda item number 2 (holdover tenants) was discussed. Mr. Davison said that he thought the bill would be constitutional under Mitchell v. W.T. Grant Co., 416 U.S. 600 (1974), where the Supreme Court upheld a Louisiana statute that authorized judicial orders requiring pre-trial judicial sequestration of consumer goods when the seller of goods sued the buyer to recover the goods, in which the seller had a security interest, when the buyer failed to make a required payment. Mr. Davison said that the bill similarly required holdover tenant to pay into court, prior to trial, the minimum amount of damages for which he would be liable under section 8-402(a). Mr. Lenrow said that Mitchell v. W.T. Grant emphasized not only the fact that the Louisiana statute merely

preserved the status quo (by preserving the disputed property until a trial on the merits), but also the fact that the statute required a judicial order to sequester the property and required a prompt hearing on the merits. He argued that the bill should be amended to require a judicial hearing and an order by the judge in order for a holdover tenant to be required to pay any money into the escrow of the court. Judge Ciotola questioned the constitutionality of the bill's requirement that a party to a suit be required to pay money into court before a judicial determination of the merits and a judgment making the defendant liable to the plaintiff for that amount.

Mr. Kalis suggested that the bill be abandoned in favor of a bill authorizing a court to issue protective orders such as one requiring a holdover tenant to pay a certain amount into the escrow of the court, at an ex parte hearing. Mr. Kalis said that such a bill should require a prompt hearing on the merits after issuance of a protective order. Judge Ciotola said that in order to issue such a protective order, a judge would essentially have to determine the merits. Mr. Lenrow said that such a bill would be similar to the Louisiana statute upheld in Mitchell v. W.T. Grant Co., which involved issuance of a judicial sequestration order at an ex parte hearing and a prompt judicial hearing on the merits.

Mr. Jenkins raised the possibility of amending the bill to provide that if a holdover tenant failed to pay the required amount into court, a default judgment would be entered against him. Judge Ciotola said that this would violate a holdover tenant's right to a jury trial when he has requested a jury trial. Mr. Davison noted that in Purvis v. Forrest Street Apts., 408 A.2d 388 (Md. 1979), the Court of Appeals held that the amount in controversy in a landlord-tenant action is the total amount of rent sought by the landlord (even if more than one rent payment is due and unpaid), plus the value of the right of possession (which is at least the rent due under the lease for the amount of time required for the notice to quit, which would be thirty days in the case of a month-to-month tenant). Judge Ciotola asked what remedy a landlord would have under the bill after a holdover tenant was held in contempt.

Mr. Meyerhoff and Judge Ciotola said that one of a landlord's problems in a suit against a holdover tenant action is the long wait between filing and the trial. They suggested that one solution would be a requirement that a holdover tenant action be tried within a specified period of time.

Mr. Jenkins asked the Reporter to draft a protective order bill and a bill requiring holdover tenant actions to be heard within a specified time period, and to place these bills on the agenda for the next meeting.

6. Agenda item number 4 (security deposits) was discussed.

7. Mr. Davison noted that under Real Property Article §7-105(d), "Any purchaser at a foreclosure sale of a mortgage or deed of trust has the same rights and remedies against the tenants of the mortgagor or

grantor as mortgagor or grantor had, and the tenants have the same rights and remedies against the purchaser as they would have had against the mortgagor or grantor on the date the mortgage or deed of trust was recorded." He said that this section would appear to make a purchaser of leased premises, after the landlord becomes bankrupt, liable to the tenants for the security deposits held by the landlord. He said this reinforces the provision of section 8-203(e)(3) and (4) that a landlord's successor in interest in the event of sale or transfer of any sort, including receivership or bankruptcy, is liable to a tenant for the tenant's security deposit. Judge Ciotola, however, said that he didn't think a bank that purchased leased premises from a receiver in bankruptcy would be considered a successor in interest.

8. The meeting adjourned at 9:40 p.m.

Steven Davison,
Reporter

GOVERNOR'S LANDLORD - TENANT

LAWS STUDY COMMISSION

Minutes of Meeting

of February 12, 1980

1. Present: Jenkins (chairman), Ciotola, Laurent, Meyerhoff, Zerwitz, Ackerman, Martin, Stollof, Everngam, Dancy (quorum). Mr. Lenrow was also present.

2. The meeting started at 8:00 p.m.

3. Mr. Davison said that the House Judiciary Committee would hold hearings on five Commission bills on February 13: HB 574 (exculpatory clauses), HB 336 (late charges), HB 577 (stay of executions to holdover tenants), HB 580 (duty to provide copy of leaseform and lease), and HB 584 (notice to quit to week-to-week tenants). Mr. Jenkins said that he and Mr. Davison would testify in favor of the bills on behalf of the Commission.

4. Mr. Jenkins announced that Delegate Weisengoff had resigned from the Commission. The Commission now has 16 members. Mr. Jenkins said that he had been told by the Governor's Office that appointments would soon be made to fill the remaining three vacancies on the Commission.

5. Agenda item number one (letters of credit in lieu of placing tenants' security deposit in a banking account) was discussed. Mr. Stollof argued that a letter of credit from a nationally chartered bank gives a tenant more protection than having his security deposit placed in a bank account. He made a motion, which was not seconded, to delete the reference to state chartered bank in the definition of letter of credit, on the grounds that a letter of credit issued by a nationally chartered bank was more secure than one issued by a state chartered bank. Mr. Davison noted that §5-117 of the Commercial Law Article dealt with the status of a letter of credit after the issuing bank becomes insolvent. He noted that §5-117 does not absolutely guarantee payment of a letter of credit, but rather gives preference to payment of a letter of credit from the bank's assets. Mr. Davison said that the only statutory provision dealing with corporate surety bonds was Article 90, §5. Judge Ciotola and Mr. Lenrow said that this provision merely provided that a corporation acting as a fiduciary cannot issue a corporate surety bond to fulfill its fiduciary duty, but must have such a surety bond issued by another corporation. Ms. Dancy made a motion,which was seconded by Mr. Stollof and which passed unanimously, to amend the bill to require a landlord who obtains a letter of credit to pay his tenants twice the amount of interest that a landlord is required to pay tenants under section 8-203(f)(1). She said this change would make it unnecessary to amend the bill if the interest rate under section 8-203(f)(1) was amended; she noted a bill had been introduced in this session of the

General Assembly to raise the interest rate under section 8-203(f)(1) to 4%.

The bill, as amended, received four votes in favor, one vote against, and five abstentions. Because the bill did not receive a vote of the majority of members present at the meeting, the bill was defeated under Commission bylaw #7.

6. Agenda item #2 (protective order bill) was discussed. Judge Ciotola recommended that the references to "ESCROW OF THE COURT" be amended to "ESCROW ACCOUNT OF THE COURT." Mr. Meyerhoff suggested that a new section (A)(6) be added to authorize a court to prohibit a landlord from filing an independent action to recover rent or possession, or both, against a tenant who has filed an action against the landlord under the rent escrow statute. Judge Ciotola said that two days was too short a period for holding a hearing under section (B) after service of the motion. Mr. Jenkins suggested that a hearing be held three days after service of the motion. Mr. Jenkins and Judge Ciotola said that if a tenant requests a jury trial, a case will be transferred from the district where a tenant requested a jury trial, the circuit court would issue the protective order, but after additional delay. Judge Ciotola noted the difficulty of giving personal service of process, which the bill would require. Mr. Lenrow suggested that the bill be amended to authorize a court to pay money out of the escrow account to a landlord before a final judgment; Judge Ciotola argued that this would violate due process if such an order occurred prior to a hearing on the merits. Mr. Jenkins said that requiring payment of money into an escrow account would insure that the court's judgment would be satisfied. Mr. Laurent noted that the possibility of a protective order requiring a tenant to pay money into an escrow account would deter tenants from requesting jury trials solely for delay purposes. Judge Ciotola asked what would happen under the bill if a party doesn't comply with a protective order. Mr. Davison and Mr. Jenkins said that a party could be held in civil contempt, but that an action could not be dismissed or a default judgment entered because it would violate a tenant's right to jury trial. Mr. Jenkins notes that a party held in civil contempt will be confined to jail until he complies with an order. Judge Ciotola suggested that the bill be amended to provide that a tenant loses his status as a tenant, thus becoming a holdover tenant subject to eviction, if a court finds, after a hearing, that the tenant has violated, without good cause, a protective order. Mr. Davison questioned whether such a provision would constitute an unconstitutional impairment of contract or an unconstitutional taking of property without just compensation.

7. Agenda item #3 (specifying time limits for trial of holdover tenant actions) was discussed. Judge Ciotola noted that the bill could not be complied with in Baltimore City, where holdover tenant actions are not heard within 10 days. Judge Ciotola also asked what would happen if the bill's time limit was not satisfied.

8. The Commission, at Mr. Laurent's request, directed the Reporter to prepare a year-by-year compilation of bills proposed by the Commission which have been enacted by the General Assembly.

9. Judge Ciotola suggested that the Commission review landlord-tenant bills introduced in the General Assembly that are not bills introduced by the Commission.

10. Mr. Laurent's letter of July 13, 1979, was placed as the first item on the agenda for the next meeting.

Steven Davison,
Reporter

GOVERNOR'S LANDLORD - TENANT

LAWS STUDY COMMISSION

Minutes of Meeting

of March 11, 1980

1. Present: Jenkins (chairman), Snowdon, Martin, Laurent, Ackerman, Zerwitz, Meyerhoff, Everngam, Dancy (quorum). Mr. Jay Lenrow also attended the meeting.

2. The meeting started at 7:55 p.m.

3. Mr. Jenkins said that Ms. Aspargus had written him to say that she would be unable to attend Commission meetings until April, but thereafter would be an active member of the Commission. He introduced a new member of the Commission, Mr. Carl Snowdon of Annapolis. Mr. Jenkins said that he expected the Governor to fill the remaining vacancies on the Commission soon.

4. Mr. Jenkins and Mr. Davison discussed the status of Commission bill in the present session of the General Assembly. Hearings were held February 13 before the House Judiciary Committee on HB 336 (Late Charges), HB 574 (Exculpatory Clauses), HB 577 (Stay of Execution Against Holdover Tenants), HB 580 (Duty to Provide Leaseform and Lease), and HB 584 (Month's Notice to Quit to Week-to-Week Tenant). Hearings were held February 19, before the House Judiciary Committee on HB 832 (Amount of Damages Recoverable Under §8-203.1) and HB 1384 (Application for Leases). Hearings have not yet been held on the Essential Services bill. SB 149 (Status of Holdover Tenant After Consent to Holdover) has passed the Senate. HB 336 has passed second reader in the House of Delegates. HB 574, HB 577, HB 580, HB 584, HB 832, and HB 1384 received unfavorable reports from the House Judiciary Committee. Mr. Davison and Mr. Jenkins said that only a few of the bills which received unfavorable reports had been opposed at the hearings, and that HB 1384 had received supporting testimony from landlords, tenants, and the Attorney General's Office.

   Mr. Laurent suggested that the Commission place the bills that received unfavorable reports on the agenda for second reader at the May meeting so they could be resubmitted to the General Assembly after the June meeting. This proposal was accepted by the Commission.

5. The Commission agreed to hold a dinner meeting in May in Baltimore. Mr. Jenkins agreed to make the arrangements. Mr. Jenkins agreed to a request by Mr. Snowdon to hold the June meeting in Annapolis, and to hear testimony by Annapolis tenant groups with respect to proposals for legislation. The Commission agreed to a suggestion by Mr. Meyerhoff to hold meetings in July and August if a quorum can attend, and not to hold meetings in December.

6. The Commission accepted a proposal by Mr. Everngam that Judge Ciotola be requested to give the Commission his views at the next meeting with respect to the Commission bills that received unfavorable reports at this session of the General Assembly, and with respect to new areas that the Commission should draft bills to address.

7. Agenda item number one (security deposits) was discussed. Mr. Laurent said that his letter was proposing that the landlord should be required to inform his tenants in writing of all their rights under the security deposit statute, and that penalties be provided explicitly for all violations of the statute by the landlord. He noted, for instance, that section 8-203(c)(3) requires the landlord to inform the tenant of right to inform a tenant of his right to receive an itemized list of existing damages upon written request, and section 8-203(g) requires the landlord to notify the tenant of right to present at the inspection for damages after termination of the lease, but that the statute doesn't require the landlord to inform his tenants of his other rights under the statute. He also noted that the landlord isn't explicitly penalized for failure to keep his security deposits in a banking or savings account. Mr. Davison said that he thought that section 8-203(g), which provides that a landlord loses the right to withhold any damages from a tenant's security deposit if he fails to inform the tenant of his right to be present at inspection of the premises, should be limited to provide that the landlord only forfeits his right to withhold damages to the premises from the security deposit if he fails to give such notice. Mr. Meyerhoff said that the penalty under section 8-203(g) was intended to be harsh to serve as a deterrent. He said that he didn't believe that the House Judiciary Committee would approve a bill that required landlords to inform tenants of all their rights under the security deposit statute. Mr. Meyerhoff made a motion, which Mr. Laurent agreed with and seconded, to amend the security deposit statute by combining sections 8-203(c) and (d) by repealing section 8-203(c)(2), requiring the landlord to inform his tenants, either in the receipt or lease, of their rights these sections, and providing that the landlord forfeits his right to withhold any damages from the security deposit if he fails to comply with his duties under these sections. The Commission unanimously approved this motion and requested the Reporter to draft an appropriate bill.

8. Agenda item #2 (protective orders) was discussed. Mr. Ackerman suggested that the purpose clause and section (A) be amended to permit an order to enjoin "DISTURBANCE", and "HARASSMENT". He also suggested that the reference in section (A)(1) to "RENT DUE" be changed to "RENT DUE AND PAYABLE" in order to be consistent with section 8-401. Mr. Ackerman further suggested that in referring to continuances in section (B), the word "ADDITIONAL" be added before "TWO DAYS". The Commission unanimously requested the Reporter to redraft the bill to incorporate the amendments suggested by Mr. Ackerman and at the last meeting, and to place the bill on the agenda for third reader at the next meeting.

9. Agenda item #2 (security deposits) was discussed. Mr. Meyerhoff noted that a bill to raise the interest rate on security deposits to 4% had passed both Houses of the General Assembly. Mr. Ackerman objected to the provision in the bill requiring a landlord to notify his tenants where his security deposit is being held; he noted that landlords may often move security deposits to a different bank or savings account, and that this notice requirement would be

costly in terms of postage and administrative costs. Mr. Lenrow noted that several landlords in Maryland have absconded with their tenants' security deposits. The Commission placed the bill on thrid reader for the next meeting and asked the Reporter to request Mr. Walsh, who requested the bill to be drafted, to attend the next meeting to discuss the bill.

10. Agenda item #4 (note of Rent Increase) was discussed. Mr. Laurent noted that the Commission had previously discussed this problem, but never had approved a bill addressing the problem. Mr. Laurent said the problem he raised occurs when a tenant's lease contains an automatic renewal clause, requiring the tenant to give the landlord notice of non-renewal at least 60 or 90 days before the termination of the lease, and the tenant gets notice of a rent increase under a new lease only a few days before he must give notice of non-renewal in order to avoid automatic renewal of the lease. Mr. Laurent said that a tenant in such a situation has insufficient time to search for a new apartment to move to after termination of his lease. Mr. Ackerman noted that Virginia requires landlords to give tenants 30 days notice before a rent increase becomes effective. Mr. Meyerhoff said that a tenant may have difficulty in renting an apartment for a term 60 or 90 days in the future, because many landlords will not know which apartments will be vacant at that time. Mr. Jenkins said that Mr. Laurent's proposal was a fair one; he said that a tenant should have 30 days after receiving notice of a rent increase before having to give notice to a landlord to avoid automatic renewal of the lease. Mr. Meyerhoff suggested that notice of a rent increase 30 days before a tenant must give notice under an automatic renewal clause be required only if the rent increase would exceed 5% of the present rent. The Commission, however, requested the Reporter to draft a bill for consideration at the next meeting that would require a landlord to give a tenant notice of a rent increase under a renewed lease at least 30 days before the tenant must notify the landlord that he will not renew the lease in order to avoid automatic renewal of the lease.

11. The meeting adjourned at 9:10 p.m.

Steven Davison,
Reporter

GOVERNOR'S LANDLORD - TENANT

LAWS STUDY COMMISSION

Minutes of Meeting

on April 8, 1980

1. Present: Jenkins (chairman), Ciotola, Meyerhoff, Ackerman, Walsh, Stollof, Dancy, Martin, Kalis (quorum). Mr. Jay Lenrow, and Ms. Gwynne Tromley from the Housing Law Denter of Legal Aid, were also present.

2. The meeting started at 8 p.m.

3. Mr. Jenkins said that Mr. Pilla had told him that he was resigning from the Commission.

4. Mr. Davison noted that the General Assembly had passed SB 149 (status of holdvoer tenant after landlord's consent to holdover) and HB 336 (late charges). He said that the bill providing criminal penalties for essential services had not left the Governor's Office, but that the Governor's Office had not yet informed him what the reason for this was. The other 6 bills introduced by the Commission received unfavorable reports from the House Judiciary Committee. The Commission decided to place these 6 bills on the agenda for the May meeting for second reader and on the agenda for the June meeting for the third reader.

5. The Commission decided to attempt to schedule a dinner meeting on May 13 at the King's Contrivance Restaurant in Columbia. Mr. Jenkins agreed to make the arrangements. Mr. Jenkins also said that the Commission would meet in Annapolis in June, as requested by Mr. Snowdon, so that testimony from tenant's groups in Annapolis could be heard. Mr. Jenkins also said that the Commission would meet in July and August if there would be a quorum.

6. Agenda item #1 was discussed. Mr. Lenrow said that the purpose of the bill was to impose a penalty upon a landlord who breaches his duty under section 8-203(c)(3) to inform a tenant in the lease or receipt for the security deposit of the tenant's right to obtain a written list of all existing damages. Mr. Lenrow noted that the way the bill was drafted would require a lease or receipt to inform the tenant of all of his rights under the security deposit statute, not just the tenant's rights under subsection (c) and (d). Mr. Stollof suggested that section 8-203 should be amended to also require a landlord to give an applicant for a lease a receipt for an application fee; Mr. Lenrow argued against this proposal on the grounds that section 8-203 applied only to security deposits and that only a tenant, but not an applicant (prospective tenant) can give a security deposit under the definition of section 8-203(a). Mr. Davison suggested that Mr. Stollof's proposal could be incorporated as an amendment to the application for lease

bill. Mr. Walsh criticized the bill for changing the penaltied presently provided in sections 8-203 (c)(2) and 8-203 (d)(2). He noted that section 8-203(c)(2) presently makes the landlord liable to a tenant for $25 if he fails to give the tenant a written receipt for his security deposit; and that section 8-203(d)(2) makes a landlord liable to a tenant for threefold the amound of the security deposits, less damages lawfully withheld and unpaid rent, if the landlord fails to provide the tenant with a written list of all existing damages after a written request from the tenant for such list. Mr. Walsh noted that the bill would change these penalties, so that a landlord would forfeit the right to withhold any damages from the security deposit if he violates the statute in either respect. Mr. Walsh said that the penalties provided under these sections should not be changed, since they reflected legislative policy that have not been shown to be abusive. Mr. Stollof and Mr. Meyerhoff argued that the penalty provided for by section 8-203(d)(2) was too severe; they argued that since section 8-203(d)(2) was penalizing the landlord's failure to give a tenant a list of existing damages to the premises, a more approproate penalty would be to deny the landlord the right to withhold damages to the premises from the security deposit. Mr. Meyerhoff noted that section 8-203(d)(2) allows a tenant to recover three times the amount of the security deposit even though the landlord does not withhold any damages to the premises from the security deposit. Mr. Lenrow said that the Consumer Protection Division of the Attorney General's Office considers it to be an unfair and deceptive trade practice for a landlord to withhold damages to the premises from a security deposit when the landlord has failed to give a tenant a list of existing damages to the premises after the tenant has requested such a list, on the grounds that the landlord cannot prove that the damages did not exist at the beginning of the lease. He noted, however, that this theory had not been tested in the courts, so that this policy did not necessarily obviate the need for the bill. Mr. Meyerhoff recommended that section (c)(2) of the bill be redrafted to read: "IF THE LANDLORD IMPOSES A SECURITY DEPOSIT, HE SHALL PROMPTLY PROVIDE A TENANT WITH A WRITTEN LIST OF ALL EXISTING DAMAGES TO THE LEASED PREMISES IF THE TENANT REQUESTS IN WRITING SUCH A LIST WITHIN 15 DAYS OF THE TENANT'S OCCUPANCY OF THE LEASED PREMISES." The Commission decided to reconsider the bill on second reader at the next meeting, in conjunction with an alternative bill that would address Mr. Walsh's objections to the bill by making the penalty of section (c)(4) of the bill apply only to a violation of §(c)(3).

7. Agenda item #2 was discussed. Mr. Walsh questioned whether the protective order bill was necessary, on the grounds that courts had the inherent power to issue such orders. Judge Ciotola said that he believed that judges in Maryland had inherent authority under the common law to issue such orders. Several members of the Commission said that some judges might not agree that they had such inherent authority and that the bill would be beneficial by making it clear that such protective orders could be issued. Mr. Walsh also said that he opposed the bill's application to all landlord-tenant actions and the broad range of the type of protective orders that could be issued. Mr. Jenkins noted that when he requested Mr. Davison to draft the bill, he had been concerned only with protective orders requiring defendants in holdover tenant actions to pay into escrow the amount of rent that would be due under the defendant's prior lease. Mr. Davison said that he drafted the bill more broadly to address other situations in landlord-tenant actions where a protective order might be desirable.

Mr. Stollof questioned whether a court would order a defendant in a holdover tenant action to pay an amount equivalent to rent into escrow if the defendant told the judge he would pay damages or rent if ordered to do so after trial. Judge Ciotola said that except in Baltimore City, courts would not hold a hearing within three days of the filing of a motion, as required by the bill. He said that a hearing 21 days after the filing of the motion would be more realistic. Judge Ciotola recommended that the bill be amended to provide for service of the motion and scheduling of the hearing on the motion in accordance with the Maryland Rules of Procedure. The Commission agreed to have the Reporter redraft the bill to authorize protective orders only in holdover tenant actions under section 8-402, after service of the motion and scheduling of the hearing on the motion in accordance with the Maryland Ruled of Procedure. Mr. Meyerhoff suggested that the amended bill also authorize issuance of protective orders in rent due and payable actions under section 8-401. Judge Ciotola said that the number of rent due and payable actions on the courts' dockets would make it impossible to hold prompt hearings on protective orders in rent due and payable cases. Mr. Walsh also said that it would be inappropriate to authorize protective orders in suits under section 8-401 that would require tenants to pay rent into escrow of the court prior to the hearing on the merits, since the basic issue in a suit under section 8-401 is the amount of rent due. Mr. Meyerhoff withdrew this suggestion. Mr. Meyerhoff also asked whether the bill could also apply to actions under section 8-402.1, which provides a landlord an action to evict a tenant who has materially breached the lease. Mr. Walsh opposed this suggestion.

Agenda item #3 was discussed. Mr. Walsh agreed to delete the part of the bill that would raise the interest required to be paid on security deposits to 5%, becuase the General Assembly has approved legislation that would raise the interest rate to 4%. Mr. Walsh suggested that a more appropriate remedy would be a monetary penalty. Mr. Walsh said that he didn't see the necessity of requiring a landlord to notify all of his tenants every time that he transfer security deposits from an account in one bank to an account in another bank. Mr. Stollof said that if the bill didn't require notice in such situations, he didn't see why a landlord should be required to notify his tenants of the bank where he initially deposits the tenants' security deposits. Mr. Lenrow said that the Consumer Protection Division of the Attorney General's Office considers a landlord who fails to deposit tenants' security deposits in an account in a banking or savings institution to have committed an unfair and deceptive trade practice. He said that this theory hasn't been reviewed by the courts. He noted that if this was upheld by the courts, tenants would have a cause of action under the Consumer Protection Article to obtain an injunction requiring a landlord to deposit security deposits in a bank or savings account and to obtain restitution for any damages caused by the landlord's failure to do so. Mr. Davison said that tenants would not suffer any damages from a landlord's mere failure to place security deposits in a bank or savings account, since a landlord has to pay interest on security deposits even if he hasn't deposited security deposits in a bank or savings account. He said that tenants would probably leave enforcement of this requirement to the Attorney General's Office because tenants wouldn't want to pay the cost of attorney fees in such an action. The Commission agreed to consider at the next meeting the necessity for this bill in view of this policy of the Attorney General's Office.

Agenda item #4 was discussed. Mr. Walsh argued that a landlord who notified a

tenant that he was increasing the rent for a new lease term would be changing the terms of the lease, and therefore could not invoke an automatic renewal clause to bind the tenant to another lease term at the increased rent. Mr. Davison noted, however, that section 8-209(b)(1) refers only to a lease provision providing for automatic renewal of the lease term; the section does not refer to a clause automatically renewing the entire lease for another term.

10. The meeting adjourned at 9:30 p.m.

Steven G. Davison,
Reporter

GOVERNOR'S LANDLORD - TENANT

LAWS STUDY COMMISSION

Minutes of Meeting

of May 13, 1980

1. The Governor's Landlord-Tenant Laws Study Commission conducted a dinner meeting on May 13, 1980, at the Kings Contrivance Restaurant in Columbia, Maryland. A business meeting was conducted beginning at 8:00 p.m.

2. Present: Jenkins(chiarman), Meyerhoff, Snowdon, Ackerman, Stollof, Ciotola, Everngam, Zerwitz, Walsh, Dancy, Asparagus, Laurent. Assistant Attorney General Jay Lenrow and David Harris of AACT (Anne Arundel County Tenants) also attended.

3. Mr. Jenkins said that he had invited Chairman Joseph Owens of the House Judiciary Committee to attend the meeting, but he was unable to attend. Mr. Jenkins said, however, that Chairman Owens had indicated a willingness to meet with the Commission at a future meeting.

4. Mr. Jenkins said that the Commission would meet in Annapolis in July to hear testimony from Anne Arundel County tenants, and might meet in August with Chairman Owens in Montgomery County.

5. The Commission discussed whether to resubmit the 7 bills submitted the Governor's Office for the 1980 Session of the General Assembly which had been not been enacted. Mr. Meyerhoff said that the application for lease bill had been unfavorably reported by the House Judiciary Committee because of opposition from Senator Broadwater, the sponsor of the statute which the bill would amend. Mr. Davison said that if the bill was resubmitted for the General Assembly's next session, he would write Senator Broadwater to explain the bill and to seek his support for the bill. Mr. Meyerhoff said that HB 832 had received an unfavorable report from the House Judiciary Committee because a Baltimore City judge had declared it to be unconstitutional and because the Anne Arundel County delegation likes section 8-212 in its present form. Mr. Snowdon said that he would like to have further opportunity to studythe seven bills before the Commission voted on them. Consequently, Mr. Meyerhoff made a motion, which was seconded by Mr. Walsh and was approved unanimously, to place the seven bills on second reader again for the June meeting, subject to being considered on third reader by a two-thirds vote as provided by the Commission's by-laws.

6. Mr. Meyerhoff said that some landlords opposed the exculpatory clause bill (HB 574) because the bill was being interpretes as making the landlord liable for injuries caused by defects in single family homes that manifest after the tenant begins his occupancy. Mr. Davison said that the landlord would be responsible for injuries caused by such defects only if the landlord knew or had reason to know of such defects prior to the tenant's occupancy or during the tenancy through re-entry for purposes of making repairs or inspections,

and failed to warn the tenant or correct the defects. Judge Ciotola said that an apartment is still considered within the tenant's exclusive control even if the landlord has reserved a right to reenter the premises to make repairs or to inspect. Mr. Lenrow said that there is no presumption under the common law that a landlord knows or has reason to know of a defect causing injury to a tenant. Mr. Meyerhoff suggested that HB 574 be amended to make it clear that the landlord is not liable for injuries caused by defects that manifest during the term of the tenancy and which the landlord didn't know or have reason to know about. Mr. Lenrow said that exculpatory clauses exonerating a landlord for liability for injuries caused by defects in a tenant's apartment are widespread in residential leases in Maryland. Mr. Walsh said that section 8-105 may deter tenants who are injured by defects in their premises from suing the landlord for damages when the lease contains an exculpatory clause. Mr. Lenrow said that HB 574's exemption for exculpatory clauses applicable to injuries caused by defects in the tenant's premises was illogical, since section 8-105 makes a landlord liable for an act of negligence that injuries a tenant in a common area but allows a landlord to exonerate himself for liability for the same act of negligence when it injures a tenant in the tenant's apartment. Mr. Meyerhoff noted that HB 574 would not change the common law standard for determining whether a landlord is liable, since a landlord would still have to be shown to have been negligent in order to make him liable. At Mr. Meyerhoff's request, the Commission directed Mr. Davison to draft an alternative version of HB 574 that would make it clear that section 8-105 does not make a landlord liable for injruies caused by defects in the tenant's apartment during the tenancy which were not caused by the landlord's negligence.

Steven Davison,
Reporter

GOVERNOR'S LANDLORD - TENANT

LAWS STUDY COMMISSION

Minutes of Meeting

of June 24, 1980

1. Present: Jenkins (chairman), Asparagus, Walsh, Meyerhoff, Stollof, Laurent, Zerwitz, Everngam (quorum). Mr. Jay Lenrow, Assistant Attorney General; and Mr. John Stang, Mr. Everngam's nephew, also attended the meeting.

2. The meeting started at 8:15 p.m.

3. Mr. Jenkins said that the Governor's Office had told him that the Governor would be removing Mr. Meredith from the Commission and naming a replacement. Counting Mr. Meredith, the Commission presently has 15 members and 4 vacancies.

4. The Commission considered whether to resubmit HB 580 (Duty to provide leaseform). Mr. Davison noted that the bill doesn't require a landlord to use a written lease. Mr. Stollof noted, however, that many small landlords want to use written leases, but cannot afford to hire an attorney to draft a written lease; he raised the question of whether a small landlord can obtain a model lease from any organizations. Mr. Laurent noted that Regional Management has a plain language lease but members of the Commission indicated that there did not appear to be any short, simple leases that were consistent with Maryland law that were readily available to small landlords. Mr. Davison suggested that the Commission draft a model lease that could be made available to small landlords. Members of the Commission agreed that HB 580 would stand a better chance of approval if such a model lease were available to landlords. Mr. Laurent recommended that such a model lease be in plain language and be as short as possible, containing only provisions required to be in a lease in Maryland. Mr. Davison said that such a model lease could have appended to it a list of provisions which Maryland prohibits in a residential lease, and possibly, optional lease clauses not required by Maryland law. Mr. Jenkins requested Mr. Davison to draft such a model lease with the assistance of Mr. Lenrow, for consideration by the Commission in the fall.

5. The Commission considered whether to resubmit HB 584 (month's notice to quit to week-to-week tenant). Mr. Lenrow noted that the bill would apply to both residential and commercial leases, and that there might be some opposition to the bill because of its applicability to commercial leases. Mr. Wlash said that very few, if any, commercial leases were week-to-week tenants. Mr. Davison said that in the previous sessions of the General Assembly, there had been no opposition to the bill on the grounds that it would apply to commercial leases. Mr. Davison noted that the bill could not simply be recodified to be placed in Subtitle 2 (Residential Leases), because the other subsections of 8-402 (Holdover Tenants) would also have to be incorporated into the bill. Mr. Lenrow noted that Maryland courts hold that a landlord can include a shorter notice to

quit in a lease than is required in section 8-402. Mr. Davison noted, however, that section 8-501 provides that a landlord cannot require a tenant to give a longer notice that he is terminating the lease than the landlord's require notice to quit.

HB 584 was unanimously approved, without amendment, for resubmittal to the General Assembly.

HB 577 (stay of executions in holdover tenant actions) was discussed. Mr. Walsh argued that the bill conflicts with a tenant's right to appeal in a holdover tenant action. He noted that a tenant has 10 days after judgment to appeal in a holdover tenant action, and that a writ of execution is not executed until after the period for appeal has expired. He also noted that if a tenant appeals a judgment against him in a holdover tenant action, he would post a bond to stay execution pending the appeal. Mr. Walsh noted, however, that the bill requires a tenant in a suit under section 8-402 to pay to the landlord an amount equivalent to rent that would have been due under the lease, within 2 days of judgment-prior to the time that the right to appeal expires and prior to the time for execution of judgment. Mr. Walsh noted that under the bill, if a tenant in a suit under section 8-402 appeals, he would have to post a bond to stay execution pending appeal, but that there is no provision for the landlord to return the amount paid to him in the district court by the tenant to stay execution of judgment. Mr. Stollof said that the bill should be amended to have the tenant pay the stay of execution amount into the escrow of the court, not to the landlord. Mr. Jenkins said that the bill also should be amended to provide that the amount paid by the tenant into court would be returned if he appealed. Mr. Walsh suggested that the bill could be amended to condition a stay of execution upon payment of the amount for the stay within 10 days of judgment (the time in which to appeal); if the tenant appealed, the tenant would post an appeal in the appellate court to stay execution instead of posting the amount with the district court. Mr. Meyerhoff raised the problem of a tenant in a suit under section 8-402 who appealed and had his stay amount returned by the district court, but then did not prosecute his appeal. Mr. Meyerhoff suggested that this type of order could be imposed by a judge as a protective order under the protective order bill (agenda item #5). Mr. Stollof argued that the protective order bill gives a judge too much discretion. Mr. Walsh said, however, that he believed that judges presently have inherent equitable powers to issue protective orders. Mr. Walsh and Mr. Stollof suggested that the type of order provided for in HB 577 could be issued as a protective order under the protective order bill; such a protective order would specify that if the tenant in a suit under section 8-402 didn't appeal an adverse judgment, the stay of execution protective order would remain unaffected, but the money required to be posted for a stay of execution beyond the time required to appeal would not have to be posted until the time for appeal has expired. They also said that the order could provide that if the tenant appeals, the appeal bond would have to be posted simultaneously to prevent the landlord from executing the put out order (which would set the date for ejection to be the day after the time for appeal expires. Mr. Laurent questioned whether small landlords would know what types of protective orders were permitted under the bill. Mr. Davison said that the explanation and justification of the bill that accompanies a bill to the Governor's Office could note some of the types of protective orders that could be issued under the bill.

The Commission unanimously voted not to resubmit HB 577; and unanimously voted to approve the protective order bill (agenda item #5).

7. The Commission unanimously approved HB 1384 (Application for Leases). Mr. Dawson said that he would send a copy of the explanation and justification of the bill to Senator Broadwater and attempt to meet with him to discuss the bill, in order to attempt to avoid his opposition to the bill, which apparently was the reason for the bill's defeat last session.

8. Mr. Laurent suggested that the Commission consider future business at the November and December meetings. Mr. Walsh suggested that the Commission examine mobile home park landlord-tenant relations; he noted that amendments to the mobile home park act which were enacted by the last session of the General Assembly appears to be detrimental to mobile home park residents. Mr. Jenkins recommended that the Commission meet in July, and twice in September if necessary, to complete consideration of the remaining items on its agenda. The Commission agreed to this recommendation.

9. The meeting adjourned at 9:30 p.m.

Steven G. Davison,
Reporter

GOVERNOR'S LANDLORD - TENANT

LAWS STUDY COMMISSION

Correction to Minutes

of Meeting of June 24, 1980

Paragraph 4 should be corrected by adding the following sentence at the end:

The Commission unanimously voted to resubmit HB 580.

GOVERNOR'S LANDLORD - TENANT

LAWS STUDY COMMISSION

Mistakenly dated June 24 when distributed

Minutes of Meeting on July 8, 1980

1. Present: Jenkins (chairman), Snowdon, Laurent, Meyerhoff, Ciotola, Zerwitz, Stollof, Kalis, Ackerman (quorum). Mr. Jay Lenrow was also present.

2. The meeting started at 8:05 p.m.

3. The Commission's previous decision to draft a model lease was discussed. It was suggested that the Reporter contact the Real Estate Board and Board of Realtors to obtain sample leases. Mr. Lenrow said that the Consumer Protection Division of the Attorney General's Office had a number of leases of file which would be available for inspection. Mr. Davison asked members of the Commission to provide him with any sample leases that they had. Mr. Kalis suggested that the Commission draft a different lease for single family homes than for multi-unit dwellings, noting that tenants of single family homes are generally responsible for paying utilities and maintaining the premises and yard, which may not be the case for tenants of multi-unit dwellings. Mr. Stollof said that such a model lease should be drafted from the viewpoint of small, non-professional landlords. Mr. Laurent stated that a model lease should be suitable for a landlord who rents a single family home or an apartment in his home, and should be drafted in plain language. Mr. Zerwitz suggested that the model leases be divided to place tenant's duties in a section separate from a section dealing with the landlord's duties. Mr. Davison said that he would work with Mr. Lenrow in drafting the model leases, and would have the model leases distributed to members of the Commission prior to the September meetings. He said that he would draft comments to the model leases explaining what lease provisions are required to be included in a lease in Maryland and which are prohibited in lease provisions; and might draft optional lease provisions.

4. Mr. Jenkins said that no meeting would be held in August, but that the Commission would meet twice in September on the second and fourth Tuesdays. He said that at the October and November meetings the Commission would consider future business, such as mobile home park regulation. Mr. Jenkins said that the Commission might hold one fall meeting in Annapolis to receive testimony from tenant representatives. Mr. Stollof stated that the Commission should attempt to receive input from landlords and tenants, but that testimony at such a meeting should be directed towards criticism of Commission bills or proposals for new legislation rather than airing individual landlord-tenant problems. Mr. Snowdon said that he didn't expect that large numbers of tenants would seek to testify at such a meeting in Annapolis, and that testimony would be directed towards Commission bills or proposed new legislation.

5. Mr. Zerwitz said that the Commission should devote time in their fall meetings to reviewing prefiled bills dealing with landlord-tenant matters that are introduced by members of the General Assembly. Mr. Davison said that he

would ask Legislative Reference to provide the Commission with copies of prefiled landlord-tenant bills so that the Commission can consider them before they are printed by the computer.

6. Agenda item #1 (HB 832 (Amount of damages)) was discussed. Mr. Lenrow argued that liguidated damages clauses were prohibited in Maryland by section 8-207(d) of the Real Property Article, which prohibits a lease provision that would waive a landlord's duty to mitigate damages. Mr. Meyerhoff argued, however, that section 8-207 refers only to an "aggrieved party" having a duty to mitigate damages, and that neither a landlord nor a tenant would be "aggrieved" by breach of the lease if they had agreed to a liquidated damages lease provision respecting such breach. Mr. Davison said that the Baltimore City and Anne Arundel County delegations had opposed a previous version of the bill that would have repealed section 8-212's prohibition of liquidated damages provisions in leases. Mr. Kalis and Mr. Laurent suggested that the Commission enact a substitute bill that would amend section 8-209 to provide that if a landlord wished to include a provision in the lease that sets liability at a fixed amount for breach of the lease, the lease would have to include a provision, which the tenant would have to initial in order to be valid, stating that if the tenant breaches the lease by early abandonment or otherwise, the tenant can elect liability either for actual damages or for a fixed amount (which Mr. Ackerman suggested be called a premature lease termination fee; Mr. Lenrow said that such amount should not be referred to as :liquidated damages.") Mr. Kalis said that the landlord would not be required to include such a cluase in a lease, but if he wanted to collect a fixed amount of damages if the tenant abandons prior to the end of the lease term, he would have to comply with the statute. Mr. Kalis said that the bill could specify the actual damages for which a tenant might be liable, such as lost rent, advertising expenses, and realtors expenses. Mr. Davison said that such bill would also provide for repeal of section 8-212. The Reporter was requested to draft such a bill for consideration on second reader at the September meeting.

7. Agenda item #2 (the essential services bill) was discussed. Mr. Meyerhoff said that the bill appeared to apply to a landlord who had to turn off utilities to make necessary repairs. Mr. Davison said that he believed that a landlord would not be liable under section (B)(2) if he made the repairs within a reasonable period of time; he suggested, however, that a new section (D)(3) could be added to provide that a landlord would not violate the section if he interrupted essential services for a reasonable period of time to make necessary repairs. Mr. Meyerhoff made a motion, which was seconded, to so amend the bill. Mr. Kalis said that he didn't think that the bill would pass, and that it might hurt the chances of passage of other bills; Mr. Laurent argued, however, that the Commission should approve and submit the bill if they thought it was a good bill. The bill, as amended by Mr. Meyerhoff's motion, was passed unanimously.

8. Agenda item #3 (exculpatory clauses) was discussed. Mr. Meyerhoff said landlords had opposed HB 574 in the last session because it would prohibit landlords from exculpating themselves from liability for injuries to tenants on the premises when the landlord does not have a right of reentry to make repairs. Mr. Lenrow argued that a tenant has exclusive control of the premises even if a landlord has under the lease a reasonable right of reentry to make repairs, so that a landlord can under section 8-105 exculpate himself from liability for injuries to tenants on the premises

due to the landlord's negligent acts because all tenants have exclusive control of their premises in Maryland. Judge Ciotola noted, however, that a landlord could not exculpate himself from liability under section 8-105 for injuries that a tenant suffers on the tenant's premises that are caused by a negligent act of the landlord in an area outside the tenant's premises (which would not occur in an area under the tenant's exclusive control). Judge Ciotola gave, as an example of a negligent act which could not be exculpated from liability, a situation where water leakage from another apartment caused the ceiling of the tenant's apartment to fall, injuring a tenant. Mr. Davison, noted, however, that section 8-105 does permit a landlord to exculpate himself from liability for injuries caused to a tenant by negligent acts by him or his employees on the premises, such as in Mr. Lenrow's example where the landlord's repairman left grease on the floor of the tenant's apartment, resulting in injury to the tenant. Mr. Kalis noted that to prevent evidentiary disputes with respect to whether tenants had notified the landlord of defeats in the premises, he includes a lease provision requiring tenants to notify the landlord of defects in the premises by certified mail. Mr. Laurent suggested that the Reporter draft a bill that would amend section 8-208 (prohibited lease provisions) to permit landlords to use such lease provisions only if the tenant initialed such a provision, as is the case with automatic renewal provisions. The Reporter was requested to draft such a bill for consideration at the September meeting. Judge Ciotola urged that section 8-105 be left in its present form; he argued, as indicated in the explanation accompanying HB 574 and the alternative bill, that the sentence which the alternative draft of HB 574 would add to section 8-105 simply stated the common law. Judge Ciotola noted that many judges interpret section 8-105 as not prohibiting lease clauses exculpating liability for damages to a tenant's property. Mr. Ackerman said that a tenant's personal property would cover property damage.

The Commission voted, by a vote of 5 to 2, with 2 abstentions, not to resubmit HB 574; and voted 6 to 3 not to approve the alternative bill to HB 574.

9. Agenda items #4 (proposed amendments to sections 8-203(e) and (d) (security deposits)) were discussed. Mr. Meyerhoff, Mr. Kalis, and Mr. Stollof argued that section 8-203 (d)(2) should be amended to make the penalty, for a landlord's failure to provide the tenant with a written list of existing damages to the premises, denial of the right to withhold damages to the premises from a security deposit, rather than three times the amount of the security deposit. Mr. Snowdon said, however, that he favors the present penalty. Mr. Stollof argued that section 8-203(d)(1) should be amended to require the landlord to provide a tenant the written list of existing damages to the premises within 30 days of receiving the tenant's request for such list, as opposed to the present requirement that the landlord "promptly" provide such list after the tenant's request, since the tenant is required to request such list within 15 days of occupancy of the premises. Mr. Meyerhoff said that he favored Alternative A of the bills, since it made the penalty for all violations of sections 8-203(c) and (d) forfeiture of the right to withhold any part of the security deposit for damages. Mr. Lenrow and Mr. Davison suggested, however, that section (C)(2) of Alternative A

be drafted to read as follows:

"UPON WRITTEN REQUEST BY A TENANT WITHIN 15 DAYS OF THE TENANT'S OCCUPANCY OF THE LEASED PREMISES, A LANDLORD WHO IMPOSES A SECURITY DEPOSIT SHALL PROVIDE THE TENANT WITH A WRITTEN LIST OF ALL EXISTING DAMAGES TO THE LEASED PREMISES WITHIN 30 DAYS OF RECEIVING SUCH REQUEST."

Mr. Stollof argued that the tenant's request for the list of existing damages should be by certified mail, because if a tenant can read the lease and understand the requirement to make a written request for a written list of existing damages within 15 days of occupancy, he would understand what certified mail was.

Mr. Snowdon made a motion to table the bills, until the September meeting, which was approved by the Commission. Mr. Jenkins requested Mr. Davison to redraft section (c)(2) of Alternative A in the manner suggested by Mr. Lenrow and him.

10. The meeting adjourned at 9:40 p.m.

Steven Davison,
Reporter

GOVERNOR'S LANDLORD - TENANT

LAWS STUDY COMMISSION

Minutes of Meeting

on September 9, 1980

1. Present: Jenkins(Chairman), Ackerman, Zerwitz, Meyerhoff, Ciotola, Asparagus, Dancy, Martin (quorum). Gwen Tromley and Ken Montgomery of Legal Aid and Assistant Attorney General Jay Lenrow also attended the meeting.

2. The meeting started at 8:15 p.m.

3. Mr. Jenkins noted that the meeting was scheduled to start at 7:45 p.m. After determining that members of the Commission did not want a later starting time, Mr. Jenkins requested members to try to arrive by the scheduled time for the meeting to start.

4. Agenda item number one was discussed. After discussion, a motion was made and seconded to approve Alternative A. This motion was defeated because the vote was 3 in favor, 3 against, with one abstention and the chairman not voting. A motion to approve Alternative B was also defeated by a vote of 3 in favor, 3 against, with one abstention and the chairman not voting.

5. Prior to the vote on agenda item one, the Commission discussed whether Ms. Tromley could vote with a proxy given to her by Mr. Walsh. Mr. Davison and Mr. Meyerhoff noted that the Commission had previously addressed the issue of voting by proxy and had rejected this idea. Mr. Davison noted that a problem was presented in exercising a proxy when amendments to bills were proposed at a meeting. Mr. Ackerman said that Robert's Rules of Order specified specific requirements for a proxy, requiring it be in writing and to specify exactly what action it authorized. Mr. Jenkins ruled that Ms. Tromley could not vote Mr. Walsh's proxy.

6. The Commission discussed the schedule of meeting. Mr. Meyerhoff mad a motion, which was seconded by Mr. Ackerman and Mr. Zerwitz, that the Commission not meet in November and December. The chairman ruled that the motion had passed, but because some members had not heard the call for a vote, Mr. Meyerhoff made a motion to withdraw his earlier motion, which was seconded and passed. Judge Ciotola then argued that the Commission should meet in November and December to consider pre-filed landlord-tenant bills submitted by members of the General Assembly. Judge Ciotola noted that there was a company that would deliver pre-filed bills each day during the session for approximately $300-$400. Mr. Lenrow said that the Attorney General's Office received copies of pre-filed bills, and suggested that his office might be able to provide the Commission with copies of pre-filed landlord-tenant bills. Judge Ciotola made a motion, which was seconded and unanimously approved, not to change the present schedule of meetings and to have the Reporter make inquiries with respect to obtaining copies of pre-filed landlord-tenant bills in time for consideration at the November and December meetings. Judge Ciotola also made a motion to create an Advisory Pre-filed Bill Committee, consisting of Gwen Tromley and Jay Lenrow as co-chairpersons and Jack Stollof and George Laurent as members, to study

pre-filed landlord-tenant bills and report to the Commission recommendations with respect to what position the Commission should take. This motion was seconded by Mr. Meyerhoff and passed unanimously.

7. Ms. Asparagus urged that the Commission hold a meeting in Wicomico County to study the housing problems of migrant workers. The Commission asked her to report back at a later meeting with recommendations as to the date, time, place, and agenda for such a meeting and travel and accomodations for Commission members.

Mr. Jenkins noted that Mr. Snowdon had requested that the Commission hold a meeting in Annapolis, and he asked Mr. Davison to write Mr. Snowdon a letter requesting him to provide details as to the date, time, place and agenda for a meeting in Annapolis.

Ms. Martin suggested that the Commission should hold a meeting in Prince Georges County to consider the many problems faced by the county's tenants. In response to a question by Mr. Ackerman, Ms. Martin stated that the county's tenants had not brought these problems to the attention of the Prince Georges County Landlord-Tenant Commission. Mr. Ackerman suggested that the county's Commission,not the Governor's Commission, should address the problems of the county's tenants. Ms. Martin was requested to make recommendations at a later meeting as to the date, time, place, and agenda for a Commission meeting in Prince Georges County.

8. Agenda item number two was discussed. Mr. Lenrow said the reference to the Commercial Law Article should be 13-301 rather than 13-302. Mr. Ackerman said that he opposed the bill because it would require a landlord to notify all his tenants when he moves security deposits from one bank to another. He also noted that attorneys are not required to notify clients of the bank where the clinet's funds are kept in an escrow account. Judge Ciotola said that an attorney's escrow account would not be considered a security deposit account even when the attorney is also engaging in real estate trnasactions. Mr. Lenrow said that the Attorney General's Office considers violation of Title 9 (Landlord-Tenant) of the Real Property Article to be an unfair and deceptive trade practice under section 13-301 of the Commercial Property Article, and that several judges had established this interpretation as precedent. He said that the bill's reference to section 13-301 was therefore unnecessary, and might cause courts to hold that violations of other sections of Title 8 are not unfair and deceptive trade practices because these other sections don't explicitly say, as does the bill, that violations of their requirements are unfair and deceptive trade practices. Mr. Lenrow said that landlords in Montogmery and Prince Georges County were lobbying hard to have the General Assembly enact the bill introduced by the Commission last year that would permit a landlord to obtain a surety bodn rather than place security deposits in a bank account. Judge Ciotola said that agenda item number two would cloud existing law and produce more work; he said that existing law provides adequate protection. The Commission unanimously voted not to approve agenda item number two.

9. Agenda item number three was discussed. Mr. Lenrow said that many people misunderstand automatic renewal clauses. He said that an automatic renewal clause applied only if a landlord is seeking to renew all provision of the lease.

He said, however, that if a landlord seeks to change terms of the lease, such as the rent, his actions would be construed as an offer to the tenant to enter into a new and different lease. In such a situation, he said that the automatic renewal clause would not apply because a landlord cannot unilaterally change provisions of the lease without the tenant's consent. He noted that the conduct addressed by the bill (a notice of an increase in rent) was not within the scope of an automatic renewal clause. A motion to approve the bill was defeated, by a vote of none in favor, three against, and five abstaining.

10. Agenda item number 4 was discussed. Mr. Lenrow said that section 8-207 of the Real Property Article prohibits liquidated damages clauses in a lease, but that the Attorney General;s Office takes the position that is is legal for a lease to give a tenant the alternative of being liable for a liquidated amount or actual damages if the tenant is fully informed of these alternatives and is given the right to choose either alternative. Mr. Ackerman said that he thought that the bill should use the term promature lease termination fee to refer to a fixed (liquidated) amount of damages. A motion to place the bill on third reader at the next reader was unanimously defeated, resulting in the bill being dropped from the Commission's future agendas.

11. Agenda item number 5 was discussed. It was noted that the purpose of requiring written notification of defects was to strenghten the landlord's case when there is an evidentiary dispute as to whether notice was actually given and received. It was noted that the bill would not prohibit a tenant from giving oral notice, but would simply specify requirements that must be met in order for a lease provision requiring written notice of defects to be valid. A motion to place the bill on third reader at the next meeting was unanimously defeated, resulting in the bill being dropped from the Commission's future agendas.

12. The Reporter was requested to distribute copies of the by-laws in the next mailing.

13. The Commission voted 5-1, with 2 abstentions, not to hold a meeting on September 23 as previoulsy scheduled. The next meeting will be on October 14, and the agenda will involve consideration of the model leases drafted by Mr. Davison. Mr. Davison distrubuted copies of the rough drafts of the model leases he had drafted, and said that typed copies would be mailed out prior to the next meeting.

14. The meeting adjourned at 9:35 p.m.

Steven Davison,
Reporter

GOVERNOR'S LANDLORD TENANT

LAWS STUDY COMMISSION

Minutes of Meeting

of October 14, 1980

1. Present: Jenkins (chairman), Everngam, Stollof, Meyerhoff, Dancy, Ciotola, Laurent, Asparagus, Martin (quorum). Assistant Attorney General Jay Lenrow and Gwen Tromley from Legal Aid were also present.

2. The meeting began at 8:00 p.m.

3. Security Deposit Guidelines of the Apartment Builders & Owners Council (copy enclosed) were distributed and discussed. Mr. Lenrow raised the question of whether a landlord has a private civil remedy against a tenant to collect damages to the premises when the landlord cannot withhold the amount of such damages from the security deposit because of failure to give the notice required by section 8-203(g) of the Real Property Article. Judge Ciotola said that an award of damages in such a case would be contrary to the policy of section 8-203.

4. All members present at the meeting stated that they had not received the mailing with the agenda for this meeting. It was noted that the bylaws require at least two weeks written notice of each meeting, with the written notice accompanied by the agenda for the meeting. Mr. Jenkins said that he would speak with the Commission's Secretary and arrange to have the notice of meeting mailed early enough before a meeting so as to comply with the bylaws. Because no one had received copies of the mailing, Mr. Davison distributed copies of the model apartment lease and the model single family home lease which were in the mailing. Because there had been no prior opportunity to read the model lease, the Commission decided to postpone discussion of the model leases until the next meeting.

5. Ms. Asparagus proposed that the Commission hold a meeting in Salisbury to hear testimony with respect to problems on the Eastern Shore with respect to mobile home parks and housing for migrant workers. Mr. Davison noted that the General Assembly had amended the mobile home park owner-resident regulatory statute (Title 8A of the Real Property Article) in the last session. Mr. Lenrow said that the new statute had removed the Attorney General's Office's jurisdiction to regulate mobile home park owner-resident relations. Mr. Lenrow also noted that the state's mobile home park commission was no longer in existence. He noted that in most counties mobile homes can be located only in mobile home parks because of restrictive zoning, but that very few new mobile home parks had been built in recent years in Maryland. (It was noted that a new mobile home park had recently had opened in Howard County). Consequently, Mr. Lenrow noted that many mobile home parks in Maryland were overcrowded, with mobile homes in parks often located closer together than permitted by health and fire laws. Mr. Lenrow said that because residents of mobile homes in these parks would have no place to move their mobile homes if these parks were closed or reduced in density, public officials were not enforcing health and fire laws

that were being violated in overcrowded mobile home parks. He also said that there was one mobile home park that had raw sewage in the rods in the park.

Mr. Laurent said that if the Commission held field hearings, the testimony should not present individual complaints but should present proposals for legislations that would address actual problems faced by landlords and tenants. Mr. Jenkins agreed with this proposal. Mr. Davison suggested that the Commission might publicize field meeting in advance and have witnesses sign up in advance to testify and submit written statements, in order that repetitious or non-relevant testimony could be avoided. Mr. Laurent suggested that the Commission attempt to insure that the witnesses at such field hearings would be representatives of landlord and tenant organizations. Ms. Tromley suggested that the Commission appoint a subcommittee to plan and coordinate such field hearings. The Commission unanimously adopted a motion to create such a subcommittee. Mr. Jenkins then appointed Ms. Asparagus, Ms. Tromely, and Mr. Davison to this subcommittee, and requested the subcommittee to report back to the Commission when detailed arrangements for field meetings in Salisbury, Prince George's County, or Annapolis had been developed.

6. Mr. Jenkins discussed the present vacancies on the Commission. Mr. Davison noted that Mr. Walsh had indicated that he was resigning from the Commission and would be recommending to the Governor that Ms. Tromley be appointed to replace him. Mr. Jenkins noted that the Governor had taken no action to replace Mr. Meredith or to appoint persons to fill the present vacancies on the Commission despite his having written several letters to the Governor requesting that these vacancies be filled. Mr. Jenkins noted that he had received a phone call from a woman in the Governor's Office asking if the Commission was still functioning! Judge Ciotola said that this inaction was probably due to the fact that the Governor presently does not have an Appointments Secretary. Mr. Laurent suggested that a letter be sent to the Governor, requesting the present vacancies on the Commission to be filled, jointly by Legal Aid, the Property Owner's Association and other landlord organizations, and the directors of Baltimore Neighborhoods. Mr. Stollof and Ms. Tromley said that they would favor their organizations signing such a letter. Mr. Jenkins said that he would draft the letter and circulate it to the various groups for signature. Mr. Davison noted that after Mr. Walsh resigns, the Commission will have only 14 members (counting Mr. Meredith), leaving 5 vacancies to be filled and a proposal to the Governor requesting replacement of Mr. Meredith.

7. Mr. Davison noted that the minutes distributed at the last meeting that said they were for the June 24 meeting were actually for the July 8 meeting. (A corrected first page of these minutes are included in this mailing).

8. Mr. Davison noted that the mailing for the meeting included a copy of a letter to Judson Garrett of the Governor's Office forwarding the five bills that the Commission had voted to submit to the General Assembly. Mr. Davison said that he had also submitted, upon request, a memorandum to Dennis Robin of the Governor's Office discuccing the likelihood that the General Assembly would enact the four bills which had been previously submitted to the General Assembly. He said that he had discussed these four bills with Delegate Joseph Owens prior to drafting this memorandum. He said that because Delegate Owens had indicated that the House Judiciary Committee probably would not vote favorably

on the bill that would require a month's notice to quit to month-to-month tenants and because the Governor's staff had questions about the effect of the other provisions of the bill adding a reference to trespasser and squatters, the Governor had decided not to introduce the bill. Mr. Davison said that the other bills were apparently being introduced, although the Governor's Office was making some stylistic changes to the other four bills. Mr. Davison also noted that the mailing also included a letter that he had sent to Senator Jennie Broadwater which contained a copy of the Commission's Application for lease bill and a copy of the bill's explanation and justification. Mr. Davison said that Delegate Owens had told him that this bill had been rejected last year because Senator Broadwater (who sponsored the law which the bill would amend), had lobbied against the Commission's bill. Mr. Davison said that he hoped that he could get Senator Broadwater to support the Commission's bill, or at least not oppose it.

Mr. Jenkins discussed a letter he had received from George Laurent with respect to eviction of an employee of the landlord from an apartment which the employee is allowed to use as part of his compensation. Mr. Jenkins asked whether such an employee was subject to self-help eviction from the apartment. Mr. Laurent said that he did not think that such an employee would be a tenant subject to eviction under section 8-402 of the Real Property Article, although Mr. Lenrow and Mr. Stollof disagreed. Judge Cicotola suggested that this problem might be referred to the Commissioner of Labor.

Mr. Davison said that the Department of Legislative Reference would not be able to send pre-filled 'landlord-tenant bill' to the [illegible], but that if he phoned the Department's Library each week they would check to see what landlord-tenant bills had been prefiled that week and would certainly be free copy of each bill.

The meeting adjourned at 4:00 p.m.

Steven Davison,
Reporter

GOVERNOR'S LANDLORD - TENANT

LAWS STUDY COMMISSION

Minutes of Meeting

of November 11, 1980

1. Present: Jenkins (chairman), Laurent, Zerwitz, Meyerhoff, Everngam, Dancy, Snowden, Stollof, Kalis (quorum).

2. The meeting started at 8:00 p.m.

3. Mr. Jenkins circulated a letter that he had drafted to Governor Hughes, which he had signed and which he asked members of the Commission also to sign, requesting Governor Hughes to fill existing vacancies on the Commission, to remove Mr. Meredith from the Commission, and to name Mr. Lenrow to the Commission. The members of the Commission who were present signed the letter. Mr. Davison was requested to telephone the Commission members who were not present to obtain their authorization to have their names signed to the letter by Mr. Davison.

4. Mr. Snowdon discussed his letter to Mr. Jenkins proposing that the Commission hold a meeting in Annapolis for the purpose of explaining to, and discussing with, tenant groups bills that the Commission had submitted to the General Assembly. Mr. Snowdon said that opposition to Commission bills often comes from persons who don't understand Commission bills. In response to Mr. Laurent's question as to whether members of the General Assembly would be invited to this meeting in Annapolis, Mr. Snowdon said that only representatives of landlords and tenants should be invited to such a meeting. Mr. Stollof said that he supported field hearings for the purpose of hearing landlords and tenants discuss problems that should be addressed by legislation, but not for the purpose of explaining Commission bills to the public. Mr. Davison said that he would be happy to attend meetings of landlords or tenants to explain Commission bills, but that attendance of all members of the Commission was not necessary for such purpose. Mr. Laurent suggested that at a field hearing the Commission should first explain and discuss bills that the Commission had submitted to the General Assembly, and then hear testimony from members of the public with respect to proposed bills. Mr. Jenkins said that testimony at a field hearing should be directed to problems that exist throughout the state that can be addressed through statewide legislation, as opposed to local problems. Mr. Laurent suggested that the Commission contact all landlord and tenant groups throughout the state and invite them to one centralized meeting to present proposals for legislation to the Commission. Mr. Stollof suggested that the Commission hold such a meeting in Annapolis sometime between January and April when the General Assembly was in session, possibly after there had been a committee hearing on landlord tenant bills. Mr. Zerwitz suggested that the Commission hold 3 or 4 field hearings, in the western, eastern and southern areas of Maryland and in Baltimore. Mr. Laurent recommended that the Commission first hold a meeting in the Washington, D. C. area, to which all landlord and tenant groups in the state would be invited;

the meeting would start with the Commission explaining the bills it had introduced in the General Assembly, and the Commission would then hear proposals by landlords and then proposals by tenants. Mr. Jenkins suggested, however, that the Commission hold a meeting in Annapolis in January to which landlords and tenants from Prince Georges, Montgomery and Anne Arundel County would be invited. Mr. Zerwitz made a motion to hold a meeting on January 20, 1981, in Annapolis, to which would be invited landlord and tenant representatives from Montgomery, Prince Georges, Anne Arundel and Baltimore Counties and Baltimore City would be invited; and to have the previously appointed subcommittee to develop a format for testimony and to invite appropriate representatives to testify. This motion was seconded and was approved unanimously. Mr. Jenkins then requested Mr. Snowdon to arrange for a suitable meeting place in Annapolis, and asked Mr. Davison to have the subcommittee contact and invite landlord and tenant groups to testify at the hearing. Mr. Jenkins said that the meeting should be scheduled to start at 7:30 p.m. and end at 9:00 or 9:30 p.m. Ms. Dancy suggested that the Commission develop a format for witness' testimony, and that the Commission invite specific persons to speak on behalf of one county's landlords or tenants. Mr. Kalis objected to a pre-screening of witnesses who would be permitted to testify; he suggested that all identified landlord and tenant groups be invited to testify, but that the time permitted for testimony be limited. Mr. Jenkins requested the subcommittee to develop a format for witnesses' testimony and to include this format in letters inviting persons to testify at the hearing. Mr. Laurent suggested that rather than have the Commission take time at the beginning of the hearing to explain its history and to discuss its bills which had been enacted into law and which had been introduced to the 1981 session of the General Assembly, the Commission distribute at the meeting an information sheet providing this information. Mr. Davison was requested to write such an information sheet and have it ready for distribution at the meeting. Mr. Davison said that he would invite representatives from the Prince Georges and Montgomery County Landlord-Tenant Commissions and offices to make proposals at the hearing.

5. Mr. Davison distributed a memorandum analyzing the Maryland Mobile Home Park Act of 1976. He noted that the memorandum identified a number of provisions of the Act that required amendment. He noted that Ms. Asparagus had proposed a meeting on the Eastern Shore to address problems in mobile home parks and migrant worker housing. He said that he would be preparing a memorandum analyzing California's migrant worker housing legislation. Mr. Laurent said that Baltimore Neighborhoods, Inc., had received many complaints with respect to mobile home parks.

6. The model leases drafted by the Reporter were discussed. Mr. Stollof noted that Frank Gallagher, at a Baltimore City Council hearing the previous evening, had suggested that the availability and use of model leases might solve many landlord-tenant problems. Mr. Jenkins said that these model leases would be intended for use by small landlords who can't afford to

hire lawyers to draft leases. He said that model leases should be drafted to apply to the majority of small landlord situations, but could not be drafted to be satisfactory for use by all landlords. Mr. Kalis raised the issue of possible liability by the Commission for drafting leases that might not be appropriate for particular landlords or tenants. Mr. Davison said that he didn't think that issuance of such model leases would constitute the unauthorized practice of law, and that the Commission would be protected from liability for damages by the doctrine of sovereign immunity if issuance of model leases was within the statutory authority of the Commission. Mr. Laurent said that the Commission could avoid litigation by putting disclaimer clauses in the model leases. Mr. Stollof made a motion, which was seconded and approved unanimously, to have Mr. Davison request an opinion from the Attorney General as to the legality of the Commission drafting model leases, and as to how the Commission should distribute model leases if it is lawful for the Commission to draft model leases. Mr. Laurent suggested that the Commission might provide the model leases to private landlord and tenant organizations such as Baltimore Neighborhoods and have them reproduce copies and distribute the leases to the general public. He also suggested that public libraries might distribute copies of model leases drafted by the Commission. Mr. Kalis argued that it would be inappropriate to have the Commission sell or distribute its model leases. Mr. Zerwitz said that he could see no objection to the Commission distributing a model lease that was described as a sample and that contained a disclaimer.

The Model Lease for Multi-Unit Dwelling Units was discussed. Mr. Kalis noted that many landlords do not provide tenants in such units with heat or water, but Mr. Jenkins said that a model lease could not be drafted to cover all situations and that most landlords of multi-unit dwellings did provide heat and water as part of the rent. Mr. Stollof asked why clause 8 referred to eviction for substantial lease violations; Mr. Davison said that this was based upon Section 8-402.1 of the Real Property Article. Mr. Kalis suggested that section 8 be redrafted to use plain English. Mr. Kalis also suggested that clause 1 of the lease be redrafted to list specific items which might be provided by the landlord, with opposite "Yes" or "No" columns to be checked opposite specific items to indicate whether or not the items were or were not being supplied by the landlord. Mr. Zerwitz said that this is how Federal Title 8 leases are drafted. Mr. Stollof said that tenants have their greatest problems with small landlords with 1-4 units, and that this model lease would protect small landlords and their tenants (who he said need more protection than other tenants). Mr. Snowdon said that the Commission should go forward with the model leases. Mr. Laurent said that he was pleased with the draft of the model leases. Mr. Jenkins and Mr. Meyerhoff said that they believed that the model leases were drafted in plain English to the extent possible. Mr. Davison noted a correction to section 4 of the single family home lease, which would have it read the same as section 4 of the multi-unit dwelling model lease.

Mr. Laurent suggested that section 5 of the model lease (security deposits) be amended to indicate that the landlord will pay the lawful rate of interest on security deposits that are $50.00 or more. Mr. Laurent made a motion, which was seconded by Mr. Zerwitz, to place the model leases on second reader at the next meeting. The motion was approved by a vote of 7-1. Mr. Davison said that he would revise the model leases to incorporate the changes suggested by members of the Commission. Mr. Kalis noted that Baltimore City required a tenant to sweep his apartment before he returned it to the landlord; Mr. Davison said the he would prepare an appendix to the model leases that would incorporate lease provisions required in specific counties or cities.

7. Mr. Snowdon requested the reporter to draft a bill that would amend section 8-401 (rent due and payable) to make the right of redemption inapplicable only when a landlord had obtained 4 or more judgments for possession for rent due and payable within the previous 12 months, as opposed to the present provision making the right of redemption inapplicable when the tenant has received 4 or more summonses for rent due and payable in the previous 12 months, even though the landlord may have lost the suits involving such summonses. Mr. Laurent noted that Legal Aid believes that this provision is unconstitutional. Mr. Davison noted that the Commission had considered such a bill several years previously; he noted that the District Court now retains court records in rent due and payable suits for a year so that such a bill could be implemented.

8. The meeting adjourned at 9:30 p.m.

Steven G. Davison
Reporter

SGD:lv/sm

GOVERNOR'S LANDLORD - TENANT

LAWS STUDY COMMISSION

Minutes of Meeting

of December 9, 1980

1. Present: Jenkins (Chairman), Zerwitz, Everngam, Laurent, Meyerhoff, Ciotola, Asparagus, Snowdon, Martin (quorum). Assistant Attorney General Jay Lenrow and Gwen Tromley from Legal Aid also attended the meeting.

2. The meeting started at 7:50 p.m.

3. Arrangements for the public hearing to be held on January 20, 1981, in Annapolis, Maryland, were discussed. Mr. Snowdon discussed places where the meeting could be held. The Commission decided to attempt to hold the meeting in the Arundel Center. Mr. Davison distributed a proposed letter of invitation and an initial list of persons and organizations to be invited to the public hearing in Annapolis. The Commission made a number of changes to the proposed letter of invitation, and added some additional persons and organizations to the invitation list.

4. Ms. Asparagus discussed the facilities available for the proposed meeting in Salisbury. She said that the meeting could be held in the County Building, which has a meeting room that can accomodate 100 people. She also noted that hotels and restaurants were located close to this building. Mr. Jenkins proposed that the meeting in Salisbury tentatively be scheduled for April. He asked Ms. Asparagus to begin to prepare a list of witnesses to be invited to the meeting. Mr. Jenkins suggested that two areas that could be addressed at the Salisbury meeting would be mobile home park regulation and migrant worker housing. Mr. Snowdon suggested that a meeting on the Eastern Shore be held in Cambridge rather than Salisbury.

5. Mr. Snowdon made a motion, which was seconded by Mr. Meyerhoff and was passed unanimously, that the Commission prepare a budget each year, beginning with Fiscal Year 1982, in order to enable the Commission to allocate its appropriated funds and to insure that the Governor's Office allocates sufficient funds to the Commission. Mr. Jenkins decided that the Commission would consider a budget for Fiscal Year 1982 at the February meeting. Mr. Jenkins said that he would request

from the Governor's Office an itemized statement of the funds spent by the Commission for the last five fiscal years, the amount of funds allocated to the Commission for Fiscal Year 1981, and an itemized statement of how much the Commission has spent so far this year (on salaries, typewriter rentals, duplicating, and travel), in order to assist the Commission in preparing a budget for Fiscal Year 1982.

6. Mr. Jenkins decided to table consideration of holding a public hearing in Prince George's County until after the public hearings in Annapolis and the Eastern Shore were held.

7. The Commission then discussed the proposed model leases that had been drafted by the Commission. Mr. Davison noted that the Attorney General's Office had advised him that an Assistant Attorney General had been assigned to write an opinion addressing the legality of the Commission drafting and distributing model lease forms. Judge Ciotola suggested that the Commission should table consideration of the proposed model leases until the Commission receives the Attorney General's opinion. Mr. Snowdon urged the Commission to go forward with consideration of the model leases. Mr. Laurent made a motion, which was seconded by Mr. Meyerhoff and approved by the Commission, to continue discussion and consideration of the proposed model leases, subject to the Attorney General's opinion.

The Commission discussed the proposed model lease for multi-unit dwelling units. Mr. Meyerhoff proposed that the list in paragraph 1 should have "garbage disposal" added to it; and that the reference to window air conditioners be changed to air conditioner, because many buildings have central air conditioner units for each apartment. Mr. Laurent also suggested that blank lines be included in paragraph 1 so that additional items supplied by the landlord could be added. Mr. Meyerhoff suggested that a sentence be added to paragraph 8 stating that the tenant remains liable for rent for the remainder of the term of the lease, less rent that the landlord obtains from rerenting the premises. Mr. Lenrow and Judge Ciotola criticized the model leases for using legalistic language and said that the language in the model leases should be simpler and use laymen's terminology. Mr. Lenrow suggested that "Landlord" be changed to "We" and "Tenant" to "You" in the model leases. He also suggested that laymen's terminology be used in referring to assignment and sublease. Mr. Lenrow said that the model leases should follow the leases used by Columbia Management and Regional Management; Mr. Davison said that he would send copies of these leases to members of the Commission. Ms. Martin said that the Prince George's Landlord-Tenant Commission several years ago had drafted model leases, but had never officially approved model leases; it was noted, however, that these draft lease forms might not

reflect the current State of Maryland law. Mr. Snowdon said that he thought that the proposed model leases contained the substance of what a model lease should contain. Mr. Laurent said that the proposed model leases were better than most of the leases presently being used by landlords in Maryland that he had examined. Mr. Lenrow said that each page of the model leases should state an expiration date so that dated versions of the model leases would not continue to be used.

Mr. Laurent suggested that a subcommittee be appointed to work on further simplifying the language of the model leases. Judge Ciotola made a motion to this effect, which was seconded and approved. Mr. Jenkins then appointed Mr. Lenrow, Ms. Tromley, Mr. Stollof, and Mr. Davison as members of this subcommittee, and asked the subcommittee to report back to the Commission by January 31, 1981, so that its report could be considered at the February meeting.

8. Mr. Laurent suggested that the Commission discuss mobile home park regulation, and the Reporter's memorandum analyzing the Maryland Mobile Home Park Act, at the March meeting, prior to the April public hearing on the Eastern Shore.

9. The Commission discussed the bill previously requested by Mr. Snowdon that would make the right to redemption in a rent due and payable suit inapplicable only if a tenant has had more than 3 judgments (as opposed to three summonses under present law) for failure to pay rent due and payable. Mr. Davison noted that the bill was a revised version of HB 304 of the 1978 Session. Judge Ciotola noted that one problem with the present version of section 8-401 was proving that a tenant has previously received more than 3 summonses for rent due and payable. It was noted that Judge Janey presently requires in Baltimore Rent Court proof of service of process in prior rent cases in order for the right of redemption to be held inapplicable; this is usually accomplished by showing that the prior summonses were mailed. Judge Ciotola noted, however, that posting a summons does not mean that the tenant actually received the summons. Mr. Meyerhoff said that Mr. Snowdon had raised a valid issue, because tenants are being illegally evicted under section 8-401 by landlords who are abusing rent due and payable actions. Mr. Lenrow proposed an amendment to the first page of the bill that would provide that only more than three judgments of restitution will terminate the tenant's right of redemption; this amendment would not allow prior judgments for costs to terminate the tenant's right of redemption. Mr. Lenrow's amendment would also require the landlord to attach certified copies of the previous judgments of restitution to his complaint and made part thereof in order to terminate the tenant's right of redemption. Mr. Meyerhoff argued that a tenant should lose his right of redemption

after receiving two judgmwnts for rent due and payable; Mr. Snowdon said that he would oppose such an amendment to the bill. Mr. Jenkins argued that the language "IN THE DISCRETION OF THE COURT" in the third line from the bottom of section 1 of the bill should be deleted, in order to require a court to terminate the tenant's right of redemption when the tenant has had more than three prior judgments for possession entered against him.

10. Ms. Asparagus distributed a proposed bill that would permit tenant farmers to receive guests and invitees and would prohibit farmer owners from denying guests and invitees of their tenant farmers the right to cross the owner's property in order to visit the tenant farmer. She stated that this type of conduct is a common problem on the Eastern Shore.

11. Ms. Martin raised issue, initially raised by Mr. Laurent at a previous meeting, of the procedure for eviction of an employee of a landlord who is fired and is required to move out of an apartment in the landlord's building (which may be provided to him as part of his compensation for employment) immediately and without prior notice.

12. The meeting adjourned at 9:35 p.m.

Steven G. Davison
Reporter

SGD:sm

GOVERNOR'S LANDLORD - TENANT

LAWS STUDY COMMISSION

Minutes of Meeting

on January 20, 1981

1. The meeting was held in the County Council Chambers in the Arundel Center in Annapolis. The meeting began at 7:45 p.m.

2. Present: Jenkins (Chairman), Laurent, Meyerhoff, Martin, Kalis, Stollof, Snowdon, Zerwitz, Ciotola, Lenrow. Mr. Jenkins said that he had been informed that Mr. Lenrow had been appointed to the Commission, although Mr. Lenrow said that he had not yet received his official appointment to the Commission.

3. Most members of the Commission said that they had not received written notice of the meeting, although one member said that he had received his notice that afternoon, with the notice postmarked January 19. Mr. Davison said that invitations to potential witnesses, which the Secretary had told him had gone out in early January, had not been received by witnesses until January 14 or later, which was after the date specified in the invitation for returning the form attached to the invitation. None of the witnesses and members of the public attending the meeting indicated that they had received the written invitation. They had heard of the meeting by word of mouth. Only one member of the press, from a local Annapolis newspaper, was present at the meeting, and he had not received the press release, which Mr. Davison had directed the Secretary to send to newspapers, radio stations and television stations in late December.

4. The first witness to testify was Herman Dawson, representing the Tolliver Courts Tenant Association, Hillside, Maryland. The first problem he raised was conversion of apartments to condominiums, which he said was adversely affecting lower to middle income families who cannot purchase condominiums or houses. He said condominium conversion was causing lower to middle income families to be concentrated in particular areas of Prince George's County. Mr. Dawson also indicated the need for a good cause eviction statute to limit the reasons for which a landlord could refuse to renew a tenant's lease. He argued that only a violation of a clause in a lease or a violation of a state law or a county ordinance should be grounds for not renewing a lease. He also asserted that a landlord should be required to give a tenant notice of the violation and an opportunity to correct the violation, since the tenant is required to give the landlord

adequate notice of violations and an opportunity to correct violations or problems before a tenant has a legal remedy. Mr. Dawson also stated that there was a need to control rent increases so that they were not out of proportion to inflation, although he conceded that landlords should be allowed to raise rents as their costs increase and should be permitted to make a profit. He said that he was not advocating limiting landlords to a specified annual percentage increase in rent.

Mr. Laurent urged tenant groups to testify in favor of the good cause eviction bills that had been introduced to the 1981 Session of the General Assembly.

Mr. Stollof noted that a landlord in Baltimore City needs cause to evict a tenant within 30 days of notice of a violation, although no cause is needed to evict a tenant if 60 days notice is given. Mr. Stollof noted that landlords have difficulty in evicting a tenant for cause because other tenants are reluctant to testify against bad tenants; bad tenants may threaten other tenants to keep them from testifying in court eviction proceedings.

Mr. Snowdon questioned whether rent control should be a statewide program, or was needed only in Prince George's County.

Ms. Martin noted that Prince George's County allowed rent control to expire when the vacancy rate in rental units increased from 2% to 4%. She also noted that the county had had difficulty in developing a suitable formula for controlling rent increases.

Mr. Stollof said that many landlords were faced with 200% to 300% increases in their tax assessments, and that if they were allowed to pass the costs of these increased assessments on to their tenants, their rents would increase 50%-60%. He also suggested that if a rent control program specified maximum permissible annual rent increases, landlords would automatically raise rents the permitted maximum amount. He argued that economic control of rents through supply and demand was the best system for controlling rents.

4. Wendy Hinton, Director of the Anne Arundel Coalition of Tenants in Annapolis, and a member of the Low Income Housing Coalition, was the next witness to testify. She submitted a written statement (copy attached). She first stated the need for a good cause eviction statute. She said that in Anne Arundel County, many tenants are evicted because of their landlord's personal dislike of them. She noted that the Governor's budget cuts will significantly affect tenants, and should be offset by enactment of a good cause eviction statute. She recommended that good causes for eviction should be specified in such a statute.

She also stated that there was a need for legislation prohibiting utilities from turning off essential services to tenants (who have paid their landlord for such essential services) when the landlord

fails to make his payments to the utility. She noted that in Anne Arundel County tenants in several apartments have been threatened with the cutoff of utilities, because of their landlord's mismanagement, even though the tenants have paid for the utilities in their rent.

Ms. Hinton said that some landlords are sending summary ejectment notices to tenants under section 8-401 for rent due and payable, even though the tenant has paid his rent on time, in order to cut off the tenant's right of redemption under section 8-401. She stated that legislation should be introduced to prevent such abusive practices.

Ms. Hinton next recommended that legislation be enacted to require landlords renting more than four dwelling units at one location to use a written lease. She noted that some tenants with oral leases were having difficulty in getting landlords to repair defects in their apartment's heating system; she noted that a tenant with a written lease could force the landlord to repair such defects.

She next proposed that the six month presumption period in the retaliatory eviction statute should be changed to one year.

She concluded by arguing that housing is a necessity of life, and that the state hasn't given adequate attention to housing. She requested Governor Hughes to introduce legislation to address the problems she had raised.

Mr. Zerwitz noted, in reference to Ms. Hinton's testimony with respect to Ms. Hinton's allegation that landlords were sending summary ejectment notices when rent had been paid on time, that courts do not check summary ejectment notices to see if rent has been paid.

Mr. Snowdon questioned why a duty to give tenants a written lease should be limited to landlords renting four or more dwelling units at one location. He noted that many tenants in the same complex are given different types of leases, or receive different treatment from their landlord when they breach the same lease provision.

Mr. Stollof said that what would protect a tenant from arbitrary eviction or arbitrary failure to renew their lease would be a written lease specifying a tenant's rights and the grounds for eviction, not a good cause eviction statute. He noted that landlords generally do not act irrationally in evicting tenants because it costs a lot of money to evict a tenant. Ms. Hinton responded that a landlord could vary the grounds for eviction in their leases. She said that rental housing was scarce in Anne Arundel County, so landlords have no compassion for tenants, and tell them to accept their lease or go elsewhere. She also noted that there are tenants in rural areas of Anne Arundel County who live in "sugar" shacks. Mr. Meyerhoff noted that the Anne Arundel County Council has limited growth and construction of new apartments.

5. Mary Ellen Cobb of Oxon Hill was the next witness to testify. She first urged enactment of a good cause eviction statute.

She also urged that section 8-401 be amended to repeal the provision making the right of redemption inapplicable when a tenant has received four or more previous summonses. She said tenants usually have good reasons for late payment of rent. She noted that rent may be late when a single parent tenant becomes ill or is hospitalized. She argued that if a tenant gives a landlord advance notice that rent will be late, a summons for rent due and payable should not be allowed to be issued. She also asserted that a summons shouldn't be counted against the right of redemption unless a judgment was entered.

Mr. Snowdon noted that a bill (Senate Bill 24) has been introduced in the Maryland Senate that would direct the Department of Social Services to deduct rent from a welfare grant and pay the amount of rent directly to the grant recipient's landlord. Ms. Cobb argued that the majority of tenants are responsible enough to pay their rent themselves to the landlord. Judge Ciotola noted that Baltimore City Social Services paid $289,000 in emergency rent payments last year.

Ms. Cobb next raised the issue of retaliatory eviction, noting that there are numerous ways a landlord can retaliate against a tenant other than by evicting him. She referred to a case where a tenant's child was beaten-up by someone paid by the landlord to do so. She also indicated cases where landlords had retaliated against tenants by damaging their cars, making harassing telephone calls, and knocking on a tenant's door late at night to frighten them. She noted that tenants have difficulty proving that such acts were retaliatory acts by the landlord. She noted such retaliatory acts were done by landlords because the tenant testified against the landlord in court or because the tenant was a member of a tenant's organization.

Ms. Cobb urged that there be tighter limitations placed on the percent of a tenant's income that can be required to be paid as rent in subsidized buildings. She noted cases where tenants in subsidized buildings were paying more than 25% of their income as rent. Mr. Snowdon recommended that these tenants contact the local HUD office to have then calculate whether their rent is the correct amount.

Ms. Cobb said that there was a lack of affordable housing in Prince George's County.

She next stated that some landlords were making false advertisements with respect to the security features in their complex, by advertising the complex as a security building. She noted such adversitements do not explain what is meant by "security building;" they do not

indicate whether the complex has security patrols or simply locked outer doors. She alleged that police were being paid off by some resident managers not to come into the complex after tenants have reported a robbery to the police. She noted the need for protection of tenants against crime in common areas while they were coming to and going from their apartments.

6. Ronnie Edwards of Dodge View Apartments in Landover in Prince George's County was the next witness.

He first stated that the Prince George's County Landlord-Tenant Office and Commission needed to be reformed to be more protective of tenants. He charged that the office seemed to be serving landlords only. He said the office's advice to tenants with problems generally was to move, and that the office didn't enforce the law.

Mr. Edwards noted that Dodge View Apartments had had three different managers in the last year; a new manager would raise the rent and then leave after two or three months. He argued that managers should be required to meet certain criteria before rent could be raised, and that the law should require that a rent increase be used for the purpose for which it was raised. Mr. Edwards noted that landlords are not required to give notice to their tenants before they abandon or sell the complex or change resident managers. Mr. Jenkins suggested that the counties, rather than the state, should adopt legislation requiring apartment managers to be licensed before they can take over a complex. He noted that such a licensing program had been unsuccessful in Baltimore. Mr. Lenrow noted that Maryland requires a person to be a licensed real estate broker in order to collect rent for someone else.

Mr. Edwards suggested that bad tenants might be detected by landlords through a computerized system. He stated that tenants are concerned about the tenants living next to them. Mr. Snowdon questioned where tenants identified as bad by such a system would find a place to rent housing, and questioned the legality of such a computerized system. Mr. Edwards also suggested that there should be a computerized system to assist tenants in finding out where there are vacant apartments that meets his needs.

Mr. Edwards noted security problems in Prince George's apartment complexes. He said drugs were sold in most apartment complexes in the county. He charged that landlords and police passed the "buck" to each other. Mr. Snowdon said that one solution would be for landlords to evict tenants who have been convicted of drug offenses. He said that some landlords in subsidized housing in Anne Arundel County have put clauses in their tenants' leases providing that the tenant can

be evicted if he is convicted of a drug offense. He noted that persons convicted of narcotics distribution offenses may not be jailed and will return to the complex. He noted that courts had upheld the use of such lease clauses in subsidized housing on the grounds that they stated good cause for eviction under HUD regulations. Mr. Kalis noted that landlords cannot obtain the criminal records of prospective tenants or employees.

7. Ernest B. Gray, Sr., Chairman of the Housing Panel of the Prince George's County Human Relation Commission, from Takoma Park, was the next witness to testify. He testified in support of a good cause eviction statute. He also stated he supported rent stabilization controls. He noted a senior citizen on a month to month lease who had an $80.00 rent increase after only three months in the premises, leaving only $23.00 after payment of rent.

8. James O'Sullivan, Chairman of the Prince George's Landlord-Tenant Commission, was the last witness to testify. He said that there were failures in Prince George's County's housing, because special interest groups take precedence over the county's interest in decent housing. He said that the county's housing policy was one of default. He also stated that there was a need for adequate representation of tenants before the county's landlord-tenant commission.

In response to a question by Mr. Snowdon, Mr. O'Sullivan said that the county's commission had no formal policy with respect to condominium conversion. He said that the metro system was causing conversion of rental units to condominiums and was displacing low and moderate income tenants.

Mr. O'Sullivan said a good cause eviction bill will be introduced in six to eight weeks in Prince George's County. He asserted that a good cause eviction ordinance will impact only bad landlords.

In response to a question from Mr. Snowdon, Mr. O'Sullivan said that the general sense of the county's landlord-tenant commission was against the concept of a rent stabilization program. He stated that rent control was not reasonable for Prince George's County, though it might be reasonable in other local jurisdictions. He asserted that free market supply and demand forces will control rents in Prince George's County.

Mr. O'Sullivan stated that Prince George's County needed a housing court. He also said that Prince George's County had problems in enforcing its housing code.

Judge Ciotola suggested that condominium conversions might be controlled through tax penalties, such as by rolling back for assessment purposes the property's increased value for five years, resulting retroactively

in increased taxes. Mr. O'Sullivan said that he opposed such controls. Mr. Kalis noted that apartments are converted to condominiums because landlords can't make money by renting the property.

Mr. Stollof said that the problem faced by tenants wasn't the lack of a good cause eviction statute, but the failure of tenants to get decent housing for their housing and retaliation by their landlord when they complain about the quality of their housing. He stated that strong housing authorities are needed to obtain good housing for tenants.

Mr. Laurent said there is widespread fear among tenants that they will be evicted if they organize to seek better quality housing.

9. The meeting adjourned at 9:45 p.m.

Steven G. Davison,
Reporter

SGD:sm

GOVERNOR'S LANDLORD - TENANT

LAWS STUDY COMMISSION

Minutes of Meeting

on February 10, 1981

1. Present: Lenrow (acting chairman), Laurent, Dancy, Ackermann, Zerwtiz, Stollof, Asparagus, Ciotola, Everngam, Martin, Snowdon. Gwen Tromley of Baltimore Legal Aid and Wendy Hinton of the Anne Arundel Coalition of Tenants also attended the meeting.

2. The meeting started at 8:15 p.m.

3. Agenda item #1 (amendments to section 8-204 of the Real Property Article to allow migrant worker tenants to receive visitors) was discussed. Ms. Asparagus noted that section 8-204 does not apply to farm tenancies. She noted that her bill was designed to protect migrant workers who are in Maryland from June to October. She noted that many farmers bar case workers, food stamp workers, health officials, legal aid attorneys, and television news reporters from crossing their land to visit migrant worker tenants renting housing on their property. Mr. Lenrow noted that migrant workers renting housing on a farmer's property have an easement allowing them to cross the farmer's property to go to and from their rental housing, but many farmers deny a similar easement to other persons seeking to visit migrant workers at their rental housing. Mr. Lenrow noted that migrant worker housing is not covered by the state's labor laws.

   Mr. Laurent noted the similar problem of employees of landlords who receive housing as part of their compensation and who get fired. Mr. Laurent noted that the procedure for eviction of former employees from landlord's premises was unclear. Ms. Asparagus noted that a similar problem arises when a migrant worker, who has paid the rent for housing on a farmer's property for the entire growing season, is fired by the farmer prior to the end of the growing season; she noted it was unclear whether the migrant worker could continue to live in the rented housing until the end of the growing season, or, if not, whether the worker was entitled to a rebate of the unused portion of his pre-paid rent.

   Ms. Asparagus said that the Health Department isn't citing migrant worker housing camps for violations (such as overflowing septic tanks) so camps with health violations don't get closed down. Mr. Ackerman said that many of these camps don't have bathroom facilities. Ms. Asparagus noted that one camp in Somerset County consists primarily of units constructed as temporary housing during World War II. She

noted that migrant worker camps are owned by the growers. She said that loans are available from the Farmers Housing Administration to upgrade migrant worker housing in these camps, but that growers will not take these loans because if they do take an FHA loan they would have to comply with federal space limitations and other requirements. She said that growers charge migrant workers $150-$300 per month rent for housing in their camps, as compared to approximately $275 per month rent in Salisbury for an apartment of a similar size. Mr. Lenrow asserted that in migrant worker camps the housing is substandard, the conditions deplorable, and rent exhorbitant. Mr. Lenrow noted that local governments in areas where migrant worker camps are located are controlled by the growers, so local government regulation of migrant worker camps is weak or non-existent.

Mr. Stollof said that the purpose of Ms. Asparagus' bill is to allow migrant workers to receive visitors whom they have invited, not to allow television news reporters and others to visit migrant worker housing camps on their own initiatives.

Mr. Laurent raised the question of how migrant workers who invite government officials to visit them at their rental housing can be protected against retaliatory conduct by growers.

Ms. Asparagus said that Legal Aid was drafting a companion bill to provide for penalties against growers who prevented migrant workers from receiving invited visitors.

Judge Ciotola noted that District Courts have no authority to issue ex parte orders, which Ms. Asparagus' bill provides for. Ms. Asparagus submitted an amendment to the bill which would amend the Courts and Judicial Proceedings Article to give District Courts the authority to issue such ex parte orders.

Judge Ciotola also questioned whether migrant workers renting housing in a camp on a grower's property would be considered lodgers. Mr. Davison noted that he had previously prepared a memorandum for the Commission discussing lodgers and that he would distribute copies of this memorandum to members of the Commission.

Mr. Laurent made a motion, which was seconded, to amend the bill to include a provision giving the courts jurisdiction to issue appropriate ex parte orders and to move the amended bill to third reader at the next meeting.

4. Agenda item #2 (bill to amend the right of redemption provision under section 8-401 (rent due and payable) to require three prior judgments (as opposed to summonses) for rent due and payable in order for the right of redemption to be inapplicable) was discussed. Mr. Ackerman suggested that the bill be amended to refer to "more than three times,"

or to "four or more." He noted that some judges require proof of five or six prior summonses for rent due and payable before they will hold that the right of redemption has been lost. Mr. Lenrow pointed out that under the present version of the bill, a landlord would have to receive four prior judgments before he could evict a tenant for rent due and payable (which would occur after the fifth summons for rent due and payable in twelve months). Mr. Lenrow noted that section 8-401 presently makes the right of redemption inapplicable after a tenant receives three or more summonses.

Judge Ciotola recommended that the bill refer to "three or more" judgments, meaning four prior judgments would be required before the right of redemption was lost, and that a tenant could be evicted under the fifth judgment for rent due and payable in twelve months.

5. Mr. Lenrow noted that copies of the Reporter's latest drafts of the model leases, which had not been formally acted upon by the model lease subcommittee, had been mailed to Commission members. He asked Commission members to submit to him their written comments on these drafts. He said that the subcommittee would try to have final approved drafts of the model lease for consideration by the full Commission at the next meeting.

6. The Commission next discussed the testimony presented at the January 20 public hearing in Annapolis. Mr. Lenrow said that the poor attendance was attributable to late notice of the meeting being given by the Secretary to members of the Commission, the public, and the media. Mr. Davison said that the Commission had hired a new Secretary because of the former Secretary's inability to get notices of meetings out on time.

Mr. Zerwitz stated that the major concern of witnesses who testified at the hearing was the need for a good cause eviction statute. Mr. Davison noted that the Commission had examined good cause eviction four or five years ago, and that memoranda, reports on the New Jersey good cause eviction statute, and a good cause eviction bill had been prepared for and considered by the Commission. He said this material could be redistributed to members of the Commission. Mr. Laurent said that he thought that it would be a waste of time for the Commission to reexamine good cause eviction, because the Commission would split down the middle on the issue.

Mr. Stollof said that he thought the major concern of witnesses at the hearing was not good cause eviction but lack of decent housing and the lack of housing codes or ineffective or unenforced housing codes. Mr. Laurent and Wendy Hinton disagreed with Mr. Stollof. Ms. Hinton reasserted her position at the hearing in support of the need for a good cause eviction statute. She said that because of low vacancy rates, landlords in Anne Arundel County often evicted tenants for

retaliatory reasons (such as because of a tenant's complaint to the landlord or public officials) or personal dislike. Mr. Stollof responded that what tenants needed were laws or lease provisions requiring landlords to provide decent housing and to make necessary repairs to the leased premises. Mr. Laurent noted that the prime goal of the Low Income Housing Coalition is a good cause eviction statute.

Mr. Lenrow said that "good cause eviction" is a misnomer, noting that during the term of a written lease a landlord can only evict a tenant if the tenant has materially breached the lease. He said that the issue is really whether a landlord can decide not to renew a tenant's lease without good cause.

Mr. Lenrow said that the Commission would defer until the next meeting its decision as to whether the Commission should undertake to reexamine good cause eviction. He asked the Reporter to redistribute the material on good cause eviction which had been previously considered by the Commission.

7. Mr. Lenrow distributed another package of landlord-tenant bills that have been introduced to the General Assembly. Ms. Tromley said that her subcommittee will present to the Commission at its next meeting a report containing a synopsis and explanation of landlord-tenant bills introduced to the General Assembly. Mr. Laurent urged members representing landlords to attempt to get landlord organizations to support the bills introduced by the Commission.

Mr. Laurent, at Mr. Lenrow's suggestion, urged members of the Commission to attempt to get their constituent organizations to testify in support of the Commission's bills at legislative hearings on the bills, and to report to the Commission on the success of their efforts to gain such support.

Mr. Laurent and Judge Ciotola recommended that the Commission attempt in the future to meet with the House Judiciary Committee and the Senate Judicial Proceedings Committee prior to each Session or possibly post-session, to discuss the bills being introduced by the Commission.

Mr. Lenrow requested the Reporter to send copies of the Commission's bills and the explanations of the bills to interested groups. The Reporter compiled a list of groups that members thought would be interested in receiving these materials.

Mr. Laurent also suggested that after each session the Commission attempt to meet with persons and groups who testify in opposition to Commission bills at legislative hearings.

Mr. Davison also suggested that the Commission should attempt to arrange a meeting with Senator Broadwater to discuss the Application for Lease bill, noting that Senator Broadwater's opposition to the bill in the

last session apparently had caused the House Judiciary Committee to vote unfavorably on the bill.

Mr. Lenrow, at Ms. Tromley's suggestion, said that he would ask Mr. Jenkins to arrange a meeting between representatives of the Commission and Delegate Owens to discuss the Commission's bills prior to the hearing before the House Judiciary Committee on the Commission's bills.

8. The Commission discussed plans for a meeting on the Eastern Shore. Mr. Lenrow suggested that an Eastern Shore meeting be held in June; Mr. Snowdon suggested that it be held on a Saturday. Mr. Snowdon suggested that the Commission's annual dinner meeting be held in conjunction with the Eastern Shore meeting. Mr. Lenrow suggested that the meeting date for the Eastern Shore meeting coincide with the meeting of the Maryland Bar Association in June at Ocean City. Ms. Asparagus suggested that Saturday, June 13, would be an appropriate date for a meeting on the Eastern Shore. Ms. Asparagus agreed to report back to the Commission at the next meeting with detailed proposals for an Eastern Shore meeting.

9. Ms. Tromley said she would report back to the Commission at its next meeting with respect to Legal Aid's position with respect to the Reporter's draft implied warranty of habitability bill.

10. Judge Ciotola asked that the Commission put on its agenda for the next meeting discussion of the method of how notice and service of process has to be given in suits under section 8-401 (rent due and payable) and section 8-402 (holding over). He raised the question of how service should be given when the only known address is a post office box.

11. The meeting adjourned at 9:35 p.m.

Steven G. Davison,
Reporter

SGD:sm

GOVERNOR'S LANDLORD - TENANT

LAWS STUDY COMMISSION

Minutes of Meeting

on March 10, 1981

1. Present: Jenkins (Chairman), Lenrow, Dancy, Ackermann, Zerwitz, Laurent, Stollof, Martin, Asparagus (quorum). Gwen Tromley of Legal Aid also attended the meeting.

2. The meeting started at 8:00 p.m.

3. Mr. Jenkins announced that Mr. Walsh had resigned from the Commission, and that the Governor had removed Mr. Meredith from the Commission.

4. Mr. Jenkins noted that the Governor's Office had decided, for reasons stated in a letter by Carl Eastwick, the Governor's Legislative Officer, not to introduce the Commission's protective order bill. The reasons for this decision were stated to be that the bill failed to specify the criteria governing issuance of protective orders, and that the bill failed to specify the situations where issuance of a protective order would be appropriate. Mr. Laurent referred to a letter he had written Mr. Jenkins advocating that the protective order bill be amended to be applicable to rent due and payable suits under section 8-401 as well as to holdover tenant suits under section 8-402. The Commission requested the Reporter to redraft the protective order bill to address the concerns expressed in Mr. Eastwick's letter.

5. Ms. Tromley and Mr. Lenrow presented summaries of a number of landlord-tenant bills introduced by members of the General Assembly, which were then discussed by the Commission prior to the Commission voting whether to support or oppose the bills. The Commission voted to have the Reporter state the Commission's vote on these bills.

   a. The first bill that was examined was S.B. 581, which would change the date of trial for rent due and payable suits under section 8-401 from 5 days after the filing of the complaint to 7 days after the filing of the complaint. This change would make section 8-401 consistent with Baltimore City Public Local Law. Saturdays and Sundays apparently are counted in computing the running of this time limit. Mr. Lenrow made a motion, that was

seconded by Mr. Ackermann, that the Commission support this bill with the reservation, that if the bill was approved, that the courts would comply with this time limit in trying cases. This motion was not approved, because there were 4 votes in favor, but 2 votes opposed and 2 abstentions. Consequently, the Commission would take no position on this bill at the hearing on the bill.

b. S.B. 843 was next discussed. This bill would prohibit judges from staying eviction orders in holdover tenant actions for more than 30 days, but would not require holdover tenants to compensate landlords for lost rent during the period of the stay of the execution. Mr. Ackerman made a motion to oppose this bill, which was seconded by Mr. Zerwitz and Mr. Stollof. Mr. Stollof said that he opposed the bill because of the lack of a provision in it for compensation to be paid to landlords for lost rent during the stay of execution. Mr. Laurent made a motion, which was not seconded, to support the bill if it was amended to include a provision for compensation to be paid to landlords for lost rent during the period of the stay of execution. Mr. Davision noted that the Commission had introduced a bill in the previous session of the General Assembly that would have permitted stays of execution for up to 30 days in holdover tenant actions, if the holdover tenant compensated the landlord for his lost rent during the period of the stay of execution. Mr. Ackermann's motion was approved by a vote of 5 in favor, 2 opposed, and 2 abstentions. Mr. Davision said that he would provide the Senate Judicial Proceedings Committee with a copy of the Commission's bill introduced last session when he testified in opposition to the bill.

c. S.B. 935 was then discussed. S.B. 935 would require landlords to maintain minimum temperatures in leased premises when the landlord is required to supply heat to the leased premises. The bill, however, provides no remedy or sanction if a landlord violated this duty. The bill also provides that the State Department of Health can set minimum temperature requirements for particular times of day, between 60°F and 68°F. The bill also requires landlords to take specified action to prevent water pipes from freezing. Mr. Laurent made a motion to support this bill, which was seconded by Mr. Jenkins. This motion passed by a vote of 8 in favor, none opposed, and one member abstaining on the grounds that the Commission should take no position on the bill.

d. H.B. 23, which would raise the interest rate on security deposits to 5%, was discussed. Mr. Lenrow made a motion to support this bill, which was seconded by Mr. Laurent. Mr. Ackermann opposed the motion, stating that landlords cannot earn more than 5¼% interest on security deposit accounts. Mr. Stollof, however, said that he can earn 7% interest on a regular passbook savings account. The Commission voted to support this bill by a vote of 5 in favor and 4 opposed.

e. The Commission next discussed H.B. 703, which would permit tenants to require other tenants to comply with lease provisions in their lease which were not included as provisions in the leases of other tenants. In essence, the bill would require landlords to use the same lease for all of their tenants. The bill also would require a landlord to pay damages to a tenant when a subsequent tenant's lease does not contain a restriction in that tenant's lease (e.g. prohibiting a tenant from making excessive noise) and the prior tenant is damaged as a consequence. The Commission voted to oppose this bill by a vote of 7 opposed and one abstention.

Mr. Laurent said that he was in favor of a bill that would authorize tenants to force landlords to enforce other tenants' lease provisions.

f. H.B. 1017, which would require a landlord to return a tenant's security deposit within 35 days of termination of the lease (as opposed to 45 days under the present law), was discussed. A motion in favor of this bill was discussed. Ms. Martin noted that the Prince George's County Landlord-Tenant Commission had supported shortening the required period for return of the security deposit. Mr. Laurent and Ms. Tromley stated that low-income tenants faced significant problems when they moved to new leased premises and had not received the security deposit for their previous premises. Mr. Davison noted that the bill would continue to permit landlords to have 45 days to return security deposits to tenants who had abandoned the premises or had been evicted from the premises (section 8-203(i)). Ms. Asparagus argued that a landlord who gives a tenant under a year's term three month's notice that he will not renew the lease, has plenty of time to return a tenant his security deposit within 35 days of termination of the lease. The Commission voted to support this bill unanimously, 9 votes in favor.

g. The Commission discussed H.B. 1067, which would amend the rent escrow statute (section 8-211), to allow a tenant to refuse to pay rent, make self-help repairs, and deduct the costs of these repairs from the rent. The bill contains no limitations on the costs of self-help repairs which could be made by a tenant. Mr. Lenrow argued that the bill could hurt tenants, because if a tenant made repairs that he was not entitled to make under the rent escrow statute and deducted their cost from the rent due and payable, the tenant could be evicted. Mr. Ackermann made a motion to oppose the bill, which was seconded by Mr. Zerwitz. The motion passed by a vote of 5 in favor, none opposed, with 4 abstentions.

6. The Commission tentatively voted to hold a meeting on the Eastern Shore on Saturday, June 13, 1980.

7. The meeting adjourned at 9:45 p.m.

Steven G. Davison,
Reporter

SGD/sm

GOVERNOR'S LANDLORD - TENANT

LAWS STUDY COMMISSION

Minutes of Meeting

on April 14, 1981

1. Present: Jenkins (Chairman), Lenrow, Ciotola, Meyerhoff, Zerwitz, Ackermann, Martin (quorum).

2. The meeting started at 7:50 p.m.

3. Mr. Davison reported that all three of the Commission's bills (denial of essential services; application for leases; and duty to provide copy of lease form and lease) had been reported unfavorably by the House Judiciary Committee. Mr. Davison said that Delegate Owens, chairman of the House Judiciary Committee, appeared to be strongly opposed to imposition of criminal penalties upon landlords who willfully deny essential services to tenants. Mr. Davison said that he did not think that the Committee would ever approve the bill in its present form; he suggested that the criminal penalty provision be deleted from the bill and replaced by a provision that would award a tenant compensatory damages, punitive damages, and attorney's fees against a landlord who willfully denied the tenant essential services or ingress or egress.

   Mr. Davison said that Mr. Koons had opposed the bill that would require all landlords to provide copies of their lease form to prospective tenants and a copy of an executed written lease to tenants, because the bill did not allow landlords to charge prospective applicants a fee for the lease form. Mr. Koons said that tenant organizations had harassed him by sending lines of persons through his office requesting copies of leaseforms. Mr. Koons had suggested that the bill should be amended to allow landlords to charge a prospective applicant $5.00 for a copy of a lease form, which would be refunded if the tenant executed a lease with the landlord. Mr. Koons said that such a fee would deter tenant organizations from harassing landlords. Mr. Davison also said that some landlords had suggested that the bill be amended to give the landlord 45 days rather than 30 days after occupancy to give a tenant a copy of the executed written lease.

   Mr. Davison said that no witness had opposed the Commission's application for lease bill, and that last fall Delegate Owens had

appeared to support the bill. Mr. Davison said that the bill might have been reported unfavorably because Senator Broadwater had opposed the bill as he had last year. Mr. Davison said that he had sent Senator Broadwater a copy of the bill and an explanation of the bill and had offered to meet with him to discuss the bill, but he had never heard from him. Mr. Davison suggested that if the Commission reintroduces the bill in the next session of the General Assembly, they should attempt to have a subcommittee meet with Senator Broadwater to discuss the bill.

Mr. Jenkins suggested that the Commission appoint a subcommittee to meet with Delegate Owens to discuss the three bills to determine if the House Judiciary Committee is totally opposed to the three bills or if the bills can be amended to make them acceptable to the Committee.

Mr. Lenrow noted that no landlord-tenant bills had received favorable reports from the House Judiciary Committee or the Senate Judicial Proceedings Committee, although a bill granting tenants greater protection against condominium conversions had been approved by the General Assembly.

4. Mr. Laurent and Mr. Jenkins discussed what the future role of the Commission should be. Mr. Laurent noted that very few Commission bills had been enacted since the House Judiciary Committee had obtained jurisdiction over Commission bills. Mr. Jenkins raised the question of whether the Commission should remain in existence in light of this recent lack of success of enactment of Commission bills. Mr. Laurent and Mr. Meyerhoff said that landlords and tenants could have bills introduced directly in the General Assembly without going through the Commission. Mr. Laurent suggested that the Commission might shift its emphasis from approving bills for submission to the General Assembly, to issuance of reports examining areas of landlord-tenant law. Mr. Laurent suggested that one area that the Commission should study was mobile home park owner-resident relations.

5. Mr. Davison noted that there was a Governor's Mobile Home Park Commission still in existence, which had jurisdiction over mobile home park owner-resident relations. Mr. Zerwitz said that he thought that the Landlord - Tenant Commission had jurisdiction over all landlord-tenant matters, including mobile home parks. Mr. Davison said that both the Mobile Home Park Commission and the Landlord - Tenant Commission might have concurrent jurisdiction over mobile home park owner-resident relations; he noted that both the

Landlord - Tenant Commission and the Condominium Commission had exercised jurisdiction over the conversion of rental buildings to condominiums. Mr. Jenkins suggested that the Commission hold one meeting devoted exclusively to mobile home park owner-resident relations. Mr. Davison noted that in the fall of 1980 he had written and distributed a memorandum analyzing the Maryland Mobile Home Park Act. Mr. Laurent made a motion, which was seconded and passed by a vote of seven in favor and none opposed, with one abstention, to hold a meeting to study the Maryland Mobile Home Park Act and to issue a report, which would be sent to the Mobile Home Park Commission, suggesting amendment to the Act.

6. The plans for the meeting scheduled for Salisbury on Saturday, June 13, were discussed. Mr. Davison said that Ms. Asparagus had scheduled the hearing for 10:00 a.m. on Saturday, June 13, in a meeting room in the Wicomico County Public Library that could hold 75 persons. He said that the Commission would receive testimony from witnesses addressed to rural and migrant worker landlord-tenant problems and mobile home park owner-resident relations. The Commission decided that the Commission would tour Eastern Shore migrant worker housing and mobile home parks on the afternoon of Friday, June 12, and would have a dinner meeting on the evening of Friday, June 12. Mr. Davison said that he would reserve single rooms for Commission members in a motel or hotel in Salisbury for Friday evening, June 12.

7. The Commission then discussed the subcommittee's draft model leases and Mr. Laurent's letter dated March 12, 1981, proposing amendments to the draft model leases.

The Commission unanimously agreed to amend section 6 of the model leases to specify the penalties provided under section 8-203 of the Real Property Article when a landlord charges an excessive amount for a security deposit (section 6 of the leases); fails to send the itemized list of damages to be withheld from the security deposit within 30 days of termination of the lease (section 6); fails to return the security deposit less rightfully withheld damages within 45 days of termination of the lease (section 6); fails to send a written list of existing damages to the premises within 15 days of occupancy when required to do so (section 7); or fails to deliver possession of the premises at the beginning of the term (section 9 of the leases).

The Commission unanimously agreed to amend the last paragraph of section 6 of the leases to specify that the landlord has to return the security deposit plus 4 percent interest, less rightfully withheld damages.

The Commission unanimously voted not to amend the model leases by adding a requirement that a tenant give a 72 hour move out notice to the landlord.

Ms. Martin suggested that the model leases be amended to specify which provisions of the leases were required by state statute. The Commission voted unanimously to include a general statement in the leases that they incorporate provisions required by statute to be present in leases.

The Commission voted unanimously to amend the model leases to include a provision stating that the landlord was not responsible for any damages to the tenant's property that was not due to the landlord's negligence and suggesting that the tenant obtain homeowner insurance to protect himself in such situations.

The Commission voted unanimously to amend section 13 of the leases, Automatic Renewal, by changing "3 months" to "_____ days;" and by changing "this lease will automatically renew for another term" to "this lease will automatically renew for a term of the same length."

The Commission also unanimously voted to amend the phrase "CONTACT YOUR LAWYER" in the introductory paragraph of the leases to "SEEK LEGAL ADVICE."

Mr. Davison said that he would talk with Irvin Feinstein, the Administrative Officer of the Executive Department, with respect to printing and distribution of the model leases.

The Commission unanimously voted to include a statement on the model leases authorizing reproduction of the model leases without permission if no changes are made in the model leases; and to put a statement at the end of the model leases that they were prepared and distributed by the Commission as a public service.

Mr. Davison said that he would draft a press release that would be distributed when the model leases are available for public distribution.

8. The meeting adjourned at 9:15 p.m.

Steven G. Davison,
Reporter

SGD/sm

GOVERNOR'S LANDLORD - TENANT

LAWS STUDY COMMISSION

Minutes of Meeting

on May 12, 1981

1. Present: Jenkins (Chairman), Stollof, Laurent, Zerwitz, Ciotola, Meyerhoff, Ackermann, Asparagus, Everngam, Kalis, Martin (quorum).

2. The meeting started at 8:00 p.m.

3. Mr. Davison outlined plans for the meeting in Salisbury on June 12 and 13. He indicated that there would be a tour scheduled for Friday afternoon June 12 to allow Commission members to see migrant worker housing and mobile home parks. The exact time of the tour and its itinerary have not been determined by Ms. Asparagus. The members of the Commission will stay in the Sheraton Salisbury Inn Friday evening, June 12. A public hearing will be held on Saturday, June 13, at 10:00 a.m., in the Wicomico County Public Library in Salisbury, to hear testimony on migrant worker housing and mobile home park landlord-tenant problems.

4. The Commission discussed agenda item #4 (Mr. Laurent's letter dated February 12, 1981).

   a) The liquidated damages clause issue was first discussed. Mr. Davison said that he believed that Mr. Lenrow has taken the position that a liquidated damages clause cannot preclude a tenant from having the option to pay either actual damages caused by his abandonment prior to the end of the lease term or the liquidated amount specified in the lease. Mr. Davison said that this position is based on the fact that section 8-207 of the Real Property Article does not allow a landlord to waive his duty to mitigate damages if a tenant abandons prior to the end of the lease term, which Mr. Lenrow consequently interprets as not allowing a landlord to preclude a tenant from being liable for the actual damages suffered after mitigation. Mr. Meyerhoff indicated that Mr. Lenrow also has taken the position that a

liquidated damages clause in a lease that states that a tenant "may" terminate the lease prior to the end of the term if he pays a specified amount of money as liquidated damages is valid, but that a liquidated damages clause is invalid if it is worded in a mandatory manner so that it indicates that a tenant must pay a liquidated amount of damages if he abandons the premises prior to the end of the lease term. Mr. Laurent said that he thought that liquidated damages clauses that indicate that a tenant "may" terminate the lease if he pays the specified amount mislead a tenant into thinking that he has no other choice if he wishes to terminate the lease early, because the clause doesn't tell him that he has the option of being liable for actual damages. He said that some judges have held that a tenant loses the option of being liable for actual damages once the tenant tells the landlord that he is electing to terminate the lease and pay the specified amount of liquidated damages. Mr. Laurent suggested that a liquidated damages clause should be required to state that a tenant has the option of paying the specified liquidated amount of damages or being liable for actual damages. Mr. Ackermann said that his leases include such a clause, which he calls a premature lease termination fee clause, giving the tenant the choice of paying actual damages or a liquidated specified amount of damages if he wishes to terminate the lease before the end of the term. Mr. Ackermann said that most leases cover the problem raised by Mr. Laurent in an abandonment clause; he noted that a landlord loses lost rent as well as incurring expenses such as redecorating costs when a tenant abandons the premises prior to the end of the term. Mr. Stollof said that he didn't think that a lease clause that simply stated that a tenant "may" pay a specified amount to terminate the lease early, without telling the tenant that he has the option of being liable for actual damages, was misleading or unfair. Mr. Laurent made a motion that section 8-208 of the Real Property Article (prohibited lease provisions) be amended to prohibit liquidated damages clauses unless they specify that a tenant has the choice of paying the specified amount of liquidated damages or paying actual damages. This motion was not seconded and therefore was not approved.

b) The Commission next discussed the issue of roomers raised in Mr. Laurent's letter. Mr. Davison noted that he had previously prepared and distributed a memorandum addressing the rights of roomers. Mr. Laurent noted that Baltimore City P.L.L. § 9-14 requires 30 days notice to quit to be given to roomers, although he proposed enactment of a state-wide law that would require 48 hours to quit to a roomer. Mr. Kalis said that such a bill would be opposed by Eastern Shore rooming house owners who lodge roomers on vacation. Mr. Zerwitz said that owners of lodging houses often lockout roomers they wish to eject, padlocking the roomer's room and removing the roomer's personal property from the room. He

also indicated that many roomers occupy a single room in a house rented by a tenant. Ms. Asparagus stated that her Legal Aid Bureau hasn't had many cases involving the lockout of roomers, although she said that the legal status of roomers was uncertain. Mr. Davison stated that the rights of owners and guests of hotels and motels was regulated by statute, so that any law regulating roomers would have to be drafted to exclude hotel and motel guests. Mr. Zerwitz proposed that there should be a distinction in the way the law regulates rooming houses as opposed to roomer's renting a single room in a house from a tenant or owner. Ms. Asparagus said that she ejects roomers by means of a forcible entry and detainer action. Mr. Ackermann raised the problem of parents who receive money from a child who has reached majority but continues to live at home. Ms. Tromley questioned whether legal rights of a roomer should depend upon how long the roomer has resided in his room, noting that there are roomers who are long-term residents in their room and whose room is their principal place of residence and roomers who only stay in a room overnight. Mr. Stollof asserted that there should be a difference in the legal rights of the long-term roomer and the overnight roomer. Mr. Laurent suggested that roomers should be given personal service of a notice to quit. Mr. Meyerhoff made a motion that the Commission not consider the roomer issue, which was seconded and approved by a vote of 6 in favor, and 3 opposed, with 2 abstentions.

c) The Commission next considered the attorneys' fees clause issue raised by Mr. Laurent's letter. Mr. Stollof said that he didn't think that the Commission should approve legislation prohibiting landlords from doing acts such as putting illegal clauses in lease contracts, that already were made illegal under the law. He said that he regarded the attorneys' fees clauses discussed by Mr. Laurent's letter as such a problem. Mr. Davison noted that section 8-208 of the Real Property Article (prohibited lease clauses) does not prohibit attorneys' fees clauses in leases. Mr. Ackermann said that a landlord's legal fees generally result from suits against tenants who have failed to pay rent when due. Mr. Kalis noted that courts will review the reasonableness and lawfulness of an attorneys' fees clause if a landlord attempts to collect attorneys' fees from a tenant by bringing an action in court. Mr. Laurent decided to withdraw his attorneys' fees clause issue from consideration by the Commission.

5. Judge Ciotola noted that agenda item #6 (problems in interpreting how service of summonses and complaints is to be made under section 8-401 (rent due and payable) and section 8-402 (holding over)) was being addressed by bills being drafted by several judges, so this issue was dropped from the Commission's agenda.

6. Ms. Tromley said that she did not yet have a report with respect to Legal Aid's position on the implied warranty of habitability bill.

7. The Commission next discussed the model leases. Mr. Ackermann suggested that the words "rental agreement" be used rather than "lease" but he did not make this suggestion a motion. Mr. Kalis made a motion to amend the model leases by deleting the phrases that the leaseform should not be used after June 30, 1982, which was seconded by Mr. Jenkins. Mr. Stollof made a motion, which was not seconded, to amend the model leases by adding language to the model leases advising users of the model leases to check for changes in landlord-tenant law each year. Mr. Zerwitz made a motion, which was seconded by Mr. Everngam, to table action on the model leases because Mr. Lenrow was not present at the meeting. This motion by Mr. Zerwitz was defeated by a vote of 4 in favor, 5 opposed, and 2 abstentions. Mr. Kalis' motion to amend the model leases was approved by a vote of 9 in favor, none opposed and 2 abstentions. Judge Ciotola made a motion to amend the model leases by adding a notice provision on the front page, blocked in by lines, stating in bold capital letters: "NOTICE: THIS LEASE IS BASED ON MARYLAND LAW AS OF JUNE 30, 1981." This motion was seconded by Mr. Zerwitz and was approved unanimously. Mr. Meyerhoff called the question to vote on the model leases; his motion was seconded by Mr. Laurent. The Commission unanimously approved the model leases, as amended by Mr. Kalis' and Judge Ciotola's motions.

8. The meeting adjourned at 9:30 p.m.

Steven G. Davison,
Reporter

SGD/sm

MINUTES OF THE PUBLIC HEARING
HELD BY THE GOVERNOR'S LANDLORD-TENANT COMMISSION
IN THE WICOMICO COUNTY FREE LIBRARY
IN SALISBURY, MARYLAND
ON JUNE 13, 1981

1. Present: Jenkins (chairman), Meyerhoff, Martin, Asparagus, Snowden, Ackermann, Stollof, Everngam, Lenrow (quorum).

2. The public hearing began at 10:15 a.m.

3. The first person testifying at the hearing was Donna Spencer of Salisbury, who said that she was testifying on behalf of tenants renting apartments from both private and public landlords.

She first raised the effect of the lack of rent control on welfare recipients. She noted that many landlords in Salisbury charged welfare recipients rent that exceeded 25% of the recipient's welfare grant; she said that in some cases rent charged welfare recipients amounted to 50% to 75% of the amount of their welfare grant. This was in addition to landlords requiring welfare recipient tenants to pay a like amount as a security deposit. Members of the Commission pointed out that the 25% of income limit on the amount of rent that a private landlord can charge applies only to federally subsidized housing and to landlords who voluntarily enter the Section 8 program. It was pointed out that private landlords are not required to participate in the Section 8 program.

Another problem Ms. Spencer raised was harassment and intimidation of tenants by landlords. She said that there were no tenant organizations in Salisbury because of intimidation of tenants by landlords. She also asserted that the lack of attendance of tenants at the Commission's public hearing was due to landlord intimidation. Ms. Sepncer said that one of her landlords once had entered her apartment at night with a passkey and warned her about causing trouble.

Ms. Spencer next raised the problem of landlords in Salisbury engaging in self help eviction, without legal process, of tenants who don't pay rent on time. She said that this is a particular problem for welfare recipients whose welfare chacks don't arrive until after the due date for rent. She asserted that some landlords in Salisbury, without resorting to legal process, put a tenant's personal property out in the front yard or sidewalk when the tenant is not home, and change the locks on the tenant's apartment when the tenant doesn't pay the rent She said that when this occurs, a tenant's personal property is often

stolen. She said that she has been locked out of an apartment by a landlord who changed the locks on her apartment; she said that this landlord held her personal property as "ransom" until she returned the keys to the apartment. She said that she refused this demand of the landlord and had to go to court to get her personal property back.

The next problem raised by Ms. Spencer was the invasion of tenant's privacy by landlords who use pass keys to enter a tenant's apartment, without the tenant's consent. She said landlords in Salisbury do this for the purpose of turning down the thermostat, to remove personal property which the landlord doesn't think should be in the tenant's apartment, or to tell tenants who can and cannot visit or live in the apartment. She said that landlords evict a tenant by self help and changing of locks if the tenant complains to Legal Aid about such invasions of privacy.

Ms. Spencer also said that some tenants in Salisbury have unclean apartments when they first move in; she said some apartments have roaches, mice, and broken toilets (sometimes the toilets remain broken for 4 to 6 weeks before the landlord repairs them, she said). She said some landlords show prospective tenants vacant apartments that are unclean and promise the applicant that they will clean the apartment before he moves in, but don't do so.

False advertising by landlords was another problem raised by Ms. Spencer. She said that some landlords advertise apartments renting for $225-$265 per month as an "efficiency" with a bathroom, but the apartment has no bathroom and the apartment is one room that has been divided into two rooms (a kitchen and a livingroom-bedroom). She said this occurs in the case of a single family home which the landlord has converted into several apartments; in such cases, the tenants have to share a common bathroom that is not located in their apartment. She said that after she went to court against this landlord and recovered a judgment for breach of contract for false advertising, the landlord retaliated against her by spraying the apartment above her with "lethal" pesticide, forcing her to move out of her apartment for several days.

Another problem mentioned by Ms. Spencer was landlords not properly repairing apartments that have been damaged by fires before re-renting them to other tenants. She said landlords often re-rent fire damaged apartments four to six weeks after a fire, which she said is not adequate time to repair the premises.

She also asserted that landlords in Salisbury "blackmail" tenants who complain about problems to their landlord or Legal Aid, making it difficult for the tenant to rent housing.

Mr. Snowden told Ms. Spencer that some of the problems she raised were protected against under the retaliatory eviction statute. Ms. Asparagus mentioned the rent escrow statute. Mr. Lenrow told Ms. Spencer that self help eviction without legal process was illegal in Maryland; Mr. Davison also noted the bill which the Commission unsuccessfully introduced last session that would make it a criminal offense for a

landlord to lock a tenant out of his apartment. Mr. Lenrow also said that a landlord has no absolute right to enter a tenant's apartment with a passkey; he said that entry without a tenant's consent must be at reasonable times or for a reasonable purpose (frozen pipes, fire, etc.). He suggested that tenants file complaints about the type of landlord conduct raised by Ms. Spencer with the Consumer Protection Division of the Attorney General's Office. Ms. Spencer responded by saying that tenants who complained to Legal Aid or the Consumer Protection Division in Salisbury did not receive assistance.

4. The next witness who testified at the hearing was Richard Ensley of Salisbury, who owns and manages residential rental property in Salisbury. He said he owns or manages over 300 units, whose rents vary from $250 to $350 without utilities included in the rent. He said that there are firms in Salisbury managing larger numbers of rental units.

Mr. Ensley said that most of the problems raised by Ms. Spencer, except rent control, are covered by Salisbury ordinances or statutes. He said Salisbury had a housing code, which had been revised in the last year. He said that it was considered a fairly strict code. He said that the code is enforced by the Salisbury Bureau of Inspection, which has a reputation for fairly strict enforcement. Mr. Ensley noted that the Bureau of Inspection makes inspection both randomly and on request.

The problem that Mr. Ensley presented to the Commission was that State employees' wages and certain other assets (such as savings accounts in State credit unions) are exempt from attachment. He said that in four to six cases, he has been unable to execute recorded judgments for rent against tenants of his who were State employees. He said that several tenants of his who were State employees had flaunted their asset's exemption from liability at him. He also said that State credit unions refused to attach State employees' savings accounts pursuant to a rent due and payable judgment. Mr. Ackermann noted that wages and certain assets of federal employees are also exempt from attachment pursuant to State rent due and payable judgments.

Mr. Ensley said that most rental property owners he knew would not harass tenants the way Ms. Spencer described.

Mr. Ensley said that there was no organization of Salisbury landlords. Mr. Meyerhoff noted that Baltimore landlord organizations have grievance committees to try to resolve the types of problems raised by Ms. Spencer. He suggested that Salisbury landlords form such a landlord organization and grievance committee, but Mr. Ensley replied that the small number of landlords in Salisbury made this impractical.

Mr. Ensley said that in Salisbury, there is a week to two weeks between the filing of a rent due and payable suit and trial. He said that

judges will give welfare recipients who are defendants in rent due and payable suits a document to take to the Social Services Department to get money for rent to prevent eviction. Mr. Ensley said that landlords have to wait 2 to 3 days after a judgment in a rent due and payable action to get a warrant of restitution, and that the sheriff personally serves the tenant with advance notice of the date set for eviction for non-payment of rent.

5. The next witness to testify was Ralph E. Bromley, who said that he owns several small apartments and a 45 unit mobile home park where he also rents 28 mobile homes, in Delmar, Maryland.

The first problem raised by Mr. Bromley was a problem he had had with a tenant who was playing his stereo so loud as to disturb other tenants. After he got a warrant for the tenant for disturbing the peace, the judge dismissed the charges, telling him that the State disturbing the peace statute doesn't apply to loud noise generated by a tenant in an apartment. He said that the Attorney General's office confirmed this interpretation, stating that for the statute to be violated there must be vulgar language used or loud noise in a public place (not in a private apartment). Members of the Commission noted that Baltimore City and Ocean City had ordinances that applied to the situation discussed by Mr. Bromley. It was also noted that Mr. Bromley could include provisions in his lease or rules and regulations to address the problem of loud noise by tenants.

Mr. Bromley next proposed that landlords be permitted to use self help eviction without resorting to legal process, to remove tenants who failed to pay rent when due (when the landlord is not seeking a money judgment for unpaid rent). Members of the Commission unanimously told Mr. Bromley that they opposed his proposal, both on policy grounds and on the grounds that such a policy would violate due process under the United States Constitution. Mr. Lenrow pointed out that there can be mistakes made by a landlord, such as crediting a tenant's payment to another tenant's apartment, embezzlement of rent payments by a landlord's agents, or a rent check lost in the mail, as well as situations where a tenant is entitled to withhold rent under the rent escrow statute.

Mr. Bromley also suggested that the law be changed to require only a week's notice to quit, rather than the presently required month's notice to quit, in order to eject a tenant who is endangering other tenants' health and safety.

6. Brenda Bibbins of Snow Hill was the next witness to testify. She said that her landlord had told her to move out in 30 days after she complained to him about a hole in the kitchen floor of the house she is renting from him. He refused to accept her latest rent payment and told her to move out by July 1. Members of the Commission told her that her landlord was acting illegally in attempting to evict her without legal process, and recommended that she consult with several Legal Aid attorneys present at the hearing. Ms. Bibbins said that this type of

self help eviction was a common problem suffered by tenants in Worcester County. She noted that she had complained about the kitchen floor hole and lack of hot water to the housing inspector for over six months before he came out to the house. Mr. Meyerhoff suggested that she make her complaints in writing to her landlord and the housing inspector so that she would be protected for six months under the retaliatory eviction statute.

Mr. Davison said that one problem that tenants on the Eastern Shore appeared to have was a lack of knowledge of their rights or where to go to learn about their rights. He noted that New Jersey required landlords to give tenants a document prepared by the State informing tenants of their rights.

7. George Carr, the chief attorney in the Migrant Division of Maryland Legal Aid, with the main office in Salisbury, was the next witness to testify.

He noted that there were many reasons why legal aid workers and social service providers need to be present and have access to migrant worker camps. He said that there might be public health threats from measles or typhoid carried by migrant workers into Maryland from other states. He also said that Legal Aid paralegals and attorneys were needed in migrant worker camps in order to determine the eligibility of migrant workers for emergency food stamp benefits; to provide emergency relocation assistance under Maryland law to migrant workers who had been misled or deceived and who wished to return to their home states; and to determine if migrant workers were being paid the minimum wage and for the number of hours they had worked. Mr. Carr said that growers were not willing to allow legal aid and other social service workers to enter migrant worker camps. He noted that the Somerset County Growers Association has told Legal Aid that their employees cannot enter the Westover camp, and Mr. Onley has likewise told Legal Aid that its workers cannot enter his migrant worker camp. Mr. Carr also stated that a Catholic priest has been told that he cannot enter Butler's migrant worker camp. Mr. Carr urged the Commission to approve the bill that he and Ms. Asparagus had drafted to give migrant workers the right to have their invitees visit them in migrant worker camps and to provide for an expeditious ex parte remedy when a grower denies a migrant worker's invitees access to a camp. Mr. Davison told Mr. Carr that the Commission is scheduled to vote on this bill at its next meeting in July. Mr. Carr discussed a situation in Florida where he had had trouble gaining access to a migrant worker who needed a cataract operation. A grower denied him access to a camp to see her, and got the county police to threaten a paralegal with arrest if the paralegal tried to visit the worker in the camp. Mr. Carr said he had to get a federal court order authorizing him to enter the camp to see the worker, but he could not get the worker to a scheduled operation with a specialist, who could not return to see the worker for six months. He also noted a case last year on the Eastern Shore, where a paralegal encountered a

a migrant worker with a stab wound in the abdomen, as another example indicating the need for Legal Aid and social service workers to have access to migrant worker camps. Mr. Carr stressed that Legal Aid does not organize migrant workers. He said that Legal Aid attorneys and workers remain in migrant worker camps unless there is a threat of arrest or violence. Mr. Carr noted that Legal Aid might be able to establish a right to access to migrant worker camps under the First and Thirteenth Amendments of the United States Constitution (right of association, prohibition of incidents of slavery), but that an explicit statutory right of access would be preferable to bringing constitutional test cases. He said that this problem of access to farm workers also exists in Western Maryland. Mr. Carr estimated that the migrant worker population during the summer in Wicomico, Somerset, and Dorchester Counties is approximately 1,500. He said that there are no illegal aliens among the worker population. He said that the first migrant worker crew would be arriving on the Eastern Shore at any time. He said that the majority of migrant workers arrive on the Eastern Shore in early July and stay approximately 6 weeks. He said that some migrant worker crews stay on the Eastern Shore until October.

Mr. Carr said that it is uncertain as to whether Maryland's trespass statute applies to legal service workers crossing growers' fields in order to get to migrant worker camps.

Mr. Snowden and Mr. Stollof suggested that if the Commission approves the access bill, the Commission and Legal Aid should meet with members of the General Assembly from the Eastern Shore to seek to win their support of the bill. Mr. Carr said he had not met with members of the General Assembly to discuss the access bill.

Mr. Carr also raised the questions of whether the statute requiring landlords to give tenants receipts for rent, and the rent due and payable statute (section 8-401 of the Real Property Article) apply to agricultural tenancies, such as in migrant worker camps. He proposed that this uncertainty be resolved one way or another by legislation. Mr. Lenrow suggested that Mr. Carr arrange to have a member of the General Assembly request an opinion of the Attorney General on this matter.

8. Susan Canning, Executive Secretary of the Delmarva Rural Ministries Coalition, and Chairman (by appointment of the Secretary of the United States Health and Human Resources Department) of the National Migrant Commission, discussed the Coalition's federally funded (United States public health service) migrant worker health services provided to migrant workers on the Eastern Shore. She stated that the nurses employed by the Coalition to provide health services to migrant workers have problems obtaining access to migrant worker camps. Ms. Canning said that during the 8 years that the Coalition has been providing health services to migrant workers, farmers and crew leaders "very frequently" have

intimidated and harassed the Coalition's nurses. She said that the Somerset Growers Association has told her that the Coalition's nurses will be denied access to the Westover camp this summer. She said that the Westover camp holds 400 to 1,000 migrant workers during the summer. She indicated the importance of her nurses entering migrant worker camps to prevent and detect outbreaks of measles and encephalitis from workers coming from Texas to the Maryland Eastern Shore. Ms. Canning emphasized that the Coalition's nurses do not interrupt the work of migrant workers, because they only enter migrant worker camps when it is raining or evening, or a worker being visited is too sick to get out of bed to work. She said that there is a prevalence of alcoholism among migrant farm workers, particularly those who have not brought their families with them; she asserted that the religious activities and community involvement brought by the Coalition to migrant worker camps helped to combat alcoholism among migrant workers. Ms. Canning said that about 40% of Maryland's migrant workers are Mexican-Americans from southern Texas, while the rest are primarily American blacks from Florida and the Carolinas and Haitian immigrants. She stated that the Coalition made 14,000 visits during 4 months last year to migrant worker camps. She said that growers feared that social service workers would inform migrant workers of their rights.

9. The final witness testifying at the hearing was Fred Webster of WDMV Radio News, who stated that there had been coverage of the migrant worker issue by two television stations, radio stations and newspapers on the Eastern Shore.

10. The hearing ended at 12:35 p.m.

Steven G. Davison,
Reporter

SGD/ssm

GOVERNOR'S LANDLORD-TENANT

LAWS STUDY COMMISSION

MINUTES OF MEETING

ON JULY 14, 1981

1. Present: Jenkins (chairman), Lenrow, Ciotola, Zerwitz, Meyerhoff, Snowden, Everngam, Ackerman, Martin (quorum). Ms. Gwen Tromley of Legal Aid and Wendy Hinton of Anne Arundel Coalition of Tenants were also present at the meeting.

2. The meeting started at 8:00 p.m.

3. The Commission discussed the letter to Mr. Davison from Leonard Homa in which Mr. Homa asserted that the Commission does not have jurisdiction over mobile home park owner-resident relations. Mr. Jenkins said that Mr. Homa's letter raised the larger issue of whether the Commission should address issues that also were within the jurisdiction of other Governor's Commissions. Mr. Jenkins noted that the previously inactive Governor's Migrant Worker Commission has been reactivated within the last month or two. Mr. Davison noted that several years ago the Commission had approved a bill dealing with the conversion of rental complexes to condominiums, even though there was a Condominium Commission in existence. Mr. Snowden said that there could be overlapping jurisdiction among Governor's Commissions. He recommended that the Commission meet with the Governor's Migrant Worker Commission and Eastern Shore Delegates to the General Assembly, in order to share with them what we had acquired in our trip to the Eastern Shore last month. Mr. Jenkins said that he would appoint a subcommittee to meet with the Governor's Migrant Worker Commission at one of their meetings. Mr. Snowden suggested instead that the two Commissions hold a joint meeting.

4. The Commission next turned to agenda item #1 (bill to provide for right of access of invitees of migrant workers to migrant worker housing camps). Mr. Jenkins raised the question of whether the Commission should vote on the bill at this meeting or defer action on it until meeting with the Governor's Migrant Worker Commission. Mr. Snowden made a motion to approve the bill at this meeting; and a motion to send a copy of the approved bill to the Governor's Migrant Worker Commission and to Eastern Shore Delegates to

the General Assembly and to meet with the Migrant Worker Commission and Eastern Shore Delegates to seek their support of the bill. Judge Ciotola seconded Mr. Snowden's motions. Mr. Snowden's motions were approved unanimously by the Commission.

5. Mr. Jenkins said that he would send a letter to Leonard Homa saying that he had become aware of Mr. Homa's letter to Mr. Davison, and that Mr. Homa should direct any criticism or disapproval of the Commission's actions to the Commission's Chairman, not the Commission's Reporter. Mr. Lenrow said that he believed that the Mobile Home Commission and the Landlord-Tenant Commission had concurrent jurisdiction over mobile home park owner-resident relations. Mr. Lenrow also said that he believed that the Mobile Home Commission was a Legislative Commission, not a Governor's Commission. Mr. Davison also noted that Mr. Homa's letter appeared to be a personal opinion by Mr. Homa, not an official position of the Mobile Home Commission. Mr. Jenkins said that the Mobile Home Commission apparently had not officially approved at a meeting the bill revising Title 8A of the Real Property Article that was approved by the General Assembly in the 1980 Session, although the General Assembly was told that the bill had been approved by the Commission.

6. The Commission next discussed Agenda item #2, a bill to revise the right of redemption provisions under section 8-401 of the Real Property Article (rent due and payable). Mr. Meyerhoff proposed that the bill be amended to take out "MORE THAN" in front of "THREE" in the proposed additions to section 8-401. Mr. Meyerhoff alternatively suggested that "MORE THAN THREE" be changed to "FOUR." Mr. Zerwitz said that if "FOUR" was used instead of "MORE THAN THREE," a judge might interpret section 8-401 to allow a tenant the right of redemption if a landlord sued for rent due and payable after five or more prior judgments for rent due and payable, because five or more is not "FOUR." Judge Ciotola and Mr. Snowden argued that Mr. Meyerhoff's alternative proposed amendments had been previously discussed and disapproved by the Commission. Ms. Tromley noted that Baltimore City's rent due and payable public local law refers to "more than four" prior judgments as the time when the right of redemption is lost, thus allowing a landlord to evict a tenant for rent due and payable, without the tenant having a right of redemption, after the tenant has received a fifth summons for rent due and payable in a twelve month period. Judge Ciotola, Mr. Lenrow and Mr. Meyerhoff proposed that "MORE THAN" be changed to "AT LEAST" in the bill, so that a landlord could evict a tenant after the fourth summons for rent due and payable. They noted that the bill as drafted would allow a landlord to evict a tenant only after the fifth summons for rent due and payable. Mr. Snowden said that judges in Anne Arundel County were interpreting the present language in section 8-401 to allow landlords to evict tenants after issuance of the fourth summons for rent due and payable in a twelve month period, although Judge Ciotola said that judges in Baltimore City allow tenants to be evicted only after receipt of the fifth summons for rent due and payable in a twelve month period. Mr. Lenrow made a motion to amend the bill by changing "MORE THAN" to "AT LEAST" on both the first and second pages of the bill, in order to allow a

landlord to evict a tenant after the fourth summons for rent due and payable in a twelve month period. Mr. Snowden seconded the motion. The Commission unanimously approved Mr. Lenrow's motion, which thus was adopted under the Commission's by-laws which require a two-thirds vote of approval by members present to amend a bill on third reader. Ms. Tromley and Mr. Snowden noted that a landlord can obtain a judgment for restitution, even when a tenant has successfully raised a rent escrow defense, when some rent is still due and payable because abatement of only some of the rent is ordered after a rent escrow defense is established. They argued that a judgment in such a rent due and payable action should not be counted as a judgment that can be counted toward extinguishment of a tenant's right of redemption. She noted that there was a provision in HB 1303 of the 1981 Session, which had been enacted as a Baltimore City Public Local Law, which would achieve this result. The Commission then examined copies of HB 1303. Mr. Snowden made a motion, which was seconded by Mr. Zerwitz, to amend the bill by adding at the end of the bill the language in lines 133-138 of HB 1303, except that the reference to Baltimore City Public Local Laws in lines 135-136 would be changed to a reference to Maryland statutory law and common law. This motion by Mr. Snowden was approved unanimously. The bill, as amended by Mr. Lenrow's and Mr. Snowden's motions, was approved unanimously by the Commission.

7. Agenda item #3, the protective order bill, was discussed. Mr. Jenkins said that he saw no problem with the bill. He explained to Mr. Snowden that it was introduced because of problems in holdover actions under section 8-402 of the Real Property Article, where there are substantial delays between filing and the hearing when a tenant requests a jury trial. Judge Ciotola said that he thought that a landlord in a holdover tenant action could obtain an order in circuit court requiring a tenant to post a bond for rent that becomes due and payable after suit is filed and before the hearing is held. Mr. Jenkins said that there is a need for further clarity of this issue. The Commission decided to move the protective order bill to third reader at the next meeting.

8. Ms. Tromley proposed, on behalf of Legal Aid, a number of items to the implied warranty of habitability bill, agenda item #4. She first proposed that the second sentence in subsection B(1) be amended to read: "A TENANT WHO PROCEEDS DEFENSIVELY IS ALSO ENTITLED TO ANY OR ALL OF THE REMEDIES SPECIFIED IN SECTIONS (B)(2)(A), (B)(2)(B), AND (B)(3)." She next proposed deleting subsection (B)(3)(C) and the word "OR" in subsections (B)(2) and (B)(3) after the semicolons at the end of each subsection. Ms. Tromley proposed deleting the second sentence of subsection (C)(1) on page 2 of the bill; and amending subsection (C)(2) to read as follows: "THIS SECTION DOES NOT APPLY IF THE LANDLORD OR HIS AGENTS, AFTER GIVING REASONABLE AND ADVANCE NOTICE, WERE DENIED ENTRY TO THE DWELLING FOR THE PURPOSE OF REPAIRING OR CORRECTING THE CONDITIONS OR DEFECTS." She also proposed changing subsection (D)(1) to read as follows: ""DWELLING" MEANS A STRUCTURE

OR THAT PART OF A STRUCTURE WHICH IS USED OR IS INTENDED TO BE USED FOR PURPOSES OF HUMAN HABITATION: AND COMMON AREAS UPON THE PROPERTY OF WHICH THE DWELLING FORMS A PART. DWELLING INCLUDES BOTH PUBLICLY AND PRIVATELY OWNED PROPERTY AND BOTH SINGLE AND MULTIPLE UNIT BUILDINGS." In subsection (D)(2), she proposed changing "CERTIFIED MAIL" to "FIRST CLASS MAIL." She proposed changing "LACK OF" to "INADEQUATE" in subsections (D)(3)(A) and (D)(3)(B); deleting the words "OR" after the semicolons at the end of each subsection of subsection (D)(3); deleting "IN TWO OR MORE DWELLINGS" in subsection (D)(3)(C); and changing "(A)", "(B)", "(C)" and "(D)" in subsection (D)(3)(E) to "(1)", "(2)", "(3)" and "(4)". She also proposed adding "(F)" in front of the third sentence of subsection (D)(3)(E) on page 3 of the bill. Finally, she proposed amending section (F) of the bill by deleting the reference to section 8-203.1(A)(3).

9. Mr. Snowden made a motion which was seconded and unanimously approved, to resubmit HB 141 (Duty to Provide Lease Form and Lease), HB 142 (Application for Leases), and HB 122 (Essential Services) of the 1981 Regular Session.

10. In response to an inquiry by Ms. Hinton, Mr. Snowden made a motion to submit copies of the bills approved by the Commission to Delegate Owens and to attempt to arrange a meeting with Delegate Owens to discuss these bills. Ms. Martin seconded this motion and the Commission unanimously approved the motion.

11. Ms. Hinton raised the question of the validity of legal fees and court cost provisions in leases. Judge Ciotola said such provisions are valid with respect to legal fees incurred in court proceedings, but invalid if the legal work does not involve work involving a court proceeding; he said that judges consider 15% of the amount due by the tenant to be a reasonable legal fee that the tenant must pay the landlord if the lease doesn't specify the amount.

12. The Commission decided to make good cause eviction bills the first item for discussion at the next meeting.

13. The meeting adjourned at 9:35 p.m.

Steven Davison,
Reporter

SGD/sm

GOVERNOR'S LANDLORD-TENANT

LAWS STUDY COMMISSION

Minutes of Meeting

on August 11, 1981

1. Present: Jenkins (Chairman), Meyerhoff, Lenrow, Asparagus, Ciotola, Ackermann, Zerwitz, Snowden, Dancy, Waller (quorum). Mr. Jenkins introduced a new member of the Commission, Sue Waller of Baltimore, who is a landlord representative. Gwen Tromley of Legal Aid and Dayton Harris of the Anne Arundel Coalition of Tenants were also present at the meeting.

2. The meeting started at 7:55 p.m.

3. Mr. Davison distributed a letter from Carl Eastwick, the Legislative Officer of the Executive Department, stating that the state should not distribute the Commission's model leases unless the model leases were accompanied by an explanation of the model leases, which should include instructions as to which sections had to be completed, which sections were required to be included in a residential lease, and a section-by-section analysis. Mr. Davison distributed an Explanation of the Model Leases which he had drafted in response to the Model Leases, which came to nine double-spaced typed pages. The members of the Commission generally expressed opposition to a requirement that such a lengthy explanation be distributed with the model leases, on the grounds that such a lengthy explanation of the model leases would deter members of the public from using the model leases. Mr. Ackermann noted that the explanation drafted by Mr. Davison was lengthier than the model leases. Mr. Lenrow proposed that he speak with Mr. Eastwick, who he said he knew well, to see if he could convince Mr. Eastwick to modify the type of explanation that he proposed being distributed with the model leases. The Commission agreed to this proposal by Mr. Lenrow.

4. Mr. Davison proposed that the model leases be amended by renumbering section 14 (Automatic Renewal) as section 15 and adding a new section 14 to each model lease that would read as follows: SECTION 14. REPOSSESSION. The landlord may repossess the premises in accordance with the procedures of section 8-402.1 of the Real Property Article of the Annotated Code if the tenant breaches this lease." Mr. Davison noted that section 8-402.1 of the Real Property Article requires a lease to contain such a provision in order for a landlord to be able to evict a

tenant for breach of a lease under the summary eviction procedures of section 8-402.1. The Commission unanimously agreed to amend the model leases as proposed by Mr. Davison. Mr. Davison also noted that the model leases contained some typographical errors; Mr. Lenrow agreed to have his office retype the model leases to incorporate the amendments to the model leases and to correct the typographical errors.

5. The Commission then discussed whether it should consider good cause eviction bills. Mr. Meyerhoff and Ms. Waller said that they were opposed to good cause eviction statutes. Ms. Waller stated that it would be difficult to get tenants to testify in court against other tenants to establish good cause grounds for eviction. Mr. Meyerhoff suggested that the solution to tenants' problems was not a good cause eviction statute, but a strengthened retaliatory eviction statute. He noted that landlords several years ago had been willing to strengthen the retaliatory eviction statute, as a compromise to a proposed good cause eviction statute, by increasing the presumptive period from 6 to 12 months, and extending the statute to protect tenants who made oral complaints to governmental agencies if the complaints were followed up. Mr. Meyerhoff noted that "good cause eviction" statutes should more properly be called "good cause non-renewal of lease" statutes, because a tenant under a written lease can only be evicted during the term of his lease for breach of a provision of the lease. Ms. Tromley responded by noting that tenants are arbitrarily evicted for reasons other than for retaliation for complaints. She said that this was a serious problem because of a shortage of rental housing. Mr. Meyerhoff argued that the burden should be on tenants to establish that there was no good cause for their eviction. He also suggested that tenants should be required to pay rent into escrow of the court while they are awaiting a jury trial in a holdover tenant brought against them when they refuse to comply with a notice to quit at the end of their lease term. Mr. Lenrow said that if there was not a need for a good cause eviction statute, there was a need for a stronger retaliatory eviction statute. He noted that the retaliatory eviction statute does not protect tenants against retaliatory non-renewal of their lease. Ms. Asparagus also noted that outside Baltimore City week-to-week periodic tenants are entitled only a week's notice to quit under section 8-402 of the Real Property Article. Judge Ciotola suggested that a good cause eviction statute require a court to consider whether a landlord has good cause for not renewing a tenant's lease prior to the end of the lease term and prior to the tenant becoming a holdover tenant. Mr. Lenrow argued that the Commission should at least consider the issue of good cause eviction, and not just ignore the issue. Mr. Jenkins suggested that the Commission consider Senator McGuirk's good cause eviction bill at the next meeting (Senate Bill 512 of the 1981 session). Mr. Davison also suggested that the Commission also consider the last draft of a good cause eviction statute that he had drafted for the Commission several years ago. The Commission agreed to consider both of these bills as the first item on the agenda at next month's meeting.

6. The Commission next considered the protective order bill. Mr. Jenkins noted that the major problem which the bill was intended to address was tenants who demand jury trials when the landlord brings a holdover action to evict the tenant. The tenant is able to avoid paying rent to the landlord during the lengthy delay for a jury trial, and the landlord cannot accept rent from the holdover tenant because that would constitute consent to the holdover. He noted that under the protective order bill a court could require a holdover tenant to pay the rent that would be due under the lease into the escrow of the court. Ms. Waller noted, however, that there are many cases where a judge orders a tenant, who is a defendant in a holdover action and who has requested a jury trial, to pay rent into escrow of the court and the tenant doesn't do so. Judge Ciotola said that when he issues such an order, he specifies in the order that the tenant will be evicted by a specified date if the tenant has not paid the specified amount of rent into escrow of the court. He said that if the tenant fails to pay rent into escrow of the court, the landlord can have the tenant evicted without having to have a court hearing before a judge. Mr. Jenkins noted that there was disagreement over whether judges had the inherent power to issue the types of protective orders specified in the bill. Judge Ciotola noted that District Court judges do not have equitable powers. He noted that Maryland judges differed with respect to issuance of protective orders. Mr. Jenkins said that it might be possible to obtain statistics on the number of defendant tenants in holdover tenant actions that request jury trials. Mr. Lenrow argued that the Commission should not delay acting on the bill in order to attempt to obtain relevant statistics. He said that the Commission has always acted on bills based upon the testimony of other Commissioners indicating that a particular problem did exist, without requiring relevant statistics. Mr. Davison noted that the bill would not require protective orders to be issued, but would leave issuance of protective orders within the discretion of a judge. Judge Ciotola noted that the bill would require personal service of a protective order; he said that personal service is successful only about 50% of the time. He proposed that the bill be amended to substitute "service by certified first class mail return receipt requested" for "personal service." This motion was seconded and approved unanimously. The Commission then voted on the bill. The vote was 5 in favor, 2 opposed, and 3 abstaining. Consequently, the bill did not pass, because it did not receive a vote of approval by the majority of members present as required by the by-laws.

7. The Commission then discussed the implied warranty of habitability bill. Mr. Meyerhoff proposed that rather than approving the bill, the Commission could achieve essentially the same purpose that the bill intended by adopting a bill that would amend section 8-203.1(a)(2)(i) to delete the provision allowing a landlord to provide in a residential lease that he was not furnishing the premises in a condition permitting habitation with reasonable safety. He pointed out that such a bill would require a

residential lease to contain a provision providing that the premises are in a condition permitting habitation with reasonable safety. Mr. Meyerhoff asserted that most problems that tenants have with the conditions of their premises are remedied by the rent escrow statute. Ms. Tromley noted that section 8-203.1 only applies to landlords renting four or more units at one location. Mr. Davison noted that the common law doctrine of constructive eviction does not provide tenants with a means of remedying defects in their premises, because a tenant's only remedy under the constructive eviction doctrine is to abandon the premises and terminate the lease. Mr. Lenrow noted that the rent escrow statute only applies to serious and significant defects endangering health and safety.

Mr. Meyerhoff made a motion, which was seconded by Mr. Ackermann, to place the implied warranty of habitability bill on second reader again at the next meeting. This motion was not approved because it did not receive a vote of approval by a majority of members present; the vote was 5 in favor of the motion, 1 opposed, and 4 abstaining.

A motion, which was seconded, to place the bill on third reader at the next meeting also was not approved because it did not receive a vote of approval by a majority of members present; the vote was 4 in favor of this motion, 4 opposed, and 2 abstaining.

The implied warranty of habitability bill was consequently dropped from the Commission's agenda and from future consideration by the Commission.

8. Mr. Snowden proposed that in addition to meeting with Delegate Owens and the Migrant Worker Commission to discuss the Commission's bills, the Commission should meet with the Governor's staff and lobbyists to seek to have them lobby in support of the Commission's bills. He noted that in the past the Commission's bills have not received lobbying support from the Governor's staff. The Commission voted to seek a meeting with the Governor's staff and lobbyists to obtain their assistance in lobbying on behalf of the Commission's bills.

9. Mr. Snowden raised the question of the legality of landlords converting rental complexes to "adults-only" units. Mr. Lenrow stated that it is not illegal to do so in Maryland at the present time.

10. The meeting adjourned at 9:30 p.m.

Steven Davison,
Reporter

SGD/sm

GOVERNOR'S LANDLORD-TENANT

LAWS STUDY COMMISSION

Minutes of Meeting

on September 9, 1981

1. Present: Lenrow (acting Chairman), Zerwitz, Laurent, Waller, Dancy Stollof, Ackermann, Tromley (lack of quorum).

2. The meeting started at 8:00 p.m.

3. Mr. Davison announced that Gwen Tromley of Legal Aid and Bill Scrivens, President of the Baltimore City Tenants Association, had been appointed by the Governor to the Commission. The Commission now has 17 members, leaving two vacancies. Ms. Waller said that the Governor's Appointment Office had told her that the two vacancies would soon be filled. The Commission now has 3 neutrals, 7 tenant representatives, and 7 landlord representatives.

4. Mr. Lenrow distributed revised copies of the model leases. He said that he had redrafted the provision approved by the Commission at the last meeting that authorizes the landlord to seek to recover possession of the premises when the tenant has breached the lease. The members of the Commission approved Mr. Lenrow's redrafting of this clause.

   Mr. Lenrow said he had talked with Carl Eastwick, Legislative Officer of the Executive Department, with respect to his recommendations with respect to an explanation of the model leases that would be distributed with the model leases. Mr. Lenrow said that Mr. Eastwick had not responded to his request that an explanation accompanying the model leases be shorter and less detailed than that recommended by Mr. Eastwick and drafted by Mr. Davison in response to Mr. Eastwick's recommendations. Mr. Laurent said that he would ask tenant groups to write Mr. Eastwick in support of Mr. Lenrow's request. Mr. Stollof said that he would ask the Property Owners Association also to write Mr. Eastwick in support of Mr. Lenrow's request.

5. Mr. Davison distributed copies of articles published in the Washington Post with respect to migrant workers on the Maryland Eastern Shore.

6. Mr. Davison also distributed copies of the bills, and explanations and justifications of these bills, which had been approved by the Commission for submission to the 1982 Regular Session of the General Assembly and which he had submitted to the Governor's Legislative Office.

7. Good cause eviction bills were next discussed. Mr. Laurent raised the question of whether the Commission should spend time discussing good cause eviction bills, he said that tenant representatives would probably vote in favor of a good cause eviction bill, while landlords would vote against any type of good cause eviction bill, regardless of how the bill was drafted. He also predicted that Delegate Owens would oppose any good cause eviction bill, resulting in an unfavorable vote by the General Assembly. Ms. Tromley, however, said that she thought that landlord and tenant representatives could agree on a compromise good cause eviction bill. Mr. Lenrow suggested that the discussion of good cause eviction bills by members of the Commission would mirror debates on good cause eviction that would take place in Annapolis. Mr. Stollof argued that discussion of good cause eviction bills would tie up the Commission, and that it would be difficult to have a good cause eviction bill approved by the Commission. Mr. Zerwitz and Mr. Ackermann said that they did not see the need for a good cause eviction bill.

   Ms. Tromley said that New Jersey and the District of Columbia have good cause eviction laws, and that some local jurisdictions in California have good cause eviction ordinances. Ms. Waller noted, however, that Los Angeles County had repealed a good cause eviction ordinance.

8. The Commission agreed that a subcommittee composed of Ms. Asparagus, Mr. Stollof and Mr. Jenkins should offer to meet with the Governor's Migratory Worker Commission to discuss the Commission's bill with respect to right of entry to migratory worker housing camps, and to seek the support of the bill by that Commission. Mr. Laurent argued, however, that the Commission should not contact the Governor's Migratory Worker Commission because that Commission might be opposed to increased rights for migrant workers and that such contact might impair the Commission's chances of getting the bill enacted if the Migratory Worker Commission had such a philosophy. Mr. Davison argued, however, that the Governor's Office would inquire whether the bill had been coordinated with the Migratory Worker Commission and would seek comments on the bill from that Commission if this Commission didn't do so.

9. The Commission agreed that a subcommittee composed of Ms. Waller, Mr. Laurent and Mr. Jenkins seek to meet with the Governor's staff and lobbyists to seek their support in lobbying for the Commission's bills.

10. The Commission agreed that a subcommittee composed of Mr. Lenrow, Mr. Scrivens, and Ms. Waller seek to meet with Delegate Owens to discuss the Commission's bills.

11. The meeting was adjourned at 9:00 p.m.

Steven G. Davison,
Reporter

SGD/sm

GOVERNOR'S LANDLORD-TENANT

LAWS STUDY COMMISSION

Minutes of Meeting

on November 10, 1981

1. Present: Jenkins (Chairman), Waller, Ciotola, Zerwitz, Meyerhoff, Ackermann, Scriven, Dancy, Tromley, Everngam, Asparagus (quorum).

2. The meeting started at 8:00 p.m.

3. Mr. Jenkins said that although he had been orally advised by the Governor's Office that Assistant Attorney General Jay Lenrow had been appointed a member of the Commission and although Mr. Lenrow has been acting as a member of the Commission, the Governor has decided not to officially appoint Mr. Lenrow a member of the Commission on the grounds that he was a state employee. Members of the Commission noted, however, that Judge Ciotola was a member of the Commission and that members of the General Assembly have been members of the Commission in the past. It was also noted that employees of Baltimore City have been members of the Commission. Mr. Jenkins stated the Commission's appreciation for Mr. Lenrow's valuable contributions to the Commission, noting that he has been attending almost all Commission meetings since 1979 and has worked diligently on Commission projects such as the Model Leases. These sentiments were seconded by all Commission members present at the meeting. The members present unanimously agreed that Mr. Jenkins should write to the Governor to express the Commission's belief that the Commission is losing a valuable member through his failure to appoint Mr. Lenrow to the Commission, and to urge him to reconsider his decision not to appoint Mr. Lenrow to the Commission. The members present also unanimously agreed that Mr. Jenkins should ask Attorney General Sachs, who recommended Mr. Lenrow's appointment to the Governor, to discuss the issue with the Governor and express to Attorney General Sachs the value that Mr. Lenrow has been to the Commission. Mr. Jenkins said that Mr. Lenrow had told him that he (Mr. Lenrow) did not want himself to raise the issue with Attorney General Sachs, but had not stated that he opposed Commission members talking with Attorney General Sachs about his appointment.

4. Mr. Meyerhoff made a motion, which was seconded and approved by a vote of 8 in favor, 1 against, with 2 abstentions, that the Commission not meet in December or January. The next Commission meeting was scheduled for February 9, 1982.

5. Mr. Davison noted that Lawyer's Cooperative Publishing Company recently had published a treatise on landlord-tenant law entitled "American Landlord-Tenant Law." He said that he would purchase a copy for the Commission and that members of the Commission could borrow it upon request. Mr. Evernham noted that his son Gary had co-authored a book on "Maryland Landlord-Tenant Law," which will be published soon by Lawyers Cooperative Publishing Company. Mr. Davison and Mr. Jenkins said that the Commission could purchase a copy of this latter book for each member of the Commission if the price is in the range of $20.00 to $25.00.

Mr. Davison also noted that he had received a letter from James D. Wright, a member of the Baltimore law firm of Venable, Baetjer and Howard; offering the Commission access to legal memoranda in the firm's files dealing with landlord-tenant problems.

6. Mr. Jenkins noted that Mr. Davison had met with the Legislation Committee of the Governor's Commission on Migratory Labor to discuss the Landlord-Tenant Commission's bill with respect to access of invitees to visit migrant workers in migrant worker camps. Mr. Davison said that the Legislation Committee was comprised of representatives of Catholic and Protestant rural ministries organizations and representative of various state agencies involved with the health, safety and legal rights of migrant workers. Mr. Davison said that the members of the Legislation Committee were generally opposed to the bill and indicated that the Governor's Commission on Migratory Labor would probably not support it. Mr. Davison said that the members of the Committee indicated that except for the Westover camp, religious and governmental groups, except for Legal Aid representatives, have been able to negotiate rights of access to migrant worker camps in Maryland. He said that most of the Committee members feared that the bill, if enacted, might cause some reluctant camp owners to refuse to grant access to representatives of their agencies or organizations, forcing them to seek judicial review under the bill. Their feeling therefore was that the bill might do more harm than good in securing access to camps for representatives of religious organizations and governmental agencies. Most of the members of the Committee stated that they only had a problem with access to the Westover camp and that it was Legal Aid that generally was having a problem with gaining access to migrant worker camps for its representatives. Mr. Davison said that some members of the Legislation Committee also opposed the bill because it provided for enforcement by private litigants; some members of the Committee supported enforcement through criminal penalties, while others supported enforcement through administrative agencies, such as by civil penalties or cease and desist orders. Mr. Davison also indicated that the representatives of rural ministries argued that the bill should allow access to

migrant worker camps by certain uninvited representatives of specified organizations, although it was generally agreed that it would be difficult to draft a provision identifying what uninvited individuals or groups should have a right of access to migrant worker camps. One of the representatives of the rural ministries had suggested that the bill should be amended to require camp owners to set aside a specified area of the camp where invitees could meet with migrant workers residing in the camp. One of the representatives of a state agency, with authority over occupational safety and health, suggested that the bill be amended to make it clear that the bill does not affect the power of state agencies to have access to migrant worker camps under other legislation. In summary, Mr. Davison said that the Legislation Committee had indicated that even if the bill was amended in accordance with the Committee's suggestions, the bill would still be opposed by the Governor's Commission on Migratory Labor on the grounds that it would do more harm than good in gaining access to migrant worker camps. Consequently, Mr. Davison recommended that the Commission withdraw the access bill. Ms. Asparagus disagreed with the statements by the members of the Legislation Committee that it was only Legal Aid that was having a problem with access to camps. Judge Ciotola recommended that the Governor's Commission on Migratory Labor should address the problem; Mr. Davison commented that the Legislation Committee had indicated that the full Migratory Labor Commission would address the problem and would consult with the Commission on any proposed bill dealing with access. Mr. Ackermann made a motion, which was seconded by Mr. Zerwitz, to withdraw the Commission's access bill. This motion was approved by a vote of 8 in favor, none opposed, and 3 abstentions.

7. Agenda item #3, the Explanations of the Model Leases, was next discussed. Mr. Jenkins said that Mr. Lenrow was still discussing the explanations with Carl Eastwick, the Legislative Officer in the Executive Department, and that he thought he would continue to do so even though he had not been officially appointed to the Commission.

8. Good cause eviction, agenda item #1, was the next subject addressed. It was noted that the Commission had voted to discuss good cause eviction at its August 11th meeting, and had not had a quorum at the September and October meetings. Mr. Ackermann asked if there were any statistics that indicated that there was a need for a good cause eviction bill. Ms. Tromley said that Legal Aid and community organizations gathered statistics and case studies with respect to arbitrary evictions during the last session of the General Assembly, in conjunction with the hearings on Senator McGuirk's good cause eviction bill. Ms. Tromley noted that some arbitrary evictions are for retaliatory reasons; she said that some tenants evicted for retaliatory reasons are protected by public general or local laws, although others are not because they made oral, not written, complaints, or could not prove that a retaliatory motive was the sole grounds for eviction. Ms. Tromely said that some other arbitrary evictions are for unexplained reasons; some of these

cases involve eviction of elderly long-term tenants with oral leases whose tenancy is terminated without explanation. Ms. Tromley said that a good cause eviction bill should balance the need for protection of tenants against the right of a landlord to remove premises from the rental market. In response to Mr. Ackermann's question about statistics, she said that it is difficult to get statistics with respect to the reasons why a landlord evicts a tenant. Mr. Meyerhoff said that a good cause eviction bill should distinguish between tenants who have resided on the premises for five to thirty years; and tenants who have been on the premises for less than a year. Mr. Scriven said that the lack of statistics with respect to reasons for eviction is due to the fact that many tenants do not challenge in court their eviction by a landlord. Mr. Zerwitz stated that the retaliatory eviction statute provides tenants sufficient protection. Mr. Meyerhoff disagreed, saying that many types of retaliation are not regulated by the retaliatory eviction statute. Mr. Ackermann noted that it is difficult to get tenant witnesses to establish a landlord's reason for evicting a tenant. Ms. Tromley said that she has a friend, who is a landlord, who has no trouble getting witnesses to corroborate the reason for eviction. Judge Ciotola said that witnesses do come to court and testify in eviction suits in Baltimore City with respect to the reason for eviction. Ms. Tromley said that landlords should be required to give some thought to eviction of tenants and specify the reason for eviction. Ms. Waller raised the problem of how a landlord could evict under a good cause eviction statute a tenant who has run up hundreds of dollars of minor (not major) repair bills. Mr. Jenkins also noted the problem of squabbling husband and wife tenants who disturb other tenants, and whether they could be evicted under a good cause eviction statute. Mr. Meyerhoff raised the question of whether tenants should be required to give good cause before moving at the end of a term of a lease or terminating a periodic tenancy. Ms. Tromley said that she would provide the Commission with copies of amendments that were offered to Senator McGuirk's good cause eviction bill in the last legislative session. Ms. Waller said that Senator McGuirk's good cause eviction bill has been pre-filed in the 1982 Regular Session. Mr. Meyerhoff said that a good cause eviction statute should only protect long-term tenants, and that the burden of proof under a good cause eviction statute should be on the tenant to disprove the landlord's ground for eviction. Mr. Meyerhoff also raised the problem of proving that a tenant is a drug dealer when the police are unwilling to make an arrest. Ms. Waller similarly raised the problem of evicting a tenant who is a prostitute when police have not arrested the tenant. Mr. Meyerhoff also asked what was meant by an "unlawful act" under Senator McGuirk's bill; he noted that the bill did not specify whether a tenant must have been convicted or arrested for the "unlawful act." Mr. Meyerhoff said that he dealt with very few holdover tenants, because most tenants vacate the premises when they are told that their lease will not be renewed because of the complaints of other tenants. Mr. Meyerhoff said that other landlords have more trouble evicting tenants whose lease has not been renewed. Mr. Jenkins also

raised the problem of evicting under a good cause eviction bill a senile tenant who has set the leased premises on fire and has caused a cockroach infestation in the entire building. Ms. Waller and Mr. Hohermann said that tenants who are being evicted may threaten other tenants and the landlord's employees to deter them from testifying as witnesses against them in court in an eviction proceeding. Mr. Meyerhoff stated that he did not think that the Commission would approve a good cause eviction bill.

The Commission voted to consider at the February 1982 meeting whether the Commission should take any position on good cause eviction bills.

9. The Commission appointed Ms. Waller, Ms. Tromley and Mr. Meyerhoff to a subcommittee to study landlord-tenant bills prefiled in the 1982 Regular Session and to report to the Commission at the February 1982 meeting as to whether the Commission should take any position on prefiled landlord-tenant bills.

10. The meeting adjourned at 9:30 p.m.

Steven G. Davison,
Reporter

SGD/sm

GOVERNOR'S LANDLORD-TENANT

LAWS STUDY COMMISSION

Minutes of Meeting
on February 9, 1982

1. Present: Jenkins (chairman), Zerwitz, Ciotola, Waller, Meyerhoff, Scriven, Tromley, Martin, Asparagus (quorum).

2. The meeting began at 8:00 p.m.

3. Mr. Davison distributed copies of the new bound volume of the Real Property Article of the Maryland Annotated Code, which replaces the 1974 bound volume and 1981 pocket part supplement. He also noted that he had obtained a copy of The American Law of Landlord and Tenant, by Professor Schosinski of Georgetown Law School, which may be borrowed by Commission members.

4. Mr. Jenkins noted that the House Judiciary Committee had held a hearing on January 27, 1982, on the Commission's four bills (HB 449 (Failure to Pay Rent), HB 450 (Duty to Provide Lease), HB 451 (Application for Leases), and HB 452 (Essential Services). Mr. Davison was not present at the hearing to testify on behalf of the Commission, because the Committee failed to send him written notice of the hearing as they had done every previous session, and Mr. Davison did not receive a computer printout listing the hearing until after the hearing. Mr. Davison provided the Committee with written analyses of the four bills after the hearing and was informed by the Committee's counsel, Deborah Hockman, that the Committee would not vote on the Commission's bill until after copies of the analyses of the bills had been distributed to the members of the Committee. Assistant Attorney General Jay Lenrow was present at the hearing and testified in support of the Commission's bills. Mr. Jenkins said that Skip Buford of the Governor's Office had recommended that a subcommittee of the Commission go to Annapolis to see Delegate Owens, without an appointment, rather than try to discuss the Commission's bills with Delegate Owens on the telephone or try to schedule an appointment with Delegate Owens. Ms. Tromley said that the Commission should directly contact Delegate Owens, rather than go through Ms. Hockman. Mr. Davison said that the Committee's counsel, Ms. Hockman had told him that afternoon that she would ask Delegate Owens to telephone him, or schedule an appointment with a subcommittee of the Commission, to discuss the Commission's bills, but that he had not heard back from Ms. Hockman or Delegate Owens prior to the meeting. Mr. Jenkins decided that he and Ms. Tromley would go to Annapolis on February 10 or

February 11 to attempt to talk with Delegate Owens, without attempting to schedule an appointment with him in advance. Mr. Davison noted that Ms. Hockman had told him that the Committee would not hold a rehearing on the Commission's bills. Mr. Zerwitz and Mr. Laurent suggested that the Commission send a mailgram to each member of the House Judiciary Committee urging them to support the Commission's bills. Mr. Laurent suggested that Mr. Jenkins and Ms. Tromley should also attempt to talk with the Vice Chairman of the Committee and Delegate Perkins (who might support the Commission's bills) while they were in Annapolis.

5. The Commission next discussed distribution of the Commission's model leases. Mr. Davison and Mr. Jenkins said that they had not recently heard from Carl Eastwick or Irvin Feinstein about printing and distribution of the model leases by the State or about whether an explanation of the leases must be distributed with the model leases. Mr. Davison said that Mr. Lenrow had told him that he was discussing these issues with Carl Eastwick, the Legislative Officer of the Executive Department. Mr. Laurent said that Baltimore Neighborhoods has been distributing the Commission's model leases to the public. Mr. Zerwitz said that he had heard favorable criticism of the model leases. Ms. Waller and Mr. Jenkins raised the possibility of the Commission itself distributing copies of its model leases. Mr. Davison argued that this might anger Carl Eastwick and Mr. Feinstein. The Commission decided against the Commission itself distributing copies of its model leases to the public; Mr. Laurent said that he would have Baltimore Neighborhoods distribute the model leases to various organizations throughout the State. Mr. Jenkins said that he would attempt to discuss this issue with Mr. Feinstein and Mr. Eastwick when he is in Annapolis.

6. The Commission discussed the issue of the notice that a periodic tenant must give to a landlord to terminate the tenancy, an issue raised in a letter by Mr. Laurent dated September 20, 1981, and analyzed in a memorandum by the Reporter. Mr. Davison noted section 8-402(b)(S) of the Real Property Article, which he discusses in his memorandum, is not included in the 1981 Replacement Bound Volume of the Real Property Article, although he did not think that section 8-402(b)(S) had been repealed; he said he would contact Michie Company to see why section 8-402(b)(S) is not included in the new bound volume. Mr. Davison noted that Maryland law is unclear as to how much notice a periodic tenant must give a landlord in order to terminate the tenancy, as also noted in his memorandum. Ms. Waller noted that Baltimore City has a punlic local law that specifies the amount of notice that a periodic tenant must give in order to terminate the tenancy. Mr. Laurent made a motion to have the Reporter draft a bill that would require a month to month and year to year periodic tenant to give a month's nctice in order to terminate their tenancy, and a week to week tenant to give a week's notice in order to terminate his tenancy. This motion was seconded by Ms. Asparagus and unanimously approved by the Commission.

7. The Commission next discussed good cause eviction. It was noted that no good cause eviction bills had been filed this term; Senator McGuirk withdrew the good cause eviction bill that he had prefiled. Mr. Jenkins argued that therefore there was no action for the Commission to take on the issue of good cause eviction. Ms. Tromley, however, proposed that the Commission draft and consider a good cause eviction bill; and she volunteered to draft a good cause eviction bill for the Commission to consider. The Commission approved a motion to place on the agenda for the March meeting consideration of Ms. Tromley's proposal for a good cause eviction bill.

8. Ms. Waller, Ms. Tromley, and Mr. Meyerhoff discussed landlord-tenant bills that had been filed in the 1982 Regular Session of the General Assembly. The Commission did not vote to take a position on any of these bills. The Commission approved a proposal by Mr. Scriven to have the Reporter include in each month's mailing a copy of a computer printout from the Department of Legislative Reference listing the status of landlord-tenant bills.

9. The Commission voted to hold a dinner meeting in April at the Hyatt Regency Hotel in Baltimore.

10. The meeting was adjourned at 9:30 p.m.

Steven G. Davison
Reporter

SGD/sm

GOVERNOR'S LANDLORD-TENANT

LAWS STUDY COMMISSION

Minutes of Meeting

on March 23, 1982

1. Present: Jenkins (chairman), Waller, Meyerhoff, Ackermann, Ciotola, Martin, Dancy, Everngam, Tromley, Laurent, Snowden (quorum).

2. The meeting started at 8:00 p.m.

3. Because a dinner meeting on April 13, 1982, would conflict with Passover, the Commission decided to reschedule its dinner meeting for April 27, 1982. The Commission members expressed their desire to be able to order their entrees individually, rather than have everyone served the same dinner. It was also decided that Assistant Attorney General Jay Lenrow should be invited to the April 27 dinner meeting.

4. Mr. Jenkins said that Mr. Lenrow may soon be appointed as a member of the Commission, because the Attorney General had ruled that Mr. Lenrow's position as an Assistant Attorney General did not preclude him from serving as a Commission member at the same time. Mr. Jenkins also said that he had written a letter to Attorney General Sachs praising Mr. Lenrow's work for the Commission and urging his appointment to the Commission.

5. Mr. Davison reported that all four of the Commission's bills had received unfavorable reports by the House Judiciary Committee. Ms. Tromley asked Mr. Davison to find out, if possible, what the vote was on each bill. Mr. Davison noted that Delegate Owens had not indicated, during a meeting he had had with him in Annapolis, any opposition to the application for lease bill, duty to provide lease bill, or the bill dealing with precluding the right of redemption in rent due and payable suits, although, as expected, he had expressed opposition to the bill that would provide criminal penalties for willful denial of essential services. Mr. Davison said that after the current session, he would attempt to talk with Delegate Owens and Debra Hochman, the counsel to the House Judiciary Committee, to determine if the Committee had any specific objections to the way the bills were drafted.

6. Mr. Davison suggested that the Commission's bills might have a better chance of being approved if they were introduced in the Senate and initially considered by Senator Curran's Judicial Proceedings Committee. He suggested that the Commission might discuss this suggestion with the Governor's Office, since there are no rules requiring the Commission's bills to be introduced in the House.

Mr. Meyerhoff suggested that the Commission might attempt to meet with and lobby each member of the House Judiciary Committee during the summer months. He suggested that meetings with the Committee's members should occur when the General Assembly is not in session and after the Commission has approved its package of bills to be forwarded to the Governor's Office.

Ms. Tromley raised the question of whether the Commission should continue to remain in existence because of its recent lack of success in getting its bills enacted by the General Assembly, although she said she favored having the Commission remain in existence. She also raised the question of who the Commission's constituency was; she said the Commission should work with identified constituent groups.

Mr. Laurent suggested that the Commission might change its orientation by becoming an educational group that attempts to get the counties and cities to introduce and support bills recommended by the Commission. He questioned whether the Commission should continue to function in light of its recent failure to get its bills enacted.

Ms. Martin suggested that the Commission work to develop a constituency of private groups that would support the Commission's bills.

Mr. Laurent noted that several years ago Baltimore Neighborhoods had actively lobbied each member of the House Judiciary Committee, but had been able to gain the support of only a few Committee members for the bills it was supporting.

Ms. Martin said that she would not want the Commission to disband, because its discussion of bills is valuable even if its bills don't pass.

Mr. Jenkins noted the value of the Commission's work on the migrant worker issue. He said he thought that the Commission's work on this issue may have helped to get action on this issue; he noted that several migrant worker bills were likely to be enacted by the General Assembly. It was noted that the Health and Human Resources Department had already changed some of their practices in response to these bills to help migrant workers.

Mr. Laurent said when Baltimore Neighborhoods met several years ago with Delegate Owens, Delegate Owens had advised him to introduce bills that sought to amend existing statutes, rather than bills that broke new ground; and not to introduce bills dealing with controversial

issues, such as good cause eviction. He said that Delegate Owens was strongly opposed to good cause eviction bills. He said that Delegate Owens had also recommended that the Commission not introduce bills with respect to which the landlord and tenant members of the Commission were divided; he said that the Commission had followed this advice and has been usually introducing technical, uncontroversial bills. He also noted that despite the fact that the Commission followed Delegate Owens' advice, its bills continue to be defeated. He said that Governor Mandel had met with the Commission and that he had expressed support for the Commission.

Mr. Snowden said that Governor Hughes had promised the coalition that camped out in Annapolis seeking better housing that the Commission would address the landlord-tenant issues that they had raised. Mr. Jenkins and Mr. Davison noted that the Governor has never requested the Commission to consider these issues. He noted that Governor Hughes will support Commissions when he is interested in the subject matter with which the Commission is concerned.

Mr. Laurent noted that unlike some Commissions, the Landlord-Tenant Commission is composed of members who are philosophically divided, and that this creates problems in getting its bills passed.

Ms. Martin suggested that the Commission might develop constituents to support its bills if more meetings were held outside Baltimore in the various counties.

Mr. Laurent noted, however, that the Commission has not introduced bills that would be supported by tenants, such as retaliatory eviction and good cause eviction bills.

Mr. Everngam, Mr. Ackermann, and Mr. Laurent supported the idea of having the Commission hold more meetings in the various counties. Mr. Laurent suggested that areawide meetings, such as one addressed to Montgomery and Prince George's Counties and another one addressed to Baltimore City, Baltimore County and Howard County. He suggested that prior to these public hearing meetings, the Commission should circulate, to identified constituent groups, a synopsis of Commission bills that have been enacted and Commission bills that have recently been introduced but not enacted by the General Assembly.

Mr. Jenkins said that after public hearings are held, the Commission should hold follow up working meetings to address the issues raised at the public hearing. Mr. Ackermann said that such a follow up working meeting should not be held until after several of these public hearings are held.

Mr. Davison suggested that Commission members provide him with lists of persons and groups who should be invited to testify at such public hearings.

Ms. Dancy recommended that the Commission, after such public hearings are held, should maintain regular contact with the groups and persons who testify at these public hearings. Mr. Ackermann suggested that the Commission start a newsletter that could be sent to interested groups and persons to keep them informed of what the Commission is doing.

Mr. Davison suggested that the Commission could attempt to get groups and persons who testify at its public hearings to testify in support of Commission bills at legislative hearings.

Mr. Laurent suggested that the Commission offer assistance in drafting landlord-tenant bills to all members of the General Assembly.

Mr. Snowden argued that holding such public hearings in the various counties would not result in greater success in getting bills enacted by the General Assembly. He suggested that a better approach would be to develop a working relationship with the Governor and his key aides. Mr. Davison suggested inviting the Governor to the April 27th dinner meeting, but the Commission decided that it would be better to arrange to meet the Governor in Annapolis. The Commission requested Mr. Snowden to meet with the Governor and attempt to arrange a meeting between him and the Commission in early May. Mr. Ackermann said that the Commission should present the Governor with a "shopping" list of what the Commission wants from him. Mr. Davison suggested that action on the model leases and lobbying support for the Commission's bill be included on such a list. Appointments to fill the vacancies on the Commission was also raised as an issue to be included on the list.

Ms. Waller suggested that in the future, the Commission should deal with Johnny Johnson, not Carl Eastwick, in seeking lobbying support from the Governor's Office.

7. The Commission decided to postpone Ms. Tromley's report on good cause eviction until the regular May meeting.

8. The meeting adjourned at 9:10 p.m.

Steven G. Davison,
Reporter

SGD/sm

GOVERNOR'S LANDLORD-TENANT

LAWS STUDY COMMISSION

Minutes of Meeting

With Governor's Staff

on April 20, 1982

1. On April 20, 19[illegible], from 3:00 p.m. until 4:15 p.m., several members of the Commission (Jenkins (Chairman), Asparagus, Ackermann, Martin, and Merritt) met in Annapolis, with several members of the Governor's staff (Staff Director Ajmer (Johnny) Johnson, Appointments Secretary Jamie Beims, and Skip Bafford, counsel to Administrative Officer Irvin T. Feinstein). Assistant Attorney General Jay Lenrow and Commission Reporter Steven Davison also attended the meeting. Governor Hughes did not attend the meeting.

2. The first item that was discussed was appointment of new members to fill the three vacancies on the Commission. Mr. Jenkins noted that there was one tenant vacancy, one landlord vacancy and one neutral vacancy. Ms. Beims indicated that she would like to fill all three vacancies with appointments at the same time. She suggested that appointment of a member of the House Judiciary Committee as a neutral member might increase the chance of passage of Commission bills that are considered by the Committee. Ms. Beims welcomed suggestions as to persons who might be appointed to the Commission. She also noted that Assistant Attorney General Jay Lenrow, as a state employee other than a judge or teacher, can not be appointed to the Commission, but may be assigned to work with the Commission. There is a State law that provides that Commission members who attend less than 50% of the Commission's meetings each fiscal year are automatically removed from the Commission unless the Governor acts affirmatively for good cause to keep the member on the Commission. She also said that this State law requires the Commission's chairman to send to the Governor each year a record of the attendance of members at Commission meetings.

3. Mr. Johnson said that he did not think that the Commission's bills would have a greater chance of passage if they were introduced in

the House rather than in the Senate. He suggested that the Commission might increase the chances of passage of its bills if it met individually with each member of the House Judiciary Committee to discuss its bills. He said that the Governor had to limit lobbying by his staff and lobbyists to a relatively short list of bills, which usually does not include departmental or miscellaneous bills. He said that commissions usually must do their own lobbying in support of their bills. He said, however, that the Governor's staff would be willing to meet with the Commission in the fall to review the Commission's selected bills and to discuss the possibility of lobbying in support of the Commission's bills by the Governor's lobbyists and staff.

Mr. Johnson suggested that the Governor's office would commence action to have the model leases printed and distributed. It was agreed that the model leases would be distributed without having to be accompanied by the long section-by-section analysis drafted by Mr. Davison. It was agreed, however, that the model leases would be accompanied by a short introduction, based upon the Introduction on pages 1 and 2 of the Explanation of the model leases drafted by Mr. Davison; and that the section-by-section analysis in the Explanation drafted by Mr. Davison would be separately printed by the State and distributed upon request, but would not be automatically distributed with every model lease. Various possible methods of distribution were discussed; it was suggested that Lucas Brothers and the Daily Record might be contacted to see if they would print and distribute the model leases. Various methods of distribution through State agencies were discussed. The Governor's staff reacted positively to the Commission's plans to hold public hearings throughout the State. They indicated that if the Commission decides to attempt to have a Commission bill addressing a problem of a local county or city, introduced by a county delegation, they should get the approval of the Governor's office before doing so. The Governor's staff also suggested that the Commission might consider drafting a booklet explaining Maryland landlord-tenant law that could be distributed to the public; Ms. Beims suggested that such a booklet might use a question-answer format.

Steven G. Davison,
Reporter

SGD/sm

GOVERNOR'S LANDLORD-TENANT

LAW STUDY COMMISSION

Minutes of Dinner Meeting

on April 27, 1982

1. The dinner meeting was held in the Trellis Garden Restaurant at the Hyatt Regency Hotel in Baltimore on April 27, 1982, beginning at 7:00 p.m. and adjourning at approximately 10:30 p.m.

2. Present: Jenkins (chairman), Meyerhoff, Ciotola, Waller, Asparagus, Overgaard, Daney, Martin, Ackermann, Snowden, Scriven, Zerwitz. Also present: Assistant Attorney General Jay Lenrow, Steven Davison (Commission Reporter), and Wendy Hinton of the Anne Arundel County Tenants Association.

3. Mr. Davison discussed what occurred at the Commission's meeting with the Governor's staff. See the separate minutes of that meeting.

4. Mr. Davison noted that all four of the Commission's bills were voted unfavorably unanimously by the House Judiciary Committee. Mr. Scriven suggested that the Commission, during meetings this summer, discuss ways of improving its lobbying efforts on behalf of the Commission's bills. He raised the possibility that the failure of most of the Commission's bills to be enacted in recent years might be the result of inadequate lobbying rather than the merits of the Commission's bills. Mr. Davison noted that because of time constraints due to his position as Reporter being part-time, he has to limit his lobbying efforts to sending copies of the Commission's bills and explanations of them to Delegate Owens, testifying in favor of the bills at hearings on the bills held by the House Judiciary Committee, and submitting copies of explanations of the bills to the Committee. Mr. Davison said that because of the demands of his full-time teaching job, he does not have time to meet individually with each member of the House Judiciary Committee to discuss the Commission's bills. He suggested, however, that it might be worthwhile to have each member of the Commission meet with one or two members of the House Judiciary Committee in the fall, before the regular session of the General Assembly begins, to discuss the Commission's bills. He also suggested that the Commission might begin circulating a newsletter to the members of the General Assembly and to constituent public service organizations that discuss the Commission's bills and activities. He also suggested

[illegible] the public hearings the Commission was planning to hold around the state, lists of the names and addresses of persons who attend the hearings could be obtained and these persons could be notified of the dates of House Judiciary Committee hearings on Commission bills and urged to testify in favor of the Commission's bills.

Mr. Ackermann and Mr. Berwitz suggested that the model leases might be printed on the front and back sides of two legal size pages, with the first page having the title on the front and the explanation of the model leases on the back. This first page could be attached to the second page on the left side but be perforated on the left so that it could be detached from the second page, which would have the model leases printed on the front and back.

Steven G. Davison,
Reporter

SGD/sm

GOVERNOR'S LANDLORD-TENANT

LAWS STUDY COMMISSION

Minutes of Meeting

on May 11, 1982

1. Present: Ciotola (acting chairman), Meyerhoff, Waller, Asparagus, Zerwitz Laurent, Ackermann, Dancy, Snowden, Everngam (quorum). Wendy Hinton of the Anne Arundel Coalition of Tenants also attended the meeting.

2. The meeting began at 8:00 p.m.

3. The minutes of the meeting on March 23, 1982, were approved.

4. Mr. Davison discussed the meeting that the Commission had with the Governor's Staff on April 20, 1982 (see the minutes of that meeting). Mr. Davison noted that the Governor's staff had advised the Commission that there is a state law that provides that members of the Commission who attend less than 50% of the Commission's meetings during each fiscal year are automatically removed from the Commission, unless the Governor, for good cause, acts affirmatively to keep such a member on the Commission. This statute also requires the chairman of the Commission to submit to the Governor each year a record of attendance of Commission members to Commission meetings.

Mr. Davison noted that at the April 27 dinner meeting, Mr. Ackermann and Mr. Zerwitz suggested that the model leases be printed on two legal size pages, with the front of the first page and the one page explanation of the leases printed on the back of the front page, and the model leases printed on the front and back of the second page. Judge Ciotola stated that printing the model leases on $8\frac{1}{2}$" x 11" paper would be preferable from the standpoint of filing. Mr. Laurent stressed that the type size on the model leases should be large enough to be legible. He also argued that the explanation of the model leases should be placed after the model lease itself, but several members opposed this suggestion. Distribution of the model leases was discussed; in addition to arranging for commercial stationers to print and sell the model leases, it was suggested that copies of the model leases be distributed at public hearings held by the Commission.

Mr. Davison indicated that Commission members should send the names of persons they would like to be appointed to the three vacancies on the

[illegible]sion (there is one landlord position, one tenant position and one neutral position vacant at the time) to Mr. Jenkins as soon as possible, so he can forward their names to the Governor's Appointments Secretary.

Mr. Ackerman and Ms. Waller noted that Johnny Johnson, the Governor's Staff Director, had expressed his willingness to meet each year with the Commission to discuss the Commission's bills and whether the Governor's lobbyists would lobby on behalf of the Commission's bills. Mr. Davison suggested that such meetings be held in the fall after the Commission has submitted its bills to the Governor's office.

6. The Commission unanimously voted to request Mr. Jenkins to send a letter of appreciation to Mr. Snowden thanking him for his efforts in scheduling the Commission's meeting with the Governor's staff.

7. Mr. Davison noted that each of the four bills that the Commission had submitted to the 1982 Regular Session of the General Assembly had been reported unfavorably by a unanimous vote of the House Judiciary Committee. Judge Ciotola urged the Commission to screen bills more carefully and to submit to the General Assembly only bills that address significant problems and that are urgently needed.

8. Mr. Davison noted that the Governor's staff had suggested that the Commission draft and distribute to the public a booklet addressing Maryland landlord-tenant law. The Commission voted not to do so, on the grounds that there was no need for such a booklet because of the pamphlets published by Baltimore Neighborhoods, Inc., and the soon-to-be published book on Maryland landlord-tenant law co-authored by Mr. Everngam's son.

9. Because Ms. Tromley was ill and did not attend the meeting, the Commission decided to table discussion of Ms. Tromley's good cause eviction bill until the June 8 meeting. The Commission also voted to discuss whether to resubmit the four bills submitted to the 1982 Session, and whether to submit the bill specifying the notice that a periodic tenant must give his landlord to terminate his tenancy, at the June 8 meeting.

9. The Commission next discussed how to improve its lobbying techniques. Mr. Lerwitz questioned whether any of the members of the Commission had sufficient "clout" to influence members of the House Judiciary Committee. Mr. Snowden suggested that the Commission should schedule a meeting with Delegate Owens each summer or fall to discuss the Commission's bills. Ms. Waller stated that the Commission needs to lobby the Senate Judicial Proceedings Committee as well as the House Judiciary Committee. She also suggested that the Commission meet with the General Assembly's Legislative Study Group to discuss Commission bills. Mr. Snowden made a motion, which was seconded and approved unanimously by the Commission, that the Commission meet each summer with Delegate Owens and the Legislative Study Group and each fall with Johnny Johnson to discuss Commission bills.

... [illegible] made a motion, which was seconded and approved unanimously, ... the Commission ... distribute a newsletter to elected officials. ... Snowden suggested, however, that the Commission distribute a newsletter to tenant and landlord organizations. Mr. Laurent made a motion, which was seconded ... approved unanimously, to distribute, once a year, a Legislative Alert newsletter, discussing the Commission's bills, to landlord and tenant organizations. The Commission decided that the ... would draft the Legislative Alert, which would be reviewed and approved by the Commission prior to being distributed. Mr. Laurent suggested that the Legislative Alert should be distributed at the beginning of the year. The Commission agreed with Ms. Dancy that approval of this motion does not mean that the Commission is precluded from distributing memoranda or flyers with respect to specific issues to landlord and tenant organizations.

11. The scheduling of public hearings was the next issue that was discussed. Mr. Snowden suggested that the Commission might hold workshops and seminars and present call-in radio and television programs that would educate the public with respect to landlord-tenant law. Mr. Laurent and Mr. Snowden suggested that testimony at public hearings held by the Commission might address issues that the Commission has heard about before. Mr. Laurent said that Baltimore Neighborhoods, Inc., has for many years produced call-in radio shows on landlord-tenant law; he noted; however, that the seminars have been poorly attended by the public. Judge Ciotola warned that there might be the danger that Commission members on a call-in show might give wrong answers to landlord-tenant questions; Ms. Waller argued, however, that if several members of the Commission were on such shows, a member who did not know the answer to a question could get the correct answer from the other panelists. Mr. Ackermann and Judge Ciotola said that the Commission should first identify problems at public hearings and then hold seminars addressing these problems; they argued that seminars should not be held until the subject matters of the seminars were identified at public hearings. Mr. Laurent asserted that holding public hearings to identify landlord-tenant problems and submitting bills to remedy identified problems was a proper function of the Commission.

The Commission agreed with Judge Ciotola that it should meet in June, July and August, but not meet in December and January.

Judge Ciotola suggested that the Commission meet twice both in September and October, with one monthly meeting being a regular business meeting and the other meeting being a public hearing. The Commission agreed to this suggestion. The Commission also decided to hold a number of public hearings during the next fiscal year, with the first public hearings being held in the Montgomery County/Prince George's County area and in Annapolis (for the Anne Arundel County area), followed by public hearings for ... Maryland (in Hagerstown), for Baltimore City, for Cecil ... Counties, and for the shore (possibly in

. ...'s County). ... Reporter was requested to start making prepara-
... for public h... in the Montgomery/Prince George's Counties area
... ...polis ... ...tember and October.

11. ... meeting adjour... at ...:15 p.m.

Steven G. Davison
Reporter

SGD/sm

GOVERNOR'S LANDLORD-TENANT LAWS COMMISSION HEARING
11/21/80 War Memorial Building Baltimore, Md.

I am here to testify on behalf of the landlords. A number of random items I would like to go over, the first one being that as a landlord I have to be registered and as such I think it is only fair that the tenants be registered too. I know this is a totally new concept, but I think the real reason the tenant should be registered is so that they will be identified with identification. I have had a number of tenants who have used different names and it is very difficult to identify them and to try and serve them with papers for court proceedings, you can't get service on them. I've had a situation in a particular case, it went on through twelve different proceedings before Legal Aid Bureau, The situation was the tenant's attorney, from the Legal Aid Bureau said they weren't served properly. By having a tenant registered, you will be able to require that tenant who is having problems to take care of the property. When the tenant damages the property you can't get a judgement against them so you can't serve them. In other words, they pull out of the property in the middle of the night, take anything they want, including hot-water heaters, forgetting about the security deposit. They should be required to present a driver's license or a social security number to be identified. I think by this registration it would solve a lot of damage to the property and on the same side, the landlord would be more willing to spend money on the properties, because they know the property would be protected. We have a big problem now with smoke detectors. Friends of tenants will come in and steal the smoke detectors. According to the law, I have to supply detectors; I think there should be some provision in the law whereby the tenant should be made to provide a smoke detector. I have one in my car tonight that I have to deliver to an apartment because one was stolen; and yet I'm responsible to replace them. Why are they being stolen? They are being sold on the street. I provide the best smoke detector I can get, the best, $32.00, that can be sold on the street for $10-$15.00. But to me that's a real problem. I bought three or four smoke detectors for one apartment just this past week. I am not complaining about buying them, I'm complaining that these things have to be supplied. Another big problem that has developed is the littering of

property by people and the landlord has to keep them clean. Yet there are big outlets that will distribute leaflets three or four times a week, litter up the property, the hallways, and deposit them on my property. This means trespassing because they litter my property with trash. The same thing goes for beer bottles from a bar nearby. People go to the bus stop, sit on my porch, on my steps and leave the bottles there. In the same token, people who dispense beer, or food, should be responsible to clean up their neighborhood. I know there's a bottle bill situation trying to be worked out and passed by the Legislature, trying to make some kind of law, but it's a real problem. Another thing that damages the property and requires it to be fixed; can you imagine the telephone company attempting to install phones on the property---four holes in the side of the wall, seven or eight feet of wire down the wall, tie wires tight around the building. That's especially bad with electric wires. So in conclusion, I would like to say that the biggest problem is service upon a tenant--I've had cases where tenants have gone away for a month, leaving their friends--they are in possession of the property--I can't serve a friend, I can't serve the tenant because he's not there. So I sincerely feel that by identification of some means, that this will help the entire situation. Thank you very much.

Remain a second because there may be some questions on the points you have made.

I just have a little comment--concerning you can't find a tenant, the tenant may give you an improper address; I guess my real question to you is, "Shouldn't the application process eliminiate some the problems you have because if a tenant is going to pay $10, 15 or $20 just for the application form, I would assume part of the process is verifing 1, past address and 2, if you are going to be doing reference check, you would have access to tenant's actual name and address?

What are you talking about? $20 or $30.00 application fee?

Well, what I am saying is before they leave the room, they have to fill out an application with a fee, which is a reference check wherein they pay $15.00. Doesn't the application process help to some degree?

application would help some if you have property that was in a more desireable neighborhood, or in an area where there is a very low vacancy rate. In some areas it is very difficult to get a tenant, so you have to get the best tenant that you can get at the time especially in lieu of leaving the property vacant. So in areas of low vacancy, yes, but I'm talking about the area where you are not going to get a tenant to fill out an application. This is a realpproblem.

One final question that I am confused with, do you think with the registration process that you can get the tenants to provide their own garbage can? Is there some connection between the two, maybe you can help me?

Well, the problem is the tenant's failure to understand his responsibility.
How would registration remedy that problem?
Well, if the landlord sees the problem, the landlord could send that tenant a registered letter at the address that was given that you know was in the registration; his complete name, such as John Brown Doe, see many times they will use J.B.Doe or a combination of names and they won't accept mail. So the registered letter could be sent out to a correct name notifying him that he has to appear in court.

You have two units, did you say?
Yes, mine are in the area where you have problems if you don't have full occupancy all the time.

Do you realize this is a State Board, and not a City board and the only thing about tenant's being registered, you have to be taken to the City Council------

I realize that the state could supercede

not necessarily, sometimes -----

Sir, you are not responsible to get smoke detectors, your tenants are. In buildings that have less than three units, the tenants are required to buy the smoke detectors, according to HCD and the fire department. If you are having so many problems with the

tenants you are bringing in, you could do a check on each tenant you bring in.

I have done checks, they are good. It doesn't help, they are good then they have some financial problems, are put in jail for assault.

Do you get security deposits?

No.

I would suggest you do this.

Well, when you are dealing with people in this area, you aren't likely to get a security deposit because people don't have a security deposit; we're talking about depression. It would be tough for me to come up with a security deposit, if it were required, several hundred dollars. It isn't available all the time.

You have brought up the idea of registration, the cost would be prohibitive for them to administer programs that call for registration. Also, I am almost positive that it would be opposed to any voluntary registration for the tenant.

I'm the landlord, I have to be registered, so why can't the tenants be registered as well?

Well, I would think in this situation, particular the larger landlords, don't have the problems you have mentioned.

You had mentioned earlier the application fee for credit check for references probably negates this situation for most of us. My point is this, I think you can help.

Sir, because this is a state body that recommends legislation; we are concious of the kind of legislation that would go to the general assembly and I don't think you find a concensus here among the landlords--but I think they would see it difficult to get this kind of legislation through. But it seems to me from the tenant's standpoint, you happen to be a landlord of two units--I think you will find that tenants who live in larger complexesproperties, dont' have this particular problem. I do credit checks at the expense of the tenants themselves and oneother problem I forasee with the unauthorized telephone being put in the unit, I have had an occasion to deal with a person with a

ller problem who took it to the public service commission and the public service commission addressed it that it was the responsibilty of the C & P to make those particular repairs in that particular unit and I would suggest to you that you may find relief by filing with the public service commission; particularly if it is a cause where neither you or the person occupying the unit authorized putting the telephone in.
To me I think its unconstitutional for landlords to register and tenants not to.

When you have two parties involved in a contract, one party is registered and the other party is not.

I don't think its true that throughout the State of Maryland, all landlords are required to register.

In fact there are some counties that are reciprocal but there are certain landlords who I hhink, if you would see some of the properties they rented out, I think you would think it necessary that landlords be licensed and registered.

I make it a point to visit the property and do work on the property at least once a week.

Mr. Chairman and members of the commission, my sole purpose in coming tonite, let me introduce myself, I happen to be a delegate elect which means I am working with profeddional people and I won't take sides, either or because I'm not biased.
Let me introduce Delegate Rosenberg.

As I say "thank you for your proposed legislation and one of the things I think I can look at in Annapolis, is where will I be assigned committee wise?" It may be that I will be on a committee to deal directly with tenant-landlord situations.
what do we look like, who are we for and against, but right now I am completely neutral.

Do you have any interest in tenant-landlord involvement because one of the things that this-- we felt that we need to have a closer working condition with members of the General Assembly.

of the complaints I hear most and from landlords, there are quite a few laws that re overlapping. I'm having some work done on behalf of landlords in this regards How long is the landlord going to be responsible, forever and a day?
We have been incensed with the landlord problems and I can think of about three or four bills that --- we have one with tenants that skip out and you have a security deposit, all you have to do is send it to the last known address, you don't have to try and track down a tenant who has skipped out or been evicted. This will alleviate that problem.

There may be some problems with the two month' rent that can be held in escrow for damages.
He's talking about the security deposit-- a number of times the tenant comes in, breaks up== you are only allowed up to two month's security deposit.
the tenant's got it fixed, so that it can be put in court in Baltimore City, but it can be broken, I can tell you, I broke it once--unless you can prove that the tenant maliciously did damage, the court's been allowing.

Correct me if I am wrong, I assume that the very nature of your existence is to look at all these on behalf of the tenants and the landlords and give recommendations and where new laws need to be put into operation. And let me assure you that a lot of the stuff doesn't get anywhere because it doesn't get through committee--we've experienced frustration because some of the bills we've sent down we've felt were non-controversial, that I mean that had well in excess of the majority of the commission both landlord and tenant in favor of them.

Do me a favor, keep your objection, a lot of it may depend on one or two landlords- a small group of landlords who may have had some ligitimate problems- a small group of landlords, not a group dealing with tenant-landlord relationships.

I am sure in your own position, sitting over there you have had to adjust.

I think that one of the things we have is to balance things out. When you look at the repair question, it is a problem and on the other hand, there are a number of places that are-that the tenant walked into that situation- there has to be a cuttoff point somewhere, and generally, as Sue said, when you talk about malicious destruction, we don't have that problem, but there has to be a safe clause for the tenant also to balance it out, in most cases, I think you will find that the legislation that exists protects both groups, if you are able to look at it objectionally. And then again, our challenge and yours, what are our loopholes, that's what we are all about.

I just wanted to ask you if you were aware or if you could check into it, that they are sending people out to investigate the properties.

I can attest that they are. In most cases, Mr. Bosley gave reference to constitutionality; if one among us refused to let them come in, they would have strength to cope with that law like we do. I don't know. There are some people that have refused and they've been tried but they haven't done anything. If you have a landlord and the landlord doesn't let them in, I can bet you appear in court. Is the law just made for landlords, or is it made for tenants?
to protect the property of the landlord. This is a clear issue, it's not in favor of one or the other, and I would think as Sue mentioned, that's what ought to happen. If I see the fire department not coming in-sombbody ought to make an inspection. There is a procedure within the city codes that if someone refuses and the city wants to take the time, there is a search warrant and they can go in.The supreme court some years ago, said the home owner can require them to get a search warrant, but the search has been issued on an area-wide basis, so they don't need a contributional criminal charge.
An owner can except in an emergency require a search warrant.

Once again thank you for inviting me, I'm sure I'll be appearing before you again.

Next, I think in terms of order is Kenneth Webster, Anne Arundel Co.. The only Webster I knew was in Baltimore City, but I guess changed jurisdiction.

To the Chairman and members of the commission: In the sake of brevity, I would like to do just two things, first I would like to thank you for the opportunity to allow input from the public to identify and propose meaningful legislation in the 1983 session. Secondly, I would like to address some areas of the tenant-landlord relations. Number one, partial rent payments should be able to stay an eviction for a specific period of time, what I mean by that is right now you have a lot of people unemployed, having a hard time finding jobs, unemployment, they owe $300 on their rent, and give the landlord $200 - $250.00 and he says, "No, I want it all." You can make the determination of the percentage he should have, you know, this is at a time where employees are forfeiting a raise so they can keep their jobs. I just feel as though, in my everyday working with tenants, five days a week and forty hours a week, this is a major problem we deal with, and I think you all need to address that; partial payments to stay evictions, not partial payments in terms of dealing with the lateness of the rent, but in terms of eviction. Secondly, the present condition of the unit that threatens the health and safety of the tenant puts it in an emergency situation or forfeiture of certain percentage of the rent. I mean I sign a lease paying $300/ a month, and the lease provides heat & hot-water. Friday night at 10:00, my heat goes off--the whole week-end I don't get no heat, the landlords out to allow some specific time to deal with that. I still got to pay the rent though. This should be addressed as an emergency situation. Get back and turn the heat on or forfeit a percentage of his rent. If it takes them ten days to get back and turn the heat on, then he ought to forfeit a percentage of this rent that I am paying. Thereby motivate him when they get the call 10:00 Friday night to get here 6:30 Saturday morning, to get the heat corrected, because if he doesn't come, he will forfeit a certain percentage of his rent. That doesn't deal with compassion, that deals with dollars. It's really a breach of contract as far as I am concerned that calls for heat and hot-water--no heat from Friday evening at 10:00 until Monday morning, that's a breahh of the contract so we need some kind of adjustment in terms of defective conditions. We had a situation in Anne Arundel County whereby housing is unequipped with

and hot-water. The proceedure is we notify the landlord, he got 30 days to deal with it, anywhere from 30-60 days, then another letter, the landlord gets up to 90 days to correct that defective. The tenant stillspays the rent or put it in rent escrow, but it still is coming out of his pocket, Mr. Chairman and members of the commission, and he's not getting what the contract calls for, heat and hot-water. That's the situation I wanted to address in Number two. Item three: reduction of the time to return the security deposit. Now that calls for 45 days, the current law now states that the landlord has up to 45 days to return the security deposit, but then, and with good reason, he might even have longer. I think we need to deal with that because the people leaving have to relocate. 45 days for me to get my $250.00 back, that man isn't going to wait 45 days to get his rent; and I think you are going to need some kind of adjustment on that, especially if there isn't a good reason, the landlord says well I couldn't do it for 45 days because the stock market fell and the money was tied up, so I couldn't- so seriously, there needs to be some reduction of time for return of security deposit. The tenant moving out of one apartment-he needs that security deposit-any damage he has done to the property, let the landlord deduct it right then, on the spot or within ten days, not 45 days and even without good reason; so you need to deal with that. Anyone sitting here thinking the landlord isn't getting a fair shake, they must be crazy. The landlords just passed a bill last year in Anne Arundel County saying that three time late notices; you're gone, forfeit your redemptionof property. I agree with that bill, we went through that last year, that was a flag raiser for the landlord. I think it was vetoed, but I'm not sure.

No, it wasn't vetoed Mr. Chairman- yes, they tried to change the working from instead of appearing, they reduced it from a four to three summons ---it's in the whole thing, we are looking for it now. Number four: Putting tenants' belongings on the street. Here again is an archaic situation and inhumane situation about putting peoples' furniture on the street--everybody has got to live somewhere, you got to pay the rent, but when the tenant has to be evicted, I think it is archaic and cruel to be sitting his stuff out on the street-----

that do you suggest we do? Who's responsible for it? Notwithstanding sense of responsibili there should be some time of eviction where when the tenant has to be evicted, some governmental agency has the truck there to put the tenant's belongings right there into the truck and put it in storage, and let them pay 30 or 40 days, let them absorb the cost. Setting the belongings out on the street to me is archaic.

Thank you again, Mr. Chairman, for giving me the opportunity. I will be glad to answer any questions the chairman or memebers of the commission have.

Neal: I would like to question number four, whereby the City had the truck and they had a procedure whereby they put most of the goods in storage. Mr. --- tried to introduce a bill requiring the landlord to hold the goods for 30 days, and we thought that was unfair, the the government would have to be responsible, not the landlord. Coming back to number one, in our jurisdiction, it takes 35 t0 45 days or 50 days to get an eviction, so that when the constable comes to evict a person for July's rent of $200; at this point its August or September--are you suggesting at that point where he is now owing two or three month's rent--that we should take part of July's rent when he already owes August or September--at what point--I think if he puts $50.00down a month--I think at some point, the landlord is out a great deal of money.

No sir, I am not saying that, sir. It doesn't take 35 or 45 days for the landlord to go to court and get that eviction - it might take 35 or 40 days in terms of the beaurocratic red tape- to get the eviction of the landlord so desires- that's the buresuocratic red tape.

The point is, most tenants realize that until the constable shows up they can sit on the rent until the constable shows up. I don't know under whose jurisdiction. In Washington you can get an eviction in the same month. In the state of Maryland, this does not happen, so you say that the rent is $200 or $300, at that point, there is an additional $300, and to say that you don't pay the whole thing, how does the landlord get out from under when the tenant doesn't pay the full month's rent?

well, Sir, my only response to that, you are here with the Chairman of the commission and you can get whatever document is necessary, just like the example that I cited before, a man whose been laid off, four kids, unemployment has tied up his unemployment checks, He was in our office a few days ago asking for $425; he had $350, the landlord said, "All or nothing." He came to our office, we wrote him a check for the difference. These are the kind of cases I am talking about. You and your wisdom can doctor and deal with it; but I am just dealing with the concept and what can be done in that area.

Sir: how much rent was due at the time?

One month.

Why did it have to be one more month? Wait a minute, you stated that he had $350-you had to write a check for the additional monies- his rent was $425 a month due November 1- this was November 14th.

The sheriff was there in 14 days?

Yes, this was Anne Arundel County-I didn't say the sheriff was there, I said he had the eviction notice-he had been to court-the court proceedings had been executed, the constable at that point can go whatever time they feel like it. I find it difficult to believe that somebody got an eviction notice issued in 14 days in Anne Arundel County.

I'm just making my presentation-if there was a situation, we are just going to react the best way we can to that. I would just like to say that I have been in a number of situations where tenants are having some type of financial problem and they have not addressed this to the landlord. They have instead gone other places seeking help. In most instances where we have been able to sit down with the landlord, we have been able to arrange, depending on the type of situation. It would be very difficult though to try and legislate anything like that because you have to take it case by case. In many instances where people have prevailed upon me to--I found that somewhere along the line they didn't exactly pay their rent the way they should have and then when they did run into a real problem, the landlord was not willing to give, but I, being a tenant representative, I really have been in these situations and it is getting worse, I will grant you that.

but I would perhaps like to hear more of what you have in mind- so that we could legislate the person who, you know, to protect the landlord too, and help the tenant who is really in trouble; but not help the tenant who---you and your wisdom, I can't accept it.

What do you think would be a reasonable time?
15 days, 30 days, your comment was basically that a lot of things ought to be determined at the day the tenant leaves. In being serious, Mr.Chairman, I just think there should be a shorter time, you know, 15 days, that's the maximum, you know when a person is moving out of an apartment, security deposit, everybody has a high degree of stability; sure I want you to come in and check my place and the $350, I want to get it all back; I'm going to call you and tell you I'm going to be there promptly at 9:00 o'clock, do the inspection, deduct $20.00, go back and mail me a check in two or three days, so I say like 15 days at the most. But 45 days even without good reason----

You're tyying to get it the other way-because a lot of times you can't know within 30 days-you can't possibly on some of these damaged properties, fix the property and know what the bills are, your tenants can do a number of things, your tenants can call on the day and say, "Please meet me, I am moving out of the property and I want you to inspect it." Once they've checked it and you've moved out, they will write a check if there are no damages. I know I do in my properties and I know a number of other landlords that do. I have one more question. I feel that point number two is an emminently good point-- if there are serious conditions as you have here--emergency situations, there should be a forfeiture of the rent which I think is a good point for the reason, if the tenant doesn't pay their rent, the landlord says he didn't pay the rent and legally he should be put out, he should be evicted. If you buy that argument which I think is a legitimate one then you also have to buy the argument that when you have entered into a contractoral relationship with the landlord, and if that contract says hot water and whatever, then that's not forthcoming, there could be some sort of forfeiture in a portion of the rent. I think that's a good point to bring out.

You ought to deal with the spirit of the law, rather than get into specifics.

Thank you very much. Thank you for coming.

I want to call your attention to the September 2 letter that our director, Mr. Lorrent sent to you in which he proposed a campaign that he hopes the commission will cooperate in to eliminate limited clauses in leases. In the letter Mr. Lorrent documented D & I's efforts to get certain landlord groups to voluntarily take up such a campaign and we've been pretty much unsuccessful. You know a volunteer effort on the part of the landlords would be the best way to do it just to prove that they and we can cooperate in a matter like this. But because of our failure to spur the landlord groups in this effort, we suggest that the commission get involved and call for tenants and tenant organizations to send copies of leases to the commission for their inspection and these leases would be sent to various landlord groups, so that the commission and the landlords would see the same leases, and that this type of an effort given an appropriate amount of publicity-the landlords would be encouraged to eliminate the problems with clauses in leases. That's what I am talking about, prohibitive clauses that violate a section of the law, any section of the law. The other aspect I want to talk to you about tonite is also not new, but needs to be repeated--the rent escrow issue. According to Baltimore neighborhoods, statistics that we've put together, the most common complaint of tenant groups is very simply not receiving the services and the facilities promised. These aren't always health and life threatening services. They are things that the tenant relied on in the contract, the signed lease, that unit, things like air-conditioning and other major aspects of the lease. The tenant was under the impression that he was going to receive when he entered into the lease and agreed to pay the landlord a certain amount of money. Under present law, as you know, State Law, a tenant must continue to pay his full rent even if the landlord refuses or neglects to comply with his obligations unless his compliance is resultant to serious threats of life or safety--suggest as previous bills that have been sponsored that the rent escrow law be expanded to cover material breeches that the tenant would be able to take advantage of the rent escrow provisions if there is a material breech in the lease. The procedures and the remedies under the

rent escrow law, under our concept. We would also like to see a part of the rent escrow law- retalitory evictions strengthened. As we read the law now, a landlord could not bring retaliation for a tenant attempting to take advantage of rent escrow provisions, evict a tenant during the course of that lease, is able to evict a tenant in the lease, no reason given. We would like to see something that says that a retaliatory eviction could not take place which would defeat the purpose of the law. There's a couple different ways you could word it, I'm not going to get into that--but what we would like to see is protection that would prevent a retalitory eviction even if it is not addressed as such at the end of the lease and we would also like to ask that tenant complaints under the rent escrow law not have to be written, now that just isn't the problem with some tenants and the major argument against oral complaints kicking in rent escrow remedies, is that there is no permanent record; well, I submit to you that our courts of law have to deal with discerning the truth and if a tenant lied when he said that he contacted the landlord; I think that the courts would be able to discern that when they hear the evidence making a complaint in writing is just a big problem for some tenants.

Why?

Because some of them can't read or write. They are not familiar with the nuisances of the law. That's basically my point. One other point about retaliatory evictions is, you know, one retaliatory conviction in a large apartment complex goes, even if its a legal retaliatory eviction that I talked about tonight where a person ended a period, can disuade the rest of the tenants in an apartment complex to take advantage of the rent escrow. That's all I have to say.

I would just like to make a point that in this September 2, letter the organization that he takes to task for failing to act on his suggestion, the organization that I was President of 3 and 8 years ago, and we have no record of these terrible leases that he claims to have sent us all these years there are several organizations that have had attorneys come in to their meetings and explain what prohibitive provisions are- roughly their own model lease and I just want to say that I think the accusations Mr. Laurent made in his September 2 letter are totally without merit.

me respond to that point.

dispute, and I will take this so Mr. Laurent, but are you saying that it's not worth the landlords groups taking up----

No, I'm saying our organization did--we told all of our members what is and what is not legal under the law and are prohibitive in how to write up a correct lease and the man said that we haven't done anything and the attorney's general office agrees. Members of this commission and he said that--most of the illegal clauses he found were not with members of our group and-- Daily Record were signing leases that were illegal and the landlord's responsibility to get the Daily Record and the Attorney General-neighbe one can (selling a pre-printed lease) Well, o.k. One of the points of our conclusion is your view, get together with other landlords, what we are proposing is cooperation, let's work it together. And we are still waiting for that first lease to come in so we can get to see it. At the present time, in our last meeting the letter was taken into discussion. I wasn't present at the meeting, but just said that they substantiated, he's the attorney for the group. Lawyers and owners council and he said that they had not received any letters dealing. He was aware that Jay Lambroe had come in and looked at the model lease and had talkdd to the owners and builders council. The point is that when we received the letter-- we wanted to hear some kind of a response back from the home builders association--we heard their response tonight and at our next meeting we will go forward. I understand what George's proposal is, to use the Landlord Tenant Commission in terms of the publicity that it might be able to secure to maybe address this issue and basic. Just the homebbuildersfso we have got his proposal and I think we are going to actively look at it, but we haven't had a chance to hear from the homebuilders and of course, what their response is---Any other questions?

May I ask to be specific with you on material damages that you want to put on the rent escrow law?

The term material breech is a real term that has been defined by the courts. I'm not sure that I am going to put it into layman's terms. It's the same thing, if you went to the store and bought an applianee; appliance was advertised as doing this, having

this feature and having that feature, so the reliance on that advertisement and the salesman's promises about the product, you pay x amount of money. In the case of a tenant he sees an advertisement, well, besides the things that are required by law, for my rent I am also going to receive air-conditioning, a balcony with a view of this or that, certain kinds of lights, anything that induces him to spend more money.

Is this in writing or is the tenant just telling you--

I'm not speaking of a specific instance--

Oh, I thought you were---

No, I'm not. I think air-conditioning, you know if you are paying a certain amount to get air-conditioning, presumably less if that same apartment did not have air-conditioning. If that air-conditioner breaks down and you are not getting it fixed, you ought to be able to kick in rent escrow, you are still paying your rent, your still paying your part of the bargain and the landlord is going to get his money as soon as he fixes the air-conditioning unit which he included in the lease.

Do they consider air-conditioning the same as heating?

I'll respond to that in terms of violations, in terms of what's required. You have to have heat, you have to provide an apartment with a certain temperature-but I think what Mr.--- is indicating is that in a contractural relationship with the landlord that requires air-conditioning and you don't have it then that should be---

You mean they didn't put it in at all or it broke?

No, it broke in two months.

Say you see in an ad, apartment, heating, air-conditioning, like that, $400 a month. After two month's the air-conditioning breaks down, is that apartment still worth $400/mo.? Did the landlord try to fix it?

I'm not speaking of a specific instance. What I am trying to say to you is, you are now saying that if a tenant complains about this problem is a lot of times they can't fix it or whatever--you're trying to make a blanket rule for everthing.

No, I agree with you, if a tenant went in and said I am suppose to have air-conditioning and I don't have it, they should be able to take some sort of action. To hold up their

rent until they do get it fixed. The way rent escrow stands you can't take it in, withhold rent until you give the landlord notice-exactly 30 days. You are saying given the threat, if the landlord doesn't fix it after a reasonable time, make the repairs be able to put the rent in rent escrow. Any other questions?

You stated that the -in essence- isn't what you are saying, is that we need a good clause eviction law-presumably you are saying the same thing. You know some kind of language that says cannot defeat the purpose of this law and evicting a tenant, you cannot day you know 8 months into the lease the tenant, for whatever reason goes to rent escrow-well the tenant under the law now could be evicted, but under the terms of the law after 12 months he just informs him-- sorry.

O.K. then the reference would be that under what you are saying, the burden of the truth is still on the tenant for good cause eviction, the burden of proof, the landlord will agree with me when the tenant would be on the landlord--
Right, but he is saying that the bottom line is that the proof will still be on the tenant.
I'm not going to agree or disagree with you.
I thought that when you talked about retaliatory eviction that were not necessarily something that would be covered by eviction, could be just a tenant who has formed a tenant association or done something else to evoke the ire of the management and to put a complaint of some type in writing but not necessarily something that would require that he go out and have some restrictions made as to the definite service; like the landlord decided to close the playground area. I think the tenantcomplained about it, the landlord said that-- I am not totally familar with the retaliatory eviction and that area but I would not see the two-one being the remedy for the other and if the tenant feels in jeopardy for any reason, repair on the property or havingcomplained about that, if the retaliatory eviction is not working it would be accepted and if that is what you are requesting. Under the present law, and even if you say strengthen the present law, for example, because we are dealing with tenants every day-- if a tenant did form a tenant's association and the landlord didn't--very few landlords are going to

come but can say hit the road because you formed an association. They are going to wait until when the lease expires and then not extend the lease. I'll give you your 60-day notice or I just won't extend your lease. Landlord's do it -- I'm talking about bad landlords now -- the small percentage -- but the problem is just like in civil rights litigation, how can you prove intent because of the thenant definitely can't go inside the landlord's mind.

Correlation with the labor law where somebody involved in union organizing activities the employer has a heavier burden in a case like that to prove that the termination was not due to union activity. That's the kind of strength you are talking about here.

Members of the Commission, ladies and Gentlemen, my name is Denise Noonon Slavin and I am an investigator of the housing division of the Maryland Commission on Human Relations. The MCHR has enforcement authority, through Article 49B of the Annotated Code of Maryland, to investigate and resolve complaints of discrimination in housing, employment and public accomodations. We laud the efforts of the Governor's Landlord-Tenant Laws Study Commission, however, through our case processing and related activities concerning community issues we have gained perspectives on housing problems and issues which we would like to bring to the attention of this task force.

In Handling inquiries and processing complaints of discrimination in rental housing we have found that many times persons seeking rental housing or tenants do not know how to contact upper level management or an owner with questions or to seek redress of a problem. Any influence that the Governor's Landlord-Tenant Law Study Commission can exert to assure that the management company's name and phone number are conspicuously posted in all apartment complexes would provide for improved communications between landlords and tenants and may even reduce complaints made to MCHR and other enforcement agencies.

We have also found that many landlords and tenants in Maryland do not use written leases. In the cases we have dealt with, we have found that leases improve the landlord-tenant relationship by clarifying the expectations of the landlord and protecting each party from arbitrary actions by the other. To the extent that the model leases prepared by your Commission encourage the use of leases in Maryland,

we applaud them, but we feel that mandating written leases in all rentals would go a longer way towards clarifying and securing the rights of landlords and tenants. Finally, we were concerned that the model leases did not contain statements that housing was available regardless of race, color, religion, sex, national origin, marital status, or physical or mental handicap, since as Section 19 (A) of Article 49B states in part:

> "It is the policy of the State of Maryland to provide fair housing throughout the State of Maryland to all its citizens, ..."

Although the General Assembly proclaimed this policy in 1971, discrimination in Housing continues to be a problem. While deiscrimination based on race continues to be the major problem, other areas such as sex and marital status discrimination appear to be on the increase.

The Commission, through a cooperative agreement with HUD has conducted a series of workshops throughout Maryland to inform women of their rights to fair housing.

In an effort to obtain information as to the status of women and housing, the Commission has disseminated a fair housing questionnaire for women. While this project is still in the early stages we have conducted an analysis of a sample of the questionnaires returned. This small sample indicates that income levels and cost of housing have had a negative impact on women, especially the single female head of household. We have also been conducting a survey of rental advertisements for Baltimore City as listed in the Sunpapers. Survey results from November, 1981 to September, 1982 indicate that 20% of the ads during this period indicated an "adult only" preference and that on some days and during peak periods as many as 40% of the ads state such a preference. Our own experience indicates that the extent of "adult only" restictions is far greater than the ads would indicate. For the past two years, legislation has been introduced before the Maryland Legislature to protect families from such practices. However, these efforts have been resouldingly defeated by opposition from the Housing Industry as well as a lack of support from the community at large. We hope that the Governor's Landlord-Tenant Laws Study Commission will support any future attempts at legislation in this area.

Finally, a firm policy of fair housing needs strong and effective enforcement authority. At present Article 49B limits relief in cases other than employment to non-monetary

relief such as affirmative action, letter of apology, a committment to consider for tenancy, etc. Such a limitation does no give due consideration to the financial losses incurred by illegal acts of discrimination and, therefore, does not make the injured party "whole" or provide a deterrent to the discriminator. The Commission is seeking legislation which would provide for monetary expenses actually incurred by a complainant in a housing case. We would welcome the support of the Governor's Landlord-Tenant Laws Study Commission in attempts to secure such legislation and in affirming the state's committment to Fair Housing for all its citizens.

What do you mean they wonft receive the lease?
They sign it and they never read it?
No, I'm saying some of the clients have been rejected and they never see the lease and the have inquiries about why they were rejected, might follow our commission or some other place - where if they had posted on the property the management company they might call the management company and say I don't understand - resolution of the propetty that way. Requiring it to be posted specifically without having the office.

You can help me on this then ;; what do you say to a tenant or a tenant group who because of an arrogant owner, and say I don't want to be anywhere near kids, I love kids but I hate big wehhls! I just want to be here for some quiet. Some of the model apartment owners designate that an apartment complex or would state that one or two buildings are for adults only, and that usually would take oare of the problem. I think some suggestions here something that we really want to attack...statement concerning discrimination based on race, color, etc. and it seems to me that is something that we could look into.

You're saying that it would be nice to put a notice or something in the lease but we're saying in effect that the law requires that the landlord proviso - housing without regard to sex, race, religion, any... your talking about something that should be obvious to any American. Not to put in the lease saying the State of Maryland or Anne Arundel County damages - is a very tight restricted command and under a very

statement. What would be obvious to most Americans - obvious it still remains a problem... but notifying the tenant of those rights doesn't say that you have to to enforce it against the landlord. In your lease you are stating that the tenant, which he probably already knows -- going after those landlords who are discriminating against those people.

Maybe we ought to do that, but I am saying printing up a lease doesn't aid the tenants as much as somehow going after the landlord.

That sounds fantastic to me...

The point I was making to have it in the lease is not going to help all the people who are denied for prohibitive reason requested-- the landlord might not necessarily...I don't see it as a panacea, I just see it as one of themmany steps that might help resolve problems. In fact, the last time we were here, I think one of the things the commission and that is that they themselves are going to get to do some legislation and I assume propose legislation...endorsements..set up a Bill. The Bill that was introduced last year dealt with actual damages in housing the Bill this year will probably deal with such language as actual damages - limited to out of pocket expenses that is the legislation that we encourage. Last year it did pass the Senate but died in the House.

I think, just to summarize, we will, I think one is that in defense of the Commission I can say that we didn't think about particular clauses, because none of us were present but having overlooked it we certainly will make an effort to try to find a solution, either through the posting of a sign and/or something in the lease as we go forward. Thank you for your comments.

I would like to add one more thing -- before we miss it-- I think she makes two companion points because if you read in her documentation-- she makes two points I t

think go together - the fact that the provision should be included but secondly the fact that many tenants don't receive leases - it may be an inconsistency if we on one hand say include the provision and on the other hand don't address the problem that tenants don't receive leases. Something I think the commission can address. We talked about that last year. No, it only requires if the landlord uses a lease to give them a copy. We have one more speaker, but before we get to that just let me recognize Rikki Spector and Councilman Waxter.

...equate the subject figure you are denying th face the ver important point about the condition...

...rent and being able to afford the rent, protect the quality of their life. Because you I would like to offer...maybe between your involvement and our legislation. I know you don't do that anymore and yet...to what I paid and...

My services go either Committees or in any way that...

Thank you Rikki-I think that one of the things that can happen would be the City has a really large - well it's not as large as it used to be- has a fairly large delegation, if you get the City delegation into a specific piece of legislation,fifst of all there would probably be delegates that sit on the House Judiciary Commission, etc. in candor to our files of the last couple years is getting things through delegates, and we had bills as I've said have gone down that I think would have been very meritorious that just do not survive because they just don't have the clout; something that we cannot, we have been looking for help and certainly we will follow up on that.

Rikki Spector forthe Councilmatic District.

OK, well we are in Northwest Baltimore. Mrs. Spector and I and Councilman Reeves, have a constituency where there are really a great number of counties in that as a resident homeowner and there is a span of really all types of housing, subsidized housing, public housing, very very terrotorial housing, expensive rental housing and less expensive rental housing. In Baltimore City every time the issue of rents has been put before the public it has always been a very, generally, been a poor black issue

the City on television, but Mrs. Spector and I know that it is not simply a poor black issue, it is an issue that cuts all the way across and my suggestion is really a sort of, and I am sure it has been done, in that situation, and I'll give you an example, the Fordleigh Apartments, Reisterstown Road, near Reisterstown Plaze, they are senior citizens, let's say a middle income racially mixed group, some families but mostly older. There is a great concern about security. Now nobody's lease let's say really defines as to what the landlord is required to do -does that mean that the landlord ought to provide a lock for the front as well as locks and keys for the individual units, what kind of guards and custodians there ought to be, what kind of lighting there should be. Things that are very hard to find in a contract and things that if you are a sensible tenant you really can't raise as rent escrow. If you go to a good lawyer, Now Mr. Jenkins will say I don't think that is serious, life threatening, it could be but I don't think the Judge is going to buy it, like air conditioning. So you don't really have any place to go in Baltimore - you go in front of the television you scream and yell at your landlord - you yell at Mrs. Spector, but you really don't have anywhere to go and I believe that this Commission should support something that would provide a place to go. The Property Owner's Association offered to council people and I have used it as a mediation type of complaing place. You give me the complaint, I'll do the best I can, and I think they have at the Fordleight Apartments, I don't think the last complaint I got was in the Property Owner's Association so there is no way to get a large apartment unit.

Well that's a company that the City Council people, the manager says I don't have any responsibility, I can't do anything, send it to New Jersey, we sent it to New Jersey we got an answer the guy says I can't do anything it's my father that really owns it -- I mean you never can get to the source. What do you think the State ought to dowwith that. Well, I am just throwing at out as the Department of Licensing and Regulation must have this type, a provision, it has a pretty effective insurance complaint procedure. If you really have a bit about your insurance policy you go to complainaabout insurance, they give you a hearing examiner it my be expensive, and generally they will resolve. I think the problem with this business is that there is no place for the tenant to go

...t move or rent escrow and there may be a ---

...st courts in other jurisdications that have interpreted similar to rent escrow stands said they only apply to structural conditions and the safety clause and the were not meant to apply to lack of proper security...security but that only gives the tenant the revenue. The interesting thing about that was...the thing that happened then was they were providing security and the failure to provide it adequately was the grounds for the tenant in winning that case. You can even take the structural lease and sign it. Is a leaking ceiling is that serious --I think it would be. I don't know about... There should be a statewide board. I think it's got to be. Secondly, where would the power of this board begin and end verses...you mentioned that the only alternative before moving out would beecomplaining to the elected official but if you set up this board what kind of powers do you forsee the board to have in respect to Housing Court. I think it would be very had to pass and I don't know in this State it is hard enough to pass anything but a power of mediation would be a good place to start-particularly a place to go and bring the two sides and not in a courtroom setting when the person who holds back rent has to worry about getting evicted. This is a hard thing to do.
Well, let me make a point, presently in this town we got a Landlord Tenant Commission in 1973 because the tenants felt that they needed someplace to go if they had a complaint that wouldn't require them to gets lawyer and go to that expense and the Commission was formed, Montgomery County has one I was unaware that Baltimore didn't have but basically the Commission's function is to do two things - one to judicate the cases, case by case and the other to recommend legislation to the county and to the state and it was set up with a representative from both sides and a neutral and I think it worked very well. Now in the two respects, a tenant could make a complaint...

TAPE RAN OUT AND MEETING LASTED FIVE MORE MINUTES WITH THE COMMISSION THANKING EVERYONE FOR ATTENDING AND PROMISING TO LOOK INTO ALL SUGGESTIONS.

I am here to testify on behalf of the landlords. A number of random items I would like to go over, the first one being that as a landlord I have to be registered and as such I think it is only fair that the tenants be registered too. I know this is a totally new concept, but I think the real reason the tenant should be registered is so that they will be identified with identification. I have had a number of tenants who have used different names and it is very difficult to identify them and to try and serve them with papers for court proceedings, you can't get service on them. I've had a situation in a particular case, it went on through twelve different proceedings before Legal Aid Bureau, The situation was the tenant's attorney, from the Legal Aid Bureau said they weren't served properly. By having a tenant registered, you will be able to require that tenant who is having problems to take care of the property. When the tenant damages the property you can't get a judgement against them so you can't serve them. In other words, they pull out of the property in the middle of the night, take anything they want, including hot-water heaters, forgetting about the security deposit. They should be required to present a driver's license or a social security number to be identified. I think by this registration it would solve a lot of damage to the property and on the same side, the landlord would be more willing to spend money on the properties, because they know the property would be protected. We have a big problem now with smoke detectors. Friends of tenants will come in and steal the smoke detectors. According to the law, I have to supply detectors; I think there should be some provision in the law whereby the tenant should be made to provide a smoke detector. I have one in my car tonight that I have to deliver to an apartment because one was stolen; and yet I'm responsible to replace them. Why are they being stolen? They are being sold on the street. I provide the best smoke detector I can get, the best, $52.00, that can be sold on the street for $10-$15.00. But to me that's a real problem. I bought three or four smoke detectors for one apartment just this past week. I am not complaining about buying them, I'm complaining that these things have to be supplied. Another big problem that has developed is the littering of

property by people and the landlord has to keep them clean. Yet there are big outlets that will distribute leaflets three or four times a week, litter up the property, the hallways, and deposit them on my property. This means trespassing because they litter my property with trash. The same thing goes for beer bottles from a bar nearby. People go to the bus stop, sit on my porch, on my steps and leave the bottles there. In the same token, people who dispense beer, or food, should be responsible to clean up their neighborhood. I know there's a bottle bill situation trying to be worked out and passed by the Legislature, trying to make some kind of law, but it's a real problem. Another thing that damages the property and requires it to be fixed; can you imagine the telephone company attempting to install phones on the property---four holes in the side of the wall, seven or eight feet of wire down the wall, tie wires tight around the building. That's especially bad with electric wires. So in conclusion, I would like to say that the biggest problem is service upon a tenant--I've had cases where tenants have gone away for a month, leaving their friends--they are in possession of the property--I can't serve a friend, I can't serve the tenant because he's not there. So I sincerely feel that by identification of some means, that this will help the entire situation. Thank you very much.

Remain a second because there may be some questions on the points you have made.

I just have a little comment--concerning you can't find a tenant, the tenant may give you an improper address; I guess my real question to you is, "Shouldn't the application process eliminiate some the problems you have because if a tenant is going to pay $10, $15 or $20 just for the application form, I would assume part of the process is verifing 1, past address and 2, if you are going to be doing reference check, you would have access to tenant's actual name and address?

What are you talking about? $20 or $30.00 application fee?

Well, what I am saying is before they leave the room, they have to fill out an application with a fee, which is a reference check wherein they pay $15.00. Doesn't the application process help to some degree?

application would help some if you have property that was in a more desireable neighborhood, or in an area where there is a very low vacancy rate. In some areas it is very difficult to get a tenant; so you have to get the best tenant that you can get at the time especially in lieu of leaving the property vacant. So in areas of low vacancy, yes, but I'm talking about the area where you are not going to get a tenant to fill out an application. This is a realpproblem.

One final question that I am confused with, do you think with the registration process that you can get the tenants to provide their own garbage can? Is there some connection between the two, maybe you can help me?

Well, the problem is the tenant's failure to understand his responsibility.
How would registration remedy that problem?
Well, if the landlord sees the problem, the landlord could send that tenant a registered letter at the address that was given that you know was in the registration; his complete name, such as John Brown Doe, see many times they will use J.B.Doe or a combination of names and they won't accept mail. So the registered letter could be sent out to a correct name notifying him that he has to appear in court.

You have two units, did you say?
Yes, mine are in the area where you have problems if you don't have full occupancy all the time.

Do you realize this is a State Board, and not a City board and the only thing about tenant's being registered, you have to be taken to the City Council------

I realize that the state could supercede

not necessarily, sometimes -----

Sir, you are not responsible to get smoke detectors, your tenants are. In buildings that have less than three units, the tenants are required to buy the smoke detectors, according to HCD and the fire department. If you are having so many problems with the

tenants you are bringing in, you could do a check on each tenant you bring in.

I have done checks, they are good. It doesn't help, they are good then they have some financial problems, are put in jail for assault.

Do you get security deposits?

No.

I would suggest you do this.

Well, when you are dealing with people in this area, you aren't likely to get a security deposit because people don't have a security deposit; we're talking about depression. It would be tough for me to come up with a security deposit, if it were required, several hundred dollars. It isn't available all the time.

You have brought up the idea of registration, the cost would be prohibitive for them to administer programs that call for registration. Also, I am almost positive that it would be opposed to any voluntary registration for the tenant.

I'm the landlord, I have to be registered, so why can't the tenants be registered as well?

Well, I would think in this situation, particular the larger landlords, don't have the problems you have mentioned.

You had mentioned earlier the application fee for credit check for references probably negates this situation for most of us. My point is this, I think you can help.

Sir, because this is a state body that recommends legislation; we are concious of the kind of legislation that would go to the general assembly and I don't think you find a concenaus here among the landlords--but I think they would see it difficult to get this kind of legislation through. But it seems to me from the tenant's standpoint, you happen to be a landlord of two units--I think you will find that tenants who live in larger complexesproperties, dont' have this particular problem. I do credit checks at the expense of the tenants themselves and oneother problem I forusee with the unauthorized telephone being put in the unit, I have had an occasion to deal with a person with a

similar problem who took it to the public service commission and the public service commission addressed it that it was the responsibility of the C & P to make those particular repairs in that particular unit and I would suggest to you that you may find relief by filing with the public service commission; particularly if it is a cause where neither you or the person occupying the unit authorized putting the telephone in.
To me I think its unconstitutional for landlords to register and tenants not to.

When you have two parties involved in a contract, one party is registered and the other party is not.

I don't think its true that throughout the State of Maryland, all landlords are required to register.

In fact there are some counties that are reciprocal but there are certain landlords who I hhink, if you would see some of the properties they rented out, I think you would think it necessary that landlords be licensed and registered.

I make it a point to visit the property and do work on the property at least once a week.

Mr. Chairman and members of the commission, my sole purpose in coming tonite, let me introduce myself, I happen to be a delegate elect which means I am working with profeddional people and I won't take sides, either or because I'm not biased.
Let me introduce Delegate Rosenberg.

As I say "thank you for your proposed legislation; and one of the things I think I can look at in Annapolis, is where will I be assigned committee wise?" It may be that I will be on a committee to deal directly with tenant-landlord situations.
what do we look like, who are we for and against, but right now I am completely neutral.

Do you have any interest in tenant-landlord involvement because one of the things that this-- we felt that we need to have a closer working condition with members of the General Assembly.

One of the complaints I hear most and from landlords, there are quite a few laws that are overlapping. I'm having some work done on behalf of landlords in this regards How long is the landlord going to be responsible, forever and a day?
We have been incensed with the landlord problems and I can think of about three or four bills that --- we have one with tenants that skip out and you have a security deposit, all you have to do is send it to the last known address, you don't have to try and track down a tenant who has skipped out or been evicted. This will alleviate that problem.

There may be some problems with the two month' rent that can be held in escrow for damages.
He's talking about the security deposit-- a number of times the tenant comes in, breaks up-- you are only allowed up to two month's security deposit.
the tenant's got it fixed, so that it can be put in court in Baltimore City, but it can be broken, I can tell you, I broke it once--unless you can prove that the tenant maliciously did damage, the court's been allowing.

Correct me if I am wrong, I assume that the very nature of your existance is to look at all these on behalf of the tenants and the landlords and give recommendations and where new laws need to be put into operation. And let me assure you that a lot of the stuff doesn't get anywhere because it doesn't get through committee--we've experienced frustration because some of the bills we've sent down we've felt were non-controversial, that I mean that had well in excess of the majority of the commission both landlord and tenant in favor of them.

Do me a favor, keep your objection, a lot of it may depend on one or two landlords- a small group of landlords who may have had some ligitimate problems- a small group of landlords, not a group dealing with tenant-landlord relationships.

I am sure in your own position, sitting over there you have had to adjust.

I think that one of the things we have is to balance things out. When you look at the repair question, it is a problem and on the other hand, there are a number of places that are-that the tenant walked into that situation- there has to be a cutoff point somewhere, and generally, as Sue said, when you talk about malicious destruction, we don't have that problem, but there has to be a safe clause for the tenant also to balance it out, in most cases, I think you will find that the legislation that exists protects both groups, if you are able to look at it objectionally. And then again, our challenge and yours, what are our loopholes, that's what we are all about.

I just wanted to ask you if you were aware or if you could check into it, that they are sending people out to investigate the properties.

I can attest that they are. In most cases, Mr. Bosley gave reference to constitutionality; if one among us refused to let them come in, they would have strength to cope with that law like we do. I don't know. There are some people that have refused and they've been tried but they haven't done anything. If you have a landlord and the landlord doesn't let them in, I can bet you appear in court. Is the law just made for landlords, or is it made for tenants?
to protect the property of the landlord. This is a clear issue, it's not in favor of one or the other, and I would think as Sue mentioned, that's what ought to happen. If I see the fire department not coming in-sombbody ought to make an inspection. There is a procedure within the city codes that if someone refuses and the city wants to take the time, there is a search warrant and they can go in.The supreme court some years ago, said the home owner can require them to get a search warrant, but the search has been issued on an area-wide basis, so they don't need a contributional criminal charge.
An owner can except in an emergency require a search warrant.

Once again thank you for inviting me, I'm sure I'll be appearing before you again.

Next, I think in terms of order is Kenneth Webster, Anne Arundel Co.. The only Webster I knew was in Baltimore City, but I guess changed jurisdiction.

To the Chairman and members of the commission: In the sake of brevity, I would like to do just two things, first I would like to thank you for the opportunity to allow input from the public to identify and propose meaningful legislation in the 1983 session. Secondly, I would like to address some areas of the tenant-landlord relations. Number one, partial rent payments should be able to stay an eviction for a specific period of time, what I mean by that is right now you have a lot of people unemployed, having a hard time finding jobs, unemployment, they owe $300 on their rent, and give the landlord $200 - $250.00 and he says, "No, I want it all." You can make the determination of the percentage he should have, you know, this is at a time where employees are forfeiting a raise so they can keep their jobs. I just feel as though, in my everyday working with tenants, five days a week and forty hours a week, this is a major problem we deal with, and I think you all need to address that; partial payments to stay evictions, not partial payments in terms of dealing with the lateness of the rent, but in terms of eviction. Secondly, the present condition of the unit that threatens the health and safety of the tenant puts it in an emergency situation or forfeiture of certain percentage of the rent. I mean I sign a lease paying $300/ a month, and the lease provides heat & hot-water. Friday night at 10:00, my heat goes off--the whole week-end I don't get no heat, the landlords out to allow some specific time to deal with that. I still got to pay the rent though. This should be addressed as an emergency situation. Get back and turn the heat on or forfeit a percentage of his rent. If it takes them ten days to get back and turn the heat on, then he ought to forfeit a percentage of this rent that I am paying. Thereby motivate him when they get the call 10:00 Friday night to get here 6:30 Saturday morning, to get the heat corrected, because if he doesn't come, he will forfeit a certain percentage of his rent. That doesn't deal with compassion, that deals with dollars. It's really a breach of contract as far as I am concerned that calls for heat and hot-water--no heat from Friday evening at 10:00 until Monday morning, that's a breahh of the contract so we need some kind of adjustment in terms of defective conditions. We had a situation in Anne Arundel County whereby housing is unequipped with

heat and hot-water. The proceedure is we notify the landlord, he got 30 days to deal with it, anywhere from 30-60 days, then another letter, the landlord gets up to 90 days to correct that defective. The tenant stillspays the rent or put it in rent escrow, but it still is coming out of his pocket, Mr. Chairman and members of the commission, and he's not getting what the contract calls for, heat and hot-water. That's the situation I wanted to address in Number two. Item three: reduction of the time to return the security deposit. Now that calls for 45 days, the current law now states that the landlord has up to 45 days to return the security deposit, but then, and with good reason, he might even have longer. I think we need to deal with that because the people leaving have to relocate. 45 days for me to get my $250.00 back, that man didn't going to wait 45 days to get his rent; and I think you are going to need some kind of adjustment on that, especially if there isn't a good reason, the landlord says well I couldn't do it for 45 days because the stock market fall and the money was tied up, so I couldn't- so seriously, there needs to be some reduction of time for return of securityy deposit. The tenant moving out of one apartment-he needs that security deposit-any damage he has done to the property, let the landlord deduct it right then, on the spot or within ten days, not 45 days and even without good reason; so you need to deal with that. Anyone sitting here thinking the landlord isn't getting a fair shake, they must be crazy. The landlords just passed a bill last year in Anne Arundel County saying that three time late notices; you're gone, forfeit your redemptionodf property. I agree with that bill, we went through that last year, that was a flag raiser for the landlord. I think it was vetoed, but I'm not sure.

No, it wasn't vetoed Mr. Chairman- yes, they tried to change the working from instead of appearing, they reduced it from a four to three summons ---it's in the whole thing, we are looking for it now. Number four: Putting tenants' belongings on the street. Here again is an archaic situation and inhumane situation about putting peoples' furniture on the street--everybody has got to live somewhere, you got to pay the rent, but when the tenant has to be evicted, I think it is archaic and cruel to be sitting his stuff out on the street-----

what do you suggest we do? Who's responsible for it? Notwithstanding sense of responsibility there should be some time of eviction where when the tenant has to be evicted, some governmental agency has the truck there to put the tenant's belongings right there into the truck and put it in storage, and let them pay 30 or 40 days, let them absorb the cost. Setting the belongings out on the street to me is archaic.

Thank you again, Mr. Chairman, for giving me the opportunity. I will be glad to answer any questions the chairman or memebers of the commission have.

Neal: I would like to question number four, whereby the City had the truck and they had a procedure whereby they put most of the goods in storage. Mr. --- tried to introduce a bill requiring the landlord to hold the goods for 30 days, and we thought that was unfair, the the government would have to be responsible, not the landlord. Coming back to number one, in our jurisdiction, it takes 35 tO 45 days or 50 days to get an eviction, so that when the constable comes to evict a person for July's rent of $200; at this point its August or September--are you suggesting at that point where he is now owing two or three month's rent--that we should take part of July's rent when he already owes August or September--at what point--I think if he puts $50.00down a month--I think at some point, the landlord is out a great deal of money.

No sir, I am not saying that, sir. It doesn't take 35 or 45 days for the landlord to go to court and get that eviction - it might take 35 or 40 days in terms of the beeeauocratic red tape- to get the eviction of the landlord so desires- that's the buresuocratic red tape.

The point is, most tenants realize that until the constable shows up they can sit on the rent until the constable shows up. I don't know under whose jurisdiction. In Washington you can get an eviction in the same month. In the state of Maryland, this does not happen, so you say that the rent is $200 or $300, at that point, there is an additional $300, and to say that you don't pay the whole thing, how does the landlord get out from under when the tenant doesn't pay the full month's rent?

Well, Sir, my only response to that, you are here with the Chairman of the commission and you can get whatever document is necessary, just like the example that I cited before, a man whose been laid off, four kids, unemployment has tied up his unemployment checks, he was in our office a few days ago asking for $425; he had $350, the landlord said, "All or nothing." He came to our office, we wrote him a check for the difference. These are the kind of cases I am talking about. You and your wisdom can doctor and deal with it; but I am just dealing with the concept and what can be done in that area.

Sir: how much rent was due at the time?

One month.

Why did it have to be one more month? Wait a minute, you stated that he had $350-you had to write a check for the additional monies- his rent was $425 a month due November 1- this was November 14th.

The sheriff was there in 14 days?

Yes, this was Anne Arundel County-I didn't say the sheriff was there, I said he had the eviction notice-he had been to court-the court proceedings had been executed, the constable at that point can go whatever time they feel like it. I find it difficult to believe that somebody got an eviction notice issued in 14 days in Anne Arundel County.

I'm just making my presentation-if there was a situation, we are just going to react the best way we can to that. I would just like to say that I have been in a number of situations where tenants are having some type of financial problem and they have not addressed this to the landlord. They have instead gone other places seeking help. In most instances where we have been able to sit down with the landlord, we have been able to arrange, depending on the type of situation. It would be very difficult though to try and legislate anything like that because you have to take it case by case. In many instances where people have prevailed upon me to--I found that somewhere along the line they didn't exactly pay their rent the way they should have and then when they did run into a real problem, the landlord was not willing to give, but I, being a tenant representative, I really have been in these situations and it is getting worse, I will grant you that,

but I would perhaps like to hear more of what you have in mind- so that we could legislate the person who, you know, to protect the landlord too, and help the tenant who is really in trouble; but not help the tenant who---you and your wisdom, I can't accept it.

What do you think would be a reasonable time?
15 days, 30 days, your comment was basically that a lot of things ought to be determined at the day the tenant leaves. In being serious, Mr.Chairman, I just think there should be a shorter time, you know, 15 days, that's the maximum, you know when a person is moving out of an apartment, security deposit, everybody has a high degree of stability; sure I want you to come in and check my place and the $350, I want to get it all back; I'm going to call you and tell you I'm going to be there promptly at 9:00 o'clock, do the inspection, deduct $20.00, go back and mail me a check in two or three days, so I say like 15 days at the most. But 45 days even without good reason----

You're tyying to get it the other way-because a lot of times you can't know within 30 days-you can't possibly on some of these damaged properties, fix the property and know what the bills are, your tenants can do a number of things, your tenants can call on the day and say, "Please meet me, I am moving out of the property and I want you to inspect it." Once they've checked it and you've moved out, they will write a check if there are no damages. I know I do in my properties and I know a number of other landlords that do. I have one more question. I feel that point number two is an eminently good point— if there are serious conditions as you have here--emergency situations, there should be a forfeiture of the rent which I think is a good point for the reason, if the tenant doesn't pay their rent, the landlord says he didn't pay the rent and legally he should be put out, he should be evicted. If you buy that argument which I think is a legitimate one then you also have to buy the argument that when you have entered into a contractoral relationship with the landlord, and if that contract says hot water and whatever, then that's not forthcoming, there could be some sort of forfeiture in a portion of the rent. I think that's a good point to bring out.

You ought to deal with the spirit of the law, rather than get into specifics.

Thank you very much. Thank you for coming.

I want to call your attention to the September 2 letter that our director, Mr. Lorrent sent to you in which he proposed a campaign that he hopes the commission will cooperate in to eliminate limited clauses in leases. In the letter Mr. Lorrent documented D & I's efforts to get certain landlord groups to voluntarily take up such a campaign and we've been pretty much unsuccessful. You know a volunteer effort on the part of the landlords would be the best way to do it just to prove that they and we can cooperate in a matter like this. But because of our failure to spur the landlord groups in this effort, we suggest that the commission get involved and call for tenants and tenant organizations ~~and landlords~~ copies of leases to the commission for their inspection and these leases would be sent to various landlord groups, so that the commission and the landlords would see the same leases, and that this type of an effort given an appropriate amount of publicity-- the landlords would be encouraged to eliminate the problems with clauses in leases. That's what I am talking about, prohibitive clauses that violate a section of the law, any section of the law. The other aspect I want to talk to you about tonite is also not new, but needs to be repeated--the rent escrow issue. According to Baltimore neighborhoods, statistics that we've put together, the most common complaint of tenant groups is very simply not receiving the services and the facilities promised. These aren't always health and life threatening services. They are things that the tenant relied on in the contract, the signed lease, that unit, things like air-conditioning and other major aspects of the lease. The tenant was under the impression that he was going to receive when he entered into the lease and agreed to pay the landlord a certain amount of money. Under present law, as you know, State Law, a tenant must continue to pay his full rent even if the landlord refuses or neglects to comply with his obligations unless his compliance is resultant to serious threats of life or safety--suggest as previous bills that have been sponsored that the rent escrow law be expanded to cover material breeches that the tenant would be able to take advantage of the rent escrow provisions if there is a material breech in the lease. The procedures and the remedies under the

rent escrow law, under our concept. We would also like to see a part of the rent escrow law- retalitory evictions strengthened. As we read the law now, a landlord could not bring retaliation for a tenant attempting to take advantage of rent escrow provisions, evict a tenant during the course of that lease, is able to evict a tenant in the lease, no reason given. We would like to see something that says that a retaliatory eviction could not take place which would defeat the purpose of the law. There's a couple different ways you could word it, I'm not going to get into that--but what we would like to see is protection that would prevent a retalitory eviction even if it is not addressed as such at the end of the lease and we would also like to ask that tenant complaints under the rent escrow law not have to be written, now that just isn't the problem with some tenants and the major argument against oral complaints kicking in rent escrow remedies, is that there is no permanent record; well, I submit to you that our courts of law have to deal with discerning the hmuch and if a tenant lied when he said that he contacted the landlord; I think that the courts would be able to discern that when they hear the evidence making a complaint in writing is just a big problem for some tenants.

Why?

Because some of them can't read or write. They are not familiar with the nuisances of the law. That's basically my point. One other point about retaliatory evictions is, you know, one retaliatory conviction in a large apartment complex goes, even if its a legal retaliatory eviction that I talked about tonight where a person ended a period, can disuade the rest of the tenants in an apartment complex to take advantage of the rent escrow. That's all I have to say.

I would just like to make a point that in this September 2, letter the organization that he takes to task for failing to act on his suggestion, the organization that I was President of 3 and 8 years ago, and we have no record of these terrible leases that he claims to have sent us all these years there are severalorganizations that have had attorneys come in to their meetings and explain what prohibitive provisions are-roughly their own model lease and I just want to say that I think the accusations Mr. Laurent made in his September 2 letter are totally without merit.

Let me respond to that point.

I dispute, and I will take this to Mr. Laurent, but are you saying that it's not worth the landlords groups taking up----

No, I'm saying our organization did--we told all of our members what is and what is not legal under the law and are prohibitive in how to write up a correct lease and the man said that we haven't done anything and the attorney's general office agrees. Members of this commission and he said that--most of the illegal clauses he found were not with members of our group and-- Daily Record were signing leases that were illegal and the landlord's responsibility to get the Daily Record and the Attorney General-neighbs one can (selling a pre-printed lease) Well, o.k. One of the points of our conclusion is your view, get together with other landlords, what we are proposing is cooperation, let's work it together. And we are still waiting for that first lease to come in so we can get to see it. At the present time, in our last meeting the letter was taken into discussion. I wasn't present at the meeting, but just said that they substantiated, he's the attorney for the group. Lawyers and owners council and he said that they had not received any letters dealing. He was aware that Jay Lambroe had come in and looked at the model lease and had talkdd to the owners and builders council. The point is that when we received the letter-- we wanted to hear some kind of a response back from the home builders association--we heard their response tonight and at our next meeting we will go forward. I understand what George's proposal is, to use the Landlord Tenant Commission in terms of the publicity that it might be able to secure to maybe address this issue and basic. Just the homebbuilders/so we have got his proposal and I think we are going to actively look at it, but we haven't had a chance to hear from the homebuilders and of course, what their response is---Any other questions?

May I ask to be specific with you on material damages that you want to put on the rent escrow law?

The term material breech is a real term that has been defined by the courts. I'm not sure that I am going to put it into laymen's terms. It's the same thing, if you went to the store and bought an appliance; appliance was advertised as doing this, having

this feature and having that feature, so the reliance on that advertisement and the salesman's promises about the product, you pay x amount of money. In the case of a tenant he sees an advertisement, well, besides the things that are required by law, for my rent I am also going to receive air-conditioning, a balcony with a view of this or that, certain kinds of lights, anything that induces him to spend more money.

Is this in writing or is the tenant just telling you--

I'm not speaking of a specific instance--

Oh, I thought you were---

No, I'm not. I think air-conditioning, you know if you are paying a certain amount to get air-conditioning, presumably less if that same apartment did not have air-conditioning. If that air-conditioner breaks down and you are not getting it fixed, you ought to be able to kick in rent escrow, you are still paying your rent, your still paying your part of the bargain and the landlord is going to get his money as soon as he fixes the air-conditioning unit which he included in the lease.

Do they consider air-conditioning the same as heating?

I'll respond to that in terms of violations, in terms of what's required. You have to have heat, you have to provide an apartment with a certain temperature-but I think what Mr.--- is indicating is that in a contractural relationship with the landlord that requires air-conditioning and you don't have it then that should be---

You mean they didn't put it in at all or it broke?

No, it broke in two months.

Say you see in an ad, apartment, heating, air-conditioning, like that, $400 a month. After two month's the air-conditioning breaks down, is that apartment still worth $400/mo.? Did the landlord try to fix it?

I'm not speaking of a specific instance. What I am trying to say to you is, you are now saying that if a tenant complains about this problem is a lot of times they can't fix it or whatever--you're trying to make a blanket rule for everthing.

No, I agree with you, if a tenant went in and said I am suppose to have air-conditioning and I don't have it, they should be able to take some sort of action. To hold up their

rent until they do get it fixed. The way rent escrow stands you can't take it in, withhold rent until you give the landlord notice-exactly 30 days. You are saying given the threat, if the landlord doesn't fix it after a reasonable time, make the repairs be able to put the rent in rent escrow. Any other questions?

You stated that the -in essence- isn't what you are saying, is that we need a good clause eviction law-presumably you are saying the same thing. You know some kind of language that says cannot defeat the purpose of this law and evicting a tenant, you cannot say you know 3 months into the lease the tenant, for whatever reason goes to rent escrow-well the tenant under the law now could be evicted, but under the terms of the law after 12 months he just informs him-- sorry.

O.K. then the reference would be that under what you are saying, the burden of the truth is still on the tenant for good cause eviction, the burden of proof, the landlord will agree with me when the tenant would be on the landlord—
Right, but he is saying that the bottom line is that the proof will still be on the tenant.
I'm not going to agree or disagree with you.
I thought that when you talked about retaliatory eviction that were not necessarily something that would be covered by eviction, could be just a tenant who has formed a tenant association or done something else to evoke the ire of the management and to put a complaint of some type in writing but not necessarily something that would require that he go out and have some restrictions made as to the definite service; like the landlord decided to close the playground area. I think the tenantcomplained about it, the landlord said that— I am not totally familar with the retaliatory eviction and that area but I would not see the two-ons being the remedy for the other and if the tenant feels in jeopardy for any reason, repair on the property or havingcomplained about that, if the retaliatory eviction is not working it would be accepted and if that is what you are requesting. Under the present law, and even if you say strengthen the present law, for example, because we are dealing with tenants every day-- if a tenant did form a tenant's association and the landlord didn't--very few landlords are going to

come out and say hit the road because you formed an association. They are going to wait until when the lease expires and then not extend the lease. I'll give you your 60-day notice or I just won't extend your lease. Landlord's do it -- I'm talking about bad landlords now -- the small percentage -- but the problem is just like in civil rights litigation, how can you prove intent because of the thenant definitely can't go inside the landlord's mind.

Correlation with the labor law where somebody involved in union organizing activities the employer has a heavier burden in a case like that to prove that the termination was not due to union activity. That's the kind of strength you are talking about here.

Members of the Commission, ladies and Gentlemen, my name is Denise Noonon Slavin and I am an investigator of the housing division of the Maryland Commission on Human Relations. The MCHR has enforcement authority, through Article 49B of the Annotated Code of Maryland, to investigate and resolve complaints of discrimination in housing, employment and public accomodations. We laud the efforts of the Governor's Landlord-Tenant Laws Study Commission, however, through our case processing and related activities concerning community issues we have gained perspectives on housing problems and issues which we would like to bring to the attention of this task force.

In Handling inquiries and processing complaints of discrimination in rental housing we have found that many times persons seeking rental housing or tenants do not know how to contact upper level management or an owner with questions or to seek redress of a problem. Any influence that the Governor's Landlord-Tenant Law Study Commission can exert to assure that the management company's name and phone number are conspicuously posted in all apartment complexes would provide for improved communications between landlords and tenants and may even reduce complaints made to MCHR and other enforcement agencies.

We have also found that many landlords and tenants in Maryland do not use written leases. In the cases we have dealt with, we have found that leases improve the landlord-tenant relationship by clarifying the expectations of the landlord and protecting each party from arbitrary actions by the other. To the extent that the model leases prepared by your Commission encourage the use of leases in Maryland,

we applaud them, but we feel that mandating written leases in all rentals would go a longer way towards clarifying and securing the rights of landlords and tenants. Finally, we were concerned that the model leases did not contain statements that housing was available regardless of race, color, religion, sex, national origin, marital status, or physical or mental handicap, since as Section 19 (A) of Article 49B states in part:

> "It is the policy of the State of Maryland to provide fair housing throughout the State of Maryland to all its citizens, ..."

Although the General Assembly proclaimed this policy in 1971, discrimination in Housing continues to be a problem. While deiscrimination based on race continues to be the major problem, other areas such as sex and marital status discrimination appear to be on the increase.

The Commission, through a cooperative agreement with HUD has conducted a series of workshops throughout Maryland to inform women of their rights to fair housing.

In an effort to obtain information as to the status of women and housing, the Commission has disseminated a fair housing questionnaire for women. While this project is still in the early stages we have conducted an analysis of a sample of the questionnaires returned. This small sample indicates that income levels and cost of housing have had a negative impact on women, especially the single female head of household. We have also been conducting a survey of rental advertisements for Baltimore City as listed in the Sunpapers. Survey results from November, 1981 to September, 1982 indicate that 20% of the ads during this period indicated an "adult only" preference and that on some days and during peak periods as many as 40% of the ads state such a preference. Our own experience indicates that the extent of "adult only" restictions is far greater than the ads would indicate. For the past two years, legislation has been introduced before the Maryland Legislature to protect families from such practices. However, these efforts have been resoundingly defeated by opposition from the Housing Industry as well as a lack of support from the community at large. We hope that the Governor's Landlord-Tenant Laws Study Commission will support any future attempts at legislation in this area.

Finally, a firm policy of fair housing needs strong and effectiveenforecement authority. At present Article 49B limits relief in cases other than employment to non-monetary

relief such as affirmative action, letter of apology, a committment to consider for tenancy, etc. Such a limitation does no give due consideration to the financial losses incurred by illegal acts of discrimination and, therefore, does not make the injured party "whole" or provide a deterrent to the discriminator. The Commission is seeking legislation which would provide for monetary expenses actually incurred by a complainant in a housing case. We would welcome the support of the Governor's Landlord-Tenant Laws Study Commission in attempts to secure such legislation and in affirming the state's commitment to Fair Housing for all its citizens.

What do you mean they won't receive the lease?
They sign it and they never read it?
No, I'm saying some of the clients have been rejected and they never see the lease and the have inquiries about why they were rejected, might follow our commission or some other place - where if they had posted on the property the management company they might call the management company and say I don't understand - resolution of the propetty that way. Requiring it to be posted specifically without having the office.

You can help me on this then ;; what do you say to a tenant or a tenant group who because of an arrogant owner, and say I don't want to be anywhere near kids, I love kids but I hate big wahhals! I just want to be here for some quiet. Some of the model apartment owners designate that an apartment complex or would state that one or two buildings are for adults only, and that usually would take care of the problem. I think some suggestions here something that we really want to attack...statement concerning discrimination based on race, color, etc. and it seems to me that is something that we could look into.

You're saying that it would be nice to put a notice or something in the lease but we're saying in effect that the law requires that the landlord proviso - housing without regard to sex, race, religion, any... your talking about something that should be obvious to any American. Not to put in the lease saying the State of Maryland or Anne Arundel County damages - is a very tight restricted commend and under a very

broad statement. What would be obvious to most Americans - obvious it still remains a problem... but notifying the tenant of those rights doesn't say that you have to to enforce it against the landlord. In your lease you are stating that the tenant, which he probably already knows -- going after those landlords who are discriminating against those people.

Maybe we ought to do that, but I am saying printing up a lease doesn't aid the tenants as much as somehow going after the landlord.

That sounds fantastic to me...

The point I was making to have it in the lease is not going to help all the people who are denied for prohibitive reason requested-- the landlord might not necessarily...I don't see it as a panacea, I just see it as one of themmany steps that might help resolve problems. In fact, the last time we were here, I think one of the things the commission and that is that they themselves are going to get to do some legislation and I assume propose legislation...endorsements..set up a Bill. The Bill that was introduced last year dealt with actual damages in housing the Bill this year will probably deal with such language as actual damages - limited to out of pocket expenses that is the legislation that we encourage. Last year it did pass the Senate but died in the House.

I think, just to summarize, we will, I think one is that in defense of the Commission I can say that we didn't think about particular clauses, because none of us were present but having overlooked it we certainly will make an effort to try to find a solution, either thmough the posting of a sign and/or something in the lease as we go forward. Thank you for your comments.

I would like to add one more thing -- before we miss it-- I think she makes two companion points because if you read in her documentation-- she makes two points I

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think go together - the fact that the provision should be included but secondly the fact that many tenants don't receive leases - it may be an inconsistency if we on one hand say include the provision and on the other hand don't address the problem that tenants don't receive leases. Something I think the commission can address. We talked about that last year. No, it only requires if the landlord uses a lease to give them a copy. We have one more speaker, but before we get to that just let me recognize Rikki Spector and Councilman Baxter.

...equate the subject figure you are denying th face the ver important point about the condition...

...rent and being able to afford the rent, protect the quality of their life. Because you I would like to offer...maybe between your involvement and our legislation. I know you don't do that anymore and yet...to what I paid and...

My services go either Committees or in any way that...

Thank you Rikki-I think that one of the things that can happen would be the City has a really large - well it's not as large as it used to be- has a fairly large delegation, if you get the City delegation into a specific piece of legislation,fifst of all there would probably be delegates that sit on the House Judiciary Commission, etc. In candor to our files of the last couple years is getting things through delegates, and we had bills as I've said have gone down that I think would have been very meritorious that just do not survive because they just don't have the clout; something that we cannot, we have been looking for help and certainly we will follow up on that.

Rikki Spector forthe Councilmatic District.

OK, well we are in Northwest Baltimore. Mrs. Spector and I and Councilman Reeves, have a constituency where there are really a great number of counties in that as a resident homeowner and there is a span of really all types of housing, subsidized housing, public housing, very very tarrotorial housing, expensive rental housing and less expensive rental housing. In Baltimore City every time the issue of rents has been put before the public it has always been a very. generally, been a poor black issue

in the City on television, but Mrs. Spector and I know that it is not simply a poor black issue, it is an issue that cuts all the way across and my suggestion is really a sort of, and I am sure it has been done, in that situation, and I'll give you an example, the Fordleigh Apartments, Reisterstown Road, near Reisterstown Plaze, they are senior citizens, let's say a middle income racially mixed group, some families but mostly older. There is a great concern about security. Now nobody's lease let's say really defines as to what the landlord is required to do -does that mean that the landlord ought to provide a lock for the front as well as locks and keys for the individual units, what kind of guards and custodians there ought to be, what kind of lighting there should be. Things that are very hard to find in a contract and things that if you are a sensible tenant you really can't raise as rent escrow. If you go to a good lawyer, Now Mr. Jenkins will say I don't think that is serious, life threatening, it could be but I don't think the Judge is going to buy it, like air conditioning. So you don't really have any place to go in Baltimore - you go in front of the television you scream and yell at your landlord - you yell at Mrs. Spector, but you really don't have anywhere to go and I believe that this Commission should support something that would provide a place to go. The Property Owner's Association offered to council people and I have used it as a mediation type of complaing place. You give me the complaint, I'll do the best I can, and I think they have at the Fordleight Apartments, I don't think the last complaint I got was in the Property Owner's Association so there is no way to get a large apartment unit.
Well that's a company that the City Council people, the manager says I don't have any responsibility, I can't do anything, send it to New Jersey, we sent it to New Jersey we got an answer the guy says I can't do anything it's my father that really owns it -- I mean you never can get to the source. What do you think the State ought to dowwith that. Well, I am just throwing at out as the Department of Licensing and Regulation must have this type, a provision, it has a pretty effective insurance complaint procedure. If you really have a bit about your insurance policy you go to complainsabout insurance, they give you a hearing examiner it my be expensive, and generally they will resolve. I think the problem with this business is that there is no place for the tenant to go

except move or rent escrow and there may be a ---

most courts in other jurisdications that have interpreted similar to rent escrow stands said they only apply to structural conditions and the safety clause and the were not meant to apply to lack of proper security...security but that only gives the tenant the revenue. The interesting thing about that was...the thing that happened then was they were providing security and the failure to provide it adequately was the grounds for the tenant in winning that case. You can even take the structural lease and sign it. Is a leaking ceiling is that serious --I think it would be. I don't know about... There shoudd be a statewide board. I think it's got to be. Secondly, where would the power of this board begin and end verses...you mentioned that the only alternative before moving out would beecomplaining to the elected official but if you set up this board what kind of powers do you forsee the board to have in respect to Housing Court. I think it would be very had to pass and I don't know in this State it is hard enough to pass anything but a power of mediation would be a good place to start-particularly a place to go and bring the two sides and not in a courtroom setting when the person who holds back rent has to worry about getting evicted. This is a hard thing to do. Well, let me make a point, presently in this town we got a Landlord Tenant Commission in 1973 because the tenants felt that they needed someplace to go if they had a complaint that wouldn't require them to geta lawyer and go to that expense and the Commission was formed, Montgomery County has one I was unaware that Baltimore didn't have but basically the Commission's function is to do two things - one to judicate the cases, case by case and the other to recommend legislation to the county and to the state and it was set up with a representative from both sides and a neutral and I think it worked very well. Now in the two respects, a tenant could make a complaint...

TAPE RAN OUT AND MEETING LASTED FIVE MORE MINUTES WITH THE COMMISSION THANKING EVERYONE FOR ATTENDING AND PROMISING TO LOOK INTO ALL SUGGESTIONS.

GOVERNOR'S LANDLORD-TENANT

LAWS STUDY COMMISSION

Minutes of Meeting

on August 10, 1982

1. Present: Jenkins (chairman), Ciotola, Waller, Dancy, Zerwitz, Tromley, Ackermann, Everngam, Stollof, Kalis (quorum). Assistant Attorney General Jay Lenrow also attended the meeting.

2. The meeting started at 8:00 p.m.

3. The Commission discussed and approved the press release for the September 21 public hearing in Hagerstown. The Commission voted to send letters to members of the General Assembly from Allegany, Garrett, Washington and Frederick Counties inviting them to testify at the Hagerstown public hearing. Ms. Tromley volunteered to have the letters (to be drafted by the Reporter) typed up by Legal Aid on its word processors. Members of the Commission also requested the Reporter to send copies of the press release to certain individuals and groups. Most of the members of the Commission present indicated that they would like to travel to the Hagerstown public hearing together in a chauffered bus, van or mini-bus. The Reporter was requested to provide such transportation roundtrip between Baltimore and Hagerstown on the day of the public hearing. The Reporter indicated that he would arrange to have food and beverages available aboard the bus or van since Commission members would be travelling during the dinner hour. The Reporter was requested to inquire as to whether the state has a group insurance policy protecting Commission members when they are travelling to and from Commission meetings.

4. Mr. Jenkins and the Reporter discussed the status of Mr. Kalis, Mr. Stollof and Ms. Martin. They noted that a state statute provides that a Commission member is considered to have resigned from the Commission if he/she attends less than 50% of Commission meetings during a fiscal year. The Reporter stated that the Governor's Appointment Office interprets the statute as not automatically removing from the Commission a member who attends less than 50% of the Commission's meetings during a fiscal year. The Reporter said that the Governor usually allows such individuals to continue to serve as Commission members if they submit a written request to continue serving as a Commission member if they promise to attend more than 50% of Commission

meetings in the future. Mr. Jenkins said that Mr. Kalis, Mr. Stollof and Ms. Martin had submitted or would submit such a letter to the Governor, and that he would submit a letter to the Governor requesting that they be allowed to continue to serve as members of the Commission. The Reporter said that the Governor's Appointment Office told him that Mr. Kalis, Mr. Stollof and Ms. Martin should be considered to be members of the Commission.

5. It was noted that Ms. Dancy had recently married, and that Ms. Martin and Mr. Lenrow would soon be married. Ms. Martin's name will change to Martin-Smith after her marriage.

6. Improvement of lobbying techniques was discussed. Ms. Tromley said that she and Mr. Scriven had been unable so far to arrange a meeting to discuss this issue, and therefore, were not ready to report to the Commission on this issue. The Commission appointed Ms. Waller to join Ms. Tromley and Mr. Scriven on the subcommittee considering this issue.

Mr. Stollof said that the Commission's inability to get its bills enacted was due to public relations problems and the lack of an image. Mr. Davison suggested that the model leases and public hearings around the state may get the Commission more publicity and improve its public image. Ms. Waller agreed that the Commission has no public image. Ms. Tromley said that another problem was that members of the House Judiciary Committee don't know who are the members of the Commission. Judge Ciotola suggested that the Commission invite specified groups and individuals to testify at Commission meetings and issue press releases addressed to such meetings and testimony. Several Commission members suggested that an agenda be developed for public hearings based upon prior requests to testify at such public hearings by public officials and members of the public. Mr. Davison said that he would prepare an agenda for the Hagerstown public hearing if he received prior requests to testify. Mr. Jenkins suggested that the Commission could increase its effectiveness if it addressed issues that it identified as being areas of concern to members of the public.

In order to improve public awareness of Commission activities, the Commission requested the Reporter to send copies of notices of meetings, minutes, approved bills and their explanations, and the model leases and their explanations, to the Baltimore Sun and News American and the Daily Record. It was noted that the Sun and Daily Record might include notice of Commission meetings in their calendar of events.

7. The Commission scheduled a regular meeting for October 12, 1982. No public hearing will be scheduled during October.

8. The Commission tentatively scheduled a public hearing on November 9, 1982 in Baltimore. This hearing would be scheduled from 7:00 p.m. until 9:00 p.m. and would be held in the War Memorial Building.

9. The meeting was adjourned at 9:00 p.m.

Steven G. Davison
Reporter

SGD/sm

GOVERNOR'S LANDLORD-TENANT

LAWS STUDY COMMISSION

Minutes of Meeting

on October 12, 1982

1. Present: Jenkins (chairman), Ackermann, Zerwitz, Ciotola, Waller, Dancy, Everngam, Snowden, Martin-Smith (quorum). Jay Lenrow also attended the meeting. Mr. Lenrow announced that he was no longer employed as an Assistant Attorney General; he is now employed with McCormick Properties, 11011 McCormick Road, Hunt Valley, MD, 21031, telephone (work): 667-7149.

2. The meeting started at 7:50 p.m.

3. The Hagerstown public hearing was discussed. It was noted that almost all of the persons attending the hearing were landlords, with only a few tenants present. It was noted that the concerns raised by landlords included the lack of a formal landlord organization; lengthy delays in evicting tenants who are sued for failure to pay rent; and a landlord's remedies when a tenant intentionally causes damage or destruction to the premises or furnishings or steals furnishings. Landlords testifying at the hearing had complained about the inability to recover a damage judgment, obtained against a tenant in a civil suit, when the tenant moves outside Maryland. Landlords also complained that state attorneys in western Maryland will not bring criminal charges against tenants who engage in such conduct. Mr. Davison said that he thought that a tenant who damages leased premises or takes furniture from leased premises commits a criminal act in violation of the Maryland Consolidated Theft Offense Statute. It was suggested that the problem of destruction or theft of furnishings may be of such concern to landlords in the Hagerstown area because a large number of furnished apartments are leased in the area. It was noted that the major concerns voiced by tenants at the Hagerstown hearing were retaliatory evictions and eviction without good cause. Mr. Jenkins suggested that many landlords in the Hagerstown area are not aware of their legal remedies. Judge Ciotola noted the apparent lack of tenant organizations in the Hagerstown area. Ms. Martin-Smith suggested that at the beginning of future public hearings the Commission should explain the present landlord-tenant statutes that are on the books. It was also suggested that at future public hearings the Commission have available for distribution

copies of booklets on landlord-tenant law that have been prepared by the Consumer Protection Division of the Attorney General's Office and by the District Court. The Commission decided that the problems raised by members of the public at the Hagerstown hearing did not warrant preparation and consideration of any bills addressed to these problems.

4. The Commission decided to hold a public hearing in Baltimore on Monday evening, November 22, 1982, from 7:00-9:30 p.m., in the War Memorial Auditorium, which is across from City Hall. The Commission requested the Reporter to send special invitations to testify at this hearing to landlord and tenant organizations, in addition to sending them press releases. The Commission decided to direct invitations and press releases to organizations and the media in Baltimore City, Baltimore County, and Anne Arundel County.

5. The Commission tentatively decided to hold a public hearing in the spring in the Montgomery County and Prince George's County areas; and another public hearing in the spring in the Harford County and Cecil County areas.

6. The Commission tentatively scheduled regular meetings in December, 1982 and January, 1983.

7. Mr. Snowden suggested that the Commission schedule meetings with the House and Senate Judiciary Committees to discuss the Commission's bills. The Commission approved Mr. Snowden's suggestion, but decided to wait until after the November elections before writing to the two committees to schedule these meetings.

8. The Commission approved Mr. Zerwitz's suggestion that the Commission write a column in the Daily Record answering landlord-tenant law questions. Such a column would be published approximately once a week. Mr. Zerwitz noted that readers of the Daily Record are primarily realtors and attorneys, but that a few tenants read the Daily record. It was noted that answers in such a column would have to be researched and drafted in a legal manner. It was noted that if there was a lack of suitable questions from readers, the Commission would have to decide upon and draft the questions to be answered in the column. After discussing whether the answers for such a column should be written by a subcommittee, the Commission voted to have the Reporter, in consultation with members of the Commission when appropriate, write the answers for the column. The Reporter was authorized to hire law students to do necessary research to assist him in writing answers for the column. Mr. Davison suggested if the Daily Record waived copyrights, the Commission could distribute to the public indexed compilations of these columns.

9. Mr. Laurent's letter with respect to leases containing invalid clauses was discussed. Ms. Waller said that she wasn't aware of any leases of the type discussed by Mr. Laurent in his letter. She said that ABOC and

other large landlords have had their leases reviewed by the Attorney General's office, which found nothing wrong with their leases. Ms. Martin-Smith noted, however, that a large number of leases in Prince George's County contain invalid clauses. Mr. Lenrow said, however, that based on his experience when working in the Attorney General's Office, he believed that Mr. Laurent's letter stated the truth. He said that some landlords buy ABOC's lease and change it by adding illegal lease clauses. The Commission agreed to Ms. Waller's suggestion that the Commission ask Frank Borgadine, the legal counsel for ABOC, to respond to Mr. Laurent's letter, and then, based on Mr. Borgadine's reply, decide whether a problem exists and what remedy, if any, is available if a problem exists.

10. Ms. Waller said that she had heard that the Governor had appointed some new members to the Commission. Mr. Jenkins said he had not been informed of any new appointments by the Governor's Office.

11. The meeting adjourned at 9:10 p.m.

Steven G. Davison
Reporter

SGD/sm

GOVERNOR'S LANDLORD-TENANT

LAWS STUDY COMMISSION

Minutes of Public Hearing

in War Memorial Building

in Baltimore on November 22, 1982

1. The public hearing began at 7:10 p.m. in the Paul C. Wolman Assembly Room in the War Memorial Building in Baltimore.

2. Present: Jenkins (chairman), Zerwitz, Asparagus, Meyerhoff, Martin-Smith, Dancy, Scriven, Snowden, Waller, Ackermann (quorum).

3. The first witness to testify was Kenneth Bosley, a landlord in Baltimore City who leases two units. He first proposed that tenants be required to register with a state agency so that tenants would have recognizable identification. He noted that landlords in Baltimore City are required to register with the City's housing department. He said that the reason for his proposal to require tenants to register and obtain identification is that some tenants use various different names and identities, making it difficult for landlords to serve process on them. If tenants were required to have a recognized type of identification, tenants, he asserted, could be made to fulfill their responsibilities. He noted problems with service of process when tenants leave the premises for a month, allowing friends (who can't be served with process for the tenant) to reside on the premises while they are away; when tenants refuse to accept registered mail from the Postal Service; and when tenants vacate the premises in the middle of the night. Mr. Bosley proposed that tenants be required to present a driver's license or Social Security card in order to obtain tenant's identification.

   Mr. Bosley also raised the problem of tenants or their friends who steal smoke detectors, which he said the City required him to install in his rental units. He questioned why tenants should not be required to install smoke detectors in their leased premises. Mr. Bosley alleged that stolen smoke detectors are sold "on the street" at a price well below their retail cost (e.g., $10 "street" price for a $30 retail smoke detector).

Mr. Bosley also noted that the City requires landlords to keep the streets in front of their rental apartments clean, thus requiring landlords to clean up litter caused by neighbors. He noted that he often has to clean up beer bottles fron neighborhood bars that are left as litter in front of his apartments. He suggested that bars and taverns should be required to clean up litter from their premises that are left in the neighborhood.

Finally, Mr. Bosley complained about damage done to rental buildings by the telephone company boring holes in walls and sides of the buildings when installing telephones. He said this is often done at the request of friends of a tenant, without the knowledge or approval of the landlord or tenant.

Mr. Scriven suggested that Mr. Bosley's problems with his tenants might be reduced through screening of potential tenant's through use of an application form and references or credit checks. Mr. Bosley replied that it was difficult for him to get tenants for his rental units because he was in an intermediate area with a high vacancy rate and consequently can't get applicants to pay an application fee. Mr. Bosley added that he checks his applicants, but that the personality of a tenant may change as a result of divorce, unemployment, or being jailed on criminal charges. He also noted that he doesn't get security deposits from his tenants; he said that with the economic situation he is lucky to receive rent when it is due.

Mr. Bosley said that he has problems with rats and mice on his premises when tenants don't put garbage in metal cans. He said that he will send tenants registered letters when such problems occur. He does not use leases for a term of a year, however.

Ms. Waller suggested that registration of tenants be limited to Baltimore City, rather than being done state-wide. Mr. Snowden argued that the cost of state-wide registration of tenants would be very high. Mr. Snowden said that requiring an application fee or doing a credit check on applicants would solve for most landlords many of the problems raised by Mr. Bosley.

Ms. Waller told Mr. Bosley that in rental complexes with 3 or less units, tenants, not the landlord, are required in Baltimore City to provide smoke detectors.

4. The next person to testify was Bucky Muth, Delegate-elect to the Maryland General Assembly from the 43rd legislative district in Baltimore City. Mr. Snowden told Mr. Muth that there was a need for a closer working relationship between the Commission and the General Assembly. Mr. Muth replied that many landlords have told him that there are many statutes protecting tenants, but that there is a need for statutes protecting landlords. He referred to the smoke detector

problem raised by Mr. Bosley; and the limitation on the recovery of damages by a landlord under §8-212 of the Real Property Article. Mr. Snowden stated that some problems brought to Mr. Muth's attention may be problems of only a few landlords, not of all landlords statewide. Ms. Asparagus said that some statutes protect both landlords and tenants.

5. Mr. Jenkins said that the Baltimore City Fire Department was checking rental units for smoke detectors. Mr. Jenkins said that there was a provision in the City Code for issuance of search warrants when entry is refused to firemen. Mr. Davison said that the Supreme Court has held that search warrants are required if entry is refused to firemen or other public officials seeking to make code enforcement inspections, but that such warrants could be issued on an area-wide basis, based on the condition of the area or the time since the last inspection, without a showing of probable cause in the criminal law sense.

6. Kenneth Webster then spoke on behalf of the Economic Opportunity Committee, submitting a written statement (copy attached). He noted that many unemployed persons could not make full rent payments, so that partial rent payments should be able to stay eviction. He also argued that when a landlord breached his obligations under the lease contract, such as by failing to provide heat to the premises, the landlord should forfeit a certain percentage of the rent if he takes an unreasonable amount of time to make emergency repairs. Mr. Scriven stated that Mr. Webster was making a good point, since the landlord can evict the tenant if the tenant doesn't pay the rent that is due. Mr. Davison noted that the language referred to by Mr. Webster in the third point in his written statement is in §8-203(f) of the Real Property Article (Security Deposits). Ms. Waller, in response to Mr. Webster's proposal that the 45 day period for returning a tenant's security deposit be reduced, noted that the time for return had originally been 30 days and later had been increased to 45 days. She noted that it is impossible to know the cost of damages to the premises until repairs are made, which may not occur until several weeks after the tenant leaves the premises. In response to Mr. Webster's fourth point, Mr. Meyerhoff noted that Baltimore City does pick up an evicted tenant's personal property and takes by truck to a storage warehouse. In response to Mr. Webster's first point, Mr. Meyerhoff noted that eviction for non-payment of rent doesn't take place until 50-60 days after suit is filed, at which time 2 or 3 months rent may be owed by the tenant. Consequently, he said that if Mr. Webster's proposal was adopted a landlord would never get all the rent that he was owed by a tenant. Ms. Martin-Smith said that she has had to intervene in many situations where tenants could not pay rent because of financial problems. She said that in many such situations, partial payment arrangements can be worked out with the landlord. But she said such arrangements have to be done on a case-by-case basis, rather than through legislation. Mr. Snowden pointed out that there will be increasing numbers of cases of tenants not paying rent on time as the economic situation continues or gets worse.

7. John Trotz then testified on behalf of Baltimore Neighborhoods, Inc. (BNI). He first referred to George Laurent's September 2, 1982 letter to the Commission with respect to leases containing prohibited lease clauses. Mr. Meyerhoff replied that according to Mr. Borgendien, APOC's counsel, APOC has no record of receiving copies of the leases referred to by Mr. Laurent in his September 2 letter. Mr. Meyerhoff noted that APOC has drafted a model lease that was reviewed approvingly by the Attorney General's Office. Mr. Trotz said that BNI has been essentially unsuccessful in eliminating prohibited clauses from leases. He suggested that voluntary efforts by landlords to eliminate prohibited lease clauses would be the best way to accomplish this, but he urged that the Commission should review leases submitted to it and publicize such a program.

Mr. Trotz also proposed that the rent escrow statute be amended so that it would apply to cover material breaches of a lease. He said that the most common complaints by tenants is not receiving facilities or services, such as air conditioning, that were promised to them in the lease and which they relied upon in signing their lease. He said such conditions, such as lack of air conditioning, often are not life threatening, so that they would notbe subject to the rent escrow statute. He noted that if the condition is not subject to the rent escrow statute, the tenant must continue to pay the full amount of rent even though the landlord is breaching the lease.

Mr. Trotz also urged that the retaliatory eviction statute be amended to provide greater protection to tenants. First, he urged that the statute be amended to protect tenants against retaliatory non-renewals of their leases; i.e., retaliatory eviction after a tenant's lease has expired. He also urged that the statute be amended to protect tenants who make oral complaints as well as tenants who make written complaints. He noted that landlords oppose this proposal because there would be no formal records of the tenant's complaint. But he noted that a court could determine if a tenant is lying, just as a court decides which witness to believe when witnesses disagree as to what the facts are. He noted that the written complaint requirement penalizes the many tenants who can't read or write or who don't know what the statute requires. Mr. Trotz argued that one retaliatory eviction in a complex can dissuade the rest of the tenants in the complex from taking advantage of the rent escrow statute. In response to a question from Mr. Scriven, Mr. Trotz said that he personally supported enactment of a good cause eviction statute, but did not know BNI's position on this issue. Mr. Scriven noted the difficulty a tenant has in proving that an eviction was for a retaliatory reason. Mr. Trotz drew an analogy to labor law, where the issue often is whether the termination of employment was because of an employee's union activities and the employer has the burden of showing that this was not the case.

8. Denise Slavin read a written statement (copy attached) on behalf of the Maryland Commission on Human Relations. In response to Ms. Waller, Ms. Slavin noted that §8-210 of the Real Property Article allows the owner of a rental complex to put his name and address in the lease rather than posting it on the premises, and that most landlords put this information at the end of their leases. She said that many applicants whose applications are rejected consequently will not know the name or address of the owner. Consequently, she proposed amending §8-210 to require that owners post their name and address on the premises and to remove the option of putting this information in leases rather than posting it on the premises.

   Ms. Slavin also discussed the problem of "Adults Only" complexes. She noted that some model statutes didn't totally prohibit Adults Only complexes, instead allowing landlords in a multi-building complex to designate one or two buildings in the complex for adults only.

   Ms. Slavin suggested that the Commission amend its model leases to include a statement with respect to Maryland's prohibitions on discrimination in the rental of housing. Mr. Davison suggested instead that these prohibitions be posted on the premises. Mr. Scriven noted that many tenants don't use written leases. Mr. Snowden noted that Ms. Slavin's written statement proposes that all landlords be required to use written leases.

9. Baltimore City Councilwoman Rikki Spector noted her concern for elderly and fixed income tenants with no rent subsidies. She volunteered to attempt to get the Baltimore City Council to lobby in Annapolis on behalf of Commission bills, and volunteered her services to lobby in Annapolis on behalf of the Commission's bills.

10. Baltimore City Councilman Tom Waxter, who submitted a written statement (copy attached) noted that in his northwest Baltimore district, there are a greater number of tenants than homeowners in his constituency. He noted that his district contains both very expensive and less expensive rental housing. He noted that although rent has been treated by the media as a "poor black issue," rent is an issue that cuts all the way across the board.

    He also noted the Fordly Apartments on Reisterstown Road, which he said primarily houses senior citizens, middle income tenants, and tenants of mixed race. He said these tenants are greatly concerned with security against crime. He noted that their leases did not address security measures such as lighting and locks. Concilman Waxter said that §8-211 of the Real Property Article (Rent Escrow) may not apply to inadequate security against crime. Mr. Davison noted that courts in other states have interpreted statutes similar to §8-211 as applying only to unsafe structural conditions but not to inadequate security against crime. Councilman Waxter noted that the Property Owners

Association have a mediation-type complaint service, but that Fordly Apartments doesn't belong to the Association. He suggested establishment of such a mediation service on a state-wide basis. Ms. Martin-Smith noted that Prince George's and Montgomery Counties Landlord-Tenant Commissions and Offices adjudicate disputes between landlords and tenants.

11. John McCauley, Deputy Commissioner of Baltimore City's Housing and Community Development Department, testified on behalf of Mayor Schaefer. Mr. Zerwitz asked him if the majority of problems raised at the hearing would be addressed by the housing code. Mr. McCauley responded that Baltimore City's sophisticated housing code enforcement program addresses many of the types of problems raised at the hearing. He said that he agreed with Councilman Waxter that mediation between landlords and tenants is a viable solution in a middle class miliea where there is a strong housing code.

Mr. Scriven noted that President Reagan may be easing standards for eviction of public housing tenants. Mr. McCauley noted that Baltimore City's public housing authority has a grievance procedure that works well as a type of mediation. He said that Baltimore City would not change its standards for eviction of public housing tenants even if the federal government eases its eviction standards.

12. Wendy Hinton of the Anne Arundel Coalition of Tenants said that she was there to report to Anne Arundel County Councilwoman Maureen Lamb, who would be submitting a written statement to the Commission.

13. The public hearing adjourned at 9:10 p.m.

Steven G. Davison
Commission Reporter

SGD/sm
Attachments

GOVERNOR'S LANDLORD-TENANT

LAWS STUDY COMMISSION

Minutes of Meeting

on January 11, 1983

1. Present: Jenkins (chairman), Tromley, Ciotola, Lenrow, Ackermann, Abrams, Dancy, Hinton, Snowden, Asparagus, Kalis (Quorum). The meeting began at 8:00 p.m.

2. Mr. Jenkins introduced three new members of the Commission who were recently appointed by the Governor: Y. Hillel Abrams, Wendy Hinton, and Jay Lenrow. Mr. Jenkins noted that the Commission now has 18 members, with one vacancy. He stated that the vacancy was for a tenant representative, and that the Governor's Office was looking for someone from the Hagerstown area to fill the vacancy.

3. Mr. Davison noted that the Real Property Code Revision Committee was looking for a Commission member to serve on the Committee. He noted that the Committee reviews proposed legislation that would amend the Real Property Article. He also noted that he had agreed with the Committee's chairman to have the Committee review the Commission's proposed legislation before it is submitted to the Governor's Office. The Commission appointed Mr. Lenrow to be the Commission's representative on the committee.

4. The Commission requested the chairman to arrange meetings with the chairmen of the Senate Judicial Proceedings Committee (slated to be Senator Mike Miller) and the House Judiciary Committee (Delegate Joseph Owens) to discuss the Commission's bills. The Commission appointed a subcommittee to meet with the chairmen, comprised of Mr. Jenkins, Ms. Tromley, Mr. Snowden, Mr. Lenrow and Mr. Abrams.

5. Mr. Davison noted that the Commission's bills were being introduced in the Senate and would be heard by the Senate Judicial Proceedings Committee, but had not yet been assigned bill numbers.

Mr. Snowden made a motion, which was seconded by Ms. Hinton, to have the Commission support the Human Relation Commission's bill that would authorize the Human Relations Commission to award damages in housing discrimination cases and to have the chairman or a person designated by him testify in support of the bill at the legislative hearing. Mr. Abrams argued that there was a similar federal legislation that is enforced by the Justice Department. Mr. Snowden stated, however, that no federal administrative agency is authorized to require a person to pay damages in housing discrimination cases to a person against whom he has discriminated. Ms. Asparagus noted that HUD has the authority to conciliate housing discrimination cases, but has to go to court to get an award of damages to a person who has been the victim of discrimination. Mr. Snowden noted that the Human Relations Commission presently has the authority to award damages in employment discrimination cases, but does not have such authority in housing discrimination cases. Mr. Snowden noted that if the bill was enacted, the Human Relations Commission would not have to file a court suit in order to obtain an award of damages in a housing discrimination case. Mr. Lenrow noted that it is the practice of the federal government to refer housing discrimination cases filed with the federal government to a local or state deferral agency for initial consideration, except for housing discrimination cases involving large numbers of persons. Mr. Lenrow noted that if the bill was enacted, the procedures governing the award of damages by the Human Relations Commission would be the procedures specified in the state Administrative Procedure Act. He noted that housing discrimination cases initially would be heard by a hearing examiner, with the hearing examiner's decision reviewed by the Commission. A landlord would have the right to judicial review of the Commission's decision; the court would review the Commission's decision based upon the administrative record, rather than holding a de novo hearing. Mr. Abrams noted that the bill would deny a landlord jury trial in a court and thus violated a landlord's right to a jury trial in housing discrimination cases. Other Commission members argued that the procedures that would govern the administrative award of damages in housing discrimination cases under the bill were typical procedures that are applied when administrative agencies exercise their authority and that such procedures have never been held to violate the constitutional right to a jury trial. The Commission approved Mr. Snowden's motion by a vote of 8 in favor, 4 opposed and 1 abstention. Mr. Davison said that he would contact the Human Relations Commission to learn the number of the bill and the date on which the hearing on the bill is scheduled.

Judge Ciotola recommended that the Commission appoint a subcommittee to review landlord-tenant bills introduced to the General Assembly and to make recommendations to the full Commission as to which of these

bills the Commission should support or oppose. Ms. Waller noted that if the Commission adopted this recommendation, the Commission would have to meet every 7 to 10 days during the legislative session because hearings on bills occur fairly frequently and because there is usually a short time between the date on which a hearing on a bill is scheduled and the date on which the hearing is held.

The Commission requested the Reporter to draft letters to each of the persons who testified at the Baltimore City public hearing, thanking them for appearing and testifying at the hearing and telling them that the Commission was in the process of considering the issues and proposals raised at the hearing.

The Commission decided to place on the agenda for the March 8 meeting the issues raised at the Baltimore City public hearing in which Commission members had expressed an interest.

4. The Commission next discussed agenda item #2 (lobbying on behalf of the Commission's bills before the General Assembly). The Commission approved the letter to members of the General Assembly that summarizes the Commission's five bills, but decided to have the chairman, rather than the Reporter, sign the bill. Mr. Jenkins said that he had contacted Senator Mike Miller (chairman of the Senate Judicial Proceedings Committee) and Delegate Joseph Owens (chairman of the House Judiciary Committee) to try to arrange meetings with them to discuss the Commission's bills.

Mr. Davison noted that the five bills had received numbers (SB264-268), but that hearing dates had not been scheduled for the bills.

5. The Commission discussed plans for a hearing in the Prince George's County-Montgomery County area. Ms. Martin-Smith said that the Prince George's County Landlord-Tenant Office was interested in participating in such a public hearing or at least presenting testimony at the hearing. She said that she had not proposed that the hearing be a joint hearing of the Office and the Commission. She also said that the Office was going to help her find a place for the public hearing to be held and would provide a list of landlords and tenants to be invited to testify at the public hearing. The Commission decided to schedule the public hearing for Wednesday, April 20, 1983. It was suggested that Hyattsville was a central location in Prince George's County and that a courtroom in the County Services Building in Hyattsville would be a good place to hold the public hearing. Mr. Ackermann suggested that an auditorium at one of the community colleges in the Largo area would be a good place to hold the public hearing. Ms. Martin-Smith said that members of the Prince George's County Landlord-Tenant Office had expressed an interest in having dinner with Commission members prior to the public hearing. The Commission approved this idea, and asked the Reporter to check with Irving Feinstein to see if the state would pay the cost of such a dinner, including the cost of dinners for members of the Office.

6. Mr. Lenrow made a motion to table discussion of Mr. Laurent's proposal (to have the Commission review leases to identify provisions that are prohibited) until the March meeting. This motion was seconded by Ms. Tromley and was passed by the Commission.

7. The Commission then approved several changes in both of the Commission's model leases. The Commission first approved Mr. Lenrow's motion to amend the line of paragraph 4 (Rent) of each model lease by adding the phrase "in advance" after "rent payment." The Commission also approved Ms. Waller's motions to change the date of approval of the leases to February 8, 1983 and the effective date of the leases (on the first page of the leases) to January 1, 1983; and to have the state delay publication of the model leases until after the 1983 Regular Session of the General Assembly so that any changes in the model leases required because of bills passed by the legislature could be incorporated into the model leases. The Commission also approved Mr. Snowden's motion to have the leases (when printed by the state) state on the first page where copies of the leases can be obtained. The Commission also approved Mr. Snowden's motion to amend each of the model leases by placing on their cover pages a statement as to the types of housing discrimination that are prohibited by Maryland.

8. The Commission voted to have Mr. Davison's landlord-tenant law column in the Daily Record reviewed in advance by Mr. Lenrow and Ms. Tromley as well as by Ms. Waller, Mr. Zerwitz and Mr. Jenkins. The Commission decided, however, to have Mr. Davison select the topics for the column.

9. Mr. Snowden noted that the Governor's Appointments Office was under the misconception that there were no vacancies on the Commission, when in fact there was one vacancy. Mr. Snowden noted that a person he had nominated to be appointed to the Commission (Pat Joyce, an attorney) had received a letter from the Governor's Office indicating that she could not be nominated because there was not a vacancy on the Commission. The chairman said that he would write a letter to the Governor's Appointments Secretary pointing out that there was a vacancy on the Commission and requesting that Pat Joyce be appointed to fill that vacancy.

10. The Commission voted to start future meetings at 7:30 p.m. rather than 7:45 p.m.

11. The meeting was adjourned at 9:20 p.m.

Steven G. Davison
Reporter

ssm

GOVERNOR'S LANDLORD-TENANT

LAWS STUDY COMMISSION

Minutes of Meeting

on February 8, 1983

1. Present: Jenkins (chairman), Abrams, Snowden, Hinton, Zerwitz, Waller, Lenrow, Ciotola, Martin-Smith, Dancy, Waller, Asparagus, Ackermann, Tromley (quorum). Also present was Ms. Adrith Clark from the Legal Aid Housing Bureau.

2. The meeting started at 7:55 p.m.

3. The Commission first discussed the issues raised at the Baltimore City public hearing held in November, 1982. The Commission went through each of 21 issues raised at the public hearing, and discussed those issues in which at least one Commission member expressed an interest.

   With respect to issue #3, it was noted that bills had been filed this session to raise the interest rates on security deposits from 4% to 5%.

   Ms. Martin-Smith expressed an interest in item #4, which was a proposal to prohibit putting the personal property of a tenant who has been evicted out on the street. It was noted that Baltimore City has a contract with Menick Co. that has Menick take the personal property of a tenant who is evicted that is on the premises at the time of a writ of execution is executed and place the property into storage. Mr. Davison said that he thought that this procedure is required by a public local law. The Commission requested Mr. Davison to obtain a copy of the City's contract with Menick and the public local law (if there is one) and distribute copies to the Commission's members.

   With respect to issue #5 (requiring posting of a management company's name and phone number on the premises, Mr. Davison noted that section 8-210 of the Real Property Article gives a landlord the option of placing this information in his leases or in rent receipts.

   With respect to issue #8 (adult-only restrictions), Ms. Waller noted that a bill addressing this issue has been introduced to the General Assembly.

6. Mr. Abrams moved that the Commission inform the Governor's Office, in writing, of the number of yea, nea and abstaining votes on bills when submitting the Commission's bills to the Governor. He also moved that the legislative committees hearing the Commission's bills be informed of the Commission's vote on the bills. This motion was approved.

7. Ms. Tromley moved that the Commission defer discussion of the issues raised at the Baltimore City public hearing until the February meeting, and that the Reporter prepare and distribute to Commission members a list of the proposals and issues raised at that hearing.

8. The Commission voted to send a brief summary of the Commission's bills to each member of the General Assembly. Ms. Asparagus said that her office would type envelopes addressed to each member of the General Assembly. The Commission requested the Reporter to draft a letter to members of the General Assembly that summarizes the Commission's bills. Mr. Snowden proposed that Commission members phone members of the General Assembly representing their district to discuss the Commission's bills, but Ms. Asparagus said that she would not have the time to do so. Mr. Snowden also suggested that the Commission arrange a meeting with Johnny Johnson to discuss having the Governor's lobbyists lobby on behalf of the Commission's bills, but the Commission decided that such a meeting would be futile because the Governor would not agree to have his lobbyists work on behalf of the Commission's bills.

9. The Commission appointed a subcommittee comprised of Mr. Jenkins, Ms. Hinton and Mr. Ackermann, to testify on behalf of the Commission's bills at legislative hearings.

10. The Commission voted to add the following items to the agenda for the February 8 meeting: (1) plans for a public hearing in the Prince George's County-Montgomery County area; (2) plans for the Commission's annual dinner meeting; (3) Mr. Laurent's proposal that the Commission review leases to identify prohibited lease provisions; and (4) whether the model leases should be amended.

11. The meeting adjourned at 9:15 p.m.

Steven Davison,
Reporter

ssm

GOVERNOR'S LANDLORD-TENANT

LAWS STUDY COMMISSION

Minutes of Meeting

On March 8, 1983

1. Present: Jenkins (chairman), Everngam, Snowden, Ackermann, Abrams, Lenrow, Ciotola, Waller, Martin-Smith (quorum). Ms. Elsie May Conen of Baltimore also attended the meeting.

2. The meeting started at 7:50 p.m.

3. It was announced that Neil Meyerhoff had resigned from the Commission.

4. Mr. Stollof's and Mr. Kalis' lack of attendance at most Commission meetings this fiscal year was noted. Some members suggested that the chairman send a letter to the Governor requesting that they be removed from the Commission and replaced by new members. Mr. Jenkins said that before he took such action, he would check the attendance records of Mr. Kalis and Mr. Stollof.

5. Mr. Davison noted that all five of the Commission's bills had been reported unfavorably by the Senate Judicial Proceedings Committee after a hearing on the bills on February 15. Mr. Davison noted that four of the bills did not receive even one favorable vote by a member of the Committee, while one of the bills received one vote in favor. It was noted that there were some persons who testified in opposition to several of the bills at the February 15 hearing, but that there were no witnesses testifying in opposition to several of the bills that received unfavorable reports. Mr. Davison noted that he had asked the Committee's counsel to give the Commission some feedback as to why the Commission's bills had been reported unfavorably, but that he had not received a reply.

The Commission then discussed ways in which they could lobby more effectively on behalf of Commission bills. Mr. Snowden suggested that the Commission hire a lobbyist to work on behalf of the Commission's bills. Several Commission members argued that the Governor would not approve the use of state funds for such a purpose. Mr. Davison noted that the Governor's office would have to approve a contract for a lobbyist. Mr. Abrams argued that landlord-tenant procedures vary around the state, and that this might be a reason

why the Commission's bills proposing uniform state-wide law were reported unfavorably. It was also suggested that the Commission's bills might receive more support if a member of the General Assembly was a member of the Commission. Judge Ciotola suggested that the Commission consider analyzing landlord-tenant bills that are introduced by members of the General Assembly and testifying in support of or opposition to such bills, rather than drafting and introducing its own bills. Mr. Lenrow and Ms. Waller noted that the Commission would have to meet once or twice a week during sessions of the General Assembly if the Commission decided to do so.

6. The Commission approved Mr. Snowden's motion to amend paragraph 9 of the minutes of the February 8, 1983 minutes by changing "Pat Joyce" to "Alan Legum."

7. The Commission voted to hold a public hearing from 7:30 - 9:30 p.m. on April 18, 1983, in Room 200 of the County Service Building in Hyattsville. The Commission also voted to hold a dinner meeting prior to this public hearing with members of the Prince George's County Landlord-Tenant Commission and staff of the Prince George's County Landlord-Tenant Office. The dinner was scheduled to be held at the Holiday Inn at 9137 Baltimore Boulevard, College Park, beginning at 6:00 p.m. on April 18. The Commission asked the Reporter to distribute press releases for the public hearing in Montgomery County and Prince George's County. The Commission also decided to charter a van to transport Commission members to and from Baltimore and College Park - Hyattsville on April 18 for the dinner meeting and public hearing.

8. Ms. Martin-Smith proposed that the Commission hold a landlord-tenant symposium in the fall of 1983, which would be open to landlords and tenants, groups and other members of the public. She suggested that attendees of such a symposium could discuss landlord-tenant issues in depth. Mr. Snowden suggested that such a symposium also could be a retreat for Commission members.

9. The Commission voted to hold a regular meeting in May, and the annual dinner meeting in June.

10. The meeting adjourned at 9:15 p.m.

Steven G. Davison
Reporter

SGD/sm

GOVERNOR'S LANDLORD-TENANT

LAWS STUDY COMMISSION

Minutes of Public Hearing

In County Service Building

In Hyattsville

On April 18, 1983

1. Present: Jenkins (chairman), Ciotola, Asparagus, Lenrow, Martin-Smith, Legum, Hinton, Snowden, Dancy, Abrams (quorum).

2. The hearing began at 7:50 p.m. and adjourned at 10:00 p.m.

3. The first witness to testify was Randy Jones of the Maryland Public Interest Research Group, located at the College Park campus of the University of Maryland. She said that her group operates a Tenant Hotline. She indicated that the vast majority of telephone calls to the hotline dealt with needed repairs. She said that most of the callers were from Prince George's and Montgomery Counties. She reported that one tenant caller said his lease had a clause which made the tenant responsible for repairs to the premises that cost under $50.00, with the landlord responsible only for the cost of repairs that exceeded $50.00. She said that the hotline had received complaints by three other tenants (two of whom were students) with similar lease provisions. She argued that there should be a statute requiring landlords to pay the costs of certain repairs (such as repairs to heating, plumbing and electrical systems). Ms. Jones noted that most students who are tenants are month-to-month tenants.

4. Diane Snowden, the Senior Investigator of the Montgomery County Office of Landlord-Tenant Affairs, then read a written statement on behalf of Charles Gilchrist, the Montgomery County Executive (copy enclosed).

   After she read this written statement, Mr. Snowden asked her, with respect to the pet proposal, how a landlord would know when a tenant's existing pet had died.

   With respect to her proposal with respect to §8-208.1, Mr. Legum argued that the six month cut-off provision protects a tenant from

eviction for six months after his complaint. He suggested that if the six month provision was repealed, a tenant might be given a notice to quit two or three months after he made a complaint. Mr. Snowden said that if the six month period was repealed, the reasons for each notice to quit in dispute would have to be investigated.

Ms. Snowden noted that Montgomery County does not believe that it has the authority to regulate the conversion of rental housing to cooperatives.

Ms. Hinton noted that a bill that would have amended the retaliatory eviction failed in the present session of the General Assembly.

With respect to Ms. Snowden's pet proposal, Mr. Abrams noted that her proposal would not prohibit a landlord from evicting a tenant with a pet at the end of the term of the tenant's lease. Mr. Lenrow said that her proposal would allow landlords to give a notice to quit to a tenant with pets, and that a "pet" bill would have to prohibit eviction of a tenant because he has a pet. Ms. Snowden noted that there was a problem with month-to-month tenants who have pets. Mr. Lenrow noted that a state statute prohibits discrimination against handicapped persons with pets.

5. The next persons to testify were Judith Heimlich, an attorney with Legal Aid in Prince George's County, and a tenant client of hers, Debra Wells. Ms. Wells said that her landlord had charged her excess late payment charges ($60.00 late charges when her $280.00 rent was paid late). She noted that her refrigerator had been leaking freon, and that her landlord attempted to evict her after she complained to him about the freon problem and about the excess late charges. She also said that more than $100.00 worth of food in the refrigerator in her rented apartment had been tainted by freon and ruined. She then refused to pay her rent because of the contamination. She noted that a judge, in her landlord's suit to collect her rent, has required her landlord to reimburse her for the cost of the food which was contaminated by the freon. Ms. Wells also noted that her landlord never gave her copies of her executed written lease and his rules and regulations, and had claimed in court that she had not executed a lease.

Ms. Heimlich noted that after the judge reduced Ms. Wells' rent in her landlord's rent suit, the landlord sent her a notice that her rent was late. Ms. Heimlich noted that Ms. Wells' landlord called his late charge "discounted rent" (i.e. rent was set at $280.00 if paid by the first of the month, but was $320.00 if paid after the first of the month.

Ms. Heimlich then raised a number of issues. First, she raised problems with respect to the retaliatory eviction statute (§8-208.1) (she referred to Ms. Wells receiving a notice to quit after she complained about her refrigerator). She noted that one judge, relying upon §8-208.1(f), has held that §8-208.1 does not protect month-to-month tenants, because under the common law a landlord is not required to give a month-to-month tenant a reason for giving him a notice to quit. Consequently, this judge held that §8-208.1(f) precluded him from examining why a landlord had given a month-to-month tenant a notice to quit. Ms. Heimlich also noted a case where two elderly tenants were afraid to complain to their landlord about high electrical bills (which they were required to pay in addition to rent), after the landlord converted their unit to an individual electrical meter. Ms. Heimlich argued that §8-208.1's written and certified mail notice requirements presented problems for tenants.

Ms. Heimlich also noted that the Prince George's County Code seems to prohibit retaliatory eviction of month-to-month tenants.

She also stated that Prince George's County District Court judges refer cases in which rent escrow defenses are raised by tenants to the Prince George's County Landlord-Tenant Commission, and then dismiss such cases. Mr. Davison noted that referral of such cases to the County Commission is authorized by §8-403 of the Real Property Article, but that §8-403 does not authorize dismissal of the suit after referral. Ms. Heimlich noted that District Court judges in Prince George's County refuse to take jurisdiction over cases based on the Prince George's County rent escrow ordinance, because they interpret §8-211(o) of the Real Property Article as barring state courts from taking jurisdiction over cases involving the Prince George's County rent escrow ordinance. Ms. Heimlich noted that such decisions were not appealed because tenants could not post appeal bonds.

Ms. Martin-Smith noted that the purpose of the Prince George's County landlord-tenant ordinance was to resolve landlord-tenant disputes without having to resort to the courts.

Ms. Heimlich also noted that Ms. Wells' landlord had sent her summonses to collect rent and late charges when the rent had in fact been paid. Ms. Heimlich stated that summonses also had been sent to Ms. Wells prior to the grace period for paying rent that was specified in Ms. Wells' lease, apparently in attempts to cut-off Ms. Wells' rights under the rent escrow and retaliatory eviction statutes and her right of redemption under §8-401. She noted, however, that some judges enter notations on the jackets of docket files when invalid summonses have been issued.

Ms. Heimlich also advocated that a good cause eviction statute be adopted. In addition, she criticized the requirement in the rent escrow statute that notice of defects be given by certified mail or by a housing code violation notice, noting that the retaliatory eviction statute only requires written notice. She suggested that the statute should be amended to require only proof of actual notice. She pointed out that most tenants don't think to send complaints by certified mail. She also advocated raising the interest that a landlord must pay a tenant on his security deposit (presently 4%).

6. Christine Doyle, a Legal Aid Attorney representing Montgomery County clients, discussed landlord-tenant problems faced by her clients. She noted that 6 - 8 times a year, she receives complaints about landlords threatening to evict tenants by self-help (in less than a day) without judicial process. She noted that these landlords ignore her threats of suits for damages by the tenant if the landlord engages in self-help eviction. She noted that when self-help eviction occurs, the evicted tenant's goods are often placed on the street and are then stolen. She proposed, as a deterrent against self-help eviction, a statute making a landlord who evicts a tenant by self-help liable for punitive damages of four times the tenant's rent in addition to compensatory (actual) damages. Judge Ciotola suggested that self-help eviction should be deterred by criminal penalties in addition to civil liability statutes.

Ms. Doyle also proposed that landlords be required to obtain and maintain a license. She also suggested that statutes should require landlords to inspect heating, plumbing and electrical systems and make them liable for damages to tenants when they fail to maintain such services. She noted, as an example of a situation that would be covered by such a statute, a case in which tenants were burned out of their apartments because the boiler exploded, and the landlord refused to reimburse the tenants for their losses. Ms. Doyle argued that if landlords were required to inspect such systems, they could be presumed to have notice of problems in such systems.

Judge Ciotola noted that sheriffs have no authority to stop self-help evictions by landlords. He noted that a landlord in Baltimore City who evicts a tenant by self-help is subject to criminal penalties (for breaking and entering and malicious destruction of property).

7. Charles Shyrock of the Prince George's County Landlord-Tenant office then read a written statement (copy attached). He noted, with respect to paragraph #1 of his statement, that corporations were claiming the exemption in question. With respect to paragraph #5 of the statement, he noted that the county required at least 24 hours written notice of entry, but that notices of entry often state that entry will occur sometime in the next 30 days and that the landlord will notify the tenant that he has entered the premises. With respect to security deposits, he proposed record-keeping or transfer-reporting requirements.

8. The next witness to testify was Michael Hardy, a member of the Prince George's County Landlord-Tenant Commission, who submitted a written statement (copy attached). He initially raised the problem of enforcement of the security deposit statute. He noted that §8-203 of the Real Property Article can be interpreted as exempting administrative agencies from the two year statutes of limitations and treble damages provisions of the statute. Mr. Hardy proposed that administrative agencies be given authority to enforce §8-203, with authority to award treble damages and attorneys' fees.

   Mr. Hardy also noted the issue of the respective jurisdiction of the courts and administrative agencies over landlord-tenant disputes. He said that the Prince George's County Code authorizes either the courts or administrative agencies to resolve such disputes. He raised issues of primary jurisdiction and exhaustion of administrative remedies under the ordinance. He also pointed out that the backlogs in judicial dockets give more jurisdiction to administrative agencies.

9. Mr. Shyrock noted that administrative agencies enforcing landlord-tenant ordinances face a shortage in resources. He said that Montgomery County has six inspectors but approximately 45,000 rental units. Ms. Snowden noted that Prince George's County has 1½ inspectors for 90,000 rental units.

10. An unidentified Prince George's County landlord complained about delays of up to two months in the county before suits to evict tenants for non-payment of rent are heard.

Steven G. Davison
Reporter

Attachments
SGD/sm

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION

Minutes of January 17, 1984 Meeting
Room 205, University of Baltimore Law School

1. Present: Jenkins (chairman), Ciotola, Martin-Smith, Ackerman, Hinton, Snowden, Dancy, Abrams (quorum).

2. The meeting began at 7:45 p.m. and adjourned at 9:30 p.m.

3. Chairman introduced the new Reporter, Michele Gilligan, Associate Professor, University of Baltimore Law School, 1420 North Charles Street, Baltimore, Maryland 21201. Her telephone number is 301-625-3121.

4. Chairman distributed Supplements to the Real Property Article of the Annotated Code. The Reporter will distribute the Supplement to those who were not present.

5. Chairman reviewed current membership on the Commission. Joan Asparagus, a tenant representative, has resigned and recommended Franzell Haywood to replace her. For nonattendance, the Chairman has requested the replacement of Michael Kalis, a landlord representative, Bill Scriven, a tenant representative, and Jack Stollof, a landlord representative. The Governor's Appointment Secretary has taken no action to date.

6. Chairman requested that the meeting days be changed for the balance of the Spring Semester to accommodate Professor Gilligan who has two night classes Tuesday night. At Ms. Martin-Smith's request, the meeting time will be at 7:30 p.m. All present agreed to meet in Room 205 of the Law Center on the second Wednesday of February, March, and April. Those dates are:

February 8	7:30 p.m.	L.C. 205
March 14	7:30 p.m.	L.C. 205
April 11	7:30 p.m.	L.C. 205

7. Chairman requested that any member with items for the agenda contact him two weeks before the meeting to put the items on the agenda. The agenda with parking passes will be mailed out one week before the meeting. If a member can not attend, the member should call and leave that message with Professor Gilligan's secretary. The number is 625-3121.

   Please note this is a policy change. It is now the member's responsibility to notify the Reporter if he will be unable to attend a meeting.

8. The Commission then addressed two prefiled bills before the legislature: Senate No. 99, An Act Concerning Public Assistance Recipients - Public Housing Tenants - Rent Reduction and Payments, and House No. 22, An Act Concerning Landlord and Tenant - Pets of Elderly Persons.

   Senate No. 99 authorizes deduction of rent for public housing from a tenant's public assistance grants before distribution of the grant to the tenant and disbursement of the withheld sum directly to the public housing authority.

   The discussion focused on the administrative problems inherent in the bill, the difficulty these tenants have getting repairs made, the adequacy of the current system to deal with the problem, the existence of approximately

1,500 public housing cases on the Baltimore City docket in a month involving rents of a small amount like $8.00, and the need to distinguish fairly between those tenants who meet their obligation and those who don't.

Motion was made by Judge Ciotola and seconded by Mr. Hinton to invite someone from Public Housing and someone from Social Services to our next meeting to discuss the need and effect of this bill. In favor - 7; Opposed 0.

House No. 22 allows an individual over 60 to keep a dog, cat, fish, or bird in his apartment if the animal was not forbidden in the original lease. In addition, the landlord cannot require the tenant to pay an additional fee for the pet greater than 25% of one month's rent.

The members observed that pets damage carpeting and hardwood floors, the smell bothers other tenants, some tenants are allergic to pets, the preamble of the bill was unreasonably broad, and pets have been found to be very therapeutic.

Motion by Mr. Abrams, seconded by Judge Ciotola, to take no action. In favor - 7; Opposed - 0.

9. Reporter requested that all members of the Commission, who have information on bills, please let her know since the information system she has is not as rapid as the informal network many of them have.

10. Ms. Martin-Smith presented the information she had collected on a workshop at Turf Valley. The Chairman appointed a subcommittee of Ms. Martin-Smith, Mr. Lenrow, and the Reporter to explore the idea more.

The meeting adjourned at 9:30 p.m.

Michele Gilligan
Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION

Minutes of February 8, 1984 Meeting
Rm. 205, University of Baltimore Law School

1. Present: Abrahms, Ackerman, Ciotola, Dancy, Legum, Lenrow, Martin-Smith, Snowden, Tromley, Waller, Zerwitz (quorum).

2. The meeting began at 7:40 p.m. and adjourned at 9:30 p.m. Neutral member Jay Lenrow acted as chairman.

3. The minutes from the previous meeting were reviewed. The current membership of the Commission is seventeen due to two resignations. In addition, the Chairman has requested three others who have not resigned but are inactive, be replaced. A quorum is nine members at current strength and the minutes incorrectly state a quorum exited at the last meeting.

4. The reporter passed Bregman and Everngam, Maryland Landlord-Tenant Law Practice and Procedure (Michie 1983) around, and explained that it had not been ordered and requested direction on whether it should be ordered at this time given budget constraints and deficiencies in the book. Motion by Mr. Ackerman, seconded by Ms. Waller, to order fourteen copies. In favor five, opposed two.

5. The reporter requested direction on whether the Commission wished to continue the Commission articles in the Daily Record. Motion by Ms. Waller, seconded by Ms. Tromley, to continue the articles. All in favor.

   The review committee for the articles will be Mr. Lenrow, Mr. Snowden, Ms. Tromley, Ms. Waller and Mr. Jenkins.

6. The reporter explained the budget situation as explained to her by Mr. Strief, Governor's Administrative Officer. The Commission does not per se have an individual budget, but is lumped with all the other Commissions. The total amount requested for all the Commissions is approximately what they spent the previous fiscal year.

   Last fiscal year, the Commission spent approximately $4,600. If the other Commissions have not already spent the money approximately that much is available to the Commission to spend by June 30, 1984.

   Although Mr. Strief did not have exact figures available, he thought the Commission had spent very little of that money.

7. The workshop to be sponsored by the Commission was extensively discussed.

   Motion by Mr. Snowden, seconded by Ms. Waller, that the Workshop be May 5 and 6, 1984, at Hunt Valley. All in favor.

   Motion by Judge Ciotola, seconded by Mr. Snowden, that the topics of the workshops would be:

1) leases and landlord and tenant responsibilities;
2) payment of rent directly out of social services checks;
3) housing discrimination - adults only, pets, handicapped;
4) rent control;
5) good cause eviction; and
6) housing the homeless;

and some flexibility would be permitted to the organizing subcommittee, Ms. Martin-Smith, Mr. Lenrow, and Ms. Gilligan in planning. All in favor.

Motion by Mr. Zerwitz, seconded by Judge Ciotola, to invite either Judge Janey or Judge Bell to speak at a Saturday night dinner. All in favor.

Several additional areas discussed and left to the subcommittee to decide upon:

1) obtaining continuing education credit for the program for real estate brokers;
2) inviting the Governor and other politicians to the wrap-up session on Sunday to review what was covered;
3) requiring stating of preferences on the registration forms;
4) charging a $5 registration fee for the sessions and an additional fee for dinner, overnight accommodations and the brunch wrap-up;
5) transportation from downtown Baltimore to Hunt Valley;
6) employing and paying law students to monitor the sessions and take notes on them.

8. Reporter ran through legislative update. Senate Bill 99 was unfavorably reported.

She then discussed the lagtime problems she suffers both getting the bill copies and then between meetings of the Commission. She will attempt to do a weekly mailing to inform members on the legislation.

9. Motion to adjourn by Mr. Snowden, seconded by Mr. Lenrow.

Michele Gilligan
Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION

Minutes of March 14, 1984 Meeting
Library Conference Room, University of Baltimore Law

1. Present: Ackerman, Ciotola, Hinton, Jenkins (Chairman), Begum, Lenrow, Snowden, Waller, Zerowitz. (quorum)

2. The meeting began at 7:40 p.m. and adjourned at 9:30 p.m. The reporter apologized for the confusion on the room.

3. Minutes from the previous meeting were received.

4. The agenda for the meeting was distributed. The Bregman and Everngam, Maryland Landlord-Tenant Law Practice and Procedure (Michie 1983) was distributed to those present.

5. The pamphlet on "Rent Escrow", published by the District Court headquarters, was distributed. Several inaccuracies were noted in the text. The Commission will not distribute the pamphlet.

6. The Chairman was notified by telephone by the Appointments Secretary of the Governor that four people had been appointed to the Commission. The Commission is short five members: three landlord members and two tenant members.

7. Topics for the Daily Record articles were suggessted:

   a. Explanation of time sharing;
   b. Review of conditions which warrant a rent escrow action and must be fixed immediately;
   c. Review of licenses and registrations necessary to rent housing;
   d. Update on ground rents since Judge Kaufman's article; and
   e. Common problems Baltimore Neighborhoods have received on their hotline.

8. The workshop to be sponsored by the Commission was extensively discussed.

The Chairman expressed his great appreciation of the work done by Ms. Martin-Smith, Ms. Tromley, Ms. Waller, and the reporter, and his regret that Ms. Martin-Smith was resigning from the sub-committee. The Committee then covered the items on the agenda.

Mailing

The envelopes representing the current mailing were circulated for corrections or deletions. The first mailing will be 125 people or

organizations. This is exclusive of press releases and any individual mailing Commissioners do.

Mr. Snowden suggested reaching more community associations by contacting Tom Davis, 396-3363, and Karcia Michaelick, 224-1821, for Anne Arundel Community groups.

Any additions to the mailing should be sent in writing to the reporter.

Location

The location of the Workshop was changed to the University of Baltimore School of Law because of the 2-3/4 hour time that meeting rooms would not be availabe at Hunt Valley.

No arrangements had been finalized on dinner, overnight accommodations or brunch. The Belvedere was the suggested location.

The Chairman reminded Commissioners that the Administrative Office of the Governor will not pay for overnight accommodations if the Commissioner travels less than 50 miles to the Workshop.

Continuing Education Credit for Real Estate Brokers

The Workshop has been approved for eight hours of credit by the Real Estate Commission.

Scholarships

Mr. Snowden requested the reporter clarify how the $25.00 cost for sessions and lunch was obtained. The reporter stated Hunt Valley was going to be $15.00 without lunch, and adding a $10.00 lunch made the cost $25.00. Ms. Hinton pointed out that the previous meeting's minutes suggested a low charge of $5.00 for the sessions.

The view was expressed that the cost of $25.00 for the sessions and lunch was too high to allow participation of some members of the public whose views on these topics are needed. Possible solutions offered were a waiver of all costs, a sliding scale to be administered by the reporter, ticketing for lunch and no charge for the sessions, and the same charge for everyone.

Motion by Mr. Lenrow, seconded by Mr. Ackerman, to amend the cover letter to permit senior citizens, full-time students, recipients of welfare or unemployment benefits, and handicapped to attend all of the sessions for $5.00. Four in favor, three opposed, two abstentions. Motion passed.

Clarification from the Chairman requested by Mr. Snowden on the requirements of a motion to rescind. A two-thirds vote is necessary. Motions by Mr. Snowden, seconded by Mr. Legum, to rescind prior motion. Three in favor. Motion failed.

Recording of Sessions

Commissioners expressed the view they did not want to fulfill that function, but wanted to be free to circulate between sessions. Ms. Waller volunteered to approach CJ about recording the sessions. The reporter was directed to see if University of Maryland law students have examinations as do University of Baltimore law students in order to use them to record the sessions.

Wrap-Up

The Chairman will run the wrap-up session at brunch on Sunday morning and the reporter will do the Lease session.

Special Guests

The Governor, Lieutenant-Governor, Comptroller, and Chairman of the House and Senate Judiciary Committees should be invited as guests. Everyone else should pay since it is too hard to draw a line.

All the panelists as well as Commission members will attend for no charge.

9. The reporter presented the following summary of legislative authority:

House of Delegates Bills

22	unfavorable report 1/31/84
504	hearing in Judiciary 2/08/84, no report
517	hearing in Judiciary 2/09/84, no report
845	hearing in Judiciary 3/07/84, no report
854	no action in Judiciary
878	hearing in Judiciary 3/07/84, no report
1,103	hearing in Judiciary 3/09/84, no report
1,245	hearing in Constitutional and Administrative at 1:00 p.m., 3/15/84
1,291	hearing in Judiciary 3/07/84, no report

Senate Bills

99	unfavorable report in Finance 1/31/84
209	unfavorable report in Judiciary Proceedings 2/28/84

530	hearing in Judicial Proceedings 2/23/84, no report
588	passed in House Constitution and Administrative law
596	passed in House Judiciary
930	unfavorable report in Judicial Proceedings 3/09/84
1,039	passed in House Judiciary
1,041	hearing in Judicial Proceedings 3/06/84, no report

Recognizing the problem of the speed with which the legislature acts during the session, the reporter noted other groups reviewing legislation meet more often than once a month.

Motion by Judge Ciotola, seconded by Mr. Lenrow, that in the future the Commission discuss whether to meet more frequently during the legislative session. All in favor.

The meeting adjourned at 9:30 p.m.

Michele Gilligan
Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION

Minutes of April 11, 1984 Meeting
Room 205, University of Baltimore Law School

1. Present: Jenkins (chairman), Abrams, Ackerman, Cohen, Harris, Hayward, Martin-Smith, Tromley, Zerwitz. (quorum)

2. The meeting began at 7:47 p.m. and adjourned at 9:15 p.m.

3. Chairman introduced and welcomed the new members to the Commission. The new members were Ms. Cohen, a tenant representative, Mr. Harris, a landlord representative, and Ms. Hayward, a tenant representative. Mr. Potaroff, a landlord representative, has also been appointed, but due to the short notice of the meeting was unable to attend.

That leaves a landlord representative vacancy. In addition, the Chairman informed the Commissioners that Mr. Everngam, a landlord representative, called to say he was resigning. The Chairman complimented Mr. Everngam on his contribution as the Commissioner with the longest tenure.

4. The Chairman reviewed the calendar for the next meeting dates and all present agreed to revert to meeting the second Tuesday of the month now that the reporter no longer has class. The following schedule has been agreed to:

May 6 - after the brunch
June 12 - a dinner meeting between Baltimore and Washington to be reported on at the May 6 meeting by the Chairman
July 10 - possibly on Mr. Zerwitz's boat
August 14 - University of Baltimore Law School, Room 205

5. Minutes of the last meeting were approved with correction that Ms. Martin-Smith had resigned as Chair of Subcommittee on the Workshop, but had not resigned from the Subcommittee.

Upon request, Ms. Martin-Smith explained that she had resigned as Chair of the Subcommittee because she felt that inadequate communications with her occurred before decisions were made.

6. The reporter reviewed what had occurred with regard to the Workshop. The following meals are arranged:

lunch - Overlea Caterers in the Academic Center
dinner - Engineering Society
brunch - Gourmet Caterering (in) Terrace Room of Belvedere

Overnight accommodations at the Belvedere are available.

All the panelists have been contacted by letter and thanked for their participation.

The registration so far is only ten.

7. The Commissioners expressed concern with the number of registrants and delegated to the Subcommittee and Chairman the authority to revise the schedule if necessary. A conference call at 5:00 p.m. on April 26, 1984, was to be made to determine what would occur.

8. The Chairman told the Commissioners that he was contacted about adding Nathaniel McFadden to the "Housing the Homeless" panel. This addition was agreed to.

9. The need for additional publicity was discussed. The Chairman indicated that he would contact CPHA, and Mr. Zerwitz, the Daily Record. Mr. Abrams expressed willingness to contact Channel 20, and Ms. Martin-Smith, Cable TV in Prince George's County.

10. The mechanics of the Workshop were discussed. The Commissioners will do registration and recording of the sessions. The Subcommittee will make the assignments.

11. The Chairman expressed his satisfaction with the Bregnam & Everngam book, Maryland Landlord-Tenant Law Practice and Procedure, which was distributed to Mr. Harris, Ms. Martin-Smith, Ms. Tromley, and Mr. Abrams. The Annotated Code was given to Mr. Harris.

12. The reporter promised a legislative review for the next meeting.

13. Mr. Abrams moved to adjourn, seconded by Mr. Ackerman.

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
Brunch Wrap-up May 6, 1984
Terrace Room, Belvedere Hotel

1. All the sessions were taped. Ms. Martin-Smith is going to have those sessions transcribed.

2. Once transcribed, those sessions will be discussed in a column in the Daily Record and other papers.

3. The Commission members present were pleased at the response and plan to do a similar workshop next year in another part of the state.

4. The Good Cause Eviction session showed the clearly divided sides on the issue. Landlord sympathizers maintain that such legislation makes it harder to evict bad tenants. Tenant sympathizers maintain such legislation fosters security of tenure in the property and this interests causes the tenants to take better care of the property. Public housing basically has good cause eviction. One of the problems with this is, for example, if Section 8 housing is involved in court, an official Section 8 letter stating the tenant is not complying with the lease will act as evidence for the tenant's eviction, but a notarized statement of surrounding tenants will not. Those tenants must then come down to court to testify.

5. The Housing Discrimination session arrived at several consensi:

   A. Legislation in this area should be on new construction. Existing construction is too costly to convert in many cases.

   B. Public service departments like the fire department and the police department should have a record of where handicapped tenants are located within a building.

   C. The moderator did an excellent job of controlling discussion and the two panelists had good knowledge of the problems, laws, and proposed legislative solutions.

6. The Landlord and Tenant Rights and Obligations received mixed reviews. Although conceived as a review of existing law, there was some question that it might have been too technical. Also there was so much to cover that all of it couldn't be covered.

   If a coverage of the existing law is desired in the future, the Reporter suggests that instead of a panel format, a lecture by one person would better accomplish that purpose.

7. The Housing the Homeless session was very educational in defining the problems. It is necessary to first build a community consensus that this is a community problem. Communities don't want to recognize the role they must play if the human needs of the homeless are to be met.

The homeless are not bad neighbors. Shelters for them have no problem getting property or personal liability insurance because historically, they make no claims.

To meet the problem, it must be made a priority item and money devoted to it.

8. The panel in Rent Control gaved the history of Rent Control, how it has been challenged in court, and the nature of a landlord's interest in investment property. Once the discussion was opened to the audience, it was clear that the sides are drawn on this issue.

Landlord sympathizers point out that from an investor's point of view it leads to abandonment and poor upkeep. Also, when it is in place a landlord feels he must take the allotted increase each time since he is not sure what the future holds.

Tenant sympathizers point out increases are more than their salaries permit, and they need some certainty in planning their futures.

9. All thought Judge Bell's speech was well prepared and excellent. He suggested instead of trying the same solutions to the same problems that some new solutions be tried.

Michele Gilligan
Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
Minutes of May 6, 1984 Meeting
Terrace Room, Belvedere Hotel

1. Present: Jenkins (chairman), Ciotola, Martin-Smith, Waller, Zerwitz. (no quorum).

2. The meeting began at 9:45 a.m. and adjourned at 10:00 a.m.

3. The Chairman determined that the expense of the Workshop foreclosed a dinner meeting in June. The May 5 Workshop dinner at the Chesapeake Restaurant would take its place.

4. Mr. Zerwitz's boat will not be at the Inner Harbor in July so the Commission meeting cannot be held on it.

5. The schedule of Commission meetings is revised to show the following:

   June 12 - University of Baltimore School of Law, Room 213

   July 10 - University of Baltimore School of Law, Room 213

   August 14 - University of Baltimore School of Law, Room 205
   (Reporter will be out of town)

6. Judge Ciotola expressed his thanks to everyone who worked hard on the Workshop and commented how well it had gone.

7. The Chairman expressed his pleasure with the well prepared articulate speech Judge Bell presented on "Status of Landlord-Tenant Relations."

8. Meeting adjourned to conduct wrap-up.

Michele Gilligan
Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
Minutes of August 21, 1984 Meeting
Room 205, University of Baltimore

1. Present: Jenkins (chairman), Ackerman, Cohen, Dancy, Harris, Waller, Zerwitz (no quorum).

2. The meeting began at 7:45 p.m. and adjourned at 9:30 p.m.

3. The lack of a quorum was noted and the reporter related that Mr. Abrams, Judge Ciotola, Mr. Lenrow, and Ms. Martin-Smith did contact her as requested in the notice of the meeting. Agreement was reached to move the meeting to the State Department of Transportation to see if that improved attendance.

4. The members present discussed what to do with the transcripts of the May Workshop. They decided to accept Ms. Martin-Smith's proposal to turn the transcripts into reports to be sent to the Governor with Commission recommendations.

The procedure agreed upon was: 1) to assign one commissioner for each session; 2) that commissioner would obtain the transcript of the session from Ms. Martin-Smith; 3) the transcript would be turned into a draft report; 4) the draft would be circulated and approved by all the Commission; 5) the approved final report would be sent to the Governor.

The following agreed to do drafts:

Mr. Harris - Good Cause Eviction

Ms. Dancy - Housing Discrimination

Mr. Ackerman - Rent Control

Ms. Waller - Housing the Homeless

Ms. Gilligan - Landlord-Tenant Rights and Obligations

5. Mr. Harris introduced the topic of the inconsistency of how the counties deal with "white slips" or emergency grants. Mr. Zerwitz expounded the discussion to suggest that it would be useful to have commissioners attend court in each county to observe what is actually done and suggest standardized procedures. Mr. Ackerman pointed out that not only are the procedures not standardized but the personnel are funded differently with different accountability, i.e., elected sheriffs vs. constables. Ms. Waller returning to Mr. Harris' concern suggested changing the complaint form to permit whatever proof DSS needs to be on the form. Ms. Dancy thought a judgment was needed under the emergency grants law. A consensus of those present was reached to consider making a meeting with all the judges about procedure this year's objective.

Michele Gilligan
Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
Minutes of September 11, 1984 Meeting
Board Room, State Department of Transportation
BWI Airport

1. Present: Jenkins (chairman), Abrams, Ackerman, Dancy, Harris, Hayward, Hutchinson, Legum, Lenrow, Martin-Smith, Snowden, Waller, Zerwitz (quorum).

2. The meeting began at 7:45 p.m. and adjourned at 9:15 p.m.

3. The minutes of the last meeting were approved with the change that Mr. Snowden did contact the Reporter prior to the last meeting.

4. The Chairman expressed his appreciation of the use of the Board Room of the State Department of Transportation for the Commission's monthly meetings.

5. The Chairman passed the record of past attendance for the members to check. He told Commissioners about his efforts to bring the Commission to full strength.

6. The letter from the consultant for Cable Television was discussed. Commissioners raised questions about compensation for landlords under their proposal, about problems like those foreseen in condominiums where one system is installed and an individual owner may demand another, about an individual's right to receive cable television if no right to receive basic television signals exist, and about the propriety of giving cable television the same status as a public utility.

   Motion by Mr. Abrams, seconded by Mr. Snowden, to invite the consultant to make a presentation at the next Commission meeting. Passed.

7. The transcripts of the May Workshops were handed out by Ms. Martin-Smith. It was agreed that those doing the initial drafts for the Commission to study should have those drafts done by November 1 and get them to the Reporter so she can have them xeroxed for the November 13 meeting.

8. The problem of unified court procedure especially with regard to emergency grants was discussed. The Reporter explained that the statute contained no requirement for a court order, however, the Department of Social Services regulations under the statute did require a court order.

   Mr. Harris expressed Judge Ciotola's desire to be present for any discussion of court procedure and his inability to attend the meeting because of short notice.

   The discussion on emergency grants raised the inconvenience to the tenant of having to stand in line, the difference in procedure between counties where judges hear the cases and those where clerks hear them, the function of the judge in finding the amount due, and the idea the complaint should be enough.

Motion by Ms. Waller, seconded by Mr. Snowden, to invite the head of the Department of Social Services to a Commission meeting to discuss the procedure. Passed.

After the discussion of emergency grants, the Commissioners discussed the possibility of a Judges Workshop.

9. Commission's role in the upcoming legislative session was discussed. Reporter requested that the Commission devise a more workable system than last year. Last year only two bills were prefiled; the rest were filed during the session. Often a bill was filed and its hearing held between meetings of the Commission.

Commissioners discussed having special meetings called before hearings to discuss the Commission's position on a bill, meeting more frequently during the legislative session, hiring a lobbyist to present Commission views which would be formulated prior to the session and prior to consideration of any specific bills, having the Reporter keep each member informed of all bills and hearings, and the Commission's lack of success in recent years getting legislation passed.

Motion by Mr. Snowden, seconded by Ms. Martin-Smith, to invite Delegate Owens and Senator Miller to separate meetings of the Commission to discuss their views. Passed.

10. Motion by Mr. Snowden, seconded by Mr. Zerwitz, to eliminate the July and August meetings of the Commission. Passed.

The meeting adjourned at 9:15 p.m.

Michele Gilligan
Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
Minutes of October 9, 1984 Meeting
Board Room, State Department of Transportation
BWI Airport

1. Present: Jenkins (chairman), Abrams, Cohen, Harris, Legum, Polakoff and Snowden (no quorum).

2. The meeting began at 7:50 p.m. and adjourned at 8:30 p.m.

3. Mr. Ross, Policial Consultant for Cable Television spoke to the Commissioners. He would like the Commission to propose legislation to permit access to residential rental property by the Cable Television industry. The form of the legislation was not suggested although he referred to the condominium legislation passed last term.

   The discussion raised questions about what would happen to the cables if the company lost its franchise, what compensation the landlord was entitled to for the intrusion, what would be cable's interrelation with satellite dishes, what level of government should regulate this question and what made this more than a contractual matter between private parties.

   Mr. Ross pointed out in his discussion that 20% of the channels are public access. In addition, if cable is to carry civil defense information then at least 40% of the households must be covered. Nine states have statutes on access and once the local government decides to grant a franchise then access should be provided.

4. The Chairman announced the appointment of Douglas Bregman to the Commission. One vacancy remains.

5. Department of Social Services is sending a representative to the November 13 meeting to discuss white slips.

6. Mr. Snowden recommended that we reduce the quorum to conduct business.

7. Meeting adjourned at 8:30 p.m.

Michele Gilligan
Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
Minutes of November 13, 1984 Meeting
Board Room, State Department of Transportation
BWI Airport

1. Present: Jenkins (chairman), Bregman, Ciotola, Cohen, Harris, Hanson, Legum, Waller, and Zerwitz (quorum).

2. The meeting began at 7:45 p.m. and adjourned at 9:30 p.m.

3. Department of Human Resources Secretary Ruth Massinga sent two representatives to address the Department position on white slips for emergency assistance grants. The two representatives were: Mrs. Gladyce Harris, Supervisor of the Baltimore City Emergency Assistance Unit and Mr. Terry Bolger, Income Maintenance Policy Specialist for the State Emergency Assistance Program.

The Chairman asked Judge Ciotola to explain the problem the Commission saw to the Secretary's representatives. Judge Ciotola explained that only 10% to 12% of the applications for emergency grants were contested as to amount, nonetheless all applicants had to come to court and wait in line to appear in front of a judge to get their white slip for an emergency grant. The long lines which resulted caused the applicants to miss work and backed the courts up which were already laboring with a five day trial rule in Baltimore City.

Mr. Zerwitz and Ms. Waller pointed out that there seemed to be no uniformity in how the different counties handled the problem. Ms. Waller thought in Baltimore County there was no need to go to court to get an emergency grant.

The Reporter pointed out that the statute creating the emergency grants set no procedure for distributing the money; the regulations implementing the statutes, however, required a judgment of possession against an applicant for the individual to receive an emergency grant.

Ms. Harris pointed out that the white slips started in 1975 in Baltimore City, and were supposed to simplify the procedure for getting a grant. The white slip was attached to the complaint and satisfied the requirement for a court order. It was not used elsewhere in the state.

Mr. Bolger delivered Secretary Massinga's regrets that she could not be present. He also cited the following statistics:

The emergency grants program represented large sums of money: $4 million for the eviction prevention program and $2 million for the emergency assistance program, in fiscal 1983, $3.6 million and $4.2 million were allocated, 20,000 individuals were given emergency grants for an average of $177 per person.

The department is torn because they are mandated to deliver funds as quickly as possible, but these are public funds which need verification before they are spent and the court order provides that verification; form 40 is not enough because anyone can purchase and fill it out. Difference between counties is due to volume. In December of the last fiscal year, Baltimore City had 1,216, Prince George's 169, Baltimore County 93, Anne Arundel 42, and Montgomery 18. Other than Baltimore City, judge signs CV 40 green or yellow copy, puts a social service notation on judgment to alert sheriff and gives

the green or yellow copy to tenant to take to Social Services. This is an appropriate use of the court to protect the funds. All emergency grant checks are in two names: landlord and tenant.

Since the problem was perceived to be primarily a Baltimore City one, the Chair appointed a subcommittee of Mr. Harris, Mr. Bregman, Judge Ciotola and Ms. Tromley, Chair, to look into the problem and meet with the Department of Human Resources to suggest a solution.

4. The Chair introduced the new member of the Commission, Douglas Bregman, Esquire, who co-authored the landlord-tenant book on Maryland law, and welcomed him to the Commission.

5. The Chair tendered his resignation effective at the January 8th meeting. He expressed his regrets, but felt nine years as a volunteer is a long time.

6. The need for an acting Chair until the Governor appoints a new one was discussed. There have been only three Chairs in the fourteen year history of the Commission; Judge Silver was the original Chair, then Bill Sallow and the current Chair. Traditionally, the Chair is a neutral. Jay Lenrow was suggested as the Acting Chair until the Governor acts.

7. Delegate Owens and Senator Miller have not responded. Mr. Bregman will contact Senator Miller to set-up a meeting, and the Reporter will contact Delegate Owens when the Acting Chair has been appointed.

8. The December 11 meeting was cancelled and the next meeting of the Commission will be January 8 at BWI. This will be the Chair's last meeting.

9. The Cable Television proposal was discussed and the Commission decided to take no action at this time. The Reporter was directed to write a thank-you letter to that effect to Mr. Ross.

10. The outlines from the May Workshop were collected. Only Mr. Harris had completed his. They will be discussed at the next meeting.

11. Lack of uniformity of court procedures in the different districts was discussed. Lack of uniformity is not per se bad. Mr. Bregman pointed out he had done a survey of courts for his book. He recommended that a checklist of things be sent to the Clerks and better response would be achieved by a checklist.

Judge Ciotola suggested that we contact the Administrative Clerk in twelve districts to find out the information the Commission wishes. He thought the Commission should decide on what they wish to accomplish -- perhaps a book on procedure. Mr. Bregman offered to help design a questionnaire.

Judge Ciotola also suggested contacting Judge Inverness and tell him the Commission wished to give in-put on the revision of the Landlord-Tenant rules.

12. The question of how to deal with legislation was again explored. It was suggested that the Reporter mail bills to the Commissioners and if they wanted the Commission to act, they would call the Reporter to schedule a meeting on the bill. A majority of the Commissioners had to request a meeting for one to be held.

The meeting adjourned at 9:30 p.m.

Michele Gilligan
Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
Minutes of January 8, 1985 Meeting
Board Room, State Department of Transportation
BWI Airport

1. Present: Ackerman, Bregman, Ciotola, Harris, Hayward, Jenkins (resigned), Legum, Lenrow (acting chairman), Martin-Smith, Snowden, Waller (quorum).

2. The meeting began at 7:45 p.m. and adjourned at 9:20 p.m.

3. The meeting opened with a discussion of who should be the acting chair of the Commission until the Governor acts. Traditionally, the position is held by a neutral member. This is custom based on a consensus that appointment of a neutral chair will not distort the Commission voice.

Judge Ciotola nominated Mr. Lenrow and the nomination was seconded by Ms. Waller. Mr. Lenrow was elected Acting Chairman by acclamation.

Judge Ciotola recommended that at a later meeting the Commission discuss rotating the Chair and having the power to appoint the Chair be retained by the Commission. A member could be Chair for one or two years, avoid burn-out and contribute unique skills to the Commission.

4. The minutes of the previous meeting were approved.

5. The future meetings with the Chairman of the House Judiciary and Senate Judicial Proceedings were discussed. Senator Miller responded that after the current session he would be happy to meet with us since the Commission is not proposing any legislation this session. The Reporter did not contact Delegate Owens. Mr. Bregman indicated Senator Miller would meet with us but Senator Hoffman on the Committee would also meet with us.

The possibility of having a May dinner meeting to which all legislators on those Committees would be invited was explored. Since Study Groups work on legislation over the Summer, this was thought to be a good idea. Ms. Waller pointed out that the Department of Transportation gets a special rate and the food is good if we had the meeting at BWI.

6. The need to reduce the quorum to conduct business was discussed. The arguments against reducing the quorum was that a small number could control the Commission and if this happened, the Commission would not be serving the public.

The possibility of a proxy was raised, but such a move was argued to create more problems than it solved because the limits of authority under a proxy are often unclear.

Voting by telephone was raised but it created logistic difficulties.

Motion by Mr. Bregman, seconded by Mr. Harris and Ms. Martin-Smith to reduce the quorum to 40% of the current members. Passed 5 in favor, 4 against, 1 abstention.

As a policy matter, the Acting Chairman Lenrow will exercise his prerogative to hold over matters to allow full Commission to review them. Mr. Bregman pointed out if the Commission is dissatisfied it can always change the quorum again.

7. The Commission next discussed attendance and the policy on excused and unexcused absences. Ms. Martin-Smith pointed out the inconvenience of driving up to a meeting and not finding a quorum. Judge Ciotola cautioned that the Chair should not freely give excused absences. It was suggested that the Reporter write to a Commissioner after three unexcused absences and ask for their resignation.

Motion by Mr. Ackerman, seconded by Judge Ciotola, Ms. Waller:

MARYLAND LANDLORD/TENANT LAW STUDY COMMISSION

> If a member of this Commission fails to attend at least fifty percent (50%) of the meetings each calendar year, that person's resignation from this Commission shall, for the purposes of this Commission, be deemed to have been tendered and accepted, and a recommendation to this effect should be forwarded to the Governor; provided, however, that the Chair shall have the discretion to excuse Members from this attendance requirement upon the showing of good cause.

Passed 9 in favor, 1 abstention.

8. The Chair of the Subcommittee on White Slips was absent. The Chair had not contacted all members of the Subcommittee. The Reporter was directed to write the Chair and ask her to report at the next meeting.

9. Ms. Martin-Smith raised the nonpayment of Diane Swann. The Reporter said she would call Robin Urbenski to see if a bill was received for Ms. Swann's services.

10. Mr. Bregman and the Reporter agreed to confer on the questionnaire on district court process by the next meeting.

11. Motion by Mr. Snowden, seconded by Ms. Waller to hire someone to pull legislation and send it to the Reporter. 9 in favor.

12. Acting Chairman Lenrow thanked past Chairman Jenkins for his many years of service to the Commission and presented him with a Proclamation from the Governor. Ms. Martin-Smith made a motion to invite Mr. Jenkins to the annual meeting, it was seconded by a chorus and approved by acclamation.

The meeting adjourned to the International Hotel.

Michele Gilligan
Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
Minutes of February 12, 1985 Meeting
Board Room, State Department of Transportation
BWI Airport

1. Present: Abrams, Ackerman, Bregman, Cohen, Harris, Hayward, Lenrow (acting chairman), Tromley (quorum).

2. The meeting began at 7:45 p.m. and adjourned at 9:30 p.m.

3. The motion by Mr. Ackerman, seconded by Ms. Tromley, to approve minutes passed.

4. The Commission meeting time was discussed. Several Commissioners expressed the desire to have food at the meetings. The Chairman and Reporter agreed to look into the possibility of having food.

5. Ms. Tromley presented White Slip Committee report. The White Slip, which is used in Baltimore City to obtain an emergency grant to avoid eviction, is a problem unique to Baltimore City. Baltimore City just has a much greater volume of cases than any of the other jurisdictions.

The Comar regulations require a judgment of possession against a tenant before emergency assistance can be obtained. The subcommittee is seeking a way to avoid requiring the tenant to miss work and come to court to get the White Slip which DSS uses as proof of a judgment possession against the tenant.

In other counties, Mr. Abrams pointed out, the tenant must come to court and have a judgment of possession entered against them. Baltimore City seems to be circumventing Judge Sweeney's requirement each case be called by allowing the tenants to obtain a White Slip from the Clerk and consenting to default judgment before the judge is on the bench.

Mr. Bregman endorsed the Comar regulation requiring a judgment of possession because a tenant may, between the date the rent is due and the court hearing date, obtain the money necessary to pay the rent and may have defenses to the action for rent.

Several suggestions were made to deal with the Baltimore City problem: a notice could be included by the court that the tenant did not need to appear if they are seeking emergency assistance by DSS, whatever language was used could be approved by the Attorney General's Office before used, tenants could obtain a social service eligibility letter and those tenants would be dealt with first.

Motion by Ms. Tromley, seconded by Mr. Harris to table further discussion of the problem until Judge Ciotola's views could be obtained. Passed, 7 in favor.

6. Mr. Bregman presented a draft of the questionnaire he used in his book. It will be circulated to all members of the Commission for comment. Before sending it out, the Acting Chairman will contact Judge Sweeney and seek his comments on it. The questionnaire will be discussed at the next meeting.

7. Problem of effective voice in pending legislation was discussed. Since studying the laws was the role of the Commission some effort must be made to provide a role in the process. Thrashing out the problem of the short turn around time the Commission decided to try a polling system.

Motion by Mr. Ackerman, seconded by Mr. Harris:

> With each bill each Commissioner will receive a poll on which they will check whether they support, oppose or have no comment on the bill. Space will be provided to comment on the bill if desired. If a majority of the current members of the Commission respond within the time limit set in the poll, and a majority of those responding take one position on the bill, the Reporter will send a letter to the appropriate Committee stating the results of the poll and any comments made on that bill by the Commissioner.

Passed, 7 in favor.

8. The meeting adjourned to the International Hotel.

Michele Gilligan
Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
Minutes of March 12, 1985 Meeting
Board Room, State Department of Transportation
BWI Airport

1. Present: Ackerman, Bregman, Ciotola, Cohen, Harris, (Hayward called and requested an excused absence), Legum, Lenrow (acting chairman), Smith, Snowden, Tromley, Waller, Zerwitz (quorum).

2. Sandwiches were available.

3. The meeting began at 7:45 p.m. and adjourned at 9:35 p.m.

4. The motion by Mr. Ackerman, seconded by Mr. Legum, to approve the minutes passed.

5. The polling procedure was discussed. For none of the three polls had a majority of the members of the Commission responded. Ms. Waller expressed the desire to send in what was received. Mr. Bregman expressed disappointment that the Commissioners did not take the time to send in the polls. Mr. Zerwitz felt that as the procedure became familiar, more Commissioners will do it and it should be retained. The discussion ended with no motion to change the existing procedure.

6. The meeting time was again raised because food would be provided. Motion by Mr. Harris, seconded by Ms. Waller, to have the food available at 7:15 p.m. and the meeting at 7:30 p.m. Passed.

7. The Acting Chair led a discussion on the direction of the Commission. Some members felt that the Commission should again be active in drafting legislation; its charge was the study of the landlord-tenant laws. Much of the Real Property article could be improved.

   Several members discussed the history of the Commission. It has gone through peaks and valleys but has effected legislation, drafted model leases, held public hearings and a workshop.

   Two possible directions for the Commission is to become involved in Code Revision Commission and to place members on the subcommittee of the Rules Committee dealing with landlord-tenant laws.

   Other Commissioners felt the Chair should provide leadership and not leave projects hanging like the model leases. The Reporter's role also should be re-evaluated and possibly restructured.

   Motion by Ms. Waller, seconded by Mr. Bregman, to contact Julia M. Freit, Reporter, Rules Committee, and request appointment of several members of the Commission to the Subcommittee on Landlord-Tenants Rules passed unanimously.

8. The Subcommittee on White Slips reported. Ms. Tromley outlined the type of notice that the Subcommittee thought could be attached to the complaint and summons. Judge Ciotola expressed the view that such a notice would be dangerous. The regulation has to be changed.

The Acting Chair appointed Mr. Snowden (chair), Ms. Tromley, Judge Ciotola and Mr. Zerwitz to a subcommittee to come up with a better approach -- probably to suggest a change in the regulation.

9. A time table for the survey of administrative judges of the district court and the content of the survey was left for the next meeting. The Acting Chair appointed Mr. Bregman and Mr. Legum to bring a proposal before the Commission at the next meeting.

Michele Gilligan
Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
Minutes of April 9, 1985 Meeting
Board Room, State Department of Transportation
BWI Airport

1. Present: Abrahms, Ackerman, Bregman, Ciotola, Cohen, Harris, Hayward, Legum, Lenrow (acting chairman), Snowden, Waller, Zerwitz (quorum). [Excused absences: Martin-Smith and Tromley.]

2. Sandwiches were available at 7:15 p.m..

3. The meeting began at 7:45 p.m. and adjourned at 9:25 p.m.

4. The motion to approve the minutes, made by Ms. Waller, seconded by Mr. Snowden, was approved.

5. Reporter announced that an insufficient number of Commissioners responded to the polls. Therefore, none of the results were submitted to the Legislature.

6. Acting Chairman Lenrow announced the Governor's appointment of Judge Ciotola as Chairman of the Commission.

Mr. Lenrow reviewed his history with the Commission, expressed regret that the Governor never notified him directly of his intention to appoint a different Chairman nor returned his telephone calls, and indicated his intention to resign.

The members of the Commission expressed their support of Mr. Lenrow and disappointment in the treatment of him.

Motion by Mr. Bregman, seconded by Ms. Waller and Mr. Ackerman, to make Mr. Lenrow vice-chair. Passed.

7. Report of the Subcommittee on Emergency Grants by its Chair, Mr. Snowden. The Subcommittee met on March 28, 1985, at the Downtown Athletic Club. The current emergency grant process in Baltimore City was reviewed: the tenant must come to court to receive a white slip; they then take the white slip upstairs to Jim David's Eviction Prevention Unit; from the Eviction Prevention Unit they are directed to take their white slip to their neighborhood Social Service field office; at the neighborhood Social Service field office they are actually processed and receive their emergency grant.

The object of the Subcommittee is to change the regulations of Social Services so the tenant has to make only one stop and goes directly to the neighborhood Social Service field office. The Chair of the Subcommittee planned to contact the Maryland Congressional Delegation for assistance in changing the federal requirements which mandate the state Social Service regulations. Secretary Massinga told the Subcommittee the federal change is necessary because federal regulation requires an eviction order.

Mr. Harris complimented the Subcommittee on the excellent work it was doing.

8. Report of Subcommittee on the Survey was presented by its Chair, Mr. Bregman. The draft survey was circulated and the Chair asked for comments on it so it could be finalized by the April 26, 1985 meeting of the administrative judges.

Motion by Mr. Snowden, seconded by Mr. Zerwitz, that all comments on the survey be gotten to Mr. Bregman by April 16, 1985, so the survey could be put in final form by April 25, 1985, for delivery to Judge Ciotola on April 25, 1985. Passed.

9. The Chair suggested that the Commission operate in subcommittees over the Summer. He appointed a Legislation Subcommittee to follow legislation over the Summer and draft legislation for the Commission as warranted. The Subcommittee is composed of Ms. Waller, Chair, Mr. Harris, Mr. Legum, and Mr. Snowden. Mr. Snowden volunteered to obtain an individual to pull legislation as it is followed.

In addition, the Chair suggested a Public Contact Subcommittee. Over the Summer, one public meeting is to be held in each county. Motion by Mr. Abrahms, seconded by Mr. Ackerman, that the Subcommittees be balanced in terms of landlord and tenant members, and be mixed with a Commissioner from the county and the others from outside. Passed.

The Reporter is to develop the Public Contact Subcommittees and they will be approved at the next meeting.

10. Next meeting will be May 7th.

Michele Gilligan
Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
Minutes of May 7, 1985 Meeting
Board Room, State Department of Transportation
BWI Airport

1. Present: Abrams, Ackerman, Bregman, Ciotola (Chairman), Cohen, Harris, Lenrow (Vice-chairman), Snowden, Tromley, Waller (quorum). [Excused absences: Hayward, Martin-Smith and Zerwitz.]

2. Sandwiches were available at 7:20 p.m..

3. The meeting began at 7:35 p.m. and adjourned at 8:40 p.m.

4. The motion to approve the minutes of April 9, 1985, meeting made by Mr. Snowden, seconded by Mr. Bregman, was approved.

5. Ms. Waller raised the problem that she did not have the replacement volume for the Real Property volume of the Maryland Annotated Code. Many Commissioners did not have that volume so the Reporter was directed to order the volume for all the Commissioners.

   Mr. Bregman was without a copy of Maryland Landlord-Tenant Law, Practice and Procedure. The Reporter was directed to order the volume for Mr. Bregman and the expected new members of the Commission.

6. The annual dinner meeting was discussed. Mr. Snowden recommended that one person be put in charge. The Chairman appointed Mr. Lenrow to be in charge of arrangements. Several locations were discussed but the final location was left to Mr. Lenrow's discretion. A decision was made to invite all members of the Commission who have resigned in the past year. The date will be Tuesday, June 4, 1985, to avoid conflict with the Bar Convention.

7. The possibility of Summer meetings of the Commission was discussed, and the consensus was to hold no meetings of the Commission in July and August, and to operate in subcommittees over the Summer.

8. The Chairman reported on Commission in-put into the drafting of Landlord-Tenant rules. Although the Rules Committee Reporter, Ms. Freit, had not responded to the Commission letter, the Chairman of the Rules Committee, Judge Wilner, was aware of the Commission's request. Judge Wilner told the Chairman that currently no plans exist to start drafting those rules. However, when such a project is started, the Commission's wish to be represented on the Committee would be considered.

   Mr. Snowden recommended that the Judge send a letter to Judge Wilner memorializing that conversation.

9. Mr. Snowden reported on the Emergency Grant Subcommittee. It met again in Baltimore. Out of that came the recommendation that the Commission send a letter to the Maryland Delegation headed by Congressman Parren Mitchell asking federal law be changed to permit a local option on how fraud is avoided.

Motion to adopt the recommendation, made by Mr. Bregman and seconded by Mr. Harris and Ms. Tromley, passed.

10. Mr. Bregman reported on the Survey Subcommittee. No survey was sent out because not a single Commissioner offered comment.

Mr. Snowden explained sense of his motion at the last meeting was that the survey was to go out whether or not comments were received. He was satisfied by the survey as it was.

Several suggestions were made: questions in the jury trial section, disposition of rent escrow when there was a jury trial.

The Reporter pointed out that some numbers were already kept by the clerks and could be easily obtained. A copy of these statistics was given to Mr. Bregman.

Mr. Bregman was to rework the survey and give it to the Chairman for distribution.

11. Ms. Waller reported on the Legislative Watch Subcommittee. She will follow the Summer study groups and convene her subcommittee as matters arise. She wanted to know if the Commission was interested in foreclosure. The consensus was positive since there are questions on how foreclosure effects leases given the recent due process cases.

12. Public contact subcommittees were discussed. The county list was reviewed and found too demanding. Ms. Tromley was appointed to chair the effort. She and her subcommittee, Mr. Abrams and Mrs. Ackerman, will determine how publicity was done in the past, where the hearings should be held, what subject areas should be covered, assign Commissioners to be present at particular hearings and do the publicity.

13. Mr. Snowden informed the Commission that Ms. Hinton had submitted her resume to Ms. Connie Biems, the Governor's Appointments Secretary. The Commission had received no notice of her resignation.

14. Nonattendance at meetings of certain Commissioners was discussed. The Reporter was directed to write those in noncompliance with the attendance policy.

15. The vacancies on the Commission were discussed and the Chairman agreed to speak to the Appointments Secretary about them.

Michele Gilligan
Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
Minutes of June 4, 1985 Meeting
Trattoria Petrucci

1. Present: Abrams, Ackerman, Ciotola (Chairman), Cohen, Hayward, Legum, Lenrow (Vice-chairman), Martin-Smith, Snowden, Tromley, Waller (quorum). Special guests: former Commissioners Hinton and Jenkins.

2. Meeting called to order at 8:15 p.m. and adjourned at 8:30 p.m..

3. The motion to approve the minutes of May 7, 1985, meeting made by Ms. Waller, and seconded by Mr. Ackerman, was approved.

4. The composition of the subcommittees which will work over the summer was reviewed and Ms. Hayward and Ms. Martin-Smith joined the Public-Contact Subcommittee. Ms. Tromley, chair of the Public Contact Subcommittee, indicated she would be contacting people to discuss with them their responsibilities.

   See attached memo.

5. The Emergency Assistance Subcommittee will be reconvened and Terry Bolger invited to address it.

Michele Gilligan
Reporter

STATE OF MARYLAND

EXECUTIVE DEPARTMENT

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION

HARRY HUGHES
GOVERNOR

TO: Commissioners

FROM: Gwen Tromley, Chair, Public Contract Subcommittee

DATE: June 7, 1985

RE: Plans for Subcommittee

The Subcommittee has decided to break the Commission into seven teams with two members each. Commissioners will receive their team assignment at a later time. Possibly the teams might be composed of three Commissioners.

The state has been broken up into areas roughly equivalent to where there are legal aid offices. This was done because it seemed a logical way to organize counties; the grouped counties have similar problems; and legal aid covers all counties.

The hearings will be held on weekends starting in September. A given team will hold several hearings on a weekend and several teams will be out the same weekend.

The initial schedule is:

Team 1 - hearings in Allegany and Garrett

Team 2 - hearings in Frederick and Carroll

Team 3 - hearings in Harford and Cecil

Team 4 - hearings in Kent and Talbot

Team 5 - hearings in Queen Anne's and Caroline

Team 6 - hearings in Dorchester, Somerset and Wicomico

Team 7 - hearings in Calvert, Charles and St. Mary's

An effort will be made to have all the teams holding hearings meet after the hearings to discuss what was learned.

The counties not covered on the initial schedule will be dealt with later. These counties were felt to have priority.

In the past the Commission has held the following hearings:

Anne Arundel-Annapolis, January 1981
Wicomico-Salisbury, June 1981
Washington-Hagerstown, September 1982
Baltimore City, November 1982
Montgomery-Hyattsville, April 1983

The Subcommittee is still working on plans for publicity although they have drafted a press release.

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
Minutes of September 10, 1985 Meeting
State Department of Transportation - Board Room - BWI Airport
7:15 p.m.

1. Present: Abrams, Bregman, Ciotola (Chairman), Hayward, Legum, Snowden, Tromley (quorum). [Excused absenses: Harris, Lenrow]

2. Sandwiches were available at 7:35 p.m.

3. The meeting began at 8:15 p.m. and adjourned at 9:25 p.m.

4. Reading of the last minutes was waived.

5. Commission expressed its collective regrets over Mr. Lenrow's automobile accident and wished him a speedy recovery.

6. The Chairman shared Lieutenant Governor Curran's letter with the Commission concerning a tenant facing eviction from a mobile home park. The Commission reluctantly transferred the matter to the Mobile Home Study Commission. The Reporter was directed to write the referral letters.

7. Mr. Snowden, Chair of the Committee on Emergency Grants, had nothing new to report. He will be holding a Committee meeting after the next Commission meeting.

8. Ms. Tromley, Chair of the Committee on Public Contact, reported that a memo had been sent to all Commission members on August 16, 1985, outlining the plans. Since time was late, the first series of hearings would be October 5, 1985. Two teams would go out and each team would conduct hearings in two counties. The press releases and publicity were prepared. Sites for the hearings were chosen on the basis of wheelchair accessibility. Specific times were yet to be determined and Commission members would be contacted directly.

   The Chairman complimented the Chair of the Committee on the marvelous job she had done.

9. Ms. Waller, Chair of the Legislation Committee, was absent so that Committee report was deferred until the next meeting.

10. Mr. Lenrow, Chair of the Publication Committee, was absent so that Committee report was deferred until the next meeting.

11. The Reporter gave some preliminary information on the survey. For the next meeting she will circulate a compilation of the findings.

    Mr. Bregman, Chair of the Survey Committee, will review the compilation and the surveys to determine the appropriate follow-up.

    The Chairman has telephoned the counties which have not responded to the survey to obtain their responses. Those responses are expected shortly.

12. In discussing the direction of the Commission for the following year, Mr. Bregman suggested several areas of consideration:

a. Do a survey of the county landlord-tenant commissions to determine what they do in order to help them coordinate efforts and to develop a support network among them.

b. Investigate landlord liability and suggest language, in conjunction with Insurance Commissioner, which should be included in insurance policies.

c. Investigate management companies and suggest standards for them.

13. Mr. Bregman told the Commission that some landlords had requested an opportunity to discuss what it was like to be a landlord. The consensus was that the public hearings were the place for that.

14. The motion to adjourn by Mr. Legum, seconded by Mr. Snowden, passed.

Michele Gilligan
Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION

Minutes of October 8, 1985 Meeting

State Department of Transportation - Board Room - BWI Airport

7:15 p.m.

1. Present: Ackerman, Bregman, Ciotola (Chairman), Cohen, Lenrow, Tromley, Zerwitz (quorum). [Excused absenses: Harris, Wallerstein

2. Sandwiches were made available at 7:25 p.m. and the meeting was called to order at 8:00 p.m.

3. The minutes of the last meeting were corrected to show that Mr. Ackerman had an excused absence from the last meeting. On a motion by Mr. Ackerman, seconded by Ms. Tromley, the corrected minutes were approved.

4. Supplements to the Real Property article of the Code were distributed to those present.

5. Attendance was discussed. A motion by Mr. Ackerman, seconded by Ms. Tromley, to remove Mr. Polakoff for nonattendance was passed.

Reporter was directed to inform the Governor's Office of the decision and aske to have the Commission brought up to strength.

6. The Committee of Judges interested in white slips, Judges Gatewood, Rinehardt, and Carol Smith, are investigating the possibility of facsimile transfers. Chairman directed the Reporter to contact Mr. Snowden and urge his contact with them.

7. Ms. Tromley reported on the hearings being held by the Public Contact Committee. She reviewed the process used: locations were chosen by going to places had not been before. Mr. Ackerman and Mr. Abrahms arranged facilities. Notices were mailed to newspapers, NAACP, Terry Bolger of the Income Maintenance Unit, State Senators and Legal Aide.

The results were: in Allegany and Garrett only Mr. Legum appeared of the three Commissioners assigned. In Cumberland, the building was locked. No confirming letter had been sent. In Oakland, the site was open but no members of the public came.

In Carroll and Frederick, Ms. Martin-Smith and Mr. Bregman appeared of the three assigned Commissioners. The notice of hearing had the wrong location in Carroll County and the building was locked. In Frederick, the building was open. No members of the public attended either hearing.

Discussion of the upcoming hearings led to the appointment of team leaders to check details:

October 12, 1985: Team 1 - Ms. Hayward
Team 2 - Mr. Ackerman

October 19, 1985: Team 1 - Ms. Waller
Team 2 - Ms. Tromley
Team 3 - Ms. Hayward

Some suggestions for the future were:

1. To use a medium other than newsprint. National Association of Broadcasters lists every radio and television station by city and is in the library.

2. To develop a list of interest groups.

3. To do publicity earlier.

4. To write catchier publicity.

Mr. Zerwitz offered to help with publicity. Ms. Hayward is contacting churches. The Chairman suggested the county bar and Mr. Snowden's resources.

The Chairman expressed his appreciation of the Committee's hard work.

8. Ms. Waller had called the Chairman with her report. No legislation has been introduced except the low-income hopusing bills.

9. Mr. Lenrow's committee has not met; but may consider drafting some pamphlets or updating the leases.

10. Mr. Bregman thanked the Chairman and the Reporter for the work on the completion of the Survey. Based on the compilation, Mr. Bregman plans to ask judges in specific counties other questions, and thinks this can serve as an illustration of the need to be uniform.

The Chairman is distributing the Compilation at the Administrative Judges meeting at the Columbia Inn, October 31, 1985. The Compilation should not be released until after that meeting.

11. Motion by Mr. Lenrow, seconded by Mr. Zerwitz, that Mr. Bregman's proposals be referred to the Publication and Planning Committee. The proposals were:

1. investigate the existance of landlord and tenant commissions and facilitate the exchange of information between them;

2. work on language in insurance policies; and

3. develop a pamphlet or checklist on what a management company does.

Motion passed.

12. Motion to adjourn by Mr. Ackerman, seconded by Mr. Zerwitz, passed. Meeting adjourned at 3:00 p.m.

Michele Gilligan
Reporter

STATE OF MARYLAND

EXECUTIVE DEPARTMENT

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION

HARRY HUGHES

GOVERNOR

TO: Judge Joseph Ciotola, Chair, Governor's Landlord-Tenant Laws Study Commission

FROM: Michele Gilligan, Reporter

DATE: October 8, 1985

RE: Results of Survey of Landlord-Tenant Courts.

At the beginning of the Summer, June 21, 1985, the Commission distributed surveys to all the district courts concerning landlord-tenant practice. The surveys were divided into three sections: failure to pay rent, holding over and breach of lease. This memo covers the results of those surveys.

The district courts which responded were:

District #1	-	Baltimore City
District #2	-	Dorchester
		Somerset
		Wicomico
		Worcester
District #3	-	Caroline
		Kent
		Queen Anne's
		Talbot
		Cecil
*District #4	-	Charles
		St. Mary's
		Calvert
District #5	-	Prince George's
District #6	-	Montgomery
District #7	-	Anne Arundel
District #8	-	Baltimore County
District #9	-	Harford
District #10	-	Howard
		Carroll
District #11	-	Frederick
		Washington
*District #12	-	Allegany
		Garrett

* One survey for all the counties in the District.

The results of the survey are as follows:

PART I: FAILURE TO PAY RENT

Table 1 - Number of Cases

Number of Cases	Per Year	Per Month
Less than 500	#2 Somerset #3 Caroline Kent Queen Anne Talbot #4 Calvert #12 Allegany Garrett	#2 Dorchester #3 Cecil #4 St. Mary's #9 Harford #10 Carroll Howard #11 Frederick Washington
500-2,999	#2 Dorchester Wicomico Worcester #3 Cecil #4 Charles St. Mary's #10 Carroll #11 Frederick Washington	#6 Montgomery #7 Anne Arundel
3,000-9,999	#9 Harford #10 Howard	#5 Prince George's #8 Baltimore County
10,000-50,000	#6 Montgomery #7 Anne Arundel	#1 Baltimore City
more than 50,000	#1 Baltimore City #5 Prince George's #8 Baltimore County	

Table 2 - Court Days

No Particular Day

#3 Kent, Queen Anne's
#4 Calvert
#11 Frederick

Every Day

#1 Baltimore City
#7 Anne Arundel

Monday

#3 Caroline
#4 Charles
#8 Baltimore County - Essex
#10 Howard, Carroll
#11 Washington

Tuesday

#2 Somerset, Wicomico
#3 Cecil
#5 Prince George's
#8 Baltimore County - Owings Mills
#9 Harford

Wednesday

#2 Worcester
#3 Cecil
#6 Montgomery
#8 Baltimore County - Towson
#12 Allegany (every other)

Thursday

#5 Prince George's
#8 Baltimore County - Catonsville and Dundalk
#11 Washington

Friday

#2 Dorchester
#3 Talbot
#4 St. Mary's
#12 Allegany
Garrett

All the responding district courts were aware of the five day trial rule under MD. ANN. REAL PROP. CODE § 8-401(b). Some did not meet the rule because they scheduled landlord-tenant cases on one day a week or specific days of the week and at other times a judge would not be available to hear the actions.

Table 3 - Length of Time from Filing to Trial

5 Days

#1 Baltimore City
#2 Somerset
Wicomico
Worcester
#3 Caroline
Kent (longer if landlord requests)
Queen Anne's
Talbot
#4 Charles
St. Mary's
#7 Anne Arundel
#8 Baltimore County
#9 Harford
#10 Howard - 5-7 days pursuant to Rule 1-203
#11 Frederick

5 Days or More

#2 Dorchester - 8 days
#3 Cecil - 7-10 days
#5 Prince George's - 10 days time for Sheriff's office to serve
#6 Montgomery - 13 working days, insufficient staff
#10 Carroll - 5-8 days depending on when suit filed
#11 Washington - 5-7 days unless landlord requests otherwise (6-7 if filed Tues., Wed., or Fri.)
#12 Allegany - 7-10 days
Garrett - 7-10 days

The question on continuances apparently did not focus on the information wanted. No court stated a continuance was automatically granted but several stated that they were routinely granted. Probably the issue is whether they are granted routinely or not.

Table 4 - Length of Continuance

Next Landlord-Tenant Date

#2 Dorchester
Wicomico
#3 Caroline
Queen Anne's
#12 Allegany (as brief as possible)
Garrett (as brief as possible)

One Day

#3 Talbot (or 2 days)
Cecil
#7 Anne Arundel (unless parties agree to longer)
#11 Frederick (a couple of days)
Washington (1 or 2 depending on reason)

One Week

#1 Baltimore City (1-7 days)
#2 Somerset
Worcester
#3 Kent (or 2 weeks)
#4 Charles
St. Mary's
Calvert
#5 Prince George's
#6 Montgomery
#8 Baltimore County (reluctantly: 2 days to a week)
#9 Harford
#10 Howard (rarely happens)

All the answers on obtaining a default judgment were not as detailed as desired. Two districts left the question blank: #1 Baltimore City and #7 Anne Arundel; and one, #2 Worcester stated none were granted. Nonetheless, I will assume all courts require proof of service. Interestingly, District #11 Frederick and Washington require personal service. However, the main divergence between districts is then whether the sworn allegations in the complaint are sufficient or if *ex parte* proof is required for the default.

Table 5 - Landlord Proof for a Default Judgment

Complaint under Oath Sufficient	Ex Parte Proof Required
#2 Dorchester	#2 Somerset
#3 Kent	Wicomico
Talbot	#3 Caroline (same as a
#4 Charles	contested case)
St. Mary's	Queen Anne's
#5 Prince George's	Cecil
#6 Montgomery	#9 Harford
#8 Baltimore County	#10 Howard
#11 Frederick	Carroll
Washington	#12 Allegany
	Garrett

Another issue with regard to default judgment is the role of agents in landlord-tenant court. Most courts allow them, but tend to identify them as the individual most familiar with the business records whose testimony can be relied on rather than as a substitute advocate for an attorney.

Table 6 - Agents in Landlord-Tenant Court

Agents Allowed	No Agents
#1 Baltimore City	#3 Queen Anne's
#2 Dorchester (authorized rental agent or manager)	#5 Prince George's
Somerset (realty agent with lease agreement granting authority)	#6 Montgomery
Wicomico (regular agent landlord)	
Worcester (rental agent)	
#3 Caroline	
Kent (real estate agents with control of property)	
Talbot (property manager for unincorporated landlord)	
Cecil (if corporation must have officer)	
#4 Charles (property manager	
St. Mary's familiar with	
Calvert records)	
#7 Anne Arundel (property managers and agents)	
#8 Baltimore County (rental agent or attorney)	
#9 Harford (familiar business records)	
#10 Howard (an agent)	
Carroll (an agent)	
#11 Frederick (agents and/or manager)	
Washington (agents and/or manager)	
#12 Allegany (family member, agent	
Garrett familiar with records)	

To obtain a money judgment against a tenant, all the courts agree that personal service must be obtained over the tenant. District 3, Caroline; District 5, Prince George's County; District 7, Anne Arundel; District 8, Baltimore County; District 9, Harford; and District 11, Washington, allow a money judgment if the tenant is not personally served but personally appears. District 2, Somerset and Worcester; District 3, Caroline and Kent; District 5, Prince George's; and District 11, Frederick and Washington, did not detail the other requirements beyond service.

Table 7 - Proof of Rent Due for a Money Judgment

Sworn Complaint	Landlord Appears or Requests (meaning not clear from surveys)	Testimony
#4 Charles	#2 Dorchester	#2 Wicomico (proof of amount due)
St. Mary's	#3 Talbot	#3 Queen Anne's
Calvert	#7 Anne Arundel	Cecil
#6 Montgomery	#8 Baltimore County	#9 Harford
	#10 Howard	#12 Allegany
	Carroll	Garrett

The practices on granting amendments varies among the courts. The next two Tables show amendment practice with regard to the amount of rent due and the time for which the rent is due.

***Table 8 - Amendments to Increase Rent Due**

Not Allowed	Allowed
#1 Baltimore City (unless tenant requests a postponement and rent falls due during postponement)	#2 Dorchester (both parties are present)
#2 Somerset (with permission of tenant)	Worcester (if tenant is present)
Wicomico (with permission of tenant)	#3 Cecil (tenant in court may request a continuance)
#3 Caroline	#6 Montgomery
Kent	#7 Anne Arundel (landlord and tenant are both in court and tenant doesn't object)
Queen Anne's	#8 Baltimore County (rarely granted)
#4 Charles (with permission of tenant)	#12 Allegany (if tenant is present)
St. Mary's (with permission of tenant)	Garrett (if tenant is present)
Calvert (with permission of tenant)	
#5 Prince George's (with permission of tenant)	
#11 Frederick	
Washington	

*District 9, Harford, was blank on this question.

Table 9 - Amendments to Change Month on Complaint

Not Allowed	Allowed
#1 Baltimore City (allowed if tenant motion for a new trial date)	#2 Dorchester
#2 Wicomico	Worcester
#3 Caroline	#3 Queen Anne's (both landlord and tenant present)
Kent	Cecil
Talbot (if increase rent not permitted)	#6 Montgomery (tenant must appear and has right to be heard)
#4 Charles (with tenant's consent permitted)	#7 Anne Arundel (both in court and tenant doesn't object)
St. Mary's (with tenant's consent permitted)	#8 Baltimore County (rarely granted)
Calvert (with tenant's consent permitted)	#11 Frederick (in open court)
#5 Prince George's (with tenant's consent permitted)	Washington (in open court)
#10 Howard (with tenant's	#12 Allegany (if tenant is present)
Garrett consent permitted)	Garrett (if tenant is present)

*District 2, Somerset, and District 9, Harford, blank.

In order for a tenant to redeem himself before eviction all the district courts required payment of the rent found due at the time of the judgment and the court costs. The variance came in what other, if any, amounts were required to be paid. These were not broken down in the surveys from District 2, Somerset, and District 3, Caroline and Cecil.

***Table 10 - Amounts In Addition to Rent Due and to Court Costs to be Paid to Avoid Eviction**

Late Charges	Attorney Fees if in Lease
#2 Wicomico	#3 Kent
Worcester	Talbot
#3 Kent	#4 Charles
Talbot	#8 Baltimore County
#4 Charles	#11 Frederick
#5 Prince George's (uninformed judges)	Washington
#8 Baltimore County	
#11 Frederick	
Washington	
#12 Allegany	
Garrett	

*District 8, Baltimore County, will not allow eviction to proceed if tenant pays rent due but does not pay costs and fees; constables are instructed to bring both parties back to court for further proceedings.

***Table 11 - Normal Time Between Filing of a Writ of Restitution and Sending a Signed Order to Sheriff's Department**

Same Day	1-2 Days	3 or More Days
#2 Somerset	#2 Dorchester	#1 Baltimore City (2-10)
Wicomico	#3 Queen Anne's	#3 Caroline (2-3)
Worcester	Talbot	#5 Prince George's (2-3)
#3 Kent	Cecil	#6 Montgomery (3-5 working)
#9 Harford	#4 Charles	
#10 Carroll	St. Mary's	
#11 Washington	Calvert	
#12 Allegany	#7 Anne Arundel	
Garrett	#10 Howard	
	#11 Frederick	

* District 8, Baltimore County, responded to a slightly different question and indicated the average time from the trial date to the Constables Office receiving the Writ was 1 to 1-1/2 weeks.

Table 12 - Normal Time Filing of Writ and Scheduling of Eviction

According Sheriff's Schedule	Within 3 Days
#2 Dorchester	#3 Kent
Wicomico	Queen Anne's
Worcester	#4 Charles
#5 Prince George's	St. Mary's
	Calvert
	#11 Washington (1-2 days)
	#12 Allegany
	Garrett

3-7 Days	More than 7 Days
#2 Somerset (7)	#1 Baltimore City (8-16)
#3 Caroline (5)	#6 Montgomery (14-20)
Cecil (3-4)	#7 Anne Arundel (8)
#9 Harford (week)	#8 Baltimore County (2 weeks)
#10 Howard (week)	
Carroll (4-5)	
#11 Frederick (48 to 96 hours)	

This part of question I.I. on time between filing of writ and scheduling eviction was not answered by District 3, Talbot.

The second part of the question asked who prepared and issued the writs. The answers here divided into the following points:

Table 13 - Writ Preparation

Landlord Preparers

#1 Baltimore City
#3 Talbot
#5 Prince George's
#7 Anne Arundel
#8 Baltimore County
#10 Carroll
#11 Frederick
Washington
#12 Allegany > (landlord prepares
Garrett > petition and clerk
prepare order)

Clerk Preparers

#2 Dorchester
#3 Kent (landlord prepares
petitions)
Queen Anne's
#4 Charles
St. Mary's
Calvert
#6 Montgomery
#9 Harford

District 2, Somerset, Wicomico (stated Sheriff's Department), and Worcester, District 3, Caroline and Cecil, and District 10, Howard did not respond to the question of who prepares the Writ.

Table 14 - Who Issues Writs of Restitution (Who Signs)

Clerk

#2 Worcester
#3 Talbot
#5 Prince George's
#7 Anne Arundel (through
signature machine)
#10 Carroll
#11 Frederick
Washington

Judge

#2 Dorchester
#3 Queen Anne's
#6 Montgomery
#8 Baltimore County
#9 Harford (Administrative
clerk of judge)
#12 Allegany
Garrett

This part of the question, asking who issued the writs of restitution, was not answered by District 1, Baltimore City; District 2, Somerset and Wicomico (stated Sheriff's Department); District 3, Caroline, Kent and Cecil; District 4, Charles, St. Mary's and Calvert; and District 10, Howard.

In dealing with the first question on foreclosure of the right of redemption many courts did not respond to the issue of whether they used suits or judgments. Apparently the distinction was not emphasized enough on the survey. The courts which did not respond were District 2, Dorchester and Somerset; District 3, Kent and Cecil; District 8, Baltimore County; District 9, Harford; and District 12, Allegany and Garrett.

Table 15 - Foreclosure of Right of Redemption - What Count

Prior Suits	Prior Judgments
#2 Wicomico	#1 Baltimore City
Worcester	#3 Queen Anne's
#3 Caroline	Talbot
#4 Charles	#11 Frederick
St. Mary's	Washington
Calvert	
#5 Prince George's	
#6 Montgomery	
#7 Anne Arundel	
#10 Howard	
Carroll	

Table 16 - Number Required to Foreclose Right of Redemption

3	4
#2 Somerset	#1 Baltimore City
Wicomico	#2 Dorchester
#3 Caroline	Worcester
Kent	#3 Queen Anne's
Cecil	Talbot
#11 Frederick	#4 Charles
Washington	St. Mary's
	Calvert
	#5 Prince George's
	#6 Montgomery
	#7 Anne Arundel
	#8 Baltimore County
	#9 Harford
	#10 Howard
	Carroll
	#12 Allegany
	Garrett

***Table 17 - Effect of Paying Rent After Entry of an Order Foreclosing Right of Redemption**

Stops Eviction (Yes)	Doesn't Stop Eviction (No)
	#1 Baltimore City
	#2 Dorchester
	Somerset
	Wicomico
	Worcester
	#3 Kent
	Queen Anne's
	Talbot
	Cecil
	#4 Charles
	St. Mary's
	Calvert
	#5 Prince George's
	#6 Montgomery
	#7 Anne Arundel
	#8 Baltimore County
	#9 Harford
	#10 Howard
	Carroll
	#11 Frederick
	Washington
	#12 Allegany
	Garrett

*District 3, Caroline, indicates it never had the situation.

***Table 18 - Effect of Tender of Rent Before Judgment to Foreclose Right of Redemption is Entered**

Landlord Must Accept (Yes)	Landlord May Reject and Foreclose Right of Redemption (No)
#1 Baltimore City	#2 Dorchester
#2 Somerset	Worcester
Wicomico	#3 Cecil
#3 Kent	#4 Charles
Queen Anne's	St. Mary's
Talbot	Calvert
#8 Baltimore County	#5 Prince George's
#11 Frederick	#6 Montgomery
Washington	#7 Anne Arundel
#12 Allegany > (if landlord refuses	#9 Harford
Garrett > to accept can't say due and owing)	#10 Howard (landlord can still accept and evict)
	Carroll

*District 3, Caroline, indicates it never had the situation.

The next question dealt with the right to demand a jury trial. Four courts, District 3, Caroline and Talbot, and District 12, Allegany and Garrett, stated that they have never handled a jury trial request. In order for a jury trial request to be granted, the primary criteria was that the amount in controversy (rent alleged due or value of the possession to the tenant) must exceed a certain amount.

Table 19 - Amount in Controversy for Jury Demand

Exceeds $500	Other than Exceeds $500
#2 Dorchester	#1 Baltimore City - jurisdictional amount
Wicomico	#2 Somerset - small claims amount, $1000
Worcester	
#3 Kent	
Queen Anne's	
Cecil	
#4 Charles (CJ 4-402(e))	
St. Mary's	
Calvert	
#5 Prince George's	
#6 Montgomery	
#7 Anne Arundel	
#8 Baltimore County	
#9 Harford	
#10 Howard	
Carroll	
#11 Frederick	
Washington	
#12 Allegany	
Garrett	

The survey did not elicit from most Districts whether the demand had to be in writing or might be oral, nor did it elicit what time limits were imposed for making the demand.

Table 20 - Form of Jury Demand

Oral	Written	Didn't Respond
	#8 Baltimore County	#1 Baltimore City
	#10 Howard	#2 Dorchester
	Carroll	Somerset
	#11 Frederick	Wicomico
	Washington	Worcester
		#3 Caroline
		Kent
		Queen Anne's
		Talbot
		Cecil
		#6 Montgomery
		#7 Anne Arundel
		#9 Harford
		#12 Allegany
		Garrett

The only courts responding to the question of when a demand must be made were District 1, Baltimore City - timely; District 2, Worcester - any time up to trial; District 3, Queen Anne's - timely; District 4, Charles, St. Mary's and Calvert - Rule 3-325; and District 8, Baltimore County - any time up to trial.

The answers to the question I.K.2. on procedures relative to transmittal of the file to Circuit Court divided into whether a bond was required and some details of how the records were transmitted, but not every court responded to those two points.

Table 21 - Those Courts Requiring a Bond

#1 Baltimore City
#2 Dorchester

The answers on the question of transmittal were so sketchy that the results were not compiled.

The results of the survey question I.K.3 on rent escrows under Section 8-118 of the Real Property Code were not tabulated because of Lucky Ned Pepper's Ltd. v. Columbia Park and Recreation Association, 494 A.2d 947 (Md. App. 1985) filed July 10, 1985. Many of the answers will be modified because of the holding in that case.

No court pays interest on escrowed funds.

Table 22 - Counterclaim Permitted and Amount Limitation

Not Permitted	Permitted	Limitation Amount
#2 Dorchester	#1 Baltimore City	None
Wicomico	#2 Somerset	None
Worcester	#3 Queen Anne's	Jurisdictional limit in court
#4 Charles	#6 Montgomery	Only with regard to rent escrow
St. Mary's		
Calvert	#7 Anne Arundel	
#5 Prince George's	#8 Baltimore County	$10,000
#10 Howard	#9 Harford	$10,000
Carroll		
#11 Frederick		
Washington		
#12 Allegany > If a separate		
Garrett > tenant action was filed, it can be consolidated.		

District 3, Caroline, Kent, Talbot and Cecil left this question blank or stated they never had one.

This completes the compilation of the results of the first part of the survey on failure to pay rent cases. Part II of the survey dealt with tenant holding over cases.

PART II: TENANT HOLDING OVER

Table 23 - Number of Cases

Number of Cases	Per Year	Per Month
Less than 50	#2 Wicomico Somerset Worcester #3 Caroline Kent Queen Anne's Talbot #4 Charles St. Mary's Calvert #9 Harford #10 Howard Carroll #11 Frederick Washington #12 Allegany Garrett	#1 Baltimore City #2 Dorchester #3 Cecil #6 Montgomery #7 Anne Arundel #8 Baltimore County
50-299	#2 Dorchester #3 Cecil #7 Anne Arundel #8 Baltimore County	#5 Prince George's
300-999	#1 Baltimore City #5 Prince George's #6 Montgomery	

Table 24 - Court Days

No Particular Day

#1 Baltimore City
#3 Kent
Queen Anne's
#4 Calvert
#7 Anne Arundel
#11 Frederick

Monday

#3 Caroline
#4 Charles
#8 Baltimore County - Essex
#10 Howard
Carroll
#11 Washington

Wednesday

#2 Worcester
#3 Cecil
#6 Montgomery
#8 Baltimore County - Towson
#12 Allegany (every other)
Garrett (every other)

Thursday

#5 Prince George's
#8 Baltimore County -
Catonsville and Dundalk
#11 Washington

Tuesday

#2 Somerset
Wicomico
#3 Cecil
#5 Prince George's
#8 Baltimore County - Owings Mills
#9 Harford

Friday

#2 Dorchester
#3 Talbot
#4 St. Mary's
#12 Allegany
Garrett

Table 25 - Length of Time from Filing to Trial

14 days or less

#2 Wicomico - 7
#3 Caroline - 14 days
Kent - 2 weeks
Queen Anne's - 2 weeks
Talbot - 5
#4 Charles - 5
St. Mary's - 1 week
Calvert - 5
#5 Prince George's - 10
#8 Baltimore County - 1 week
#9 Harford - 4-7
#11 Frederick - 1 week
Washington - 2 weeks
#12 Allegany - 14
Garrett - 14

More than 14 days

#1 Baltimore City - 21-28
#2 Dorchester - 15
Somerset - 14-21
Worcester - 30
#3 Cecil - 2-3 weeks
#6 Montgomery - 13 working
#7 Anne Arundel - 30
#10 Howard - 21
Carroll - 21

On the question of the court's interpretation of actual damages, all the courts included apportioned rent in those damages except District 7, Anne Arundel which left the question blank. The courts, however, differed on what the other elements would be included with District 3, Queen Anne's, stating it had never received a request other than for apportioned rent.

Table 26 - Components of Actual Damages

Attorney's Fees

#3 Kent - if in lease
#4 Charles " "
St. Mary's " "
Calvert " "

Prospective Rent

#2 Somerset
#4 Charles
St. Mary's
Calvert

Court Costs	Damages Which Can Be Proven
#2 Somerset	#1 Baltimore City #2 Dorchester Somerset Wicomico Worcester #3 Caroline Kent Talbot #5 Prince George's #6 Montgomery #8 Baltimore County #9 Harford #10 Howard Carroll #11 Frederick (rent, late charges, electric, water) Washington (rent, late charges, electric, water) #12 Allegany Garrett

PART III: BREACH OF LEASE

Table 27 - Number of Cases

Number of Cases	Per Year	Per Month
Less than 50	#1 Baltimore City #2 Dorchester Somerset Wicomico Worcester #3 Caroline Kent Queen Anne's Talbot Cecil #4 Charles Calvert #7 Anne Arundel #9 Harford #10 Howard Carroll #11 Frederick Washington #12 Allegany Garrett	#4 St. Mary's #5 Prince George's #6 Montgomery #8 Baltimore County
50-299	#4 St. Mary's #5 Prince George's #6 Montgomery #8 Baltimore County	

Table 28 - Court Days

No Particular Day

#1 Baltimore City
#3 Kent
Queen Anne's
#4 Calvert
#7 Anne Arundel
#11 Frederick

Monday

#3 Caroline
#4 Charles
#8 Baltimore County - Essex
#10 Howard
Carroll
#11 Washington

Tuesday

#2 Somerset
Wicomico
#3 Cecil
#5 Prince George's
#8 Baltimore County - Owings Mills
#9 Harford

Wednesday

#2 Worcester
#3 Cecil
#6 Montgomery
#8 Baltimore County - Towson
#12 Allegany (every other)
Garrett (every other)

Thursday

#5 Prince George's
#8 Baltimore County - Catonsville and Dundalk
#11 Washington

Friday

#2 Dorchester
#3 Talbot
#4 St. Mary's
#12 Allegany
Garrett

*Table 29 - Length of Time from Filing to Trial

14 days or less

#2 Wicomico - 7
Worcester - 5-7
#3 Kent - 7-10
Talbot - 5
Cecil - 7-10
#4 Charles - 5-7
St. Mary's - 5-7
#5 Prince George's - 8-10
#8 Baltimore County - 1 week
#9 Harford - 4-7
#10 Howard - 5
Carroll - 2 weeks
#12 Allegany - 7-10
Garrett - 7-10

More than 14 days

#1 Baltimore City - 21-28
#2 Dorchester - 15
Somerset - 14-21
#3 Queen Anne's - 3 weeks
#4 Calvert - 30
#6 Montgomery - 13 working
#7 Anne Arundel - 30

*District 3, Caroline, never had a case.

The question of what damages were permitted under section 8-402.1 of Real Property Code brought a wide variation in responses. District 1, Baltimore City; and District 3, Caroline and Cecil, left the question blank, and District 8, Baltimore County, stated actual damages with District 11, Frederick and Washington, stating those in lease.

***Table 30 - Damages Permitted**

No damages

#3 Queen Anne's
#6 Montgomery
#10 Howard
Carroll
#12 Allegany > (if tenant appeals
Garrett > and stays in possession
then rent and other
costs of occupancy)

Rent

#2 Dorchester
Somerset
Wicomico > (depend on
Worcester > lease terms)
#3 Kent
Talbot
#4 Charles
St. Mary's
Calvert
#5 Prince George's
#7 Anne Arundel (2 months)
#9 Harford

Damages

#2 Dorchester
Somerset
Wicomico (depends on lease terms)
Worcester
#3 Kent
Talbot
#5 Prince George's
#7 Anne Arundel
#9 Harford

Legal Fees if in Lease

#2 Dorchester
#3 Talbot
#4 Charles
St. Mary's
Calvert
#7 Anne Arundel

Court Costs

#2 Dorchester
Somerset
#3 Queen Anne's
#4 Charles
St. Mary's
Calvert
#7 Anne Arundel
#12 Allegany
Garrett

*District 3, Caroline never had a case.

PART IV: SOCIAL SERVICES

Every court except District 1, Baltimore City notified Social Services of a judgment against a tenant by sending a copy of the judgment to Social Services. District 1, Baltimore City uses a D.C. 147 or "white slip." District 2, Somerset indicates in its answer that there is no need to do that in its district.

Table 31 - Who Initiates Transmission of Judgment to Social Services

Social Services	Tenant
#2 Dorchester	#1 Baltimore City
#3 Queen Anne's	#2 Wicomico
	#3 Caroline
	Kent
	Talbot
	Cecil
	#4 Charles
	St. Mary's
	Calvert
	#5 Prince George's
	#6 Montgomery
	#7 Anne Arundel
	#8 Baltimore County
	#9 Harford
	#10 Howard
	Carroll
	#11 Frederick
	Washington
	#12 Allegany
	Garrett

District 2, Worcester did not respond to this point.

Table 32 - Form of Judgment

Certified Copy	Copy
#2 Dorchester	#3 Caroline
Wicomico	Talbot
Worcester	Queen Anne's (give information need)
#3 Kent	Cecil
#8 Baltimore County	#4 Charles
#9 Harford ("true" copy)	St. Mary's
#10 Howard	Calvert
	#5 Prince George's (with directions on how to find Social Service Office)
	#6 Montgomery (stamp affixed tenant copy of summons)
	#7 Anne Arundel
	#10 Carroll
	#11 Frederick
	Washington
	#12 Allegany (DC/CV 82)
	Garrett (DC/CV 82)

This completes the compilation of the initial results of the June 21, 1985 Survey.

rents into escrow account when party in summary eviction proceeding prays for jury trial was unconstitutional infringement of right to civil jury trial; (2) statute requiring tenant to pay future accruing rents into escrow account when party in summary eviction proceeding prays for jury trial was reasonable and constitutional regulation of right to jury trial; (3) statute requiring tenant to pay future accruing rents into escrow account when party in summary eviction proceeding prays for jury trial sufficiently protected tenant's procedural due process rights; and (4) District Court had jurisdiction to order tenant to pay accruing rents into escrow notwithstanding tenant's prayer for jury trial.

Judgment vacated and case remanded.

1. Appeal and Error ⇐347(1)

It is from the date an order is filed that an appeal must be taken, not from the date the judge ruled from the bench.

2. Jury ⇐10

Right to trial by jury in civil actions is inviolate only to extent that it existed at common law. Const.Declarations of Rights, Art. 23.

3. Statutes ⇐64(1)

There is presumption that legislative body generally intends its enactments to be severed if possible, even in absence of express clause or declaration.

4. Statutes ⇐64(1)

Unless excision of unconstitutional portion of statute renders the same meaningless or there is evidence of legislative intent not to sever, Court of Special Appeals will infer severability.

5. Jury ⇐31(5)

Statute requiring tenant to pay all past-due accrued rents into escrow account when tenant in summary eviction proceeding prays for jury trial [Code, Real Property, § 8-118(a)] was unconstitutional infringement of right to civil jury trial because it places premium on exercise of that

LUCKY NED PEPPER'S LTD.

v.

COLUMBIA PARK AND RECREATION ASSOCIATION.

No. 1508, Sept. Term, 1984.

Court of Special Appeals of Maryland.

July 10, 1985.

Landlord filed summary eviction proceedings based upon tenant's failure to pay rent, and tenant prayed for jury trial. The Circuit Court, Howard County, Eugene M. Lerner, J., specially assigned, entered judgment in favor of landlord after tenant refused to pay accrued rents into escrow, and tenant appealed. The Court of Special Appeals, Alpert, J., held that: (1) statute requiring tenant to pay all past-due accrued

right. Const.Declaration of Rights, Art. 23.

6. Jury ⇐31(5)

Statute requiring tenant to pay future accruing rents into escrow account when party in summary eviction proceeding prays for jury trial [Code, Real Property, § 8–118(a)] is reasonable and constitutional regulation of right to jury trial. Const. Declaration of Rights, Art. 23.

7. Constitutional Law ⇐278.3

Due process requires hearing in connection with district court order requiring payment of accruing rents into escrow in summary eviction proceeding. Const.Declaration of Rights, Art. 24; U.S.C.A. Const. Amend. 14; Code, Real Property, § 8–118.

8. Constitutional Law ⇐254(2)

Invoking court's authority to order escrow payments in summary eviction proceeding when party prays for jury trial involves "state action" resulting in deprivation of property interest within meaning of due process clause and, consequently, some procedures are necessary to protect interests of tenant electing jury trial. Const. Declaration of Rights, Art. 24; U.S.C.A. Const.Amend. 14; Code, Real Property, § 8–118.

See publication Words and Phrases for other judicial constructions and definitions.

9. Constitutional Law ⇐278.3
Jury ⇐31(5)

Statute requiring tenant to pay future accruing rents into escrow account when party in summary eviction proceeding prays for jury trial [Code, Real Property, § 8–118] sufficiently protects tenant's procedural due process rights, because it provides tenant with sufficient opportunity for hearing prior to requiring an escrow of disputed funds. Const.Declaration of Rights, Art. 24; U.S.C.A. Const.Amend. 14; Code, Real Property, § 8–118(a, c); Md. Rule 2-311(f).

10. Courts ⇐488(1)

District court had jurisdiction to order tenant to pay accruing rents into escrow in summary eviction proceeding notwithstanding tenant's prayer for jury trial. Code, Courts and Judicial Proceedings, § 4–402(e)(2); Code, Real Property, § 8–118.

11. Statutes ⇐212.1

Legislature is presumed to act with knowledge of existing law.

Thomas A. Garland, Ellicott City, for appellant.

Francis B. Burch, Jr., Baltimore (David H. Bamberger and Pamela A. Loya, Baltimore, on brief), for appellee.

Before BISHOP, ADKINS and ALPERT, JJ.

ALPERT, Judge.

Trial by jury has been described as "the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution." [1] In this appeal we explore the extent to which the right to a jury trial may be curtailed. Because of such curtailment, in this appeal the constitutionality of one of Maryland's rent escrow statutes is challenged. Specifically, appellant challenges Maryland Real Property Code Ann. § 8–118 (1981 Repl. Vol., 1984 Cum.Supp.) [2] which provides, in pertinent part:

> *Rent escrow account in certain landlord-tenant actions.*
>
> (a) *Tenant to pay rents into account.* —In an action under § 8–401, § 8–402, or § 8–402.1 of this article *in which a party prays a jury trial,* the District Court shall enter an order directing the tenant or anyone holding under the tenant to pay all accrued and unpaid rents, and all

1. Thomas Jefferson, *Letter to Thomas Paine* (1789).

2. Unless otherwise specified, all statutory references are to Md. Real Prop.Code Ann. (1981 Repl.Vol., 1984 Cum.Supp.).

rents due and as they come due during the pendency of the action, as prescribed in subsection (b) of this section.

(b) *Escrow accounts into which rents to be paid.*—The District Court shall order that the rents to be paid into the registry of an escrow account of:

(1) The clerk of the circuit court; or

(2) If directed by the District Court, an administrative agency of the county which is empowered by local law to hold rents in escrow pending investigation and disposition of complaints by tenants.

(c) *Failure to pay rent.*—In an action under § 8–401, § 8–402, or § 8–402.1 of this article, if the tenant or anyone holding under the tenant fails to pay rent accrued or as it comes due pursuant to the terms of the order, the circuit court, on motion of the landlord and certification of the clerk or agency of the status of the account, shall give judgment in favor of the landlord and issue a warrant for possession.

(emphasis added).

FACTS

The appellant is Lucky Ned Pepper's, Ltd. ("Lucky Ned"), a tenant of appellee, Columbia Park and Recreation Association. Lucky Ned operates the bar and restaurant at the Allview Golf Course in Howard County, Maryland. This appeal arises out of appellee's suit filed in the District Court of Maryland for Howard County requesting possession of and accrued rent on the area of the golf course clubhouse occupied by appellant.

The action was filed under § 8–401 of the Real Property Code, providing for summary eviction proceedings based upon a tenant's failure to pay rent. At the scheduled trial date, July 9, 1984, appellant prayed a jury trial. Following the prayer for jury trial, the District Court (through appellee's counsel) requested that appellant show cause within two (2) days, as to why appellant ought not be ordered to pay, into escrow, accrued rents on the property pursuant to § 8–118(a) of the Real Property Code. On July 10th appellant responded, by letter, to the judge's request, indicating that § 8–118 ought not be applied in this case because (1) it is unconstitutional and (2) "the amount claimed [by appellee] is a shameful fraud." Finally, appellant's counsel requested "to be heard in order to lay bare the fraudulent Statement of Claim."

On July 11th, apparently without ever having seen appellant's correspondence of July 10th, the district court judge ordered appellant to pay $6,710.66 into escrow. This sum represents the amount allegedly owed by appellant, exclusive of late charges and attorney's fees, as sworn to in appellee's original statement of claim. Appellant was also ordered to pay into escrow future rents as they became due. Appellant was given two days to comply with this order. Pursuant to the prayer for jury trial, this case reached the Circuit Court for Howard County on July 16, 1983.

In the meantime, appellant paid no money into escrow and on July 19th promptly moved to strike the district court's July 11th order. The motion was based upon three grounds: (1) that § 8–118 of the Real Property Code was unconstitutional; (2) that even if constitutional, § 8–118 did not apply; and (3) that the amount of rent claimed by appellee was fraudulent. Appellant also requested a hearing on this motion.

In September, appellee moved for judgment against appellant pursuant to § 8–118(c) which provides that "[i]n an action under § 8–401 . . . if the tenant . . . fails to pay rent accrued or as it becomes due pursuant to the terms of the order, the circuit court, on motion of the landlord, . . . shall give judgment in favor of the landlord. . . ." Appellee also requested a hearing on this motion.

On November 11, 1984, the Circuit Court for Howard County heard arguments on the pending motions including appellant's motion to strike the escrow order. At the hearing appellant again claimed that § 8–118 was unconstitutional and that, in any

event, it was denied due process by the district court's failure to afford him a hearing prior to its July 11th order.

From the bench, the circuit court judge ruled that § 8–118 was constitutional and that appellant was not denied due process by virtue of the July 11th order. He then granted appellee's motion for judgment which included all rents that had accrued as of the district court proceeding plus rents that were accruing and had accrued to October 20, 1984, a total of $9,210.66. He denied appellant's motion to strike the district court order. Orders to this effect were filed on November 8, 1984, and November 13, 1984, respectively. An appeal was taken November 8, 1984.[3]

I.

Section 8–118 of the Real Property Code is alleged to be repugnant to articles 23 and 24 of the Maryland Declaration of Rights. These articles provide:

> Article 23:
> The right of trial by Jury of all issues of fact in civil proceedings in the several courts of law in this State, where the amount in controversy exceeds the sum of five hundred dollars, shall be inviolably preserved.
>
> Article 24:
> That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property by the judgment of his peers, or by the Law of the Land.

Specifically, appellant argues: (1) that § 8–118 interferes with the exercise of one's right to a jury trial, and (2) that subsections (a) and (c) of § 8–118 violate one's due process rights because they provide for the payment of money and entry of a judgment without providing for a hearing.

II.

A. *Interference with Jury Trial Right*

"Before a statute may be declared unconstitutional 'its repugnancy to the provisions or necessary implications of the Constitution should be manifest and free from all reasonable doubt.'" *Att'y Gen'l v. Johnson*, 282 Md. 274, 281, 385 A.2d 57 (1978) (quoting *Baltimore v. State*, 15 Md. 376, 475 (1860)). In this appeal it is alleged that § 8–118 is repugnant to Article 23 of the Maryland Declaration of Rights because (1) it impermissibly encroaches upon the function of a jury and (2) it places a premium upon the exercise of the right to a civil jury trial.

While the right to trial by jury in civil actions remains inviolate in this State, it does so only to the extent that it existed at common law. *See Knee v. Baltimore City Passenger Ry. Co.*, 87 Md. 623, 40 A. 890 (1898). Consequently, we must carefully scrutinize any curtailment of that right. The Court of Appeals has already recognized that the right may be subject to reasonable regulations. *See Bringe v. Collins*, 274 Md. 338, 335 A.2d 670 (1975). Our task, therefore, is to decide if § 8–118 is a reasonable regulation of this right.

Appellant suggests it is an unreasonable one because it "obliterates the ultimate function of the jury and renders the Constitution inoperable." Specifically, appellant complains that if the district court orders

3. Appellant's appeal was filed five days *before* the filing of the order denying its motion to strike. It is from the date the order is filed that an appeal must be taken, not from the date the judge ruled from the bench. *See Director of Finance, Prince George's County v. Cole*, 296 Md. 607, 614, 465 A.2d 450 (1983). Notwithstanding this premature appeal from the motion to strike, however, we reach appellant's allegations (1) that § 8–118 is unconstitutional and (2) that it was denied due process by the district court order. We reach the latter under the appeal from the granting of appellee's motion for judgment because if the original district court order is invalid, judgment could not be granted merely because appellant failed to comply with the order. *See Shapiro v. Ryan*, 233 Md. 82, 86, 195 A.2d 596 (1963); *Rosenbloom v. Electric Motor Repair*, 31 Md.App. 711, 715, 358 A.2d 617 (1976).

an escrow payment of accrued and unpaid rents due, it requires a predetermination of the ultimate issue committed to a circuit court jury, *i.e.*, what money is owed the landlord., Additionally, appellant asserts that § 8–118 unreasonably requires a party praying a jury trial to pay for the exercise of this right.

Initially, we observe that under § 8–118 the district court may order an escrow of past due (accrued) rents and future (accruing) rents. Inasmuch as the statute contemplates two separate orders we may hold the statute only partially unconstitutional. In that case those portions which are unconstitutional are without legal effect and may be severed from the remaining constitutional portions. *See Turner v. State*, 299 Md. 565, 474 A.2d 1297 (1984). There is a presumption that, "even in the absence of an express clause or declaration, that a legislative body generally intends its enactments to be severed if possible." *Turner*, 299 Md. at 576, 474 A.2d 1297. Unless excision of the unconstitutional portion of a statute renders the same meaningless or there is evidence of a legislative intent not to sever, we will infer severability. *See Turner v. State*, 299 Md. 565, 474 A.2d 1297 (1984) (legislative intent); *Davidson v. Miller*, 276 Md. 54, 83, 344 A.2d 422 (1975).

In the case *sub judice* we find no legislative intent to preclude severance of the statute at issue, § 8–118, Nor do we believe that the two orders are so intertwined that the statute becomes meaningless if only one is deemed an unconstitutional infringement of the right to a jury trial. Therefore, we will address the constitutionality of these orders separately.

Past Due (Accrued) Rents

We agree with appellant that this statute, to the extent that it provides for an escrow of past due rents, amounts to more than merely a reasonable regulation of one's right to a jury trial. We believe that it interferes with this right to the extent that the right becomes meaningless. We explain.

Requiring the tenant to escrow "all accrued and unpaid rents and all rents due" presupposes a determination that the money is owed. "The word *due* always imports a fixed and settled obligation or liability...." *Black's Law Dictionary* (5th ed. 1979) p. 448 (emphasis added). Section 8–118 permits the district court, *ex parte* and without constraints, to order an escrow of accrued and unpaid rent. This necessarily requires the court to determine what money is owed to the landlord as of the time the jury trial is prayed. That unfettered and unconditional determination requires a factual finding which impermissibly encroaches upon the function of the jury.

Moreover, the practical effect of a district court order, under § 8–118, is to require that a party prepay any possible judgment in order to obtain a jury trial. This places a premium on the exercise of this right in the context of landlord-tenant action. While no other jurisdiction has so encumbered a civil litigant's right to a jury trial,[4] we believe that requiring such a pre-

4. Our research has uncovered numerous limitations on the right to a jury trial, none of which, however, are analogous to the limitation imposed by the statute at issue. *See, e.g., In Re Peterson*, 253 U.S. 300, 40 S.Ct. 543, 64 L.Ed. 919 (1920) (court order appointing auditor and providing that audit could be used as prima facie evidence is not an infringement of one's right to a jury trial); *Slocum v. New York Life Ins. Co.*, 228 U.S. 364, 33 S.Ct. 523, 57 L.Ed. 879 (1913) (a judgment notwithstanding the verdict ruling does not deny one a jury trial); *New York Life Ins. Co. v. London*, 15 F.Supp. 586 (D.Mass.1936) (declaratory judgment act does not deprive one of right to a jury trial); *State Tax Comm'n v. Stanley*, 234 Ala. 66, 173 So. 609 (1937) (statute providing that party charged with violating stamp tax laws must demand a trial within 10 days did not violate one's right to a jury trial); *People v. Hickman*, 204 Cal. 470, 268 P. 909 (1928) (statute which permits defendant to plead guilty yet preserves to him the right to have a jury determine punishment because of insanity in no way deprives him of his right to a jury trial); *Vaughan v. Veasey*, 50 Del. (11 Terry) 133, 125 A.2d 251 (1956) (statute which provides that *court* make certain determinations does not deny one's right to a jury trial); *Metropolitan Casualty Ins. Co. v. Hahn*, 165 Ga. 667,

mium for the exercise of one's right to a jury trial is unreasonable. We realize that the legitimate purpose of summary eviction proceedings, *i.e.*, accelerated relief, is often frustrated by a prayer for jury trial. We believe, however, that requiring an escrow of past due rents provides a secure fund for the landlord, something to which neither he nor any other litigant is otherwise entitled and something which far exceeds previously defined "reasonable regulation" of the right to a jury trial.

The "reasonable regulation" said to be constitutional in *Bringe v. Collins* was a mere procedural rule (former M.D.R. 343) requiring timely election of a jury trial. That rule, clearly designed to foster efficient judicial administration, imposed no financial burden on anyone seeking a jury trial, and only a minimal procedural one. This is not to say that monetary conditions may never be attached to exercise of the jury trial right. *Knee v. Baltimore City Passenger Ry. Co.*, for example, upheld the constitutionality of the payment of court costs as a condition precedent to jury trial. 87 Md. at 624–27, 40 A. 890. *And see, Application of Harvey A. Smith*, 381 Pa. 223, 112 A.2d 625 (1955) and cases therein cited (State may constitutionally require a party praying civil jury trial to pay fees incurred as a result of jury request). But, in the latter cases the amounts involved were minor and the purposes of the requirements were related to court administration. We also note that on one occasion Maryland has held unconstitutional a provision imposing a monetary condition on the exercise of a constitutional right. *Barnes v. Meleski*, 211 Md. 182, 126 A.2d 599 (1956) (unconstitutional to require payment of court costs as prerequisite to exercise of former absolute right to removal in civil cases).

In any event, the question is as to the reasonableness of the regulation. As to the issue immediately before us (accrued and unpaid rents), the price is exorbitant. It is, indeed, a different situation where, as here, the price to be paid makes the right practically unavailable. Under § 8–118, a tenant, wishing a jury trial, can be ordered to prepay what amounts to all monies alleg-

142 S.E. 121 (1928) (not a violation of one's right to a jury trial to try Workmen's Compensation cases without one); *People v. Falk*, 310 Ill. 282, 141 N.E. 719 (1923) (statute providing that illegal possession of liquor is prima facie evidence of violation of liquor control laws is not a violation of one's right to a jury trial); *Stephens v. Kaster*, 383 Ill. 127, 48 N.E.2d 508 (1943) (statute requiring written demand for a jury trial not violation of one's right to a jury); *State v. Marion Circuit Court, Marion Co.*, 235 Ind. 226, 132 N.E.2d 703 (1956) (requiring that defendant give bail for appearance at jury trial is not an unreasonable regulation of the right to a jury); *Schloemer v. Uhlenhopp*, 237 Iowa 279, 21 N.W.2d 457 (1946) (rule requiring litigants to demand jury trial in civil cases does not deprive parties of the right to trial by jury); *Bettum v. Montgomery Federal Savings and Loan Assoc., Inc.*, 262 Md. 360, 277 A.2d 600 (1971) (rule requiring affirmative election of a jury trial is not an unreasonable limitation of the right to a jury); *Fratantonio v. Atlantic Refining Co.*, 297 Mass. 21, 8 N.E.2d 168 (1937) (statute referring case to auditors first is a valid regulation of the right to trial by jury); *H.K. Webster Co. v. Mann*, 269 Mass. 381, 169 N.E. 151 (1929) (statute requiring the filing of an affidavit or the posting of a bond in order to remove a case for jury trial does not violate one's right to a jury trial); *City of Dearborn v. Michigan Turnpike Authority*, 344 Mich. 37, 73 N.W.2d 544 (1955) (not violation of one's right to a jury trial to conduct condemnation proceeding without a jury); *City of Jackson v. Clark*, 152 Miss. 731, 118 So. 350 (1928) (not unconstitutional to require demand for a jury trial to be made upon filing of plea or answer); *State v. Griffin*, 66 N.H. 326, 29 A. 414 (1890) (requiring appellant to pay fees does not infringe upon the constitutional right to a jury trial); *Comiskey v. Arlen*, 55 A.D.2d 304, 390 N.Y.S.2d 122 (Sup.Ct.N.Y.1976) (admission of medical arbitration board decision during subsequent jury trial does not impair constitutional right to a jury trial); *General Ins. Co. of America v. Goldstein*, 182 Misc. 419, 45 N.Y.S.2d 570 (N.Y.Sup.Ct.1943) (statute permitting class action suits does not deprive parties of a right to trial by jury); *State ex rel. Beil v. Mahoning Valley Distributing Agency, Inc.*, 116 Ohio App. 57, 186 N.E.2d 631 (1962) (statute not providing for jury trial on appeal not unconstitutional); *State v. Leese*, 102 Ohio App. 416, 143 N.E.2d 860 (1956) (can require written jury trial demand, even in criminal cases); *Mandeville, Brooks and Chaffee v. Fritz*, 50 R.I. 513, 149 A. 859 (1930) (can require that demand for a jury trial be filed by certain time). *See also* 47 Am.Jur.2d, *Jury* § 12 (1969); 50 C.J.S. *Juries* § 114 (1947).

edly owed; this is not the same as requiring that same party to pay the additional costs attendant on a jury trial. The payment, in the former instance, becomes a premium on the exercise of one's inviolate right to a civil jury.

Consequently, because the statute requires a predetermination of the amount owed and because it places a premium on the exercise of one's right to a civil jury, we believe that § 8–118, to the extent that it provides for the payment of past due (accrued) rents into escrow, is an unreasonable, and, therefore, unconstitutional interference with that right.

Future (Accruing) Rents

We do not suggest, however, that a statutory provision requiring the escrowing of rents as they become payable during the pendency of a jury trial is likewise unconstitutional. We observe that in *Lindsey v. Normet*, 405 U.S. 56, 92 S.Ct. 862, 31 L.Ed.2d 36 (1972), the Supreme Court of the United States, addressing the constitutionality of Oregon's summary eviction statutes, noted that

> [t]here are unique factual and legal characteristics of the landlord-tenant relationship that justify special statutory treatment inapplicable to other litigants. The tenant is, by definition, in possession of the property of the landlord; unless a judicially supervised mechanism is provided for what would otherwise be swift repossession by the landlord himself, the tenant would be able to deny the landlord the rights of income incident to ownership by refusing to pay rent and by preventing sale or rental to someone else. Many expenses of the landlord continue to accrue whether a tenant pays his rent or not. Speedy adjudication is desirable to prevent subjecting the landlord to undeserved economic loss and the tenant to unmerited harassment and dispossession when his lease or rental agreement gives him the right to peaceful and undisturbed possession of the property.

Id. at 72–73, 92 S.Ct. at 873–74. In observing that a request for a continuance under Oregon's statute would make it impossible for the courts to provide quick relief, the Supreme Court held that there was "no constitutional barrier to Oregon's insistence that the tenant provide for accruing rent pending judicial settlement of his disputes with the lessor." *Id.* at 67, 92 S.Ct. at 871. In the case *sub judice* a tenant's request for a jury trial, like a request for a continuance, makes it impossible to provide a lessor with quick relief. Therefore, we believe that if a tenant is to remain in possession of the landlord's property, pending resolution of a jury trial, it is not unreasonable to request that the tenant pay for the privilege of remaining on the landlord's premises.

Unlike requiring an escrow of past due (accrued) rents, an escrow of future (accruing) rents, as they become payable, is not tantamount to paying for the privilege of exercising the right to a civil jury. In the latter instance the escrow fund represents money the tenant must pay in order to remain on the premises pending the jury trial. Section 8–118, to the extent it provides for the payment of future (accruing) rents into escrow, therefore, is a reasonable and, hence, constitutional regulation of one's right to a jury trial.

B. *Due Process*

Appellant argues that § 8–118, even if a constitutional regulation of one's right to a jury trial, denies it procedural due process in that no hearing is provided in connection with the district court's escrow order. Because we hold that § 8–118, to the extent it requires an escrow of past due (accrued) rents, is substantively unconstitutional under Art. 23 of the Maryland Declaration of Rights, we need address appellant's procedural due process contentions only in connection with an order to escrow future (accruing) rents.

Due Process—Future (Accruing) Rents

Appellant suggests, and we agree, that Article 24 of the Maryland Declaration

of Rights, along with the Fourteenth Amendment to the United States Constitution, dictates a hearing in connection with a district court order requiring the payment of accruing rents into escrow. *In Dep't of Transportation, Motor Vehicle Administration v. Armacost*, 299 Md. 392, 474 A.2d 191 (1984) the Court of Appeals of Maryland set forth the requirements of procedural due process. There the Court observed that:

> the aggrieved party must show that state action has resulted in a deprivation of a property interest within the meaning of the due process clause. Once deprivation of a property interest is demonstrated, the court must ascertain what procedures are constitutionally required before an individual may be deprived of a protected property interest.... [D]ue process is flexible and calls only for such procedural protections as the particular situation demands.... Therefore, determination of what is required must be made by balancing the private and government interests affected.... [T]he Supreme Court [has] set forth the appropriate factors: '... [I]dentification of the specific dictates of due process generally requires consideration of three distinct factors: first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.'

Id. at 416–17, 474 A.2d 191 (quoting *Mathews v. Eldridge*, 424 U.S. 319, 334–35, 96 S.Ct. 893, 902–03, 47 L.Ed.2d 18 (1976)).

In the case *sub judice* appellant contends and we agree that invoking the court's authority to order escrow payments would involve "state action" resulting in "a deprivation of a property interest within the meaning of the due process clause." *Id.*, 299 Md. at 416, 474 A.2d 191. Consequently, some procedures would be necessary to protect the interests of a tenant electing a jury trial.

Our courts have repeatedly looked to the Fourteenth Amendment for guidance in this area. *See Barry Properties, Inc. v. Fick Bros. Roofing Co.*, 277 Md. 15, 22, 353 A.2d 222 (1976). To this end, we believe that Supreme Court cases concerning the constitutionality of prejudgment seizures are particularly instructive.

The Supreme Court has generally held, with some exceptions and limitations, that due process requires "an opportunity for an adversary type hearing before a person can be even *temporarily* deprived of any possessory interest in personalty." *Barry Properties*, 277 Md. at 26, 353 A.2d 222 (citing *Fuentes v. Shevin*, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972)). One such limitation upon the necessity for a pre-forfeiture hearing was addressed by the Supreme Court in *Mitchell v. W.T. Grant Co.*, 416 U.S. 600, 94 S.Ct. 1895, 40 L.Ed.2d 406 (1974). In *Mitchell* the Court addressed the constitutionality of a Louisiana statute which provided for the sequestration of personal property, pending the outcome of a suit for accrued payments on the property. Under the statute, a seller, who had a vendor's lien on the goods sold, would request a writ for sequestration of the goods and submit an affidavit setting forth specific facts giving rise to the claim, its nature and the amount thereof. A judge would then issue the writ if a clear showing had been made and the "creditors seeking the writ ha[d] filed a sufficient bond to protect the [debtor] against all damages in the event the sequestration is shown to have been improvident." *Id.* at 606, 94 S.Ct. at 1899 (footnotes omitted). Although the Louisiana statute provided no pre-sequestration hearing, the statute did entitle the debtor "immediately to seek dissolution of the writ, which must be ordered unless the creditor 'proves the grounds upon which the writ was issued,' the exist-

ence of the debt, lien, and delinquency, failing which the court may order return of the property and assess damages in favor of the debtor, including attorney's fees." *Id.*

The Court held this statute constitutional. In so doing the Court observed that the statute was aimed at protecting the dual interests of the creditor and the debtor in the property to be seized. It noted that "[t]he danger of destruction cannot be guarded against if notice and a hearing before seizure are supplied." *Id.* at 609, 94 S.Ct. at 1901. Nonetheless, it observed, the statute provides that "the debtor may immediately have a full hearing on the matter of possession following the execution of the writ, thus cutting to a bare minimum the time of creditor-or-court-supervised possession." *Id.*

This final provision was significant in upholding the constitutionality of the Louisiana statute. For example, in *Fuentes v. Shevin*, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972) the Supreme Court declared unconstitutional prejudgment replevin statutes of Florida and Pennsylvania. The statutes provided for the seizure upon the issuance of a writ. The writ was issued by a court clerk upon the application of anyone asserting an interest in the property to be replevied and the posting of a bond. Neither statute provided for notice or a hearing prior to or shortly after the seizure. Similarly, in *Snaidach v. Family Finance Corp.*, 395 U.S. 337, 89 S.Ct. 1820, 23 L.Ed.2d 349 (1969) the Court struck down, as unconstitutional, a Wisconsin statute which permitted the prejudgment garnishment of wages. The statute allowed a creditor to freeze the wages of an alleged debtor without any form of notice or hearing prior to the garnishment. The statute was also unclear as to whether the alleged debtor had any immediate remedy by virtue of a post-garnishment hearing.

Again, in *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601, 95 S.Ct. 719, 42 L.Ed.2d 751 (1975), the Court held unconstitutional a series of Georgia statutes which permitted prejudgment garnishment of a defendant's bank account. There, the writ of attachment was issued upon the affidavit of a plaintiff stating the amount claimed to be due in the related action and "that [the plaintiff] has reason to apprehend the loss of the same or some part thereof unless process of garnishment shall issue." *Id.* at 602–03, 95 S.Ct. at 721 (quoting Ga.Code Ann. § 46.102). The statutes, however, did not provide for an expedited hearing either on the main case or the garnishment before or shortly after attachment.

Implicit in the Court's upholding of the Louisiana statute in *Mitchell* and striking of the Pennsylvania and Florida statutes in *Fuentes*, the Georgia statute in *North Georgia Finishing* and the Wisconsin statute in *Snaidach* is the recognition that none of the latter statutes had the "saving characteristics of the Louisiana statute." *North Georgia*, 419 U.S. at 607, 95 S.Ct. at 722. "There [was] no provision for an early hearing at which the creditor would be required to demonstrate at least probable cause for the [attachment]." *Id.* at 607, 95 S.Ct. at 723.

Consequently, because some sort of hearing is necessary, the statute, to the extent that it provides for the escrowing of accruing rents, must provide at least the opportunity for a hearing in order to be constitutionally acceptable. We believe that it does. Eliminating the unconstitutional portions, subsection (a) of the statute provides for a district court order requiring the payment of future (accruing) rents into escrow. The statute's only sanction for a tenant's failure to make the escrow payment appears in subsection (c) and must be invoked by a landlord who moves for judgment.

It is apparent that subsection (c) does not expressly provide for a hearing. We believe, however, that this subsection when read in connection with Maryland Rule 2-311(f), which prohibits "a decision dispositive of a claim or defense without a hear-

ing", provides a tenant with a sufficient opportunity for a hearing.

If a tenant disputes the district court's escrow order, the tenant may elect not to comply with it. There is no automatic, self-executing sanction for such noncompliance; the tenant becomes directly at risk only when the landlord moves for judgment. Upon such a motion, however, the tenant may request a hearing in order to dispute the validity or terms of the district court's escrow order or raise any other defense to his alleged noncompliance. At that hearing the landlord must show that the escrow order is valid and that the tenant, without legal justification, has failed to comply with it. If the landlord fails to make such a showing the circuit court must deny the motion for judgment and hold the case for trial by jury.

The circuit court, however, may determine that the landlord has sustained this burden and shown (1) that the escrow order is valid and (2) that the tenant, without cause, has failed to comply with the district court's order. In this instance the court may treat the tenant's prayer for jury trial as waived and can, at that juncture, either conduct a hearing on the merits of the landlord's claim or set the matter for future non-jury trial.[5]

We believe that this procedure contains the same saving characteristics implicit in the Supreme Court's *Mitchell* decision and sufficiently protects the tenant's procedural due process rights. If the tenant disputes the order he need not part with any property interest until he is afforded a hearing vis-a-vis the landlord's motion for judgment.

III.

Finally, appellant also asserts that no statute can provide for the district court's jurisdiction to order escrow payments because the "court [is] divested of jurisdiction 'immediately' upon the filing of the jury trial demand." We disagree.

We are cognizant of the Court of Appeals decision in *Vogel v. Grant*, 300 Md. 690, 481 A.2d 186 (1984) wherein the Court stated: "The demand itself divests the district court of jurisdiction as a matter of law and immediately vests jurisdiction in the circuit court." *Id.* at 696, 481 A.2d 186; *See also Huebner v. District Court of Maryland*, 62 Md.App. 462, 490 A.2d 266 (1985). We believe, however, that if the legislature intends to extend to the district court jurisdiction in such cases, it may so provide. *See* Md.Cts. & Jud.Proc.Code Ann. § 4–402(e)(2) (1984). *See also* 1985 Laws of Maryland, Chapter 3.

We note that the precurser to § 8–118 provided for an automatic payment of the accrued rents into escrow. The legislature, in 1983, specifically amended this section to provide for the issuance of an order by the district court. 1983 Laws of Maryland ch. 161. Inasmuch as the legislature is presumed to act with the knowledge of existing law, *see City of Baltimore v. Hackley*, 300 Md. 277, 283, 477 A.2d 1174 (1984), we believe that the 1983 changes in § 8–118 reflected a legislative intent to grant to the district court jurisdiction over the entry of an escrow order upon a prayer for a jury trial.

IV. *Conclusion*

To summarize, we hold

(1) that subsection (a) of § 8–118, to the extent that it provides for payment of past due rent into escrow, is an unconstitutional infringement of one's right to a civil jury trial because it places a premium on the exercise of that right;

(2) that subsection (a) of § 8–118, to the extent that it provides for the payment of accruing (future) rents into escrow

5. It may well be, in some cases, that the issues raised with respect to the escrow order are the same as those raised with respect to the underlying controversy and that the court's resolution of those issues in the former context will, in effect, resolve the latter. In that event, a second proceeding may be unnecessary; based upon its findings, the court could simply proceed to enter judgment.

is constitutional as we do not believe it unreasonable to require the tenant to pay for his use of the landlord's premises pending the civil jury trial;

(3) that § 8–118, to the extent that it is constitutional regulation of the right to a civil jury trial, comports with due process because subsection (c), when read in conjunction with Maryland Rule 2–311(f), provides the tenant with the opportunity for a hearing prior to requiring an escrow of the disputed funds; and

(4) that the district court has jurisdiction to order the escrow payment notwithstanding the prayer for jury trial.

JUDGMENT VACATED; CASE REMANDED TO CIRCUIT COURT FOR HOWARD COUNTY FOR HEARING ON MOTION FOR JUDGMENT AND FOR SUCH OTHER AND FURTHER PROCEEDINGS THAT ARE CONSISTENT WITH THIS OPINION; ½ COSTS TO BE PAID BY APPELLEE; ½ COSTS TO BE PAID BY APPELLANT.

Form Used -

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
DISTRICT COURT QUESTIONNAIRE

District: _____

County: _____

Administrative Judge: _____

I. FAILURE TO PAY RENT

A. Approximate number of cases:

		Per Year	Per Month
1.	Less than 500	_____	_____
2.	500-2,999	_____	_____
3.	3,000-9,999	_____	_____
4.	10,000-50,000	_____	_____
5.	More than 50,000	_____	_____

B. Are rent cases scheduled for a particular day or days of the week?

Yes _____ No _____

If yes, what day(s) _____

In general, are trial dates set within five (5) days of the suit being filed? Yes _____ No _____

What is the average or normal time between the filing date of a suit and the date of trial?

Is the Court conscious of the five (5) day trial rule for landlord/tenant actions? Yes _____ No _____

If yes, what is the justification or explanation for the trial date being in excess of the amount of time allowed by the law? (Please write short explanation)

If a continuance is requested is it automatically granted?

Yes _____ No _____

If a continuance is granted, how long is it?

C. Under what circumstances will you enter a default judgment in a landlord/tenant action? (Please list requirements in general, requirements on the form, and proof, if any, required)

D. Do you allow agents, who are not attorneys, to appear on behalf of Plaintiffs? Yes _____ No _____

If yes, please explain who you would allow and under what circumstances. Can the agent serve as lay advocate and testify?

E. Please explain the requirements and procedure for having a money judgment entered in a landlord/tenant action. Give details of form, service, appearance, and any other court requirements.

F. Under what circumstances do you allow amendments:

1. to increase the amount of rent due to account for rent due between the filing date and the court hearing date?

2. to correct the stated month for which rent is due?

G. Please provide all amounts which you require the tenant to pay in order to redeem the tenancy before eviction takes place and comment with respect to such items as rent sued for, rent determined to be due as of date of trial, rent determined to be due after trial but before eviction, court costs, late charges, court awarded attorney's fees, and any other amounts.

H. To the best of your knowledge, what is the normal or average time between filing of a writ of restitution and when the court sends the signed Order to the sheriff's or constable's department for eviction?

I. To the best of your knowledge, what is the normal or average time between filing of a writ of restitution and the scheduling of an eviction? How and by whom are writs of restitution prepared and issued in your court?

J. Foreclosure of the Right of Redemption

1. Is it the court's policy to count the number of prior suits or the number of prior judgments when granting foreclosure of the right of redemption?

2. In your court, what is the number of prior suits or number of prior judgments (not including the complaint then being considered) required before foreclosure of the right of redemption can be granted?

3. Does the payment of rent as shown on the judgment after the entry of the order foreclosing the right of redemption, but before eviction, stop the eviction? Yes _____ No _____

4. Must the landlord accept rent after suit is filed to foreclose the right of redemption but before the entry of the judgment?

K. Jury Demands

1. When and how does the court allow a request for jury trial to be granted? (Please include dollar amounts required, proof required, jurisdictional decisions, and other court considerations).

2. When a request for trial is granted, what is the court's procedure relative to transmitting the file to Circuit Court?

3. What procedure is followed by the court when rent escrow is requested and granted under Section 8-118 of the Real Property Article? Please briefly describe the procedure and actions taken by the court in this regard. Does the court hold a hearing to determine the amount of rent to be posted? Is the amount ordered by the court considered a final order which can be appealed? If yes, can the District Court still require an escrow if the determination as to what must be escrowed is appealed to Circuit Court?

4. Is interest payable on amounts paid into court under the rent escrow guidelines? Yes _____ No_____

If yes, what interest rate is paid?

_____

I. Does the court permit the tenant to counterclaim in these actions? Yes _____ No _____If yes, is there any limit in the amount of the counterclaim.

II. Holding over actions

A. Approximate volume of cases per year

	Per Year	Per Month
1. Less than 50	_____	_____
2. 50 - 299	_____	_____
3. 300 - 999	_____	_____
4. 1,000-5,000	_____	_____
5. More than 5,000	_____	_____

B. Are holding over cases scheduled for a particular day or days of the week? Yes _____ No _____

If yes, what day _____

C. What is the average or normal time between filing a suit and the date of trial?

D. What is the court's interpretation of actual damages? (Please describe whether the court allows only rent; rent and damages incurred by the landlord which can be proven; rent, damages incurred by the landlord which can be proven, future lost rents, and legal costs.)

III. Breach of Lease

A. Approximate mnumber of cases

	Per Year	Per Month
1. Less than 50	_____	_____
2. 50 - 299	_____	_____
3. 300 - 999	_____	_____
4. 1,000 - 5,000	_____	_____
5. More than 5,000	_____	_____

B. Are breach of lease cases scheduled for a particular day or days of the week? Yes _____ No _____

If yes, what day _____

C. What is the average or normal time between filing a suit and the date of trial?

D. What is the court's interpretation of actual damages? (Please describe whether the court allows only rent; rent and damages incurred by the landlord which can be proven; rent, damages incurred by the landlord which can be proven, future lost rents, and legal costs.)

IV. Social Services:

A. How does the Court let the Department of Social Services know that a judgment was entered against the Tenant.

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
Minutes of January 14, 1986 Meeting
State Department of Transportation - Board Room - BWI Airport
7:15 p.m.

1. Present: Abrams, Ciotola (Chairman), Cohen, Harris, Hayward, Lenrow, Piccinini, Waller (quorum). Special guest: Councilwoman Spector.

2. Sandwiches were made available at 7:20 p.m. The meeting was called together at 7:55 p.m.

3. Motion by Mr. Abrams, seconded by Ms. Waller, to approve the minutes of the November 12 meeting passed.

4. Commission membership was again discussed. Ms. Waller suggested contacting the new landlord's association in Salisbury for possible members. She will do that. Ms. Tromley is to seek a possible tenant member.

5. Rules Committee is meeting Friday, January 17. The subcommittee on landlord/tenant rules has not met yet. Chair directed the Reporter to comply with their request to gather laws.

6. Motion by Ms. Waller, seconded by Mr. Harris, to approve the by-laws was passed unanimously.

7. Councilwoman Spector presented her bill which was a resolution to the state legislature requesting them to amend the existing security deposit laws. The amendment would require the owner of a property to notify the purchasers of a property and the tenants in a property of the amount of money in each tenant's security deposit account. The resolution is in response to numerous complaints.

   After discussion focusing on the additional record keeping involved, the Commission endorsed the bill by a vote of 5 in favor, 1 opposed and 1 abstention.

8. The Chair of the Legislation Committee presented the current bills filed before the legislature.

   House Bill No. 13 to create an Advisory Committee on Lead-based Paint was considered first. The discussion focused on the number of members which seemed excessive and the time limit which might cause an ill-considered flurry of legislation just before the deadline.

   Motion by Mr. Abrams, seconded by Mr. Harris, to endorse the bill if the date was deleted on pages two and five and the membership was reduced by 5, passed by a vote of 7 in favor, 0 against and 0 abstentions.

   House Bill No. 14 on Lead-based Paint was then considered. The discussion on the bill focused on the desire to avoid piecemeal legislation when the Advisory Committee could present a unified package. In addition, concern was expressed with the effect of the bill on tax sales. The vote was 7 to oppose the legislation, 0 in favor and 0 abstentions.

House Bill No. 74 to amend the rent escrow law was criticized for introducing too much specificity into the Code. The vote was 7 to oppose the legislation, 0 in favor and 0 obstentions.

Senate Bill No. 150 was discussed and voted on next. The legislation was viewed as unnecessary. The vote was 7 to oppose the legislation, 0 in favor and 0 abstentions.

The Reporter was directed to write letters to all the sponsors of the bills and chairs of the committees reviewing the bills telling them the Commission's position and the votes.

9. Mr. Lenrow, Chair of the Publications Committee, reviewed the Committee plans. The Reporter is to contact all appropriate agencies and organizations and request that they send us any publications they produce for the general public. Once these are reviewed, the Committee will decide on their future direction.

10. Mr. Abrams, a member of the Public Contact Committee, gave his impression of the public hearings he attended.

11. Ms. Waller drew the Commission's attention to the Low Income Housing Conference to be held in Annapolis.

12. The Chair raised the problem of the interrelationship of 8-401 and the mini-storage act.

13. The meeting adjourned at 9:30 p.m.

Michele Gilligan
Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
Minutes of January 14, 1986 Meeting
State Department of Transportation - Board Room - BWI Airport
7:15 p.m.

1. Present: Abrams, Ciotola (Chairman), Cohen, Harris, Hayward, Lenrow, Piccinini, Waller (quorum). Special guest: Councilwoman Spector.

2. Sandwiches were made available at 7:20 p.m. The meeting was called to order at 7:55 p.m.

3. Motion by Mr. Abrams, seconded by Ms. Waller, to approve the minutes of the November 12 meeting passed.

4. Commission membership was again discussed. Ms. Waller suggested contacting the new landlord's association in Salisbury for possible members. She will do that. Ms. Tromley is to seek a possible tenant member.

5. Rules Committee is meeting Friday, January 17. The subcommittee on landlord/tenant rules has not met yet. Chair directed the Reporter to comply with their request to gather laws.

6. Motion by Ms. Waller, seconded by Mr. Harris, to approve the by-laws was passed unanimously.

7. Councilwoman Spector presented her bill which was a resolution to the state legislature requesting them to amend the existing security deposit laws. The amendment would require the owner of a property to notify the purchasers of a property and the tenants in a property of the amount of money in each tenant's security deposit account. The resolution is in response to numerous complaints.

   After discussion focusing on the additional record keeping involved, the Commission endorsed the bill by a vote of 5 in favor, 1 opposed and 1 abstention.

8. The Chair of the Legislation Committee presented the current bills filed before the legislature.

   House Bill No. 13 to create an Advisory Committee on Lead-based Paint was considered first. The discussion focused on the number of members which seemed excessive and the time limit which might cause an ill-considered flurry of legislation just before the deadline.

   Motion by Mr. Abrams, seconded by Mr. Harris, to endorse the bill if the date was deleted on pages two and five and the membership was reduced by 5, passed by a vote of 7 in favor, 0 against and 0 abstentions.

   House Bill No. 74 to amend the rent escrow law was criticized for introducing too much specificity into the Code. The vote was 7 to oppose the legislation, 0 in favor and 0 obstentions.

The Reporter was directed to write letters to all the sponsors of the bills and chairs of the committees reviewing the bills telling them the Commission's position and the votes.

9. Mr. Lenrow, Chair of the Publications Committee, reviewed the Committee plans. The Reporter is to contact all appropriate agencies and organizations and request that they send us any publications they produce for the general public. Once these are reviewed, the Committee will decide on their future direction.

10. Mr. Abrams, a member of the Public Contact Committee, gave his impression of the public hearings he attended.

11. Ms. Waller drew the Commission's attention to the Low Income Housing Conference to be held in Annapolis.

12. The Chair raised the problem of the interrelationship of 8-401 and the mini-storage act.

13. The meeting adjourned at 9:30 p.m.

Michele Gilligan
Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
Minutes of January 14, 1986 Meeting
State Department of Transportation - Board Room - BWI Airport
7:15 p.m.

Amendments

8. Add the following paragraph after the paragraph detailing the vote on House Bill No. 13:

House Bill No. 14 on Lead-based Paint was then considered. The discussion on the bill focused on the desire to avoid piecemeal legislation when the Advisory Committee could present a unified package. In addition, concern was expressed with the effect of the bill on tax sales. The vote was 7 to oppose the legislation, 0 in favor and 0 abstentions.

Add the following paragraph after the paragraph detailing the vote on House Bill No. 74:

Senate Bill No. 150 was discussed and voted on next. The legislation was viewed as unnecessary. The vote was 7 to oppose the legislation, 0 in favor and 0 abstentions.

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
Minutes of February 18, 1986 Meeting
State Department of Transportation - Board Room - BWI Airport
7:15 p.m.

1. Present: Abrams, Ackerman, Bregman, Ciotola (Chairman), Harris, Piccinini, Tromley, Waller (quorum). [Excused: Jay Lenrow].

2. Food was available at 7:15 p.m. and the meeting was called to order at 8:00 p.m.

3. Motion by Ms. Waller, seconded by Mr. Piccinini, to adopt the minutes as amended was passed.

4. The number of Commissioners and the attendance of each was discussed. The Reporter was directed to bring the attendance sheet to the next meeting and send a letter to the members with poor attendance about their attendance.

   Commission members were directed to come to the next meeting with the names of suggested members.

5. The Chair reported that the District Court Committee chaired by Judge Gatewood was considering using facsimile trasmissions to replace white slips. Rather than the Commission pursuing this matter further, he would keep the Commission informed of Judge Gatewood's progress.

6. The Chair gave the Commission an update on the Mini-Storage question addressed last meeting. In addition, he mentioned that he had been informed that a number of judges have not been following the requirements of the Mobile Home Statute.

7. The Subcommittee on Landlord-Tenant Rules of the Rules Committee has not met. Ms. Waller wishes to observe the meetings.

8. The Reporter requested assistance locating material for the Rules Committee. The Commissioners complied.

9. The Reporter explained progress made by the Publications Subcommittee.

10. Ms. Waller reported on legislation and explained all the bills.

    Ms. Tromley objected to voting on any bills because they were not specifically listed in the agenda and her interpretation of the by-laws would require that.

    Mr. Abrams moved to suspend the by-laws to consider H.B. No. 959. Seconded by Mr. Harris. Vote 6 in favor, 0 opposed and 1 abstention.

11. House Bill No. 959 was discussed. The vote was 6 against, 0 opposed and 1 abstention.

12. Mr. Bregman requested permission to use the model lease in his book. It was agreed to.

Michele Gilligan
Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
Minutes of March 11, 1986 Meeting
State Department of Transportation - Board Room - BWI Airport
7:15 p.m.

1. Present: Abrams, Ackerman, Bregman, Ciotola (Chairman), Cohen, Harris, Hayward, Lenrow, Martin-Smith, Piccinini, Tromley, Waller, Zerwitz (quorum).

2. Sandwiches were available at 7:15 p.m. and the meeting was called to order at 8:00 p.m.

3. Motion by Ms. Waller, seconded by Mr. Abrams, to approve the minutes as amended was approved unanimously.

4. The attendance sheet was circulated for members to checks its accuracy. The Reporter is to send letters to members with frequent absences to ask their intentions.

5. Ms. Waller presented the report of the legislation subcommittee. Ms. Tromley and Ms. Martin-Smith expressed their disapproval of the Commission taking a position on any of the proposed legislation since it was not detailed in the agenda.

Mr. Bregman reported Delegate Kreamer's request that the Commission review and take a position on House Bill No. 1458 concerning a landlord's security obligations to tenants.

In the ensuing discussion, Commissioners raised several questions with the legislation. Some of the issues were: Garden apartment entrances would be locked and there would be no access to the apartment doors, access by strangers to those hallways when the doors were unlocked, no quick access to apartment doors if the doors were locked, potential for tenants to put in illegal locks, need to comply with fire marshall's laws.

Motion by Mr. Lenrow, seconded by Mr. Zerwitz, to endorse legislation as written was voted on: 4 in favor, 8 opposed.

Motion by Mr. Abrams, seconded by Mr. Zerwitz, to write Delegate Kreamer and endorse the bill in principal but suggest further study with reference to the fire marshall was voted on: 9 in favor, 3 opposed.

The Reporter was directed to write the appropriate letter indicating the Commission's commitment to securing the tenant's premises, but its uncertainty with regard to this legislation.

House Bill No. 959 on Repair of Minor Defects was raised again. The Reporter had not yet written the letter from the Commission. Ms. Martin-Smith maintained that the Commission's past work in the area precluded the Commission from taking a position on the legislation.

Motion by Mr. Lenrow, seconded by Ms. Martin-Smith, to recommended passage of House Bill No. 959 was voted on: 4 in favor, 8 opposed.

Ms. Martin-Smith and Ms. Tromley expressed the desire to file minority reports. The Reporter is to wait for their minority reports. They are to get them to the Reporter in a week.

6. Membership on the Commission was discussed. Mr. Chodak was recommended by Mr. Zerwitz for the landlord position.

Ms. Waller expressed her understanding of the position of the Governor's office on tenant members. This understanding is that no more Legal Aid attorneys should hold tenant positions on the Commission. Ms. Tromley took exception to that statement. Ms. Tromley will submit some names for tenant positions. Maria Hocher was suggested as a tenant representative.

7. At 9:05 p.m. motion to adjourn by Ms. Lenrow seconded by Ms. Tromley was passed.

Michele Gilligan
Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
Minutes of May 13, 1986 Meeting
State Department of Transportation - Board Room - BWI Airport
7:15 p.m.

1. Present: Abrams, Ackerman, Bregman, Ciotola (Chairman), Cohen, Dancy (guest), Harris, Lenrow, Martin-Smith, Tromley, Waller, Zerwitz (quorum).

2. Judge Ciotola expressed the Governor's appreciation to the Commissioners for their service throughout the year.

3. The next meeting of the Commission will be September 16. The Commission faces a number of changes. Ms. Tromley will be resigning to attend law school. Membership is down. This fall a new governor and legislature will be elected. These changes will affect the program the Commission undertakes.

   The Reporter was directed to send each Commissioner a list of projects which the Commission held in abeyance this year. Over the summer, the Commissioners will study the list, and at the first meeting in the fall will set the agenda for the Commission.

4. Ms. Waller reported on the past legislative session. Some of the bills which were passed are: the Lead Paint Advisory Commission; rent escrow for air conditioning; notification for ground rent ejectments; rent receipt bill; and housing initative. Not all the legislation has been signed by the Governor.

5. Ms. Waller shared with the Commission the Property Owners' Association's efforts in educating tenants to the dangers of lead paint. The Association spent $60,000 creating video tapes to show targeted populations. The tapes detail the dangers of lead paint.

6. The next meeting of the Commission will be September 16 to avoid a conflict with the primary elections.

Michele Gilligan
Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
Minutes of September 16, 1986 Meeting
State Department of Transportation - Board Room - BWI Airport
7:15 p.m.

1. Present: Judge Ciotola (chair), Mr. Abram, Mr. Harris, Mr. Piccinini, Ms. Waller, Mr. Bregman, Ms. Cohen, Mr. Senker (guest), Ms. Martin-Smith (quorum) Ms. Hayward (excused).

2. Meeting was called to order at 7:50 p.m. Sandwiches had been available at 7:00 p.m.

3. Motion to approve minutes of the previous meeting by Mr. Bregman, seconded by Mr. Abram, was passed.

4. Chair announced resignation of Mr. Zerwitz. Mr. Zerwitz had been a long time active member of the Commission. He will be missed.

The Chair also reminded the Commission of Ms. Tromley's resignation. She had ably represented the tenants' positions, and will be missed.

The Chair reviewed the current membership which is short 2 landlord members, 5 tenant members and 1 neutral member. At least two applications for membership are pending.

The Reporter was directed to contact Ms. Biems to find out the status of the applications and urge that the appointment be made. Former Commission member Joan Asparagus was mention as a possibility to rejoin the Commission.

5. The Commission's agenda for the coming legislative session was discussed and the following proposals adopted:

A. A subcommittee chaired by Mr. Bregman with Mr. Abrams and Ms. Waller as members will gather publications distributed by other organizations and investigate existence of county and city landlord tenant commissions. (Items 1 and 3 of July 25, 1986 memo.)

B. The topic of public hearings was raised. The discussion emphasized the need for better publicity including notices in the Maryland Register 45 days before each hearing. Although no firm plans were made, libraries were agreed on as the best location for the hearings. (Item 2 of July 25, 1986 memo.)

C. The reporter was directed to contact, the appropriate person in the Attorney General's office to request he gather information on the insurance crisis. Maryland is one of only six Eastern states to allow a lead paint exclusion. The insurance commissioner did this with no public hearing. (Item 4 of July 25, 1986 memo.)

D. Reporter was directed to contacts BOMA and IRMA to see if they have standards for property managers. (Item 5 of July 25, 1986 memo.)

E. Ms. Martin-Smith agreed to chair an education subcommittee to develop a program on what the rights and obligations of a tenant are for public and parochial schools. (Item 6 of July 25, 1986 memo.)

6. The Chair discussed the activities of the lead paint group he has convened. It's next meeting will be September 29 when it will view a movie for high school students prepared by the Property Owners Association.

7. Motion to adjourned meeting at 8:50 p.m. was passed.

Michele Gilligan
Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION

Minutes of December 9, 1986 Meeting

State Department of Transportation - Board Room - BWI Airport

7:15 p.m.

1. Present: Abrams, Ackerman, Bregman, Ciotola (Chairman), Lenrow (quorum).

2. Sandwiches were available at 7:25 p.m. Meeting called to order at 8:30 p.m. and adjourned at 9:30 p.m.

3. Reporter stated that the Assistant Appointments Officer told her appointments to the Commission would be made into January. In addition, the Commission could expect a form from the Governor-elect requesting justification of the Commission's continued existence.

4. Problem with alignment of new L-T forms was discussed. The Chairman suggested recommendations be gotten to him before December 15 when the Administrative Judges were meeting to discuss the forms.

5. Mr. Lenrow will bring a revised model lease to the January meeting.

6. Mr. Bregman presented the Uniform Landlord and Tenant Law to the Commission for consideration for presentation to the legislature. The Reporter will mail copies of the Uniform Act to the members along with Professor Davison's article on the Act.

7. The Chairman reported that the Rules Committee subcommittee on Landlord and Tenant rules had taken no action.

Michele Gilligan
Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
Minutes of January 13, 1987 Meeting
State Department of Transportation - Board Room - BWI Airport
7:15 p.m.

1. Attendance: Abrams, Ackerman, Bregman, Ciotola (Chair), Lenrow, Martin-Smith, Piccinni (quorum).

2. Meeting started 8:10 p.m. Sandwiches were available at 7:25 p.m.

3. Motion by Mr. Bregman, seconded by Mr. Lenrow, to adopt the minutes of the last meeting was passed.

4. Reporter told Commission that a questionnaire had been received from the Governor-elect asking the Commission to explain what it had done in the last year. No further word has been received.

5. Mr. Lenrow distributed revisions of the Model Leases. He would like all Commissioners to review them and to send him comments or to bring him comments at the next meeting.

   The original leases were a joint effort of Jack Stolloff, Gwen Tromley and Mr. Lenrow. At the time they drafted the leases they reviewed the sample leases distributed by the Washington Law Reporter, Lucas Brothers and the Daily Record. The objective of the leases was to provide full disclosure.

   The leases are still current because there have been few changes in the Maryland landlord-tenant laws in the last six years. However, several counties like Montgomery and Prince George's have significant landlord-tenant laws which Mr. Lenrow would like the Commissioners to bring to his attention for incorporation in an addendum.

6. Mr. Bregman expressed the desire that the Commission review the Uniform Landlord-Tenant Relations Act with a view toward revising it and incorporating it in place of the current Maryland Act. He suggested reviewing a section of the Act at each meeting and starting with an outline of the provisions. The members agreed to bring outlines to the next meeting.

   The Reporter was requested to obtain the "template" used for drafting state legislation and send it to all Commissioners.

7. Mr. Bregman circulated the information he had received from throughout the State on landlord-tenant law. He is waiting for a few more responses after which the Commission will decide what action to take.

8. Ms. Martin-Smith met with Rick Miller, Director of the Citizenship Law Related Education Program at UMBC. He thought a landlord-tenant program would be good for students and pointed out the section on it in the West publication by Arbetman, McMahan and O'Brien called Street Law. He cautioned that it would be difficult getting such a program adopted in the curriculum unless it was well packaged. He thought a video tape would cost $50,000.

9. Meeting adjourned at 9:30 p.m.

Michele Gilligan
Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
Minutes of February 10, 1987 Meeting
State Department of Transportation - Board Room - BWI Airport
7:15 p.m.

1. Attendance: Ackerman, Ciotola (Chair), Harris, Lenrow, and Piccinni (quorum).

2. Food was available at 7:25 p.m. and the meeting was called to order at 8:00 p.m.

3. Motion by Mr. Ackerman, seconded by Mr. Lenrow, to approve the minutes of the last meeting was adopted.

4. The attached letter to the Commission from Judge Wilner was read and discussed. After discussion, the consensus of the Committee was to address the lack of uniformity by statute.

5. The draft model lease was discussed and a request made for additional comments to be sent to Mr. Lenrow.

6. Judge Ciotola discussed several of the new landlord and tenant cases and will send copies to the Commissioners.

7. The discussion of the revision of the Annotated Code was postponed until next meeting.

8. Production of a film was discussed as was the possibility that the Administrative Office of the Courts might produce it. Further discussion was postponed until the next meeting.

9. Motion by Mr. Lenrow, seconded by Mr. Ackerman, to adjorn was passed at 9:20 p.m.

Michele Gilligan
Reporter

1986 MARYLAND LEGISLATION OF INTEREST TO REAL PROPERTY ATTORNEYS

BY: JAMES C. OLIVER, CHAIRMAN
CODE REVISION COMMITTEE
SECTION OF REAL PROPERTY, PLANNING AND ZONING
MARYLAND STATE BAR ASSOCIATION

Below is a list of Bills enacted or enrolled by the General Assembly of Maryland during the 1986 Legislative Session which affect real property or matters relating thereto. They are listed in order of sections affected within various Articles of the Maryland Code. Any Bill for which a Chapter number is given has been signed by Governor Hughes. Unless otherwise noted the effective date of each Bill will be July 1, 1986.

This year's members of the Code Revision Committee, which was chaired by James C. Oliver, were Charles T. Albert, David E. Belcher, Annarose Sleeth Bowers, Donald L. Bradfield, Ronald P. Fish, David H. Fishman, Ann Clary Gordon, Edward J. Levin, Robert M. McCaig, George V. Parkhurst, Russell R. Reno, Jr., and Gerald R. Walsh. Each of them spent numerous hours attending our frequent meetings and reviewing the commenting on pending legislation.

The Committee reviewed approximately 180 bills during the course of its meetings and submitted written comments to the General Assembly on approximately 90 bills. Members of the Committee testified before four committees of the General Assembly and spent additional time discussing bills with counsel to these committees, with representatives of the State Department of Assessments and Taxation, with the Governor's Commission on Condominiums, Cooperatives and Homeowners Associations and with other legislative oversight committees of the Maryland State Bar Association.

REAL PROPERTY ARTICLE

CHAPTER ___ (H.B. 933) Amends RP § 3-104.

Provides that property may be transferred on the assessment books or records (a prerequisite to recordation of a deed) in July, August or September if, instead of paying all outstanding taxes, a lender or an attorney handling the transfer of title files with the appropriate official a statement that the lender maintains a real estate tax escrow account.

CHAPTER ___ (H.B. 926) Amends RP § 8-205.

Provides that a landlord of a residential building must provide a tenant with a receipt if the tenant makes the payment in person and does not pay by check.

CHAPTER ___ (H.B. 1311) Amends RP § 8-211.

Eliminates the requirement that a tenant seeking a rent escrow for the repair of a dangerous defect give notice to the landlord by certified mail. The tenant is still required to give written notice.

CHAPTER ___ (S.B. 435) -- Amends RP §8-402.2.

Imposes a requirement that the holder of a Maryland ground rent send notice by certified mail to the tenant at least 30 days prior to filing a declaration in ejectment. This, in effect, provides the tenant with an opportunity to cure the default prior to the filing of the ejectment action thereby allowing the tenant to avoid payment of court costs.

CHAPTER ___ (H.B. 371) Amends RP § 10-304 and adds RP §§10-501 to 10-508.

Enacts the Custom Home Protection Act for the protection of consumers hiring builders to construct a home on land owned by the consumer or on land previously owned by the consumer. The act imposes detailed disclosure requirements upon the builder, requires that the builder place any advance payments in an escrow account unless a surety bond is posted, and imposes prerequisites to the builder's withdrawal of moneys from the escrow account. A breach of the Act by a builder constitutes an unfair or deceptive trade practice and may be punishable as a misdemeanor. The Act also empowers a court to enter an order prohibiting an individual who has violated the Act from entering into any contract for the construction of real property.

CHAPTER ___ (S.B. 677) Amends RP §§11-102.1(b), 11-104(b), 11-114(g), 11-126(b), 11-127(d), 11-131(a) and 11-135(c).

Introduced at the request of the Secretary of State's office, this bill makes numerous technical amendments to the Maryland Condominium Act, several of which are intended to codify existing practices of that office. Among the amendments are provisions which require that condominium conversion notices be given by hand or by certified mail, that the public offering statement contain copies of insurance contracts and disclose the right of the council of unit owners to terminate contracts under RP § 11-133, that preclude a developer from avoiding his warranty obligations by a grant to an intermediate purchaser and that limit the fee that a council of unit owners may charge for furnishing a resale certificate to the council's actual cost.

CHAPTER ___ (S.B. 884, H.B. 1421) Amends RP §§ 11-109.2, 11-131, 11-133 and 11-134.

Provides relief for the developer of non-residential condominiums from certain provisions of the Maryland Condominium Act. The budget requirements of RP § 11-109.2 no longer apply to a condominium occupied and used solely for non-residential purposes, nor do the warranty provisions of RP § 11-131, nor do the contractual termination rights of the council of unit owners under RP § 11-133, nor do the prohibitions of RP § 11-134 which preclude the developer from requiring the buyer of a unit to retain the developer in connection with the sale or lease of the unit.

CHAPTER ___ (S.B. 676) Amends RP § 11-110(b).

Provides that if the condominium declaration so provides, expenses related to the maintenance of limited common elements may be charged to the unit owners or owners who are given the exclusive right to use the limited common elements.

CHAPTER ___ (S.B. 921) Amends RP §§ 11-111.

Makes a minor amendment to the rule-making provisions of the Maryland Condominium Act to provide that a special meeting to challenge a proposed rule shall be held within 30 days after the petition calling for the special meeting is received by the entity which adopted the rule and to eliminate a requirement that the petition be given to the resident agent.

CHAPTER ___ (S.B. 672) Amends RP § 11-126.

Makes clear that the public offering statement for the initial sale of a condominium unit must disclose whether the unit is subject to an extended lease. Such a disclosure requirement was already embodied in RP § 11-137(i), but the failure to disclose this information did not entitle the buyer to rescind the contract.

CHAPTER ___ (S.B. 673) Amends RP § 11-135.

Makes clear that, in the context of a resale, the seller of a condominium unit must disclose whether the unit is subject to an extended lease. Such a disclosure requirement was already embodied in RP § 11-137(i), but the failure to disclose this information did not entitle the buyer to rescind the contract. The bill also provides a due diligence defense for the seller in an action brought under RP § 11-135 for failure to accurately disclose information.

~~CHAPTER ___ (S.B. 475) Enacts RP Title 11B.~~

DID NOT PASS

Creates the Maryland Homeowners Association Act. This Act establishes detailed and lengthy disclosure requirements

with respect to the initial sale of lots on which dwellings are or are intended to be located in a "development" and minimal disclosure requirements with respect to the resale of such a lot. Failure to provide the information required to be disclosed entitles the buyer to terminate the contract. A "development" is defined as property subject to a declaration, a declaration being defined as a recorded instrument which creates the authority for a homeowners association to impose mandatory fees. In addition to the disclosure requirements, the Act imposes "sunshine legislation" upon homeowner associations, but does not impose registration requirements nor impose requirements with respect to the contents of a declaration or the formation of a homeowners association.

CHAPTER ___ (H.B. 159) Amends RP §§ 12-201 and 12-205.

Increases the minimum and maximum amounts of compensation to which a business or farm operation may be entitled in a condemnation action and provides for an annual adjustment in these limits to reflect changes in the rate of inflation or deflation.

CHAPTER ___ (H.B. 1360) Adds RP § 14-119.

Provides that an officer or director of a council of unit owners, a cooperative housing corporation or a homeowners association is not personally liable for personal injuries to another where the officer or director acts within the scope of his duties, in good faith and does not act in a reckless, wanton or grossly negligent manner.

S.J. 1, H.J.2

A joint resolution encouraging the draftsmen of condominium documents to draft these documents in plain language.

CORPORATIONS AND ASSOCIATIONS ARTICLE

CHAPTER ___ (S.B. 307) Adds C&A Subtitle 6B to Title 5.

Creates the Maryland Cooperative Housing Corporation Act, a comprehensive Act covering housing cooperatives and which defines a cooperative interest as personal property. The Act imposes disclosure and recission requirements with respect to the initial sale of a cooperative interest imposes warranty obligations upon the developer of a cooperative housing corporation, imposes detailed prerequisites to the conversion of residential rental facilities to a cooperative similar to those for conversion to a condominium and provides that a security interest in a cooperative interest may be created and perfected in accordance with Article 9 of the U.C.C.

CHAPTER 9 (S.B. 156) Creates C&A 10-1105.

Clarifies the effect of the failure to file a certificate with the State Department of Assessments and Taxation under the Maryland Revised Uniform Limited Partnership Act for a limited partnership created under the previous Maryland Uniform Limited Partnership Act. The failure to file does not effect the limited liability of limited partners, impair the validity of contracts nor dissolve the limited partnership, but does preclude such a limited partnership from bringing suit in the state courts or transferring or accepting title to real or personal property until the certificate is filed and any penalties paid. The bill was emergency legislation and took effect in March of 1986. Portions of the Bill (but not those precluding the accepting or transfer of title) are retroactive to July 1, 1985.

TAX PROPERTY ARTICLE

CHAPTER ___ (S.B. 999) Tax-Property Article Corrective Bill.

Makes numerous corrections to the newly effective Tax-Property Article. Of significance to construction lenders, former Article 81 provided that where a loan is not fully funded and recordation taxes are paid only upon that portion of the debt funded under the mortgage or deed of trust, the debtor and not the lender is obligated to pay the recordation taxes upon each new advance. The Tax-Property Article, as originally enacted, inadvertently failed to specify that the obligation was that of the debtor. The bill corrects this oversight.

CHAPTER ___ (H.B. 1789) Amends numerous provisions of the Tax-Property Article.

Makes numerous technical amendments throughout the Tax-Property Article

CHAPTER ___ (H.B. 484) Holds TP § 2-217 and amends TP § 8-104.

Establishes the conditions under which an assessor may conduct a physical inspection of real property and provides that revaluation at the end of a 3 year cycle shall be based upon an exterior physical inspection.

CHAPTER ___ (H.B. 288) Amends TP § 8-104, Repeals TP §8-205
and renumbers TP §8-206 as §8-205.

In addition to several clarifying amendments, the bill provides that real property shall be revalued if the property

is divided into 2 or more parcels by subdivision plat, metes and bounds, condominium plat or time-share.

CHAPTER ___ (S.B. 285, H.B. 1589) Adds TP § 9-107.

Provides a property tax credit for unimproved property which is subjected to a conservation easement donated to the Maryland Environmental Trust.

CHAPTER ___ (S.B. 747) Amends numerous sections of T.P. Titles 12 and 13.

A series of elaborate amendments to the recordation and transfer tax statutes intended to close a perceived loophole which permitted a corporation to convey property without paying transfer or recordation taxes. The bill limits the exemption from taxation for the transfer of property between parent and subsidiary corporations and between brother and sister corporations and imposes the taxes upon the transfer of real property through a merger or consolidation of corporations except in certain circumstances. This year's challenge sure to create next year's loophole.

CHAPTER ___ (H.B. 1508) Amends TP § 12-103 and adds TP 13-408.

Authorizes the counties and Baltimore City to exempt from recordation taxes or county transfer taxes a specified amount of the consideration payable on the conveyance of owner-occupied residential property. The state refused to provide such an exemption with respect to the state transfer tax. Unlikely to have much impact.

CHAPTER ___ (S.B. 657) Amends TP § 13-305.

Provides that the agricultural transfer tax becomes due, with interest, if the transferee, by constructing non-agricultural improvements, or nonagricultural site improvements, fails to comply with a declaration of intent to farm previously submitted in order to obtain an exemption. Also imposes a lien upon the agricultural land for the taxes and interest. Provides a mechanism by which a transferee may file a declaration of intent to farm with respect to only a portion of the property being conveyed.

CHAPTER ___ (H.B. 1828) Amends numerous sections of Sub- title 8 of Title 14 of the Tax-Property Article.

Makes numerous changes to the tax sale provisions of the Article in order to repeal obsolete references, conform the provisions to current practice and correct problematic or unclear portions of the existing provisions. The bill was

prepared by members of M.S.B.A. at the request of the Real Property Section Council.

CHAPTER ___ (S.B. 119) Amends TP § 14-836.

Provides that, if appropriate, the state shall be made a party in an action to foreclose the right of redemption from a tax sale.

CHAPTER ___ (H.B. 1418) Adds TP § 14-849.

Prohibits a county or Baltimore City from selling a taxpayer's property for the failure to pay an alley assessment charge.

FINANCIAL INSTITUTIONS ARTICLE

CHAPTER ___ (S.B. 127) Amends FI §§ 12-302 and 12-320.

Provides exemptions from the secondary mortgage loan licensing requirements for a person who directly or indirectly makes 3 or fewer secondary mortgage loans during any calendar year and for a licensed real estate broker who makes a secondary mortgage loan to assist a person in the purchase or sale of a residential property through the broker. Also imposes certain penalties upon persons violating the Maryland Secondary Mortgage Loan Law.

CHAPTER ___ (H.B. 1800) Amends FI §§ 12-302 and 12-304.

Provides an exemption from the secondary mortgage loan licensing requirements for a licensed home improvement contractor who assigns the mortgage without recourse within 30 days after completion of the work under its contract to a person licensed to make such loans or to a regulated financial institution not required to be licensed.

COMMERCIAL LAW ARTICLE

CHAPTER ___ (H.B. 184) Amends CL §9-402.

Allows financing statements, other than those to be recorded in the land records, to be placed on microfiche, microfilm or other appropriate medium.

CHAPTER ___ (S.B. 393) Amends and adds numerous provisions of subtitle 1 of title 12 of the Commercial Law Article.

Adopts numerous amendments to the Commercial Law Article recommended by the Governor's Task Force on Real Property Closing Costs intended to reduce settlement costs. A lender may not require payment of interest in advance except points. A lender that imposes fees on borrowers for settlement services or document review services by a lender-designated attorney must notify the borrower of its requirements for selection of the attorney and provide a good faith estimate of the fees of the attorney. If a lender charges for the fees of its attorney, the fees must be limited to legal services performed in processing and closing the loan and, if the fees exceed $100, a statement must be provided. Inspection fees may only be imposed by a lender for a loan on residential real property if the inspection is needed to ascertain completion of construction of a new home or repairs required by the lender.

CHAPTER ___ (S.B. 129) Amends CL §§ 12-103(b) and 12-118.

Requires that the borrower under an adjustable rate mortgage be notified of a change in the periodic payment amount or interest rate at least 15 days prior to the due date of the first payment reflecting the change and that the notice specify the change in the periodic payment, the interest rate or the principal amount and set forth the calculation reflecting each change, including the method of calculating the new payment amount.

CHAPTER ___ (S.B. 665, H.B. 1559) Amends CL § 12-103(b).

Limits the amount of interest a lender may charge in connection with the refinancing of an existing first mortgage loan on residential real property. However, the exemptions from the limitation severely limit its applicability to a very narrow group of lenders.

CHAPTER ___ (H.B. 649) Amends CL §§ 12-407 and 12-505.

Changes the method of calculating the amount of advance interest to be refunded to the borrower from the "Rule of 78" to the actuarial method.

MISCELLANEOUS

CHAPTER ___ (S.B. 748) Amends Art. 56, §§ 227A and 227A-1 and FI §§ 13-604 and 13-605(b).

Expands the authority of a licensed real estate broker to pool and commingle deposit and trust moneys entrusted with or held by the broker in accounts the interest from which is to be paid to the Maryland Rental Housing Resource Program.

CHAPTER ___ (H.B. 13) Adds Subtitle 7 to Title 6 of the Health Environmental Article.

Establishes the Advisory Council on Lead Poisoning to collect and evaluate information on the prevention, management and treatment of lead poisoning and to recommend legislation or an administrative action. No new laws requiring an owner of property to eliminate lead paint were enacted.

CHAPTER ___ (S.B. 298) Amends Art. 41, § 257L and adds Art. 41, § 257L-1.

In addition to making available new loan programs for the rehabilitation of housing, the bill also authorizes the Secretary of Economic and Community Development to adopt, by regulation, a minimum livability code that sets minimum standards for housing in the state. Enforcement of the minimum livability code will be the responsibility of the political subdivisions. The minimum livability code will not apply to political subdivisions that have adopted housing codes that are more stringent than the code, but will apply to other political subdivisions commencing on July 1, 1988.

2919R

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION

Minutes of March 17, 1987 Meeting

1. Present: Abrams, Ackerman, Bregman, Ciotola, Martin-Smith, Waller (quorum).

2. Sandwiches were available at 7:10 p.m. and the meeting was called to order at 8:00 p.m.

3. Motion to approve the minutes by Mr. Ackerman, seconded by Mr. Abrams, was passed.

4. Administrative details: Please send written comments on model lease to Mr. Lenrow. A packet of materials containing district court landlord and tenant procedures and cases was given to the Reporter to have duplicated and to distribute to the Commission members. The Reporter explained the need to get the new administrative officer's approval of the book order. The next meeting was scheduled for April 21 to avoid the Jewish holidays.

5. The annual dinner meeting was planned for May and the Chair suggested Busche's Chesapeake on Route 50 in Annapolis.

6. Ms. Waller reported on the bills with which she was familiar in the legislature. Since this session was the first of Governor Schaefer's administration, there were no prefiled bills. Mr. Bregman expressed the desire that the Commission follow the bills more closely.

7. A draft of the application of the ULTRA to Maryland law prepared by the former Reporter was distributed. The Commission members are asked to review it for further discussion.

8. Ms. Martin-Smith detailed to the Commission the further steps she had taken. She is waiting for further information from Georgetown Law Center.

She spoke with Dr. Welch at Suitland High School who suggested that a landlord and tenant film could be made a part of the curriculum in "family living", "social studies" or "business tech". The outline of the proposed film (which is attached) was discussed and suggestions made.

The Chair suggested that the AOC could do the actual filming. Ms. Waller suggested that actors and actresses could be obtained from the Theatrical Arts Department of UMBC. In addition, the Reporter was directed to determine

if the State Board of Education has any materials of landlord and tenant law and if the ABA Street Law Program has any materials available.

9. To assist in developing the Street Law Program, the Commission is going to review the POA's lead paint tape at the next meeting.

10. Meeting adjourned at 9:30 p.m.

Michele Gilligan
Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION

Minutes of April 21, 1987 Meeting

1. Present: Abrams, Ackerman, Bregman, Ciotola, Harris, Lenrow, Waller (quorum). Beverly Glassband and Don Walls.

2. Sandwiches were available at 6:45 p.m. and the meeting was called to order at 7:45 p.m.

3. Motion to approve the minutes by Mr. Ackerman, seconded by Mr. Harris, was passed.

4. Administrative details: The books on The Common-sense Guide to Successful Real Estate Negotiation were distributed. The Street Law book order must originate in the Governor's office and will be ordered at a later time.

   New stationary has been ordered. The State will not provide calling cards. The Hughes administration started the policy of not providing calling cards. Other commissions have printed calling cards at their own expense.

   The Assistant Appointments Secretary Ms. Doreen Riggins has been screening applications for appointment to the Commission. She has many good applications which she will forward to the Governor. There is no time frame on filling the vacancies.

5. The annual dinner meeting will be May 12 at 6:30 p.m. at Busche's Chesapeake on Route 50 in Annapolis. The Reporter will send directions to the Commission members. At that meeting the annual expense forms will be distributed to be filled out.

6. Commission members discussed the bills which will affect the district court. The Erbe bad weather bill was passed as was the increase of Small Claims jurisdiction to $2,500 effective January 1988. The bill to require mitigation of damages in commercial leasing situations did not pass.

7. Over the Summer a subcommittee composed of Mr. Abrams, Mr. Ackerman, Mr. Bregman, chair, Mr. Lenrow and the Reporter will meet to draft a statute applying the ULTRA to Maryland law. The Reporter will inform the subcommittee of the different public local laws applying in Baltimore City for them to consider in their drafting.

8. Ms. Martin-Smith will chair a subcommittee to carry forward the "street law" program. Her subcommittee will include Ms. Cohen, Mr. Harris, Ms. Hayward, Mr. Piccinini, and Ms. Waller. The Reporter is to contact Ms. Martin-Smith and discuss Mr. Walls offer.

9. Mr. Lenrow reported that he has received no comments on the Model Lease from the members of the Commission. He will finalize the lease in the form he has it.

10. Mr. Walls, executive director of the Property Owners' Association of Baltimore City (POA), showed the video on lead paint which the POA produced. He also explained the process and the cost involved in developing such a film.

The outline prepared by Ms. Martin-Smith would lend itself to a dramatization. Videos work better if they are in the form of a story line. Mr. Walls is willing to do a rough draft of a script if the Commission wishes based on the outline which had been provided to him. Ms. Martin-Smith is to contact him at 727-1324.

The steps in the creation of a video are: develop a script, choose locations and actors, film, and edit. The first step is completion of a script.

Once the script is completed the locations where filming will occur must be selected in keeping with the script and availability. The POA used sites which were made available to them free of charge.

The actors were chosen by audition. Mr. Walls held auditions for students at UMBC in Bob Brown's Theater Arts Program and members of the POA to fill roles. He videotaped the individuals with his own equipment to determine how they would film. The roles were assigned based on the videotapes. The actors were paid minimum wage for their time.

Mr. Walls then did all the filming himself. He filmed 4 1/2 hours to obtain a 35 minute film. The filming took three complete weekends.

He also did all the editing himself. The editing, which included putting in sound effects (which is called an assembly edit), took 20 hours. A special room for editing which cost $250 an hour was made available to him for $35 an hour by contacts in the industry.

The total cost to the POA of producing the video tape and 21 copies was $4,000. If it had been produced by a commercial film maker, it would have cost between $60,000 and $70,000. Mr. Walls stressed the point that the costs are very manageable if the organization uses the resources at hand.

11. Meeting adjourned at 9:30 p.m.

Michele Gilligan
Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
MINUTES OF TUESDAY, MAY 12, 1987
BUSCH'S CHESAPEAKE

Present: Mr. Abrams, Mr. Ackerman, Mr. Bregman, Judge Ciotola (chair), Mr. Harris, Ms. Martin-Smith (quorum). Honored guests: former Commissioners Ms. Tromley and Mr. Zerwitz.

1. Motion to approve minutes by Mr. Ackerman, seconded by Mr. Abrams, approved.

2. Chair announced that Administrative Office of the Court would do the video taping and editing. In return, a copy of the video will be given to them. If given enough notice, they will go to the location.

   Mr. Wall's offer of help with the script was discussed and Ms. Martin-Smith will get in touch with him.

3. A vote on the model lease was deferred until the next meeting.

4. A more active role in legislation next session was contemplated so a meeting for July 14 was set. The agenda will be sent out later.

5. The subcommittees are to meet between now and the July meeting.

6. Meeting adjourned at 10:00 p.m.

Michele Gilligan
Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
Minutes of September 15, 1987 Meeting
State Department of Transportation - Board Room - BWI Airport
7:15 p.m.

1. Attendance: Bregman, Ciotola (Chair), Harris, Lenrow, and Piccinni (quorum).

2. Meeting called to order at 8:15 p.m. Sandwiches were available from 6:15 p.m.

3. Motion by Mr. Harris, seconded by Mr. Lenrow, to approve the minutes was passed.

4. Reporter related her conversation with Ms. Riggin that the Assistant Appointments Secretary is searching for new members for the Commission.

5. Mr. Lenrow presented the model lease with some handwritten suggested additions. Other suggestions were made. All Commissioners were requested to call Mr. Lenrow with any other suggestions since he will present the final lease at the next meeting.

6. Receipt of Ms. Martin-Smith's report was acknowledged. Mr. Harris said that the Property Owners Association had authorized Mr. Walls' technical assistance to the project.

7. The shortness of time frame on legislation caused the Commission to decide to wait to introduce the major revision of landlord-tenant law until the 1989 legislative session. For 1988, the Commission will introduce some of the previous clean-up legislation.

   Agency bills (Commission bills are treated this way) were to be given to the Governor's Legislative Office by September 14. The Commission was to submit its draft bills as quickly as possible.

8. Meeting adjourned at 9:35 p.m.

Michele Gilligan
Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION

Minutes of October 13, 1987 Meeting

1. Present: Abrams, Bregman, Ciotola, Harris, Lenrow, Piccinni (quorum).

2. Sandwiches were available at 6:30 p.m. and the meeting was called to order at 8:20 p.m.

3. Motion to approve the minutes by Mr. Abrams, seconded by Mr. Lenrow, was passed.

4. Administrative details: New supplements for the book Maryland Landlord-Tenant Law Practice and Procedure by Mr. Bregman have been ordered. The supplement to the Annotated Code were distributed.

   The Assistant Appointments Secretary Ms. Doreen Riggins has been screening applications for appointment to the Commission. She has many good applications which she will forward to the Governor. There is no time frame on filling the vacancies. The Reporter will contact members of the Commission who have not been attending meetings and ask their intentions. Once the information is collected the Reporter will transfer it to Ms. Riggins.

5. Ms. Martin-Smith was unable to attend the meeting and reported that her subcommittee had made no further progress on the Street Law video tape. The Reporter has not yet received the books ordered on "street law".

6. Mr. Lenrow reported that he had been unable to arrange the retyping of the model lease to present to the Commission for its approval. He hopes to complete this work by the next meeting at which time the Commission can approve the model lease in its revised form.

7. Mr. Bregman presented the five bills which had been drafted by the Commission in the early 1980s and recommended that the Commission consider introducing four of them to the legislature. One bill provided the notice a tenant must give to terminate a lease. Another clarified the number of summonses a tenant must receive to cut off his right of redemption. A third clarified the application statute. The fourth provided that the landlord provided a copy of a form lease to a tenant who is applying for an apartment and a copy of his executed lease to a tenant after he signs a lease. The fifth provided criminal sanctions for a landlord who failed to provide essential services.

The Commission accepted the subcommittee report to have the Reporter revise the language of the first four bills, circulated those bills to the Commission and take a poll of the Commission members to see if they wish to submit the bills in the form presented to them. The Reporter is to conduct the telephone poll.

The subcommittee recommended that a complete revision of the Landlord-Tenant Coded should wait for more study.

8. Meeting adjourned at 9:30 p.m.

Michele Gilligan
Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION

Minutes of November 10, 1987 Meeting

1. Present: Abrams, Bregman, Ciotola, Harris, Piccinini (quorum).

2. Sandwiches were available at 6:00 p.m. and the meeting was called to order at 6:45 p.m.

3. Motion to approve the minutes by Mr. Abrams, seconded by Mr. Harris, was passed.

4. Administrative details: New supplements for the book Maryland Landlord-Tenant Law Practice and Procedure by Mr. Bregman were distributed.

The Assistant Appointments Secretary Ms. Doreen Riggin continues her screen of applications for appointment to the Commission. She has many good applications which she will forward to the Governor. There is no time frame on filling the vacancies.

The Reporter has contacted three members of the Commission who have not been attending meetings. Ms. Cohen resigned from the Commission because of her inability to arrange transportation to the meetings, Mr. Ackerman explained that he had a conflict with meetings on the second Tuesday of the month were will end this December, and Ms. Hayward didnot respond yet. The Chair directed the Reporter to contact all members of the Commission who have missed three meetings and inquiry why they have missed the meetings.

The December meeting of the Commission was canceled and the Commission's next meeting will be January 12, 1988.

5. Ms. Martin-Smith was unable to attend the meeting and there was no report from the subcommittee on the street law video tape. The Reporter has not yet received the books ordered on "street law".

6. Mr. Lenrow was called out of town on business and hopes to arrange the retyping of the model lease to present to the Commission for its approval at the next meeting.

7. Mr. Bregman presented the four bills which had been revised as a result of the telephone poll of the Commissioners. The bills were unanimously approved by the Commission.

The Reporter spoke with the Deputy Legislative Officer of the Governor, Mr. Ianucci, who expressed reservations that the bills could be reviewed in the short time which remained because all bills were to have been submitted by

September 14, 1987. The Commission directed the Reporter to submit the bills.

The subcommittee recommended that a complete revision of the Landlord-Tenant Coded should be the next project and when it is done Mr. Abrams expressed the view that the Code should be divided into Commercial and Residential sections. The interest of the Code Revision Committee of the Real Property, Planning and Zoning Section of the Maryland bar was noted, and the Reporter was directed to invite Mr. Oliver to the January meeting of the Commission.

Mr. Abrams has an outline of areas to be covered and will send it to the Reporter for distribution to the Commission members for the January meeting.

8. Meeting adjourned at 8:30 p.m.

Michele Gilligan
Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION

Minutes of January 12, 1988 Meeting

1. Present: Abrams, Ciotola, Harris, Piccinini, and Waller (quorum). (Excused Ackerman, Bregman and Lenrow.).

2. Sandwiches were available at 6:30 p.m. and the meeting was called to order at 7:25 p.m.

3. Motion to approve the minutes by Mr. Abrams, seconded by Ms. Waller, was passed.

4. Administrative details: The Reporter wrote to James C. Oliver on November 16, 1987 to invite him to a Commission meeting to discuss what the state bar intended to do with the landlord-tenant article of the code. He did not respond and the Reporter was directed to do a follow-up letter with a copy to the President of the state bar and to Mr. Abrams.

5. Ms. Martin-Smith was unable to attend the meeting and there was no report from the subcommittee on the street law video tape. The Reporter has not yet received the books ordered on "street law".

6. Mr. Lenrow was unable to attend because of business and the model lease will be present to the Commission for its approval at the next meeting.

7. Three of the four bills submitted to the Governor were submitted to the legislature by the Governor. The bill on application fees was not submitted to the legislature. The hearing dates had not been set at the time of the Commission meeting.

8. The Commission discussed the language of MD. CODE ANN. ^401(d)(1987) which states evictions are not to occur "in extreme weather". The landlord members objected to the interpretation of that language which stalled their evictions for weeks at a time in the winter.

9. The Reporter was directed to write to the new Appointments Secretary and request that new members be appointaed to the Commission since the Commission is composed of a majority of landlord members.

10. Mr. McCaig's letter was discussed and the consensus of members present was that they endorsed the legislation as presented and did not wish to invite Mr. McCaig to address the Commission.

11. Meeting adjourned at 9:00 p.m.

Michele Gilligan
Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION

Agenda - Tuesday, March 1, 1988
State Department of Transportation - Board Room - BWI Airport
7:15 p.m.

The Commission will address the following items:

1. Administrative details

   - Approve minutes (mailed out already)
   - Welcome to new members
   - Membership
   - Reporter's report

2. Legislation

3. Subcommittee reports

   - Lease - Mr. Lenrow
   - Street law program - Ms. Martin-Smith

4. New business

PLEASE CALL 625-3121 TO LET US KNOW YOUR PLANS FOR ATTENDANCE

Attendance has been light, so we need to know your plans to know if we have a quorum. Please call at least one day in advance so we can notify Commissioners who travel a distance. Food will be served so we need to know to order food.

Directions: Take Baltimore Washington Parkway to the airport exit. Take road toward airport. Take exit marked Cargo Terminal Building or North Linthicum exit. At light after exit make a right. You'll see the International Hotel. Department of Transportation is the building next to it on the right.

Check in with the guard at the desk. Meeting will be in the Board Room on the second floor.

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION

Minutes of March 1, 1988 Meeting

1. Present: Abrams, Bregman, Chodak, Ciotola (chair), Harris, Lenrow, Martin-Smith, Piccinini, and Waller (quorum).

2. Sandwiches were available at 6:30 p.m. and the meeting was called to order at 7:25 p.m.

3. Motion to approve the minutes by Mr. Abrams, seconded by Ms. Waller, was passed.

4. The Chair welcomed the new member, Mr. Chodak.

5. Ms. Martin-Smith asked the members of the Commission to review the script she sent to them. She is concerned with the tone of the script. She would like to discuss rewriting the script at the next meeting.

6. Mr. Lenrow distributed copies of the new proposed model leases. He asked that the members of the Commission study the leases and be ready to vote on them at the next meeting.

7. The Reporter reviewed the legislation pending at the legislature. The Chair expressed the view that it would be inappropriate for the Commission to take a position on pending legislation other than the Commission bills until the Commission was at full strength.

8. The Reporter announced that hearings would be held on the Commission bills on March 8 when she would be out of the country. A motion to suspend the bylaws and allow a member of the Commission to testify on behalf of the Commission was made by Ms. Waller and seconded by Mr. Harris. The motion passed unanimously.

9. The Chair appointed Mr. Abrams or Mr. Bregman to testify on behalf of the Commission.

10. Motion to adjourn at 9:20 p.m. made by Mr. Lenrow and passed.

Michele Gilligan
Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION

Minutes of April 12, 1988 Meeting

1. Present: Ackerman, Bregman, Chodak, Ciotola (chair), Clark, Doyle, Harris, Herschlag, Lenrow, Martin-Smith, Sakotomoto-Wengel, Stokes, Sweet, and Waller (quorum).

2. Sandwiches were available at 6:45 p.m. and the meeting was called to order at 7:30 p.m.

3. Motion to approve the minutes by Mr. Ackerman, seconded by Ms. Waller, was passed.

4. The Chair welcomed the new members and expressed the Chair's pleasure at having a balanced membership. With the balanced membership, the Chair expressed the view that the Commission should meet during the Summer to attend to Commission business.

5. The Reporter explained the attendance requirements, the method of reimbursement, the mileage rate, and the books to which each Commission member is entitled.

6. Mr. Bregman reported on his testimony on Commission bills before the Legislature. The two bills on which he testified were the first and the last bills heard with the result that he spent the day there. From his experience he felt that lobbying legislators before the hearings would be more effective than testifying.

7. Mr. Lenrow reviewed the new proposed model leases and gave some history on the drafting of the leases. The first model leases were drafted by Mr. Lenrow, neutral, Ms. Tromley, tenant and Mr. Stolloff, landlord in the 1970s.

The following amendments were offered to the distributed Model Lease for Multi-Unit Residential Rental Building:

1. "12. LANDLORD'S DUTIES: B. YOUR USE OF THE PREMISES AND COMMON AREAS:
We shall not UNREASONABLY interfere with your use and enjoyment of the premises AND COMMON AREAS during the term of this lease."
Motion to add the capitalized language by Mr. Harris, seconded by Mr. Chodak, passed with 9 in favor, 3 opposed and 1 abstention.

2. "12. LANDLORD'S DUTIES: C. CONDITION OF THE PREMISES:
We shall deliver the premises to you in a condition

that is ~~reasonably~~ safe for habitation with the furnance and appliances in good working order IF WE SUPPLY THEM."

Motion to remove the struck language and to add the capitalized language by Mr. Lenrow, seconded by Mr. Bregman, passed with 12 in favor, and 1 opposed.

3. "12. LANDLORD'S DUTIES: F. STORAGE AND PARKING:

1. IF AVAILABLE we shall allow you to use the storage ~~and parking areas~~ in the development at ~~no charge~~ ____(DOLLAR AMOUNT) PER MONTH.

2. IF AVAILABLE WE SHALL ALLOW YOU TO USE THE STORAGE IN THE DEVELOPMENT AT ____(DOLLAR AMOUNT) PER MONTH."

Motion to remove the struck language and to add the capitalized language by Ms. Clark, seconded by Mr. Stokes, passed with 13 in favor.

4. "12. LANDLORD'S DUTIES: RECREATIONAL FACILITIES:

We shall allow you to use any recreational areas and facilities in the development ~~at no charge~~ EXCEPT FOR A CHARGE OF _____ FOR _____."

Motion to remove the struck language and to add the capitalized language by Ms. Clark, seconded by Mr. Stokes, passed with 13 in favor.

5. "13. TENANT'S DUTIES: A. MAINTENANCE OF THE PREMISES:

You shall: 3. Not deliberately or negligently ~~waste or~~ damage the premises or knowingly allow any person to do so;"

Motion to remove the struck language by Ms. Clark, seconded by Ms. Martin-Smith, passed with 13 in favor.

6. "13. TENANT'S DUTIES: A. MAINTENANCE OF THE PREMISES:

You shall: 6. ~~Keep all plumbing from becoming obstructed due to negligence.~~ If the plumbing becomes obstructed BECAUSE OF YOUR NEGLIGENCE OR DELIBERATE ACTS, you shall pay to have the lines cleared."

Motion to remove the struck language and to add the capitalized language by Mr. Lenrow, seconded by Mr. Bregman, was passed by a voice vote.

7. "13. TENANT'S DUTIES: 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."

Motion to remove the stuck language by Ms. Clark, and seconded by Mr. Stokes, was passed unanimously.

8. The Chair requested that all Commissioners get their suggestions to the lease subcommittee chair, Mr. Lenrow, prior to the next meeting. The Chair will limit discussion of the model leases to 15 minutes on each lease.

9. Ms. Martin-Smith asked the members of the Commission to review the script she sent to them. She is concerned with the tone of the script. She would like to discuss rewriting the script at the next meeting. Additional copies of the script need to be sent to Mr. Ackerman and Judge Ciotola.

10. The annual dinner meeting convention will be held at Caesar's Den in Little Italy on the second Tuesday in June. The Reporter was asked to make arrangements with Guido for the event.

11. Motion to adjourn at 9:35 p.m. made by Mr. Lenrow and passed.

Michele Gilligan
Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION

Minutes of September 6, 1988 Meeting

Department of Transportation Building, BWI, Airport

Present: Abrams, Bregman, Ciotola, Harris, Herschlag, Martin-Smith, Sakamoto-Wengel, Stokes, Sweet and Waller (quorum).

Ms. Martin-Smith recorded and drafted the minutes of this meeting.

The reading of minutes of the August meeting was dispensed with due to non-availability.

1. Meeting 10/11/88: The October meeting will be held at the Department of Transportation Building at BWI, Airport. The November meeting-place will be announced at the October meeting.

2. Video Presentation:

   Ms. Martin-Smith reviewed the Committee's progress with the Commission. The Committee shared its concern that there be professional help to facilitate circulation of the Video to a wide audience throughout the state.

   The Committee also suggests possibilities for endorsements and support through The Legal Aid Bureau, the Department of Housing and Community Development, and other groups.

   The Committee anticipates that the script will be complete by the November meeting of the Commission.

3. Minimum Livability Code:

   Most major jurisdictions have a local Code. The Commission discussed the issue of implementation of the livability code in the absence of a local ordinance, and noted that there are state funds available for repairs and local jurisdictions should be encouraged to use them.

   A suggestion was made for the Commission to meet with local jurisdictions and help them to understand what is available to help implementation and make this law effective. Mr. Harris and Ms. Herschlag agreed to contact local Commissioners to see what help they want from the Commission.

4. By-Laws

Mr. Abrams distributed proposed by-laws (attached). Further changes were proposed to paragraph 1 (change "secretary" to "reporter" and add "recommended by the Chair appointed by the Governor"), to Section 4.1. (Quorum), to Section 4.3.1. (add "except when a phone vote is called by the chair"), to Section 4.3.2. (change to include the rule change on the quorum, that no action will take place unless a bona fide quorum exists), to Section 4.3.3. (votes on proposed legislation between meetings) and Section 6. (The motion to delete Section 6 was made by Ms. Waller and seconded by Mr. Stokes. The motion carried.)

5. A second reader for By-Laws revisions will be discussed at the October meeting.

6. Model Leases: The Commission discussed whether non-lawyers should draft opinions about the Model Lease. Further discussion will occur at the October meeting.

7. Meeting was adjourned at 9:15 p.m.

GOVERNOR'S LANDLORD–TENANT LAWS STUDY COMMISSION
Proposed By–Laws
(August, 1988)

1. Officers of the Commission:

1.1. The officers of the Commission shall be a Chairperson (the "Chair"), who shall be appointed by the Governor as such; a Vice–Chairperson (the "Vice Chair"), who shall be a neutral member of the Commission, and a Secretary, who need not be a member of the Commission. The Vice–Chair and the Secretary shall be selected at a meeting of the Commission by a vote of its members.

2. Meetings of the Commission:

2.1. Meetings of the Commission shall be held at such place or places and at such times as the Commission, my a majority vote, decides.

2.2. Regular meetings of the Commission shell be held at the call of the chairperson, except that additional meetings may be called at the request of a simple majority of the Commission. (11/17/70)

3. Notices:

3.1. At least ten (10) days written notice shall be given to each member of the Commission in advance of any meeting, whether called by the chairperson or the members.

3.2. Each such notice shall state the date, time, place and purpose of the meeting, and shall contain or have attached to it a copy of the proposed agenda for the meeting.

3.3. No action shell be taken in the name of the Commission and no amendment shall be made to these by–laws unless prior notice thereof shall have been given to the membership of the Commission as hereinbefore provided.

4. Action by the Commission:

4.1. Quorum:
A majority of the members of the Commission present at any meeting duly called pursuant to these by–laws shall constitute a quorum for all purposes.

4.2. Rules of Order:

4.2.1. Except as otherwise specifically provided, this Commission shall follow Roberts Rules of Order in the conduct of all business meetings.

4.2.2. Any rule of order may be waived by a vote of the majority of the members of the Commission present.

4.3. Vote of Commission members:

4.3.1. All action of the Commission shall be taken by a vote of the members present at a meeting duly called pursuant to these by–laws.

4.3.2. A majority vote of the members present at any meeting duly called pursuant to these by–laws shall bind the Commission to such action.

4.3.3. All proposed legislation and amendments to these by–laws shall be considered and voted upon at three (3) separate meetings, as follows:

4.3.3.1. At the first reading and consideration of the proposed action may take place at any meeting of the Commission, whether called for that or any other purpose. A vote on the proposed action taken at such meeting shall not be binding on the Commission.

4.3.3.2. A second reading of any such proposed action shall take place at a subsequent regular or special meeting duly called for such purpose pursuant to these by–laws. A vote on the proposed action taken at such meeting shall not be binding on the Commission.

4.3.3.4. A final reading and vote on any such action shall take place at a subsequent regular or special meeting duly called for such purpose pursuant to these by–laws. A vote on the proposed action taken at such meeting shall be binding on the Commission.

4.3.3.5. The third reading of any such proposed action may be dispensed with at the second reading by a vote of sixty–seven (67%) of the members of the Commission present at such meeting; in which event, the vote of the members of the Commission present at the second reading shall be binding on the Commission.

4.3.3.6. Thereafter, any such action taken by the Commission shall not be subject to reconsideration or review except upon a vote of sixty–seven percent (67%) of the full membership of the Commission.

4.3.3.7. Any member or group of members dissenting from any final action of the Commission may file a minority report which shall be forwarded to the Governor with the final action of the Commission. Every report of any action taken by the Commission shall state the number of members voting in favor of the action taken, those voting in opposition thereto and those abstaining.

5. The failure of a member of the Commission to attend, in any twelve (12) consecutive calendar months, at lease fifty percent (50%) of the regular meetings of the Commission called pursuant to these by–laws, shall constitute a tender of such member's resignation from this Commission; provided, however, that the Chair shall have the discretion to excuse a member from this attendance requirement upon the showing of good cause. Acceptance of such resignation shall be by a vote of the

members of the Commission present at any meeting duly called pursuant to these by-laws.

6. A member of the Commission who lobbies or testifies for or against a Commission bill cannot identify himself or herself as a member of the Commission. (4/11/78)

GOVERNOR'S LANDLORD TENANT LAWS STUDY COMMISSION
Minutes of the October 11, 1988 Meeting

Present: Abrams, Ackerman, Bregman, Chodak, Ciotola, Clarke, Harris, Herschlag, Lenrow, Sakamoto, Stokes, Sweet, Walker, Watts (quorum)

The minutes were taken by Jane Schukoske, Reporter.

Judge Joseph A. Ciotola, Chair, called the meeting to order at 7:27 p.m.

1. Administrative Matters:

The minutes of the Commission meeting of September 6, 1988 were approved as prepared.

The Commission welcomed the new Reporter. The reporter distributed a revised Commission list which provides her address and telephone number.

The Chair announced that the November meeting will be held at the District Court Building, second floor library, at 5800 Wabash Avenue, Baltimore, due to the renovation work to be done at the Department of Transportation Building. The Commission set the meeting for November 1, 1988 at 7:00 p.m.

2. Subcommittee Reports:

Revision of the Code: Mr. Abrams reported on the efforts to obtain the relevant Code Sections on a word processing disk. The subcommittee will make a report at the next meeting.

Bylaws Mr. Abrams proposed amendments to Sections 4.3.3.4 (line 3) and to 4.3.3.5 (line 3) to add "majority" before "vote" in both places. He noted that the bylaws are drafted to permit a majority vote of a quorum to control except for two instances which require majority vote of the full membership. Those instances are (1) dispensing with a third reading of a proposed action under 4.3.3.5 and (2) reconsideration of an action under 4.3.3.6.

Mr. Abrams moved the adoption of the proposed bylaws as amended, Ms. Watts seconded, and the Commission voted to adopt the bylaws as amended.

Videotape: The Chair reported that Ellen Marshall of the education office of the Administrative Office of the Courts has agreed to provide tape and equipment for production of the videotape in exchange for a copy of the videotape Ms. Martin-Smith will report at the next meeting on the text for the videotape. Ms. Sweet reported on the cost of private production ($2,000 per finished minute).

Livability Code: Mr. Herschlag reported that he and Mr. Harris sent a letter to the Maryland Association of Counties requesting information about which counties have local codes. The Commission requested that the subcommittee invite Robert Dengler of the Department of Housing and Community Development to attend the November meeting to discuss his efforts to inform localities without local codes of available assistance.

Model Lease: Mr. Lenrow reported that the model leases which had been distributed at the September meeting were ready for Commission action. The Commission requested Mr. Lenrow to send a copy of both the model leases for single family homes and for multi-unit residential rental buildings to the Attorney General for review as to the validity of the disclaimer, an opinion on the lease drafts themselves and on the Commission's authority to make the models available. After discussion, the Commission decided to send the draft without comments prepared by individual commission members. The Commission thanked Mr. Lenrow for his work on this project.

Mr. Lenrow noted the Commission's intent in preparing model lease forms was to make available free of charge a lease that was written in plain English and that correctly reflected the law.

Legislation: Ms. Waller reported that no new bills have been pre-filed in the landlord-tenant area as of October 7, 1988. She stated that two housing issues which are likely to be addressed in the next session are (1) expiration of federal subsidies to certain developments which will result in displacement of low income tenants as rents are raised to market level, and (2) asbestps and lead paint removal.

New Business: Mr. Bregman asked if there was interest in resubmitting the legislation that the Commission recommended last year. The Chair recommended that the issues be included in the work of the Code Revision Subcommittee. The Commission resolved to invite Senator Walter M. Baker, Chair of the Senate Judicial Proceedings Committee, and Delegate William S. Horne, Chair of the House Judiciary Committee to attend the November Commission meeting.

A motion to adjourn was approved at 8:40 p.m.

Submitted by:

Jane Schukoske

Jane Schukoske
Reporter

GOVERNOR'S LANDLORD–TENANT LAWS STUDY COMMISSION
Proposed By–Laws
(September 1988 revision)

1. Officers of the Commission:

The officers of the Commission shall be a Chairperson (the "Chair"), who shall be appointed by the Governor as such; a Vice–Chairperson (the "Vice Chair"), who shall be a neutral member of the Commission, and a Reporter, who need not be a member of the Commission. The Vice–Chair shall be selected at a meeting of the Commission by a vote of its members. The Reporter shall be recommended by the Chair and appointed by the Governor.

2. Meetings of the Commission:

2.1. Meetings of the Commission shall be held at such place or places and at such times as the Commission, by a majority vote, decides.

2.2. Regular meetings of the Commission shall be held at the call of the Chair, except that additional meetings may be called at the request of a simple majority of the Commission. (11/17/70)

3. Notices:

3.1. At least ten (10) days written notice shall be given to each member of the Commission in advance of any meeting, whether called by the Chair or the members of the Commission.

3.2. Each such notice shall state the date, time, place and purpose of the meeting, and shall contain or have attached to it a copy of the proposed agenda for the meeting.

3.3. No action shall be taken in the name of the Commission and no amendment shall be made to these by–laws unless prior notice thereof shall have been given to the membership of the Commission as hereinbefore provided.

4. Action by the Commission:

4.1. Quorum:

4.1.1. Forty percent (40%) of the appointed members of the Commission shall

constitute a quorum for all purposes.

4.1.2. Absent a quorum, no action shall be taken in the name of the Commission.

4.2. Rules of Order:

4.2.1. Except as otherwise specifically provided, this Commission shall follow Roberts Rules of Order in the conduct of all business meetings.

4.2.2. Any rule of order may be waived by a vote of the majority of the members of the Commission present.

4.3. Vote of Commission members:

4.3.1. All action of the Commission shall be considered and taken by a vote of the members present at a meeting duly called pursuant to these by–laws; provided, however, that with respect to actions taken on matters other than legislation proposed by the Commission and amendments to these by–laws, at the request of the Chair, a vote of the Commission may be taken, between meetings, by any means available, in which event a record shall be kept of the vote of each member of the Commission.

4.3.2. A majority vote of the members present at any meeting duly called pursuant to these by–laws shall bind the Commission to such action.

4.3.3. All legislation proposed by the Commission and all amendments to these by–laws shall be considered and voted upon as follows:

4.3.3.1. A first reading and consideration of the proposed action may take place at any meeting of the Commission, whether called for that or any other purpose. A vote on the proposed action taken at such meeting shall not be binding on the Commission.

4.3.3.2. A second reading of any such proposed action shall take place at a subsequent regular or special meeting duly called for such purpose pursuant to these by–laws. Except as provided in subsection 4.3.3.5. hereof, a vote on the proposed action taken at such meeting shall not be binding on the Commission.

4.3.3.4. A final reading and vote on any such action shall take place at a subsequent regular or special meeting duly called for such purpose pursuant to these by–laws. A majority vote on the proposed action taken at such meeting shall be binding on the Commission.

4.3.3.5. The third reading of any such proposed action may be dispensed with at the second reading by a vote of sixty–seven (67%) of the members of the Commission present at such meeting; in which event, the majority vote of the members of the Commission present at the second reading shall be binding on the Commission.

4.3.3.6. Thereafter, any such action taken by the Commission shall not be subject to reconsideration or review except upon a vote of sixty–seven percent (67%) of the full membership of the Commission.

4.3.4. All matters coming before the Commission, other than legislation proposed by the Commission and amendments to these by–laws, shall be considered and voted upon pursuant to subsections 4.3.1., 4.3.2., 4.3.4., 4.3.5. and 4.3.6. hereof.

4.3.5. Each report of an action taken by the Commission shall state the number of members of the Commission voting in favor of the action taken, the number of members voting in opposition thereto, the number of members abstaining and those not voting.

4.3.6. Any member or group of members of the Commission dissenting from any final action of the Commission may file a minority report which shall be forwarded to the Governor together with the report of the action of the Commission.

5. The failure of a member of the Commission to attend, in any twelve (12) consecutive calendar months, at least fifty percent (50%) of the regular meetings of the Commission called pursuant to these by–laws, shall constitute a tender of such member's resignation from this Commission; provided, however, that the Chair shall have the discretion to excuse a member from this attendance requirement upon the showing of good cause. Acceptance of such resignation shall be by a vote of the members of the Commission present at any meeting duly called pursuant to these by–laws.

STATE OF MARYLAND
Governor's Landlord Tenant Laws Study Commission

IN REPLY REFER TO
University of Baltimore School of Law
1420 North Charles St.
Baltimore, MD. 21201

WILLIAM DONALD SCHAEFER
GOVERNOR

October 17, 1988

Shirley Brittenhouse
State Documents Librarian
Maryland State Law Library
Court of Appeals Building
361 Rowe Boulevard
Annapolis, MD. 21401

Dear Ms. Brittenhouse:

I am the new reporter for the Governor's Landlord-Tenant Laws Study Commission. Enclosed are the minutes for the Commission's September meeting for your records.

During the gap between the tenure of the former reporter and the beginning of my work for the Commission, meeting minutes were not filed. I am in the process of securing copies of the minutes and will send them to you.

Please contact me if you have any questions. My telephone number is 625-3411. Thank you for your assistance with this matter.

Sincerely,

Jane E. Schukoske

Jane E. Schukoske
Reporter, Governor's Landlord-Tenant
Laws Study Commission

enclosure

GOVERNOR'S LANDLORD TENANT LAWS STUDY COMMISSION
Minutes of the November 1, 1988 Meeting

Present: Bregman, Chodak, Ciotola, Harris, Herschlag, Lenrow, Piccinini, Sakamoto, Stokes, Waller, Watts (quorum)

Guests: Senator Walter M. Baker, Robert Dengler.

The minutes were taken by Jane Schukoske, Reporter.

Judge Joseph A. Ciotola, Chair, called the meeting to order at 7:15 p.m.

1. Guest speaker on legislative process: Sen. Walter M. Baker, Chair of the Senate Committee on Judicial Proceedings, described the legislative process and responded to questions. He noted that no landlord-tenant legislation has been prefiled as of this time. He noted that the Real Property Section of the Maryland State Bar Association (MSBA) is a significant presence at the General Assembly, and that the Commission may want to discuss ideas for legislation with that body. The Chair commented that the Commission planned to coordinate with the Real Estate Section of the MSBA on code revision. The Commission thanked the Senator for attending the meeting.

2. Livability Code: Robert Dengler, Assistant Director of the Housing Inspection Department in Baltimore and a member of the statewide Livability Code Advisory Committee, reported on statewide efforts to publicize the code, to promote planning by localities that lack a code, and to educate on implementation of or revision of a local code. He noted that Maryland is one of 12 states with a statewide livability code, which was modeled on the B.O.C.A. Code. Five counties (Anne Arundel, Howard, Montgomery, Prince George and Wicomico) and Baltimore City have local codes. The code, effective January 1, 1989, applies to residential structures except owner-occupied ones.

   The Chair noted the need for seminars to educate landlords, tenants, lawyers and judges about the new code.

3. Administrative Matters:

   The minutes of the Commission meeting of October 11, 1988 were approved as prepared.

The reporter distributed a revised Commission list, the book entitled Street Law, and the 1988 pocket part to the Real Property volume of the Maryland Code Annotated.

The December dinner meeting will be held December 13 at 7:00 p.m. at the BWI Airport Marriott. Senator Walter M. Baker and Delegate William S. Horne will be invited.

4. Subcommittee Reports:

Revision of the Code: Mr. Bregman reported that the subcommittee now has the relevant Code Sections on a word processing disk. The subcommittee will make a report at the next meeting.

Bylaws: The third reading of the bylaws was carried over to the next meeting.

Model Leases: Mr. Lenrow reported that he is preparing a letter to the Attorney General about the model leases and will request a meeting with Mr. Curran to discuss the matter.

Livability Code: Mr. Herschlag reported that the Maryland Association of Counties will poll the counties about interest in livability code and report back to Mr. Herschlag.

Legislation: Ms. Waller presented the four pieces of legislation that the Commission recommended last year for the first reading by the Commission. After discussion, the Commission voted to table S.B. 190 to permit the subcommittee to rewrite it to appear in the subtitle relating to residential leases (§8-201). The Commission approved H.B. 429 for second reading with an amendment of the time in which a lease must be provided to a tenant: "within 30 days of the date of the execution of the lease by the landlordand tenant." H.B. 431 was tabled. The bill marked LTC 87-#4 was not called on for a vote.

Videotape: Vicki Watts reported that the subcommittee chair, Patricia Martin-Smith, spoke with Ellen Marshall, of the Judicial Education office in Annapolis. Ms. Marshall indicated that she would assign Juana Godinez of the audiovisual department to assist in making the videotape. Ms. Martin-Smith also spoke with Eric York, of the University of Maryland audiovisual department, who suggested that slides and an audiotape be prepared at a cost of $4,000 - 5,000, rather than a videotape, which could cost $25,000 or more. Mr. York is willing to meet with the subcommittee.

Ms. Waller offered to bring the "Baby Chewy" videotape produced by the Property Owners Association of Greater Baltimore to the December meeting. The Chair asked her to do so.

A motion to adjourn was approved at 9:30 p.m.

Submitted by:

Jane Schukoske
Reporter

MIN.1188

GOVERNOR'S LANDLORD TENANT LAWS STUDY COMMISSION
Minutes of the December 13, 1988 Meeting

Present: Abrams, Ackerman, Bregman, Chodak, Ciotola, Clarke, Harris, Herschlag, Lenrow, Martin, Smith, Sakamoto-Wengel, Stokes, Sweet and Waller (quorum)

Guests: Delegate William S. Horne and Robert Dengler

The minutes were taken by Jane Schukoske, Reporter.

Judge Joseph A. Ciotola, Chair, called the meeting to order at 8:30 p.m. after dinner.

1. Guest speaker on legislative process: Del. William S. Horne, Chair of the House Committee on the Judiciary, responded to questions. He noted that the Legislature can better address sweeping code revisions in committees after the session ends. He reported that landlord-tenant legislation has been prefiled on mobile home summonses, contract liens and extended leases for condominium conversions. He noted that the Commission may discuss ideas for legislation with the staff of the Committee on the Judiciary. The Chair commented that the Commission planned to coordinate with the Real Estate Section of the Maryland State Bar Association, and with the Code Revision Committee on code revision. The Commission thanked the delegate for attending the meeting.

2. Guest speaker on the Baltimore City citation bills: Robert Dengler, Assistant Director of the Housing Inspection Department in Baltimore City, reported on the citation bills (Bills No. 304 and 305) recently passed by the Baltimore City Council. Pursuant to enabling Legislation passed by the state in 1988 to permit enforcement of local codes by citation, the Baltimore City Council passed these bills to permit sections of the health and housing codes to be enforced by citation.

   Mr. Dengler also supplied a statewide list of contact persons on the statewide livability code. The chair directed that a copy be sent to all the Commission members.

3. Minutes of the November meeting: The reporter noted that the paragraph of the November minutes on legislation should be amended and she provided suggested language. Mr. Herschlag proposed a further amendment, that the last sentence of the paragraph read, "The bill marked LTC #87-4 was not called on for

a vote." The minutes, as amended, were approved.

Location of the January meeting: The next meeting will be held on January 10, 1989 at 7:00 p.m. in the library on the second floor at the Edward F. Borgerding District Court Building, 5800 Wabash Avenue, Baltimore. Mr. Lenrow will chair the meeting as Judge Ciotola is unable to attend.

Report of the Subcommittee on the Revision of the Code: Mr. Abrams reported that the revision is in progress and that the subcommittee plans to make a report at either the January or February meeting of the Commission. Mr. Herschlag, noting that he has not been contacted by the other Subcommittee members, asked that he be included in Subcommittee deliberations. The Subcommittee is composed of Mr. Herschlag, Mr. Abrams, and Mr. Bregman.

Report of the Subcommittee on the Livability Code: Mr. Herschlag reported that there was no response yet to the letters he and Mr. Harris had sent to check on interest in enforcement of the state livability code in localities that do not have a local code. Mr. Herschlag asked for clarification of the tasks the Subcommittee is to perform at present, and the chair responded that it was appropriate to check on interest in the topic at this point, with an eye towards possible workshops in the future.

Report of the subcommittee on the videotape: Ms. Martin-Smith reported that cost estimates for a professionally produced videotape ranged from in excess of $30,000 to in excess of $100,000. She noted that the time and effort required to produce a videotape should require paid staff. A cost comparison was made with the production of a videotape of approximately 30 minutes' duration by the Property Owners Association; even with volunteer help, it cost $10,000 -$12,000 to produce.

The Chair directed the reporter to contact Mr. William Jones, Deputy Director of Financial Administration, to see if there is $50,000- 100,000 available for videotape production, and to report back to the Commission.

Subcommittee on By-Laws: The third reading of the proposed by-laws was deferred to the January meeting.

Legislation: Bill # 89-3: There was discussion on the bill marked # 89-3 (formerly marked # 87-4) regarding application fees. Mr. Herschlag described the bill as permitting an increase in a nonrefundable application

fees from $25.00 to 10% of the rent, permitting an additional application fee for actual costs but that actual costs are not defined and lengthening the time in which a refund may be made from 15 to 21 days. Mr. Abrams noted that a credit report can cost a landlord $50-$100. Mr. Lenrow noted that subsection 8-213 (c) of the existing law is misleading because it refers to a "landlord" and "tenant" when no tenancy exists at the application stage. Ms. Clarke suggested that the costs be limited to the credit check which the applicant should pay if the credit report is negative. Mr. Abrams proposed language, "The Landlord may charge and retain the full cost of the credit check," and it was suggested that there should be a specific limit. Ms. Sakamoto-Wengel noted that information in the credit report may be incorrect.

The Chair referred the bill to the Subcommittee on legislation for discussion and revision. The Chair directed that the Legislation Subcommittee be composed of Jay Lenrow, Bruce Herschlag, Y. Hillel Abrams, and Sue Waller.

1988 H.B. 429: After discussion, a motion was made and seconded to approve the bill on second reading as presented. The motion carried, with 8 in favor, 2 opposed.

1988 S.B. 190: There was a motion to defer this bill until the next meeting, and the motion did not carry. The reporter noted that at the November meeting of the Commission, the bill was referred back to the Subcommittee to move the provision from § 8-501 to a more appropriate subsection of § 8-201 et seq. Ms. Waller said that she understood that she and the reporter were the only members of the subcommittee, and that the provisions of the bill had been moved to an appropriate section of the Code. The motion was made to approve S.B. 190 as corrected on the second reading. The motion carried, with 8 in favor, 2 opposed.

Mr. Herschlag made a motion to carry over the bill marked 1988 S.B. 190 to the next meeting because of the lack of notice on the agenda, which did specifically mention H.B. 429 and LTC # 87-4 (now # 89-3). The motion failed to carry.

Mr. Herschlag said that the agenda should reflect all legislation to be considered at a meeting. Mr. Ackerman suggested that the Commission tape record future meetings.

New business: Mr. Herschlag and Ms. Sakamoto-Wengel discussed the idea of making tenant counselors

available. The Chair referred the matter to the subcommittee on legislation and suggested that the subcommittee look for model legislation on point.

A motion to adjourn was approved at 10:36 p.m.

Submitted by:

Jane Schukoske

Jane Schukoske
Reporter

JS/ea
MIN.1288

GOVERNOR'S LANDLORD TENANT LAWS STUDY COMMISSION
Minutes of the January 10, 1989 Meeting

Present: Clarke, Harris, Herschlag, Lenrow (Vice Chair), Martin-Smith, Piccinini, Sakamoto-Wengel, Stokes (quorum)

The minutes were tape-recorded by Gina M. Smith and prepared by Jane Schukoske, Reporter.

Mr. Jay Lenrow, Vice Chair, called the meeting to order at 7:30 p.m.

Minutes of the November and December meetings: The minutes of the November and December meetings were approved as written. Ms. Martin-Smith abstained from the vote on the November minutes.

Discussion of future Commission meetings: Meetings were set for February 7 and March 14, 1989. It was suggested that the meetings be held at the airport or a more central location.

Committee Reports:

Revision of the Code: The report was deferred until the next meeting.

Legislation: Mr. Herschlag noted that the Commission bills had not been introduced by the Governor's office. The report on landlord-tenant bills pending in the General Assembly was deferred until the next meeting.

Ms. Sakamoto-Wengel reported on model legislation on provision of tenant counselors. She said there is a tenant-landlord coalition that has surveyed communities to see what tenant counseling is going on at present and to seek funds for a non-profit organization to set up an additional program. The program could include both tenant or landlord counseling, a mediation service, and compilation of a resource list.

It was noted that there are counseling resources for tenants in Baltimore City, but that there are not adequate services in the rest of the state. Mr. Herschlag suggested that the Commission could support a proposal of this type statewide.

Mr. Harris noted that the Property Owners Association holds seminars for landlords, including non-members; he noted that there is a need for tenant training on budgeting and housekeeping.

Mr. Lenrow suggested that the Commission consider this in

preparation for next month's meeting. He identified other resources that are available, such as industry groups: Property Owners Association of Baltimore, Apartment Builders and Owners Council which is part of the Homebuilders Association of Maryland, Apartment Owners and Building Association which is part of the Suburban Maryland Homeowners in Rockville; Legal Aid Bureau, Inc., offices throughout the state; Landlord-Tenant offices in Prince George and Montgomery Counties. Mr. Lenrow suggested that the Commission could act as a catalyst to get some of these groups to contribute time and ideas to put together a program on tenant and landlord rights and responsibilities. The program could circulate around the state.

Mr. Harris suggested that the industry groups might contribute funds to such an effort. Ms. Clarke suggested that it would also be helpful to encourage funding and a negotiation service for tenants who are in temporary financial distress and can demonstrate that they will be able to keep up with the rent. Mr. Herschlag described the Rental Assistance Program which provides a small amount of money to tenants behind in their rent and in severe financial distress. Ms. Martin-Smith asked about eligibility of tenants who are evicted when the right of redemption is foreclosed. Mr. Herschlag said that the Department of Social Services will not provide funds in that case, and that the Rental Assistance Program will only if the tenant locates another apartment and the tenant can meet the rental payments. Mr. Harris said that landlords rarely foreclose on the right of redemption.

Mr. Harris noted that some tenants have do not understand the system. He said that the tenants receive a balance due letter, eviction notice, a summons, a warrant of restitution. He noted that the other charges besides rent mount up quickly, e.g., late charges, water bills, warrants, and put-out charges.

Mr. Herschlag noted that the timing of issuance of public benefits checks poses a continunig problem. He has a blind and disabled client who gets his disability check on the third of the month and the landlord requires the rent on the first of the month. Mr. Harris noted that the landlord should not file on the second of the month, and that it was common practice to give a five day grace period. Mr. Herschlag noted that the law does not require the landlord to wait until after the fifth of the month. Ms. Sakamoto-Wengel noted that General Public Assistance checks do not get mailed until the 11th of the month.

The Vice Chair asked if there was a consensus that Ms. Sakamoto-Wengel should go forward with her exploration of tenant counseling and development of a program to provide tenant information about rights and responsibilities and to educate the landlords. Mr. Lenrow noted that it is useful to work with trade groups to solve problems.

The Vice Chair asked if it is appropriate for the group to refer citizen complaints to trade groups that might mediate the dispute. Ms. Martin-Smith noted that there used to be Vista volunteers and others who would provide assistance to tenants in working out disputes, but that the program is no longer funded. She noted that the high number of filings in rent disputes may be due to the fact that former tenant counselors have moved on. She noted that a number of Commission members in the past were involved with tenants on the grass roots level. She noted that there used to be a "Landlord-Tenant School" in Baltimore, to which landlords and tenants could be referred.

The Vice Chair asked for Mr. Harris and Mr. Piccinini to report on programs sponsored by the Property Owners Association. Ms. Clarke suggested that the programs could be taped and shown in the high schools.

Mr. Herschlag noted that since the Commission is governmental, the Commission may be able to get funding from the state as well as private funding. Mr. Lenrow suggested that there be joint sponsorship by landlord groups and tenant groups.

Ms. Martin-Smith noted that in the past someone collected all the information on counseling offices in the state. Mr. Harris suggested that the Commission put together a resource list.

Ms. Martin-Smith said that she would like to know what the problems are other than that people have trouble paying their rent. Mr. Harris noted that the landlords' concerns are that the rent be paid and that the premises be maintained. Ms. Martin-Smith noted that basic education about housekeeping is necessary. Ms. Sakamoto-Wengel noted that Emergency Assistance by itself is not a sufficient solution; it is available to a tenant only twice in a 12 month period.

Mr. Lenrow suggested that the Commission prepare a manual listing landlord-tenant publications available around the state, the schedule for seminars given by industry and tenant groups, names and addresses of tenant and landlord groups, Legal Aid Bureau offices, and other groups.

It was suggested that there be a committee formed to pursue this. Mr. Herschlag suggested that the committee could collect information on the resources presently available to tenants and landlords, determine whether the resources are enough, and if not, what alternate resources are needed, what groups need to be approached to seek support. Ms. Sakamoto-Wengel agreed to chair such a committee and Mr. Stokes agreed to serve on it, along with Mr. Harris and Mr. Piccinini. Mr. Harris requested that all the pamphlets previously collected on housing codes around the state be sent to Ms. Sakamoto-Wengel. Ms. Sakamoto-Wengel noted that

tha Tenant-Landlord Coalition has surveyed the whole state and has found very little tenant counseling occurring. Mr. Lenrow noted that Baltimore Neighborhoods, Inc., publishes guides on landlord-tenant law.

Mr. Lenrow noted programs could incorporate three facets: (1) counseling for tenants, (2) training for landlords, and (3) a resource publication. Ms. Martin-Smith noted that the resource guide would have to be constantly updated, and that tenant counseling could have a positive long-term effect on the tenants who participated. Ms. Sakamoto-Wengel noted that Landlord-Tenant Commission support for a group to take on tenant counseling services could be helpful. Mr. Lenrow suggested that foundations could be contacted for funding.

Livability Code: Mr. Herschlag reported that he had called the Maryland Association of Counties and that the Commission's offer of help will appear in the association's next newsletter. Mr. Herschlag and Mr. Harris plan to send a letter to the inspectors whose names were provided at te last meeting by Robert Dengler. Mr. Herschlag noted that he is unclear on what the Commission can do in this regard.

Videotape: Ms. Martin-Smith reported that the Reporter is checking with William Jones, Deputy Chief of Financial Administration, on the availability of funds for the videotape. She noted that there are professional slide presentations that could be done if the money for a videotape is not available, and that the videotape fits in with the tenant counseling proposed by Ms. Sakamoto-Wengel. Ms. Martin-Smith noted that current draft of the videotape script could serve as a start for a tenant education effort and could be expanded to cover payment of rent and other issues.

Ms. Martin-Smith noted that she had checked to see if film-making departments in schools could produce the videotape. Mr. Stokes noted that there are film-making, communications and media technology departments at his school. Ms. Martin-Smith noted that the University of Maryland said it would cost $30,000 - 40,000 for its film department to produce a 30 minute videotape. She noted that she and Ms. Sweet had looked into the costs and received estimates of up to $100,000 to produce a videotape and as low as $5,000 to produce a slide presentation with a voice-over.

Ms. Martin-Smith said that the original idea was for Commission members to go out with the videotape to lead discussions. She said she believed that once the videotape is produced, distribution will not be difficult.

Ms. Clarke noted that the Commission, bi-partisan as it is, should be effective in seeking foundation support.

Model Leases: Mr. Lenrow noted that he has not yet heard from the Attorney General's office. Mr. Harris asked how the model leases would be made available once they were approved. Mr. Lenrow suggested that the model leases be sent to all major landlord and tenant groups and local governments. Ms. Clarke suggested that they be sent to publishers. Mr. Harris said that the lease is just a model, not intended for publication. Others noted that the model lease is legal and neutral.

Bylaws: In the absence of Mr. Abrams, the vote on the bylaws was postponed.

New Business: The Vice Chair asked if the Commission would like the Reporter to report the inquiries she receives from the public. The Commission voted that it would like to be kept informed.

A motion to adjourn was approved at 8:45 p.m.

Submitted by:

Jane Schukoske
Reporter

MIN1-89

To: Members of the Commission

From: Jane Schukoske, Reporter

Date: February 6, 1989

Re: Telephone Calls to the Commission

Report on call from a citizen:

I received a call from a Calvert County tenant whose landlord gave her notice on February 1 that she had to move by February 28 because the single-family house she rents has been sold. She has lived in the house for six years, and has three children, and was concerned that she would have difficulty locating another rental property within the short amount of time she had been given.

She asked that I relay to the Commission the difficulty she had in getting information on this problem. She said that she was given numbers for the District Court, Legal Aid Bureau, and the Consumer Protection Office (apparently of the Attorney General's Office), and was told to get a private lawyer (she was over income for Legal Aid Bureau). She felt that there should be some central location from which the public could receive basic landlord-tenant information. When I reached her, she had called Baltimore Neighborhoods, Inc., and received basic information about the inadequacy of the notice. She was referred to the Commission by her local library, presumably from the Commission listing in the Maryland Manual.

Report on call from Baltimore County Department of Community Development, Housing Office

Lois Cramer was referred to me by David Harris for information on the Commission. She is collecting information on the Commission to share with her department as it assesses available resources and unmet needs in the county.

She requested written materials on the Commission. I have drafted a letter and assembled the following enclosures: Resolution establishing the Commission, by-laws, meeting minutes from October, 1988 - January, 1989, the names and localities of the Commission members, an agenda from the 1984 workshop sponsored by the Commission entitled "The Landlord-Tenant Relationship: An Overview" and a synopsis of one of the workshops.

Because of her interest in landlord-tenant resources, I referred her to Joy Sakamoto-Wengel, who is chairing the Commission commitee looking into resources.

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
Members (as of February 1989)

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Composition of the Commission:
3 neutral
7 landlord
7 tenant

Quorum:
40% of members = 7 members

Governor's Landlord-Tenant Laws Study Commission

Minutes of the February 7, 1989 Meeting

Present: Abrams, Bregman, Chodak, Harris, Lenrow, Piccinini, Sakamoto-Wengel, Stokes, Sweet and Waller (quorum)

The minutes were taken by Jane Schukoske, Reporter. The Vice Chair, Jay Lenrow, called the meeting to order at 7:20 p.m.

Minutes of the January meeting: The minutes were approved as written.

Discussion of future Commission meetings: The next meeting will be held at the District Courthouse, 5800 Wabash Avenue, Baltimore on March 14. Subsequent meetings will be on April 11 and May 9, 1989.

Committee Reports:

Revision of the Code: Mr. Abrams described two approaches on the subcommittee. Mr. Abrams wants to do a total revision of the Code on Landlord-Tenant matters. Mr. Bregman has discussed with legislators the idea of revising the Code piecemeal and believes there is no support for a total revision at this time.

Mr. Abrams says he believes that there is a consensus on some issues, e.g., that the right of redemption should not apply to commercial leases. He also noted that the provisions on residential lease termination are lengthy and confusing. He proposes that the Code provisions in the Real Property Article be divided into three sections: those applicable to all leases, those applicable only to residential leases and those applicable only to commercial leases.

Mr. Abrams asked the Commission for direction. It was noted that Mr. Herschlag is a member of the subcommittee and wants to be involved. The Real Estate Section of the Bar Association is also looking at an overall revision. There has been no contact with the Code Revision Commission yet. Mr. Abrams noted that the revision is a formidable task. He wondered if the Legislative Reference Division would under take the revision. Mr. Lenrow deferred the matter until the next meeting.

Legislation: Sue Waller reported on landlord tenant bills that have been introduced:

S.B.180 (requires landlord to wait five days after rent due before filing suit for nonpayment)

H.D.117 (amends Sec. 8-402.1 to include assignees and subtenants)

H.B.287 (increases interest rate on security deposits from 4 to 7 percent)

H.B. 391 (notwithstanding lack of licensing, a tenant shall pay rent due)

S.B. 307 (evicted tenant's belongings may not be placed on travelled portion of a roadway or on the shoulder)

H.B. 745 (provides tenant an opportunity for a hearing before the Circuit Court before terminating a rent escrow for failure to pay into the account)

H.B. 917 (changes from 5 summonses to 3 judgments of possession, the condition for pleading retaliatory eviction, rent escrow, and right of redemption)

Copies of the above bills were distributed to the Commission.

Bylaws: Mr. Abrams discussed the changes to Section 5 of the bylaws, on this the third reading. The purpose of the change is to conform the bylaws with Art. 41, Section 1-203 of the Code. Motion was made to approve Section 5 as presented. Motion was seconded and carried unanimously.

Resources Subcommittee: Joy Sakamoto-Wengel reported that she is collecting materials for tenant and landlord education and urged Commission members to send her copies of items they have.

Sue Waller suggested that the subcommittee call Robert Dengler, who operated and taught in tenant clinics in Baltimore City in the past. Jay Lenrow suggested contact with George Laurent of Baltimore Neighborhoods Inc., and Ann Hannon at the Consumer Protection Division of the Attorney General's Office. The reporter noted that she had been in touch with Baltimore Neighborhoods, Inc., and that there are manuals available describing the laws in Baltimore City and County, Anne Arundel County, and Howard County. The Commission approved getting one set of the manuals for reference.

David Harris described the "Landlord Survival Seminars" held by the Property Owners Association of Baltimore City each year to train landlords. Continuing education credits are available for

brokers who attend. Other programs were discussed. The Real Estate Board also offers an all-day seminar. The Apartment and Building Owners Council (ABOC) puts a workshop on for managers of rental properties (rental apartment managers). Sue Waller noted that there are specific requirements which must be met in order for an organization to grant continuing education credit (eg., credentials of the teachers, number of hours of instruction).

Mr. Lenrow noted that the Commission could serve as a clearinghouse of information on programs and also work with groups putting on workshops. He suggested that the subcommittee contact the Apartment Office Building Association of the Suburban Maryland Home Builders in Rockville. Sue Waller noted that the National Homebuilders offers a certified apartment managers program. Ms. Waller noted that there seems to be greater need for tenant education than landlord education.

Sue Waller said that Citizens Planning and Housing Association has collected tenant training materials. Chicky Grayson, President, or the Housing Director were named as possible contacts.

Mr. Abrams said he doubted that there is tenant interest in training. Ms. Sakamoto-Wengel said that the Baltimore City Department of Social Services Homeless Services Unit receives a high number of inquires on landlord-tenant matters, and this indicates an interest by tenants in having more information.

The Commission discussed the procedures for granting of Emergency Assistance for eviction prevention.

Mr. Lenrow voiced the sense of the commission that the concept of pursuing education for tenants and landlords is an appropriate endeavor for the Commission. He thanked Ms. Sakamoto-Wengel, Mr. Harris and Mr. Piccinini for their work in this area.

Mr. Abrams suggested that a trained clerk could discuss tenant problems with the tenants about 20 minutes before court begins. He noted that people do not seem to understand how the judge's announcements at the beginning of the day apply to their cases.

The Commission discussed the idea of using public service announcements to educate tenants, of using the back of court forms for listing more information on tenant rights, of providing a toll-free number for inquires about landlord-tenant matters.

Inquiries from the Public: Mr. Lenrow noted that it is appropriate for the Reporter to respond to simple questions from the public and refer the people to other sources of information or help. The Commission wants to be kept advised of inquiries.

Videotape: A letter to William Jones requesting leads for funding of this project has been drafted by the Reporter.

The meeting was adjourned at 8:35 p.m.

Respectfully submitted,

Jane Schukoske

JS:bb

S E N A T E O F M A R Y L A N D

91r1292 No. 180 N1
SB 167/88 - JPR (PRE-FILED)

By: Senator Wynn
Requested: November 17, 1988
Introduced and read first time: January 11, 1989
Assigned to: Judicial Proceedings

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant - Failure to Pay Rent

FOR the purpose of providing that a complaint for repossession of premises for failure to pay rent may not be filed until a certain time after the rent is due.

BY repealing and reenacting, with amendments,

Article - Real Property
Section 8-401(a)
Annotated Code of Maryland
(1988 Replacement Volume and 1988 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article - Real Property

8-401.

(a) (1) Whenever the tenant under any lease of property, express or implied, verbal or written, shall fail to pay the rent when due and payable, it shall be lawful for the landlord to have again and repossess the premises so rented.

(2) A COMPLAINT FOR REPOSSESSION OF THE PREMISES FOR FAILURE TO PAY RENT MAY NOT BE FILED UNDER THIS SECTION UNTIL AT LEAST 5 DAYS AFTER THE RENT BECOMES DUE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1989.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.

HOUSE OF DELEGATES

91r0241 No. 117 N1
HB 106/88 - JUD (PRE-FILED)

By: Delegate Gisriel
Requested: July 22, 1988
Introduced and read first time: January 11, 1989
Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning

Landlord and Tenant - Breach of Lease - Summons

FOR the purpose of altering and clarifying the procedures by which a certain summons is issued and served in an action in District Court for breach of a lease; requiring certain sheriffs or constables to serve the summons in a certain manner; and generally relating to service of process in certain landlord and tenant cases.

BY repealing and reenacting, with amendments,

Article - Real Property
Section 8-402.1
Annotated Code of Maryland
(1988 Replacement Volume and 1988 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article - Real Property

8-402.1.

(a) (1) When a lease provides that the landlord may repossess the premises if the tenant breaches the lease, and the landlord has given the tenant 1 month's written notice that the tenant is in violation of the lease and the landlord desires to repossess the premises, and if the tenant [or person in actual possession], ASSIGNEE, OR SUBTENANT refuses to comply, the landlord may make complaint in writing to the District Court of the county where the premises is located.

(2) (I) The court shall ISSUE A summons [immediately] DIRECTED TO ANY CONSTABLE OR SHERIFF OF THE COUNTY ENTITLED TO SERVE PROCESS, ORDERING THE CONSTABLE OR SHERIFF TO NOTIFY the tenant [or person in possession], ASSIGNEE, OR SUBTENANT to appear before the court on a day stated in the summons to show

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.

cause[, if any,] why restitution of the possession of the leased premises should not be made to the landlord.

(II) EXCEPT AS PROVIDED IN SUBPARAGRAPH (III) OF THIS PARAGRAPH, THE CONSTABLE OR SHERIFF SHALL SERVE THE SUMMONS ON THE TENANT, ASSIGNEE, OR SUBTENANT ON THE PROPERTY, OR ON THE KNOWN OR AUTHORIZED AGENT OF THE TENANT, ASSIGNEE, OR SUBTENANT.

(III) IF, FOR ANY REASON THE TENANT, ASSIGNEE, SUBTENANT, OR THE AGENT OF THE TENANT, ASSIGNEE, OR SUBTENANT CANNOT BE FOUND, THE CONSTABLE OR SHERIFF SHALL AFFIX AN ATTESTED COPY OF THE SUMMONS CONSPICUOUSLY ON THE PROPERTY. AFTER NOTICE TO THE TENANT, ASSIGNEE, OR SUBTENANT BY FIRST CLASS MAIL, THE AFFIXING OF THE SUMMONS ON THE PROPERTY SHALL BE CONCLUSIVELY PRESUMED TO BE A SUFFICIENT SERVICE TO SUPPORT RESTITUTION OF THE POSSESSION OF THE PREMISES.

(3) If either of the parties fails to appear before the court on the day stated in the summons, the court may continue the case for not less than [six] 6 nor more than 10 days and notify the parties of the continuance.

(b) If the court determines that the tenant breached the terms of the lease and that the breach was substantial and warrants an eviction, the court shall give judgment for the restitution of the possession of the premises and issue its warrant to the sheriff or a constable commanding him to deliver possession to the landlord in as full and ample manner as the landlord was possessed of the same at the time when the lease was entered into. The court shall give judgment for costs against the tenant or person in possession. Either party may appeal to the circuit court for the county, within [ten] 10 days from entry of the judgment. If the tenant (1) files with the District Court an affidavit that the appeal is not taken for delay; (2) files sufficient bond with [one] 1 or more securities conditioned upon diligent prosecution of the appeal; (3) pays all rent in arrears, all court costs in the case; and (4) pays all losses or damages which the landlord may suffer by reason of the tenant's holding over, the tenant or person in possession of the premises may retain possession until the determination of the appeal. Upon application of either party, the court shall set a day for the hearing of the appeal not less than [five] 5 nor more than 15 days after the application, and notice of the order for a hearing shall be served on the other party or his counsel at least [five] 5 days before the hearing. If the judgment of the District Court is in favor of the landlord, a warrant shall be issued by the court which hears the appeal to the sheriff, who shall execute the warrant.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1989.

HOUSE OF DELEGATES

91r1385 No. 287 N1

By: Delegates Hixson, Kopp, Dembrow, Gordon, Sher, Heller, Franchot, and Frosh
Introduced and read first time: January 13, 1989
Assigned to: Economic Matters

A BILL ENTITLED

AN ACT concerning

Landlords and Mobile Home Park Owners - Security Deposits - Interest

FOR the purpose of altering the rate of interest payable by certain landlords on security deposits to certain residential tenants; altering the rate of interest payable by certain mobile home park owners on security deposits to certain residents; making stylistic changes; providing for the application of this Act; and generally relating to security deposits.

BY repealing and reenacting, with amendments,

Article - Real Property
Section 8-203(f) and 8A-1001(f)
Annotated Code of Maryland
(1988 Replacement Volume and 1988 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article - Real Property

8-203.

(f) (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 [4 percent per annum] 7 PERCENT PER YEAR, less any damages rightfully withheld.

(2) Interest shall accrue at [six-month] 6-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.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.

(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.

8A-1001.

(f) (1) Within 45 days after the end of the tenancy, the park owner shall return the security deposit to the resident together with simple interest which has accrued in the amount of [4 percent per annum] 7 PERCENT PER YEAR less any damages rightfully withheld.

(2) Interest shall accrue at 6-month intervals from the day the resident gives the park owner the security deposit. Interest is not compounded.

(3) Interest shall be payable only on security deposits of $50 or more.

(4) If the park owner, 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 resident has an action of up to threefold of the withheld amount, plus reasonable attorney's fees.

SECTION 2. AND BE IT FURTHER ENACTED, That the changes in the rates of interest in Section 1 of this Act shall apply to all security deposits held by a landlord or park owner on or after July 1, 1989.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1989.

(d) 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.

(E) (1) NOTWITHSTANDING ANY LOCAL ORDINANCE OR REGULATION REQUIRING THE LICENSING OR INSPECTION OF SINGLE OR MULTI-FAMILY UNITS, A TENANT SHALL PAY RENT WHICH IS DUE TO A LANDLORD IF:

(I) THE PREMISES WERE RENDERED TO OR PROVIDED FOR THE TENANT;

(II) THE PREMISES WERE OTHERWISE HABITABLE;

(III) THE PREMISES WERE USED AND ENJOYED BY THE TENANT; AND

(IV) THE TENANT WAS UNDER REASONABLE NOTICE THAT THE LANDLORD, IN RENDERING OR PROVIDING SUCH PREMISES, EXPECTED TO BE PAID BY THE TENANT.

(2) THE AMOUNT OF RENT PAID BY A TENANT WHO RENTS A SINGLE OR MULTI-FAMILY UNIT FROM A LANDLORD WHO DOES NOT COMPLY WITH A LOCAL ORDINANCE OR REGULATION DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION SHALL REFLECT THE DIFFERENCE BETWEEN THE PROPERTY VALUE OF THE RENTED UNIT AND THE PROPERTY VALUE OF A SIMILAR UNIT RENTED IN COMPLIANCE WITH THE LOCAL ORDINANCES OR REGULATIONS DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION.

[(e)] (F) 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.

[(f)] (G) 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.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1989.

HOUSE OF DELEGATES

91r1247 No. 391 N1

By: Delegate Kelly
Introduced and read first time: January 19, 1989
Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning

Landlord - Tenant - Recovery of Rent by Landlord

FOR the purpose of requiring a tenant to pay rent to a landlord under certain circumstances; providing for the calculation of the rent a landlord may receive under those circumstances; and generally relating to the recovery of rent by landlords under certain circumstances.

BY repealing and reenacting, with amendments,

Article - Real Property
Section 8-204
Annotated Code of Maryland
(1988 Replacement Volume and 1988 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article - Real Property

8-204.

(a) This section is applicable only to single or multi-family dwelling units.

(b) 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.

(c) 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.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.

S E N A T E O F M A R Y L A N D

91r1769 No. 307 R5

By: Senator Baker
Introduced and read first time: January 18, 1989
Assigned to: Judicial Proceedings

A BILL ENTITLED

AN ACT concerning

Roadways - Personal Property Displaced by Eviction

FOR the purpose of prohibiting the placing of personal property displaced by eviction on the travelled portion of a roadway or shoulder area of a roadway; providing for the removal of the property; and generally relating to the disposition of personal property on the travelled portion or shoulder area of a roadway.

BY repealing and reenacting, with amendments,

Article - Transportation
Section 21-1113
Annotated Code of Maryland
(1987 Replacement Volume and 1988 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article - Transportation

21-1113.

(a) A person may not place any structure, building, or vehicle on a highway to sell or display any produce or merchandise if it constitutes a traffic hazard.

(b) IN THE EVENT OF AN EVICTION FROM A LANDLORD'S PROPERTY, A PERSON MAY NOT PLACE ON THE TRAVELLED PORTION OF A ROADWAY OR THE SHOULDER AREA OF A ROADWAY ANY PERSONAL PROPERTY, INCLUDING FURNITURE, IMPLEMENTS, TOOLS, GOODS, EFFECTS, OR OTHER CHATTEL.

(C) On the order of any police officer, the person shall remove the structure, building, [or] vehicle OR PERSONAL PROPERTY described under [subsection (a)] SUBSECTIONS (A) AND (B) of this section.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1989.

HOUSE OF DELEGATES

91r0396 No. 745 N1

By: Delegate Montague
Introduced and read first time: January 30, 1989
Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning

Landlord-Tenant Actions - Escrow Accounts

FOR the purpose of repealing a provision of law requiring a tenant to pay accrued rent into an escrow account in certain landlord-tenant actions; clarifying that a circuit court shall provide a tenant an opportunity for a hearing before taking certain actions for a tenant's failure to pay rents due into an escrow account under a court order; and generally relating to escrow accounts in landlord-tenant actions.

BY repealing and reenacting, with amendments,

Article - Real Property
Section 8-118
Annotated Code of Maryland
(1988 Replacement Volume and 1988 Supplement)

Preamble

WHEREAS, The Court of Special Appeals, in the case of Lucky Ned Pepper's Ltd. v. Columbia Park and Recreation Association, 64 Md. App. 222, 494 A.2d 947 (1985), declared unconstitutional the provisions of § 8-118 of the Real Property Article of the Annotated Code of Maryland requiring a tenant to pay accrued rent into an escrow account in certain landlord-tenant actions; and

WHEREAS, The Court of Special Appeals in the same case held constitutional a provision of the same statute allowing a circuit court to enter judgment and issue a warrant of restitution the holding having been due to the fact that the Maryland Rules require an opportunity for a hearing before a court disposes of a claim or defense; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.

Article - Real Property

8-118.

(a) In an action under § 8-401, § 8-402, or § 8-402.1 of this article in which a party prays a jury trial, the District Court shall enter an order directing the tenant or anyone holding under the tenant to pay [all accrued and unpaid rents, and] all rents due and as they come due during the pendency of the action, as prescribed in subsection (b) of this section.

(b) The District Court shall order that the rents be paid into the registry of an escrow account of:

(1) The clerk of the circuit court; or

(2) If directed by the District Court, an administrative agency of the county which is empowered by local law to hold rents in escrow pending investigation and disposition of complaints by tenants.

(c) (1) In an action under § 8-401, § 8-402, or § 8-402.1 of this article, if the tenant or anyone holding under the tenant fails to pay rent [accrued or] as it comes due pursuant to the terms of the order, the circuit court, on motion of the landlord and certification of the clerk or agency of the status of the account, shall give judgment in favor of the landlord and issue a warrant for possession.

(2) BEFORE TAKING ANY ACTION UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE CIRCUIT COURT SHALL PROVIDE THE TENANT OR AN INDIVIDUAL HOLDING UNDER THE TENANT AN OPPORTUNITY FOR A HEARING.

(d) Upon final disposition of the action, the circuit court shall order distribution of the rent escrow account in accordance with the judgment. If no judgment is entered, the circuit court shall order distribution to the party entitled to the rent escrow account after hearing.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1989.

HOUSE OF DELEGATES

91r2324 No. 917 N1

By: Delegate Flanagan
Introduced and read first time: February 2, 1989
Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning

Landlord and Tenants - Foreclosure for Statutory Rights

FOR the purpose of making a tenant's exercise of existing rights and remedies for redemption of leased premises prior to eviction, repair of dangerous deficts, and retaliatory evictions conditional on the number of judgments entered against the tenant by the court rather than on the number of summonses with complaints received by the tenant; and generally relating to the rights of tenants.

BY repealing and reenacting, with amendments,

Article - Real Property
Section 8-208.1(d), 8-211(k), 8-401(e) and 8A-1701(e)
Annotated Code of Maryland
(1988 Replacement Volume and 1988 Supplement)

BY repealing and reenacting, with amendments,

The Public Local Laws of Baltimore City
Section 9.9(d)(3)
Article 4 - Public Local Laws of Maryland
(1979 Edition and 1988 Supplement, as amended)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article - Real Property

8-208.1. Retal. evict

(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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.

against the tenant] THE COURT HAVING NOT ENTERED AGAINST THE TENANT MORE THAN 3 JUDGMENTS OF POSSESSION 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] THE COURT HAVING NOT ENTERED AGAINST THE TENANT MORE THAN 5 JUDGMENTS OF POSSESSION 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] THE COURT HAVING NOT ENTERED AGAINST THE TENANT 3 JUDGMENTS OF POSSESSION for rent due and unpaid.

8-211: Rent escrow

(k) Relief under this section is conditioned upon:

(1) Giving proper notice, and where appropriate, the opportunity to correct, as described by subsection (h) of this section.

(2) 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 (m).

(3) In the case of tenancies measured by a period of one month or more, [the tenant having not received more than three summonses containing copies of complaints filed by the landlord against the tenant] THE COURT HAVING NOT ENTERED AGAINST THE TENANT MORE THAN 3 JUDGMENTS OF POSSESSION 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.

(4) In the case of periodic tenancies measured by the weekly payment of rent, [the tenant having not received more than five summonses containing copies of complaints filed by the landlord against the tenant] THE COURT HAVING NOT ENTERED AGAINST THE TENANT MORE THAN 5 JUDGMENTS OF POSSESSION 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 months or less, [having not received three summonses with copies of complaints] THE COURT HAVING NOT ENTERED AGAINST THE TENANT 3 JUDGMENTS OF POSSESSION for rent due and unpaid.

8-401: Failure to pay rent

(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

GOVERNOR'S LANDLORD–TENANT LAWS STUDY COMMISSION
Proposed By–Laws
(December 28, 1988 revision)

1. Officers of the Commission:

The officers of the Commission shall be a Chairperson (the "Chair"), who shall be appointed by the Governor as such; a Vice–Chairperson (the "Vice Chair"), who shall be a neutral member of the Commission, and a Reporter, who need not be a member of the Commission. The Vice–Chair shall be selected at a meeting of the Commission by a vote of its members. The Reporter shall be recommended by the Chair and appointed by the Governor.

2. Meetings of the Commission:

2.1. Meetings of the Commission shall be held at such place or places and at such times as the Commission, by a majority vote, decides.

2.2. Regular meetings of the Commission shall be held at the call of the Chair, except that additional meetings may be called at the request of a simple majority of the Commission. (11/17/70)

3. Notices:

3.1. At least ten (10) days written notice shall be given to each member of the Commission in advance of any meeting, whether called by the Chair or the members of the Commission.

3.2. Each such notice shall state the date, time, place and purpose of the meeting, and shall contain or have attached to it a copy of the proposed agenda for the meeting.

3.3. No action shall be taken in the name of the Commission and no amendment shall be made to these by–laws unless prior notice thereof shall have been given to the membership of the Commission as hereinbefore provided.

4. Action by the Commission:

4.1. Quorum:

4.1.1. Forty percent (40%) of the appointed members of the Commission shall

constitute a quorum for all purposes.

4.1.2. Absent a quorum, no action shall be taken in the name of the Commission.

4.2. Rules of Order:

4.2.1. Except as otherwise specifically provided, this Commission shall follow Roberts Rules of Order in the conduct of all business meetings.

4.2.2. Any rule of order may be waived by a vote of the majority of the members of the Commission present.

4.3. Vote of Commission members:

4.3.1. All action of the Commission shall be considered and taken by a vote of the members present at a meeting duly called pursuant to these by–laws; provided, however, that with respect to actions taken on matters other than legislation proposed by the Commission and amendments to these by–laws, at the request of the Chair, a vote of the Commission may be taken, between meetings, by any means available, in which event a record shall be kept of the vote of each member of the Commission.

4.3.2. A majority vote of the members present at any meeting duly called pursuant to these by–laws shall bind the Commission to such action.

4.3.3. All legislation proposed by the Commission and all amendments to these by–laws shall be considered and voted upon as follows:

4.3.3.1. A first reading and consideration of the proposed action may take place at any meeting of the Commission, whether called for that or any other purpose. A vote on the proposed action taken at such meeting shall not be binding on the Commission.

4.3.3.2. A second reading of any such proposed action shall take place at a subsequent regular or special meeting duly called for such purpose pursuant to these by–laws. Except as provided in subsection 4.3.3.5. hereof, a vote on the proposed action taken at such meeting shall not be binding on the Commission.

4.3.3.4. A final reading and vote on any such action shall take place at a subsequent regular or special meeting duly called for such purpose pursuant to these by–laws. A majority vote on the proposed action taken at such meeting shall be binding on the Commission.

4.3.3.5. The third reading of any such proposed action may be dispensed with at the second reading by a vote of sixty–seven (67%) of the members of the Commission present at such meeting; in which event, the majority vote of the members of the Commission present at the second reading shall be binding on the Commission.

4.3.3.6. Thereafter, any such action taken by the Commission shall not be subject to reconsideration or review except upon a vote of sixty–seven percent (67%) of the full membership of the Commission.

4.3.4. All matters coming before the Commission, other than legislation proposed by the Commission and amendments to these by–laws, shall be considered and voted upon pursuant to subsections 4.3.1., 4.3.2., 4.3.4., 4.3.5. and 4.3.6. hereof.

4.3.5. Each report of an action taken by the Commission shall state the number of members of the Commission voting in favor of the action taken, the number of members voting in opposition thereto, the number of members abstaining and those not voting.

4.3.6. Any member or group of members of the Commission dissenting from any final action of the Commission may file a minority report which shall be forwarded to the Governor together with the report of the action of the Commission.

5. The failure of a member of the Commission to attend fifty percent (50%) of the meetings of the Commission during any period of twelve (12) consecutive calendar months, shall constitute a tender of such member's resignation from this Commission, and the Chair shall forward or cause to be forwarded to the Governor, not later than January 15 of the year following such non–attendance with the statement of such non–attendance. A member whose name has been forwarded to the Governor, as aforesaid, may submit to the Governor a request for a waiver of such resignation, with an explanation of the mitigating reasons for the non–compliance.

MARYLAND GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
Minutes of the Meeting of March 14, 1989

Present: Bregman, Ciotola, Clarke, Harris, Herschlag, Lenrow, Martin-Smith, Piccinini, Sakamoto-Wengel, Waller and Watts (quorum)

Judge Joseph A. Ciotola, Chair, called the meeting to order at 7:10 p.m. Jane E. Schukoske, Reporter, took the minutes.

Approval of the minutes of the February meeting: Motion was made to approve the minutes as sent out. Motion carried.

Location of the next meeting: The next meeting, scheduled for April 11, will be held at the District Court, 5800 Wabash Avenue, Baltimore, Maryland. The May 9 annual dinner meeting will be held at the Pimlico Restaurant, 1777 Reisterstown Road, Baltimore, Maryland. Invitees to the annual meeting will include the Governor, Sen. Walter M. Baker, Del. William S. Horne, Michele Gilligan, Sen. Thomas V. Mike Miller, Jr. and R. Clayton Mitchell, Jr., James Oliver, Esq., and Charles S. Colson.

Committee Reports:

Revision of the Code: The Chair noted that the Commission has previously recommended that the committee should contact the Real Property Section Code Revision Committee of the Maryland State Bar Association and the Code Revision Division in Annapolis. The Chair asked the Reporter to inform the Subcommittee Chair in writing of that direction. The Chair of the Code Revision Committee of the State Bar is to be invited to the May Commission meeting. Mr. Herschlag noted that he is a member of the subcommittee and has not been contacted by the other subcommittee members at all.

Legislation: Sue Waller reported on bills pending in the General Assembly.

H. B. 667 — The Advisory Council on lead poisoning has been expanded to include someone from Public Works and from Health and Mental Hygiene. The Council Membership is to be increased from 19 to 21.

Sue Waller noted that the Council has abated lead in 76 houses, and one apartment building in Prince George's County. In Baltimore City, scattered site housing has been abated. She noted that the dust levels are high; as a result, tenants are being moved out during the abatement. There are four apartments that serve as temporary residences during abatement. Furniture is removed from the residence and stored at state expense. Mayor

Schmoke has appointed a new committee to address these issues in Baltimore. Sue Waller reported that the cost of abatement was $15,000 for one two-story house.

Mr. Harris noted that one of the major faults of the lead removal program is that abatement is only done when there is a child who has level IV poisoning, that is, who has been hospitalized for 30 days. Ms. Sakamoto-Wengel noted that if more funding were appropriated for the program, more abatements could be done.

H.B. 1486 — Energy Conservation in Rental Housing Minimum Standards: This bill received an unfavorable committee report and therefore died in the House.

H.B. 1427 — Property Owners Immunity from Liability: The bill gives landlords immunity for injury or death of a felon on the property.

H.B. 917 — Foreclosure of Right of Redemption Bill: The bill regarding foreclosure of the right of redemption which permits foreclosure only after four judgments of possession, has passed both houses and is awaiting the governor's signature.

S.B. 180 — "Sweeney Bill": This bill requires a five day waiting period before filing for eviction for non-payment The bill passed the Senate and is now in the House.

S.B. 782 — Prepayment of mortgages: This bill is pending in committee.

Tenant Counseling, Landlord Training and Resource List: Mr. Harris reported on the Property Owners Landlord Training Seminars. Joy Sakamoto-Wengel reported on resources received from the Reporter: Baltimore Neighborhoods, Inc., Manuals on Tenant Landlord Law in Baltimore County, Carroll, Harford, and Howard Counties, Frederick County and City, Anne Arundel County and Baltimore City, and the Directory of Community Services. She noted that the bulk of the housing resources listed in the Directory provide emergency assistance and other financial assistance rather than tenant counseling. She reported on a discussion with Robert Dengler about tenant training and learned that it had been conducted by Citizens Planning and Housing Association on code enforcement. She commented on the brochure drafted by the Attorney General's office on landlord-tenant disputes and noted that it is written at a fairly high reading level and would not be very useful to many of her low income clients. Ms. Sakamoto-Wengel noted she also has a landlord-tenant brochure distributed by the District Courts and one by the State Bar Association. She suggested that the subcommittee meet to review the materials and plan what to do.

Videotape: A letter was sent to William Jones. There has been no response to date.

Livability Code: Mr. Herschleg reported he received a call from a Ms. Geischeker in Charles County about whether the Commission could resolve individual disputes. He told her it could not. Mr. Herschlag drafted a letter which will be sent by him and Mr. Harris to the livability code contact list to see if they need help from the Commission.

Model Leases: Mr. Lenrow reported that the Attorney General's office has indicated that it will respond shortly to the Commission's questions about the model leases.

Revision of the Code (reprise): The Chair noted that this subcommittee should contact the Code Revision Division of the Department of Legislative Reference, as well as the Code Revision Committee of the Real Estate Section of the Maryland State Bar Association. The Chair suggested that if the Commission is inactive, the subcommittee should completely revise the Real Property Section, have it introduced at the next General Assembly session and resubmit it until it passes. The Committee is composed of Mr. Bregman, Mr. Herschlag and Mr. Abrams. The Chair asked for a draft by the May 9 meeting.

New Business: Ms. Martin-Smith asked what the effect of the Fair Housing Amendments of 1988 would be in Maryland. The Chair asked the Reporter to obtain information on the topic.

Inquires from the Public: The Reporter noted that she had received a call from an attorney in Rockville regarding Real Property Section 8-202 (b), the provision that a lease option agreement state clearly that it is not a contract for sale. The attorney wanted the legislative history of the section. The Commission discussed the fact that there is little legislative history in Maryland.

A motion to adjourn carried at 8:10 p.m.

June E. Schnabolk
Reporter

MARYLAND GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
Minutes of the Meeting of April 11, 1989

Present: Abrams, Chodak, Ciotola (Chair), Harris, Herschlag, Lenrow, Martin-Smith, Sakamoto-Wengel, Sweet, and Watts (quorum)

Judge Joseph A. Ciotola, Chair, called the meeting to order at 7:30 p.m. Jane E. Schukoske, Reporter, took the minutes.

Approval of the minutes of the March meeting: Motion was made and seconded to approve the minutes as sent out. Motion carried.

Committee Reports:

Revision of the Code: Mr. Bregman, unable to be present, had asked the Reporter to deliver his report, as follows: Mr. Bregman had contacted Timothy Chriss, the Chair of the Code Revision Committee of the Real Property Section of the Maryland State Bar Association. Mr. Chriss indicated that there was no effort to revise the landlord-tenant provisions underway, but that he is willing to establish a subcommittee to work with the Commission on this.

Mr. Bregman also called Elizabeth Veronis of the Code Revision Division of the Department of Legislative Reference. She indicated that there is no effort underway to revise the landlord-tenant provisions, but that she can assign a staff person to work on this when the Commission has a working draft.

Mr. Bregman also indicated he planned to have a meeting of the Subcommittee at least by conference call. Mr. Herschlag indicated he would be on vacation for two weeks but then available thereafter.

The Reporter said that Mr. Bregman had indicated that Mr. Abrams was looking at the uniform residential landlord-tenant act and planned to make modifications to it.

Mr. Abrams said that rather than that, he had intended to take the existing code and put it in easy, readable language and then make certain key modifications, such as removing provisions relating to specific counties. He said that he has been told by legislator that wholesale revision of the code would not be well received.

Mr. Herschlag noted that at the last meeting the Chair directed the Subcommittee to rewrite the landlord-tenant provisions as a whole. The Chair agreed, and noted that wholesale revision is in order, that piecemeal revision has not been successful. The Chair noted that the next step should be for the Subcommittee to meet.

Legislation: The Reporter distributed a status report on the bills on which Ms. Waller had reported this year. (A copy is attached for those members who were not present.)

Mr. Abrams asked about the effect of H.B.917, which is "for the purpose of making a tenant's exercise of existing rights and remedies for redemption of leased premises prior to eviction, repair of dangerous defects, and retaliatory evictions conditional on a certain number of judgments entered against the tenant by the court rather than on the number of summonses with complaints received by the tenant." The Commission discussed the change.

Mr. Herschlag noted that under Real Property Code Section 8-401 (c)(3), a tenant may pay the rent at trial even if there were four summonses issued.

Mr. Abrams noted that previously summonses were sufficient, and that now judgments for possession (judgments of restitution) will be required.

Tenant Counseling, Landlord Training and Resource List: Joy Sakamoto-Wengel reported that the Subcommittee needs to meet to determine what to do with the information that has been gathered. She said that the Committee may recommend providing a pamphlet or resource list with telephone numbers and contacts for tenants. The chair noted that the court has a pamphlet for tenants but that it is out of date. Ms Sakamoto-Wengel noted that the University of Baltimore Housing Law Clinic is revising it.

The Chair noted that the current system for obtaining verification for Emergency Assistance is overly burdensome on tenants. Mr. Harris asked if the Chair thought that the court should review cases and grant judgment to insure that there is no fraud. The Chair noted that the Department of Social Services (DSS) has workers to investigate fraud. The Chair noted that the current procedure for providing verification for DSS is not an appropriate court function.

Mr. Herschlag suggested that this issue could be raised as legislative change. It was suggested that the Committee look into the issue.

Videotape: Ms. Martin-Smith read the response received from William Jones, Director of Support Services with respect to possible sources of funds for production of a videotape. In his letter, he noted that the Boards and Commissions budget does not have sufficient funding to support this ambitions project, but that the Commission might contact the Board of Realtors.

Ms. Martin-Smith reported that she had received a call from Susan Weiss, Director of Housing in Takoma Park, and that she was interested in the videotape project and has the ability to use cable television facilities. Ms. Martin-Smith sent Ms. Weiss a copy of the script and the outline, and is hopeful that she will work on the project.

Ms. Sweet reported that she had discussed with and sent copies of correspondence regarding the videotape project to Senator Miedusiewski, a member of the Film Commission. The Commission directed the Reporter to invite him to the May 9 dinner.

Livability Code: Mr. Herschlag reported that he had received two calls. Bill Laws, County Administration of Snow Hill, said the livability code was ambiguous. Mr. Herschlag referred him to Robert Dengler, Assistant Director of Housing Inspection Services in Baltimore City, who has agreed to speak to people who have technical amendments to suggest. Mr. Herschlag also informed Mr. Laws that if he had any problems with the legislation that he would like to be more specific, he could recontact the Commission and the Commission would consider the changes.

Mr. Herschlag's second call was from Stanley Prusch, the Mayor of Capital Heights, who was seeking funding for enforcement of the code and/or for repairs. It was his understanding that there were funds available for repairs and code enforcement. Mr. Herschlag said that the funds for repairs were exhausted, and he referred him to Robert Dengler regarding matching funds for code enforcement. Mr. Herschlag noted that if the available funds are not adequate, that Mayor Prusch should let the Commission know so that it could consider support in the effort for appropriation of additional funds.

Mr. Harris reported that he was contacted by Pat Wood from the Delmarva peninsula, a code enforcement officer. He was referred to Robert Dengler.

Sue Weiss, from the City of Takoma Park also contacted Mr. Harris, and was referred to Robert Dengler.

Mr. Herschlag noted the Robert Dengler or someone from the State plans to hold training for code enforcement officers on legal issues such as the legality of searches, and enforcement through the courts. Mr. Dengler had indicated to Mr. Herschlag that the Commission may be able to help in two ways: with contacting local judges and contacting states attorneys to make sure that the cases received appropriate attention.

Model Leases: Mr. Lenrow reported that the Attorney General's office has not yet responded to the Commission's request.

New Business: Sue Waller has arranged the annual dinner meeting at the Pimlico Hotel Restaurant on Tuesday, Mary 9, at 6:30 p.m. The restaurant is located at the Commercecentre complex, 1777 Reisterstown Road, Pikesville.

Motion to adjourn carried at 8:10 p.m.

Prepared by:

Jane Schukoske
Reporter

MEMORANDUM

TO: Commission Members
FROM: Jane Schukoske, Reporter
RE: Travel Reimbursement Requests
DATE: April 20, 1989

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For your use in completing a reimbursement request form, I enclose a list of meeting locations and dates from June, 1988 on, and attendance sheets. The current State reimbursement rate is 21 cents per mile.

Please bring your completed form to the May 9 meeting. If you have questions, please call me at (301) 625-3411.

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION

Meeting Locations and Dates

Date	Location
June 7, 1988	Caesar's Den, Little Italy, Baltimore
July 12, 1989	Department of Transportation, BWI Airport
August 9, 1988	Department of Transportation, BWI Airport
September 6, 1988	Department of Transportation, BWI Airport
October 11, 1988	Department of Transportation, BWI Airport
November 1, 1988	District Courthouse, 5800 Wabash Avenue, Baltimore
December 13, 1988	Marriott Hotel, BWI Airport
January 10, 1989	District Courthouse, 5800 Wabash Avenue, Baltimore
February 7, 1989	District Courthouse, 5800 Wabash Avenue, Baltimore
March 14, 1989	District Courthouse, 5800 Wabash Avenue, Baltimore
April 11, 1989	District Courthouse, 5800 Wabash Avenue, Baltimore
May 9, 1989	Pimlico Restaurant, 1777 Reisterstown Road, Baltimore

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION

ATTENDANCE RECORD OF COMMISSION MEMBERS 1988 YEAR

P = Present

A = Absent

E = Excused

- = Not a member

	January 12, 1988	No Meeting in February	March 1, 1988	April 12, 1988	May 10, 1988	June 7, 1988	July 12, 1988	August , 1988	September 6, 1988	October 11, 1988	November 1, 1988	December 13, 1988	
Abrams	P		P	E	P	P			P	P	E	P	
Ackerman	E		E	P	P	P			E	P	E	P	
Bregman	E		P	P	P	E			P	P	P	P	
Chodak	E		P	P	P	P			E	P	P	P	
Ciotola	P		P	P	P	P			P	P	P	P	
Clarke	-		-	P	P	P			E	P	E	P	
	-		-	-	-	-			-	-	-	-	
Doyle	-		-	P	P	P			E	E	E	E	
Harris	P		P	P	P	P			P	P	P	P	
	-		-	-	-	-			-	-	-	-	
Herschlag	-		-	P	P	P			P	P	P	P	
Lenrow	E		P	P	P	E			E	P	P	P	
Martin-Smith	E		P	P	P	E			P	E	E	P	
Piccinini	P		P	E	P	E			E	E	P	E	
Sakamoto-Wengel	-		-	P	E	P			P	P	P	P	
Stokes	-		-	P	P	P			P	P	P	P	
Sweet	-		-	P	P	E			P	P	E	P	
Waller	P		P	P	P	P			P	P	P	P	
Watts	-		-	E	P	P			E	P	P	E	

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION

ATTENDANCE RECORD OF COMMISSION MEMBERS 1989

P = Present
A = Absent
E + Excused
- = Not a member

	January 10, 1989	February 7, 1989	March 14, 1989	April 11, 1989	May 9, 1989							
Abrams	A	P	A	P								
Ackerman	A	A	A	A								
Bregman	A	P	P	A								
Chodak	A	P	A	P								
Ciotola	E	E	P	P								
Clarke	P	E	P	E								
Doyle	A	A	A	A								
Harris	P	P	P	P								
Herschlag	P	A	P	P								
Lenrow	P	P	P	P								
Martin-Smith	P	E	P	P								
Piccinini	P	P	P	A								
Sakamoto-Wengel	P	P	P	P								
Stokes	P	P	A	A								
Sweet	A	P	A	P								
Waller	A	P	P	E								
Watts	E	E	P	P								

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION

Agenda
Tuesday, May 9, 1989, 7:00 p.m.
The Pimlico Hotel Restaurant
Commercentre, 1777 Reisterstown Road
Pikesville, Maryland

The Commission will address the following items:

1. Administrative details

   - Approve minutes of the April Commission meeting

   - Location of the next meeting

2. Subcommittee reports

   - Revision of the Code: progress report on the proposed revision of Title 8 of the Real Property Article - Douglas Bregman

   - Emergency grants: what is the appropriate approach to eliminate the court from the verification process for emergency grants from Social Services? - Bruce Herschlag

   - Legislation: timetable for submission of Commission bills - Sue Waller

   - Tenant Counseling, Landlord Training and Resource List: progress reports by Joy Sakamoto-Wengel and David Harris

   - Videotape: status report on funding - Patricia Martin-Smith

   - Livability Code: report on response to letters to localities - Bruce Herschlag

   - Model Leases: report on meeting with the Attorney General's office - Jay Lenrow

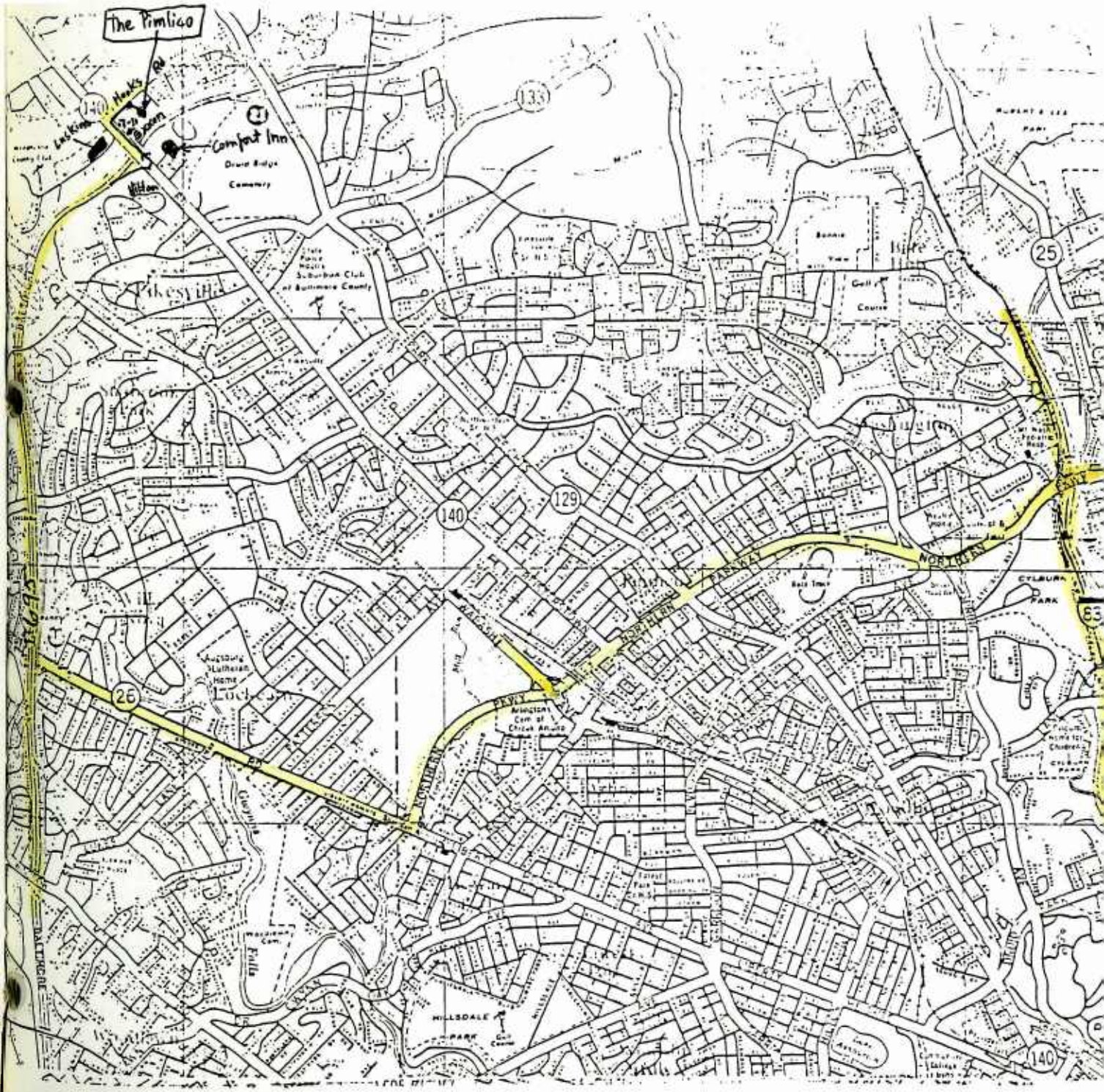
3. New business

PLEASE CALL 889-8925 BY MAY 1, 1989 TO LET THE REPORTER, JANE SCHUKOSKE, KNOW YOUR PLANS FOR ATTENDANCE

A cash bar will be available at 6:30 P.M. Dinner will be served at 7:00 p.m.

Directions To the restaurant: See attached sheet with directions and map.

Directions to the Pimlico Restaurant, 1777 Reisterstown Road, Pikesville: From the beltway, I-695, take exit 20. Coming from the south (i.e., from Glen Burnie towards Towson), turn left onto Reisterstown Road. Very soon you will see an Exxon and a 7-11 Store on your right. At the first light, turn right onto Hooks Road. In a few hundred feet, turn right into the Commercecentre parking lot. The Pimlico Restaurant is straight ahead.



GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
Minutes of the Meeting of May 9, 1989
The Pimlico Hotel Restaurant
1777 Reisterstown Road
Pikesville, Maryland

Present: Abrams, Ackerman, Bregman, Chodak, Ciotola (Chair), Harris, Herschlag, Lenrow (Vice Chair), Martin-Smith, Stokes, Sweet, Waller and Watts (Quorum)

Guests: Timothy Chriss, Prof. Michele Gilligan

Mr. Jay Lenrow chaired the meeting and Jane Schukoske, Reporter, took the minutes. The meeting was called to order at 8:15 p.m.

Approval of the minutes of the April meeting: Motion was made and seconded to approve the minutes as sent out. Motion carried.

Location of June meeting: The location of the June meeting of the Commission is the Department of Transportation Building at Baltimore - Washington International Airport, in the second floor Board Room. The date is June 13, 1989.

Subcommittee Reports:

Revision of the Code: Mr. Bregman reported that the subcommittee (Mr. Abrams, Mr. Herschlag and himself) met by telephone conference call. The subcommittee has divided the Uniform Residential Landlord-Tenant Act into six sections, and each member of the subcommittee will handle the initial revision of two sections. Mr. Bregman and Mr. Abrams plan to work together on the remedies section and to confer with District Court Judge Klavan from Montgomery County for his input. Mr. Bregman noted that Mr. Herschlag is welcome at meetings held in Montgomery County.

Ms. Waller asked if the subcommittee was working toward unifying the law statewide. Mr. Bregman said that the subcommittee is working for a statewide law, but that local concerns will be considered.

Mr. Bregman noted that the subcommittee will also attempt to delineate between the provisions affecting residential and commercial tenancies.

Mr. Herschlag announced that he will work on the subcommittee until he resigns from the Commission effective July 31, 1989, when he will be moving with his family out of state. Mr. Bregman noted that his target date for completion of a draft for consideration by the Commission is August, 1989. Judge Ciotola indicated that Joy Sakamoto-Wengel will be appointed to the subcommittee to replace Bruce Herschlag when he resigns.

Ms. Waller asked if the Commission will work with the State Bar Real Estate Section. Mr. Tim Chriss said that the legislative committee he chairs would be happy to review the Commission's draft.

Mr. Bregman reported that Elizabeth Veronis, of the Department of Legislative Reference, is willing to assign staff to assist in drafting acceptable language. Mr. Bregman proposed that the subcommittee report parts of the revision to the Commission as completed, and after the Commission revises and approves it, that the draft be sent to the State Bar and then to Ms. Veronis.

Since the deadline for submission of bills to the governor's office is August 1, the Commission noted that the revision would probably not be ready for submission for the 1990 session.

Emergency Grants: Mr. Herschlag obtained the name of the individual who is the head of the income maintenance agency that promulgates the regulation that requires proof of judgment by a landlord against the tenant before the tenant may receive emergency assistance. There have been previous efforts to change the regulation. Mr. Lenrow asked Ms. Waller to make an appropriate contact on this issue in Annapolis, and she agreed.

Legislation: Ms. Waller reported that the deadline is August, and noted that the big effort for 1991 would be the code revision. Ms. Waller asked for any other ideas for 1990. Ms. Waller suggested that the Commission invite David Iannucci to the July Commission meeting.

Tenant Counseling, Landlord Training and Resource List: Mr. Harris reported that he and Ms. Sakamoto-Wengel had had a telephone meeting. The Property Owners Association is producing a landlord reference manual. Ms. Sakamoto-Wengel wants to write city agencies to find what resources exist for tenants.

Videotape: Ms. Martin-Smith reported that Susan Weiss, Director of Housing in Takoma Park, is interested in funding the video. She will meet with Ms. Weiss, Ms. Sweet and Ms. Watts on June 12 in Takoma Park. It appears that the video will be produced in two parts to cover both state and local laws. Mr. Stokes has agreed to assist on this project.

Livability Code: Mr. Herschlag reported that he heard again from Mayor Prusch of Capital Heights who is interested in getting funds for enforcement of the minimum livability code. Ms. Waller noted that Baltimore City and Baltimore County received funds for enforcement. Mr. Herschlag noted he understood localities had to put up a 50% match, which would be difficult for small localities.

Motion was made and seconded that Mr. Herschlag be authorized to advocate for Capital Heights and other localities seeking funds for enforcement.

Model Leases: Mr. Lenrow reported that the Attorney General's Office responded to the Commission's request for an opinion. Mr. Lenrow noted that he will revise the model leases in response to the comments received.

Mr. Bregman observed that the original reason for the request to the Attorney General was to find out whether the Commission may issue the model leases. Mr. Lenrow will inquire further.

New Business: Mr. Lenrow noted that Mr. Herschlag will be moving out of state. On behalf of the Commission, Mr. Lenrow wished Mr. Herschlag well in his new location.

Motion to adjourn carried at 8:50 p.m.

Prepared by:

Jane Schukoske

Jane Schukoske
Reporter

JS:bb

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
Minutes of the Meeting of June 13, 1989
Department of Transportation Building
Baltimore-Washington International Airport, Maryland

Present: Ackerman , Bregman, Ciotola (Chair), Clarke, Harris, Herschlag, Lenrow, Martin-Smith, Sakamoto-Wengel, Stokes, Sweet, and Waller (Quorum)

Hon. Joseph A. Ciotola chaired the meeting and Jane Schukoske, Reporter, took the minutes. The meeting was called to order at 7:20 p.m.

Approval of the minutes of the May meeting: Motion was made and seconded to approve the minutes as sent out. Motion carried.

Location of July meeting: The location of the July meeting of the Commission is the Department of Transportation Building at Baltimore - Washington International Airport, in the second floor Board Room. The date is July 11, 1989. Bruce Martin, Assistant Legislative Officer, and Susan Weiss, Director of Takoma Park Department of Housing Services, will be guests.

Videotape: Ms. Martin-Smith reported that she and Vicki Watts met with Susan Weiss, Director of Housing in Takoma Park on June 12, 1989. Also present were Robert Smith of Takoma Park Cable, and Linda Walker, the Housing Coordinator. Ms. Weiss has agreed to produce the videotape with funding from her budget. Takoma Park is revising its landlord-tenant law, and wants the videotape to reflect the changes.

The group set the following schedule for the project: August 28 - deadline for the script; September and October - shooting of the videotape; November - editing of the videotape.

The videotape will be generic, to permit it to be used as long as possible. Therefore, the videotape will describe the process of looking for an apartment, without specific references to law. Individual jurisdictions will be able to provide specific information through voice-overs. The videotape may be used as part of a cable television show or for individual presentations in classes or for civic associations.

The script will be revised as follows: Vicki Watts will revise the section on leasing, Patricia Martin-Smith will revise the section on tenant associations and Linda Walker will revise another segment of the script. There will be an opportunity for the Commission to read the script before the videotape is shot.

Ms. Martin-Smith suggested that Ms. Weiss be invited to the July Commission meeting. The Chair agreed and asked the reporter to send an invitation.

Ms. Martin-Smith also recommended that the Commission send a letter to Ms. Weiss confirming the arrangements and making it clear that the Commission will receive two copies of the videotape which may be copied.

Ms. Waller asked who would have the copyright. She noted that the Commission would want to be able to duplicate the tape. The Commission discussed the issue, indicating that the videotapes would be distributed or loaned without charge and that cable stations may use it. Ms. Waller indicated that videotape duplication costs $35-40 per copy, and suggested that twelve copies be made. The reporter indicated she would check on the availability of funds for duplication of the tape with Mr. Charles Stevenson of the Governor's Financial Administration.

Ms. Martin-Smith noted that the videotape planners were looking for a celebrity to participate in the videotape. The Commission discussed numerous possibilities.

Ms. Martin-Smith also noted that the planners are looking for an apartment rental office to use in the videotape. She confirmed with the Chair that the Judge would arrange for a courtroom to use.

Volunteers from a local theater group in Takoma Park will perform as actors in the videotape, and there will be an opportunity for Commission members to participate as well.

Ms. Martin-Smith noted that materials for the different localities will need to be coordinated for use at presentations of the videotape.

The Commission thanked Ms. Martin-Smith for her fine work on this project.

Revision of the Code: Mr. Herschlag reported for the subcommittee. He noted that there have been no meetings, but that the subcommittee members have received copies of the Uniform Residential Landlord-Tenant Act that they needed for the revision process.

Mr. Herschlag resigned from the subcommittee and moved to nominate Joy Sakamoto-Wengel to replace him. The motion was seconded and the motion unanimously carried.

Emergency Grants: Mr. Herschlag obtained the name of the individual who is the head of the Income Maintenance Administration, Mr. Steve Minnick. The agency promulgates the

regulation that requires proof of judgment by a landlord against the tenant before the tenant may receive emergency assistance. There have been previous efforts to change the regulation.

Ms. Waller called Carolyn Colvin, who is the Acting Secretary of the State Department of the Human Resources. Ms. Colvin was unaware of the problem and asked the Commission to send her a letter on the matter. Ms. Waller indicated that she would meet with the reporter to prepare a letter. The Chair indicated that the court should be removed from the verification process.

The Commission discussed the issue of whether Emergency Assistance grants issued on the basis of a "white slip" evidencing a judgment in an eviction case may be used for purposes other then paying the plaintiff-landlord. The Chair reported that Judge Wahl has written to the agency to inquire about the permissable use of funds provided under the program. The Commission also discussed the different ways in which localities process Emergency Assistance checks.

Ms. Sakamoto-Wengel said that she had planned to write to Steve Minnick about the Emergency Assistance regulations, but would not in light of the contact with Acting Secretary Colvin.

Tenant Counseling, Landlord Training and Resource List:
Ms. Sakamoto-Wengel said she was surprised to see that in May's minutes she was to send letters to city agencies to inquire about resources for tenants. Mr. Harris indicated that the landlord reference manual has not been completed. Ms. Sakamoto-Wengel asked for clarification about the subcommittee's goals.

The Chair asked Ms. Sakamoto-Wengel and Mr. Harris to discuss a strategy for collecting further materials from various localities. The materials may be used in conjunction with the videotape.

Mr. Herschlag asked what direction the Commission was taking with respect to tenant counseling. Ms. Clarke noted that Prince George's County has a landlord-tenant office that provides tenant counseling about Emergency Assistance and other issues, and that she could invite the director to attend a Commission meeting.

The Chair suggested that Ms. Clarke talk with Ms. Sakamoto-Wengel and Mr. Harris about the Prince George's County Program.

Ms. Waller, responding to the description of the program in Prince George's County, noted that the Commission does not simply address concerns of poverty or low income housing, that the Commission was also aiming at the middle class. The Chair noted that tenant counseling can be made available to all tenants, poor, middle class and the rich.

Livability Code: Mr. Herschlag reported that he resigned from the subcommittee due to his imminent move. The Chair asked Mr. Harris to contact Mayor Prusch of Capital Heights who is interested in getting funds for enforcement of the minimum livability code. Mr. Herschlag said he would provide Mr. Harris with the information. Ms. Waller noted that the program is handled by the Department of Housing and Community Development, headed by Secretary Jacqueline Rogers.

Model Leases: Mr. Lenrow reported that he had revised the model leases in response to the comments received from the Attorney General's office in the letter dated April 29, 1989. He distributed revised copies of the lease, in which underlining was used to mark new language. He noted the following points:

- The Attorney General's suggestion that the lease include a reference to the rent escrow law: Mr. Lenrow did not include a reference. After discussion, the Commission considered attaching a copy of the rent escrow law, Md. Annotated Code, Real Property, Section 8-211, to the lease.

- The Attorney General's suggestion to refer to the landlord's responsibilities under the Minimum Livability Code in the model lease: Mr. Lenrow noted that he had changed paragraphs 12.D.3 and 13.A.3. to address this. After discussion, the Commission revised 12.D.3 to: "maintain safe workable plumbing, heating, and electrical systems in compliance with state and local law. We may charge you for repairs to these items when the repairs are necessary because of your negligent, wrongful or malicious acts or omissions unless we have contributed to the problem." (Reporter's note: this language was further changed; see below.)

- The Attorney General's suggestion to clarify in paragraph 12.D.1 that the tenant may dispute the need for repairs: The Commission added language so that it would read "damage shall be determined by us based on the report...."

- The Attorney General's suggestion to clarify in the security deposit section (paragraph 9) that interest must be paid on the entire security deposit, even if a portion of it was withheld for damages: Mr. Lenrow had made the suggested change.

- The Attorney General's suggestion to remove the reference to "additional rent" in paragraph 5: This change was not adopted.

- The Attorney General's suggestion to add language to paragraph 12.A to conform it with the language of Section 8-204 (e): The suggestion was adopted in the draft.

- The Attorney General's suggestion to revise paragraph 7 to reflect the standard for eviction set out in Section 8-204 (e) that a breach be "substantial and warrants an eviction": Mr. Herschlag made a motion, which was amended as follows, to substitute language for paragraph 7: "We may evict you if you commit a substantial violation of the terms, covenants or conditions of the lease and a judge finds that it warrants eviction". Ms. Sakamoto-Wengel seconded the motion, and the Commission vote tied 5-5; motion failed. The Chair, since he is a judge, abstained from the vote.

Ms. Clarke proposed an amendment to paragraph 20 on automatic renewal to substitute "s/he" for "he."

Mr. Herschlag noted that both paragraph 12.D.3 and paragraph 13.A.3 refer to the duty to maintain the heating, plumbing, and electrical system, and place the duty both on the landlord (12.D.3) and on the tenant (13.A.3) and that the apparent contradiction is confusing. After discussion, the Commission changed 12.D.3 to begin "Provide" and added language to 13.A.3 so that it reads "except where we have the duty to do so under paragraph 12 of this lease and under state or local law."

Motion was made and seconded to approve the lease as amended. Motion carried.

Revision of the Code (revisited): Mr. Bregman reported that he has revised the section on security deposits, drawing from both the Maryland Code Annotated and from the Uniform Residential Landlord and Tenant Act. He said he would send copies to the reporter for distribution to the Commission. He noted that Mr. Abrams has reported progress on his revision. Ms. Sakamoto-Wengel will be working on the section Mr. Herschlag had previously been assigned.

Bruce Martin, Chief Legislative Assistant, will attend the July 11 meeting. Mr. Bregman asked that, if possible, the other two sections be prepared by the end of June so that it may be mailed out to the Commission.

New Business: None was presented.

Motion to adjourn carried at 8:50 p.m.

Prepared by:

Jane Schukoske

Jane Schukoske, Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
Minutes of the Meeting of July 11, 1989
Department of Transportation Building
Baltimore-Washington International Airport, Maryland

Present: Ackerman, Bregman, Clarke, Harris, Herschlag, Lenrow, Piccinini, Sakamoto-Wengel, Stokes, and Sweet (Quorum) and Bruce Martin, Assistant Legislative Officer, as guest.

Jay Lenrow, Vice Chairperson, chaired the meeting and Jane Schukoske, Reporter, took the minutes. The meeting was called to order at 7:20 p.m.

Approval of the minutes of the June meeting: Motion was made and seconded to approve the minutes as sent out. Motion carried.

Location of August meeting: The location of the August meeting of the Commission is the Department of Transportation Building at Baltimore - Washington International Airport, in the second floor Board Room. The date is August 8, 1989. Susan Weiss, Director of Takoma Park Department of Housing Services will be a guest at that meeting.

Revision of the Code: Mr. Bregman reported for the subcommittee. Mr. Lenrow welcomed Bruce Martin, Assistant Legislative Officer, and invited his comment.

The subcommittee has divided up the six sections of the Uniform Residential Landlord-Tenant Act. Mr. Bregman completed his revision of section two and this was distributed to the Commission for its review. Bruce Herschlag had agreed to revise sections one and three, and this task will pass to Joy Sakamoto-Wengel after his resignation July 31, 1989.

Mr. Herschlag noted that there were concerns that Legal Aid Bureau may limit its ability to challenge the final legislation if one of its lawyers serves as a drafter of a proposed revision. Mr. Lenrow noted that Commission members are appointed as individuals, and that a subcommittee member drafting an initial proposal to the Commission would not preclude the Legal Aid Bureau from challenging the final statute.

Mr. Bregman said that he was asking subcommittee members to take the Uniform Residential Landlord-Tenant Law and to conform it to the Maryland law, to put in Maryland nuances, and to make sure that areas covered in Maryland law but not covered in the Uniform Act are included.

Mr. Bregman asked that Joy Sakamoto-Wengel call him to let him know a schedule for her portion of the revision, and he indicated he had called Mr. Abrams to check on his progress on the revision.

Mr. Lenrow asked Mr. Martin what the Governor's legislative office would do with the Commission's proposal once the Commission completes its revision (expected to be in 1990).

Mr. Martin asked if the Commission has considered what position it would take on legislation in the coming session that may impact on the revision. Ms. Clarke said that the Commission recognizes that its proposal may not pass the first time and that other bills would be considered in the meantime. Mr. Lenrow said that the Commission reviews bills on a bill-by-bill basis, that a subcommittee reviews the bills and the relevant ones are sent to the Commission. The Commission then votes to take a position on bills of interest and sends a spokesperson to the hearings at the legislature.

Mr. Martin noted that his office can assist the Commission by tracking agency positions on legislation, to identify any conflicting positions among state agencies. Patrick Roddy is the staff member who tracks that information.

Mr. Martin said that when legislation comes in to the Governor's legislative office, it is reviewed for technical sufficiency. The legislation is then circulated to other state agencies that may have an interest in the issues. Often this circulation has occurred before the legislation is proposed. Mr. Martin noted that the Department of Housing and Community Development would be an agency to which the Commission's proposal would likely be referred for comment if it has not already commented on it. The final steps the office takes are to make sure the bill is properly entered into the computer and make sure it is introduced into the appropriate house at the General Assembly. Mr. Martin's telephone number is 974-3336.

Emergency Grants: The reporter noted that at the last meeting there was discussion of sending a letter about changes the Commission recommends with respect to the verification process for the Emergency Assistance (EA) Program. The reporter spoke with Sue Waller, researched the verification and vendor payment issues, prepared a report (dated June 21, 1989) which was sent to all Commission members, and discussed the matter with Judge Ciotola, who suggested deferring sending a letter.

The reporter noted that the regulations permit either an order for possession or a writ of restitution (put-out notice) as verification, so the inconsistency around the state is permissible under the current regulations. She noted that the regulations prefer vendor payment, so if a check is issued to a tenant as sole payee, there should be a specific reason.

The Chair noted that the Commission was looking for uniformity, and that the alternate verification for EA makes a significant difference in time to the tenant who may have to return to court to obtain a copy of the put-out notice, which is issued at least 48 hours after the order for possession. The Chair asked for a consensus from the Commission.

Mr. Herschlag said that he understood Judge Ciotola's position to be that the involvement of the court in the process unnecessarily clogs the courts. He proposed that a late notice or complaint for possession suffice as verification for EA rather than using the court process. Ms. Clarke said that to the extent the EA process encourages a tenant to come in to the trial to participate, that that is a good process. She also noted that there would be a significant increase in the cost of the EA program if tenants in the suburbs of Washington could receive EA based on the complaint above because other funds may come in during the three week delay before trial.

Mr. Herschlag voted that if the tenant/EA applicant lied about the lack of other funds in the EA application, criminal penalties are available. He observed that for the lowest income people, the proposal that a complaint or late notice suffice as verification will save them a trip to court.

Ms. Clarke asked if the Commission wanted input from the Department of Human Resources. Mr. Lenrow replied that Commission expected that the agency would respond to the Commission's letter with its own views.

Mr. Lenrow said that regardless of the process used, there is the possibility of fraud. The Chair asked the reporter to draft a letter incorporating the consensus articulated by Mr. Herschlag for review at the next meeting.

Tenant Counseling, Landlord Training and Resource List: Ms. Sakamoto-Wengel reported that she is compiling a list of resources for tenants, county by county, and has contacted half of the counties in the state. Mr. Harris reported that the Property Owners Association is compiling guidelines for landlords.

Videotape: This report was deferred to the August meeting.

Livability Code: Mr. Harris reported that there had been no new requests for information or assistance about the livability code.

Model Leases: Mr. Lenrow reported that he supplied the reporter with copies of the revised leases conforming with the changes voted upon at the June 13, 1989 meeting, and that copies will be made and sent to the Commission. Mr. Lenrow provided Mr. Martin with a copy of the model leases.

Mr. Piccinini asked how the leases would be distributed. Ideas discussed by the Commission included sending them to public libraries, courthouses, to legal stationary stores (Lucas Brothers, e.g.), to the Daily Record, and to contact the governor and the governor's press office (Bob Douglas), and to send it for inclusion in the Aspen Publishers treatise on Maryland Real Property Leasing. Mr. Bregman reported that the leases will be included in the new edition of the Maryland Practice Manual. Mr. Martin suggested sending a copy to the governor and calling Bob Douglas ahead of time to alert him that it is coming.

New Business: None was presented.

Recognition of Bruce Herschlag on His Departure From the Commission: The Chair called for a round of applause for Mr. Herschlag, who resigned from the Commission effective July 31, 1989, because he is moving out of state. The Commission thanked him for his work.

Motion to adjourn carried at 8:20 p.m.

Prepared by:

Jane Schukoske

Jane Schukoske, Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
Minutes of the Meeting of August 8, 1989
Department of Transportation Building
Baltimore-Washington International Airport, Maryland

Present: Abrams, Ackerman, Bregman, Chodak, Ciotola (Chair), Lenrow, Martin-Smith, Sakamoto-Wengel, and Watts (Quorum) and Susan Weiss, Director, Takoma Park Office of Housing, guest, and Charles Ryan of AOBA, observer.

Hon. Joseph A. Ciotola, Chairperson, chaired the meeting and Jane Schukoske, Reporter, took the minutes. The meeting was called to order at 7:17 p.m.

Approval of the minutes of the July meeting: Motion was made and seconded to approve the minutes as sent out. Motion carried.

Location of September meeting: The location of the September meeting of the Commission is the Department of Transportation Building at Baltimore - Washington International Airport, in the second floor Board Room. The date is September 12, 1989.

Subcommittee reports:

Videotape: Patricia Martin-Smith welcomed Susan Weiss, the Director of the Takoma Park Office of Housing, whose office will be financing and collaborating on the production of the videotape. The videotape will have two parts, one of general application and one tailored to the local law in Takoma Park.

A letter of agreement between Ms. Weiss' office and the Commission has been drafted and will be revised to reflect a brief delay in the production schedule due to postponement of the final vote on local landlord-tenant law changes by the city council of Takoma Park. Ms. Weiss predicts that the vote will occur at the council's September meeting. These changes in the law will be incorporated into the portion of the videotape tailored for Takoma Park.

Ms. Martin-Smith reported that Vicki Watts drafted an additional portion of the script, and Ms. Watts distributed copies to the Commission. Ms. Watts said she covered basic materials from the statute that would be of interest to new renters.

Ms. Martin-Smith thanked Ms. Weiss for her cooperation on this project. Ms. Weiss noted her enthusiasm for the project. She reported that actors from the Takoma Park Repertory will perform in the videotape.

Ms. Martin-Smith noted that the committee is still looking for a celebrity to narrate the opening of the videotape.

Mr. Ackerman suggested that the model leases be tied in to the videotape. Ms. Weiss said that the videotape committee expected that groups showing the videotape would distribute landlord-tenant literature applicable where the videotape was shown. The Chair noted that the model leases might be made a standard part of the written materials around the state.

Ms. Martin-Smith noted that due to the delay of the Takoma Park City Council vote, the videotape schedule would be set back one month.

Emergency Grants: Jay Lenrow said that the draft letter to Ms. Colvin sent out with the July minutes to the Commission covers the points the Commission wanted to make. He noted that Ms. Colvin has been named Secretary of the Department of Human Resources. Motion was made to send the letter out with the adjustment of Ms. Colvin's title to Secretary. Motion was seconded, and carried unanimously.

The Chair noted that Social Services will be moving into the second floor at 1400 East North Avenue, and that the proximity to the rent court will alleviate some of the "white slip" problem. The chair noted that the new location will greatly help the tenants retain their dignity and avoid the expense of traveling between agencies.

Tenant Counseling, Landlord Training and Resource List: Ms. Sakamoto-Wengel reported that she has compiled a list of resources for tenants, county by county, for all but four Maryland counties. She distributed the available lists to the Commission, and provided the reporter with the Montgomery County and Prince George's County list for distribution with these minutes. She indicated she would complete the lists by the next meeting.

She suggested that lists be made available in each county by the courts. The Chair suggested that, due to the mobility of the population, the resource booklet contain information for the entire state. Ms. Martin-Smith suggested that the lists also be available at libraries.

Livability Code: This was deferred to the September meeting.

Model Leases: The Chair noted that the reported had distributed a memorandum regarding dissemination of the model leases.

Mr. Lenrow reported that he received the suggestion that the leases include the language from the Families Insisting on Safe Tenancies (FIST) program. This language would make it a lease

violation to "distribute, store, or manufacture illegal drugs on the premises."

The Chair asked Mr. Lenrow to obtain the language and bring it to the next Commission meeting for a vote.

The Commission discussed the difficulty of using such a provision as a grounds for termination of a lease. Mr. Lenrow noted that there would be constitutional problems with using arrest, or conviction unrelated to the leased premises, as a basis for eviction.

The Chair noted that the Commission may wish to use language requiring that the grounds for termination of the lease be conviction of a drug offense on the premises, where the lessee or invitees of the lessee are the ones involved. Mr. Lenrow noted that such action is covered in general terms by the current language of the lease.

Revision of the Code: Mr. Bregman reported for the subcommittee. He noted that each Commission member should now have a copy of draft Subtitle 2, Residential Leases (distributed in July) and Subtitle 4, Landlord Remedies (distributed in August and enclosed to absentees with these minutes).

He said that he had heard from Mr. Herschlag that a member of the Commission who works at Legal Aid Bureau will be able to assist with the revision.

Ms. Sakamoto-Wengel asked Mr. Bregman how he had approached his section subtitle 2, "Residential Leases." Mr. Bregman said that the Uniform Residential Landlord-Tenant Act covers many things that the Maryland Code does not cover, and there are Maryland Code provisions that are not paralleled in the Uniform Act. He concluded that to work with the Uniform Act and retain the provisions of Maryland Law, he would proceed to cut and paste as follows:

(1) Where there are Uniform Act provisions but no Maryland Code provisions, adopt the Uniform Act language.

(2) Where there are Maryland Code provisions and the Uniform Act is silent, retain the Maryland Code provisions.

(3) Where the Uniform Act and Maryland Code overlap, make decisions as to how to weave the two together or adopt the superior provision.

Mr. Abrams gave an example of a provision from the Uniform Act that would impose quadruple rent against a tenant holding over after a landlord has terminated a lease for cause after notice. He noted that parts of the Uniform Act are

philosophically different from Maryland's law.

Mr. Bregman said that he believes Maryland law must be retained on basic points like the right to cure lease violations and the right of redemption, and that other points can come back to the Commission for discussion.

The Chair said that approach sounded appropriate, and commented that the full Commission could discuss modifications.

Mr. Abrams noted that most of his draft of Chapter 4, Landlord Remedies, is diametrically opposed to the Uniform Act. He noted provisions that derived from the Uniform Act in the margin of his draft of Subtitle 4.

Mr. Bregman suggested that the subcommittee exchange drafts, meet and discuss them, and then present a coordinated complete draft to the Commission. The Chair asked that copies of subsections be sent to the reporter for dissemination so that Commission members may comment on the drafts while the subcommittee is working. The Chair asked that all comments be sent to the reporter, who will copy and send them out to the subcommittee.

New Business: Mr. Abrams raised several questions regarding landlord-tenant court forms. He said that tenants believe they are required to go to court on eviction cases. The Chair said he would review the language on the court form.

Mr. Abrams raised the issue of the court form requiring that copies of judgments be attached to request foreclosure of the right of redemption.

The Chair thanked the guest for attending.

Motion to adjourn carried at 8:20 p.m.

Prepared by:

Jane Schukoske

Jane Schukoske, Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
Minutes of the Meeting of September 12, 1989
Department of Transportation Building
Baltimore-Washington International Airport, Maryland

Present: Abrams, Bregman, Chodak, Ciotola (Chair), Clarke, Lenrow, Sakamoto-Wengel, Stokes, and Sweet (Quorum) and Judy Filner, of the FIST (Families Insisting on Safe Tenancies) Program, guest.

Hon. Joseph A. Ciotola, Chairperson, chaired the meeting and Jane Schukoske, Reporter, took the minutes. The meeting was called to order at 7:17 p.m.

Approval of the minutes of the August meeting: Motion was made and seconded to approve the minutes as sent out. Motion carried.

Location of October, November, and December meetings: The location of the October and November meetings of the Commission is the Department of Transportation Building at Baltimore - Washington International Airport, in the second floor Board Room. The dates are October 10 and November 14, 1989. The December 12 meeting is tentatively to be held at Northwinds Restaurant in Annapolis. The Reporter will check on availability and cost and report back at the next meeting.

Videotape: Patricia Martin-Smith was absent due to a conflicting meeting. The reporter noted that Ms. Martin-Smith had completed her portion of the videotape script on tenant associations, and is awaiting the section to be written by Linda Moore of the Takoma Park Department of Housing. Ms. Martin-Smith asked for suggestions for narrators for the videotape and Sugar Ray Leonard and Barry Levinson were suggested. Mr. Abrams said he may be able to line up a broadcaster.

Emergency Grants: Jay Lenrow said that no response to his August 8 letter had been received from Secretary Colvin. Sue P. Waller offered to call Ms. Colvin.

Tenant Counseling, Landlord Training and Resource List: Ms. Sakamoto-Wengel reported that she has completed the list of resources for tenants, county by county, and that they have been distributed to the Commission. Ms. Sakamoto-Wengel agreed to write Secretary Jacqueline Rogers of the Department of Housing and Community Development to request assistance in printing brochures for each of the 23 counties and Baltimore City. Ms. Waller said that the landlord survival kit is being printed and that she will obtain copies for the Commission.

Livability Code: This was deferred to the October meeting.

Model Leases: Mr. Lenrow introduced Judy Filner of the Governor's Families Insisting on Safe Tenancies (FIST) program of the Department of Housing and Community Development.

Mr. Lenrow reported that he had received the suggestion that the leases include the language from the Families Insisting on Safe Tenancies (FIST) program. This language would make it a lease violation to "distribute, store, or manufacture illegal drugs on the premises." Mr. Lenrow had the full text of the recommended lease clause, and noted that it was not written in plain English. He suggested that he revise the FIST clause to be easier to read, in keeping with the style of the model leases. The Chair asked Mr. Lenrow to bring the revision to the next meeting. Ms. Filner said she would provide copies of the FIST manuals for the Commission.

Ms. Filner reported on the FIST program, which encourages landlords to include the lease clause in their new leases and as an addendum to leases being renewed. She noted that landlords are encouraged to sign a participation agreement with the FIST program. She also described a computer list of FIST - excluded tenants to be maintained by DHCD.

Revision of the Code: Mr. Bregman reported for the subcommittee. He noted that each Commission member should now have a copy of draft Subtitle 2, Residential Leases (distributed in July) and Subtitle 4, Landlord Remedies (distributed in August) and the remaining subtitles (distributed in September and enclosed to absentees with these minutes).

Mr. Bregman said that he will work on merging the three drafts into one and present a coordinated complete draft to the Commission. The Chair suggested that a special meeting of the Commission be set to discuss the combined draft when it is available. The Commission asked the reporter to obtain binders in which to place the draft bill.

New Business: Ms. Waller asked whether the Maryland Real Property Code pocket parts had been received. The reporter said they have not, and that she would check on the standing order with Michie Company.

Ms. Waller also asked if pre-filed bills have been obtained. The reporter said she would request them.

Motion to adjourn carried at 8:07 p.m.

Prepared by:

Jane Schukoske

Jane Schukoske, Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
Minutes of the Meeting of October 10, 1989
Department of Transportation Building
Baltimore-Washington International Airport, Maryland

Present: Abrams, Bregman, Ciotola (Chair), Clarke, Harris, Martin-Smith, Piccinini, Sweet and Watts (Quorum).

Hon. Joseph A. Ciotola, Chairperson, chaired the meeting and Jane Schukoske, Reporter, took the minutes. The meeting was called to order at 7:31 p.m.

Approval of the minutes of the September meeting: Motion was made and seconded to approve the minutes as sent out. Motion carried.

Location of November and December meetings: The location of the November meeting of the Commission is the Department of Transportation Building at Baltimore - Washington International Airport, in the second floor Board Room. The date is November 14, 1989. The December 12 meeting is tentatively to be held at Harry Brown's Restaurant in Annapolis. The Reporter will report back at the next meeting to confirm the location.

Videotape: Patricia Martin-Smith reported that she had not heard further from the Takoma Park Department of Housing regarding final action by the City Council on revisions to the local landlord-tenant law. The videotaping will be delayed until the local law is settled.

She also reported that she was looking for a celebrity to appear in the videotape. Mr. Abrams indicated he had spoken with an area television broadcaster who is willing to appear. Mr. Bregman said he had a connection to Sugar Ray Leonard. The Chair asked Mr. Bregman to find out if Mr. Leonard is willing to appear in the film.

Ms. Martin-Smith noted that she is awaiting the last portion of the script, to be drafted by Ms. Moore of the Takoma Park Department of Housing.

Emergency Grants: Jay Lenrow and Sue P. Waller were absent, and this item was deferred to the November meeting.

Tenant Counseling, Landlord Training and Resource List: The Chair noted that Ms. Sakamoto-Wengel has written to Assistant Secretary Ardath Cade of the Department of Housing and Community Development to request assistance in printing brochures for each of the 23 counties and Baltimore City.

Mr. Harris reported that the Survival Guide For Rental Housing Management in Greater Baltimore is now available. A flyer about it was distributed, along with an announcement of a "Landlord Survival Seminar" sponsored by the Property Owners Association of Greater Baltimore.

Livability Code: Mr. Harris reported that he had received no inquiries about the livability code.

Model Leases: This matter was deferred to the November meeting due to Mr. Lenrow's absence. The reporter noted that she had received a recommendation from Ed Levin, attorney and author of a real estate form book, that the Commission add a sentence to the cover page saying that there may be additional local requirements. The Chair suggested that, immediately after the statement that the lease form conforms with Maryland law in effect on July 1, 1989, it read "Anyone considering use of this lease should check on additional requirements of local law." This issue and the addition of language on the FIST (Families Insisting on Safe Tenancies) program will be voted on at the next meeting.

Revision of the Code: Mr. Bregman reported for the subcommittee. He noted that he hoped to make progress on the coordination of the three drafts into one by the November meeting. He reported that there are funds available from the Boards and Commission budget to hire a law clerk. The reporter had checked on the availability of $600, $6/hour for 100 hours for the project, and received approval from Charles Stevenson, the Chief Financial Administrator. Mr. Bregman the Commission for approval to hire a clerk to assist with the code revision project. A motion was made and seconded to give approval, and the motion carried. Mr. Bregman asked if he could offer $10/hour for 60 hours, so that the pay would be comparable to other clerkships in the Bethesda area. The Commission asked the reporter to seek approval of that change from Charles Stevenson.

New Business: The Chair announced the appointment of Mary Helen McNeal as a tenant representative to the Commission. She is employed by Legal Aid Bureau in Baltimore County.

The Chair noted that there will be a tenant representative position open soon due to the inability of a member to attend meetings this year. He asked that names of possible tenant representatives be given to the Reporter.

The Chair asked who to invite to the December meeting. It was suggested that the Chairs of the House and Senate Judiciary Committees be invited, that Sugar Ray Leonard be invited if he agrees to participate in the videotape, and that Susan Weiss of the Takoma Park Department of Housing be invited. The Chair asked the reporter to extend invitations to those individuals.

Motion to adjourn carried at 7:58 p.m.

Prepared by:

Jane Schukoske

Jane Schukoske, Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
Minutes of the Meeting of November 14, 1989
Department of Transportation Building
Baltimore-Washington International Airport, Maryland

Present: Abrams, Bregman, Chodak, Ciotola (Chair), Clarke, Lenrow, McNeal, Sakamoto-Wengel, Stokes, and Waller (Quorum).

Hon. Joseph A. Ciotola, Chairperson, chaired the meeting and Jane Schukoske, Reporter, took the minutes. The meeting was called to order at 7:15 p.m.

Approval of the minutes of the October meeting: Motion was made and seconded to approve the minutes as sent out. Motion carried.

Location of upcoming meetings: The December 12, 1989 meeting will be held at the Columbia Hilton. On January 9, February 13 and March 13, 1990, the regular monthly meetings will be held at the Department of Transportation Building at Baltimore-Washington International Airport.

Videotape: Patricia Martin-Smith was absent due to a conflicting meeting. She had sent the message that she had not heard from Susan Weiss of the Department of Housing in Takoma Park regarding final passage of the local landlord-tenant laws. The videotape will be shot after the local law is settled.

Mr. Bregman reported that he had contacted Sugar Ray Leonard's lawyer and learned that Mr. Leonard is willing to be in the videotape for free. Mr. Bregman says that he needs to send a letter stating when and where the videotape will be shot, and what Mr. Leonard would be asked to do. The reporter said that she would send letterhead to Mr. Bregman so that he may send the letter.

Emergency Grants: Jay Lenrow said that he had received a response from Secretary Colvin. Mr. Lenrow noted that the Commission's letter to Secretary Colvin stated objections to the existing regulations regarding verification of imminent eviction. The Secretary's letter stated that the agency handled verifications according to the regulations. Mr. Lenrow recommended that Secretary Colvin be invited to a future meeting to discuss the matter in person. Judge Ciotola signed the letter that had been prepared.

Tenant Counseling, Landlord Training and Resource List: Ms. Sakamoto-Wengel reported that she is trying to see if the state will fund the printing of brochures listing tenant resources. She is attempting to contact Delegate Sandy Rosenberg and Ardath Cade of the Department of Housing and Community Development.

Livability Code: In the absence of Mr. Harris, this item was deferred to the next meeting.

Model Leases: Mr. Lenrow presented revised copies of the model leases. After discussion, the Commission agreed that the language on the cover page regarding additional requirements of local law should be revised so that the present list does not appear comprehensive, since there may be other local requirements.

Mr. Lenrow noted that he revised the FIST language to make it easier to read. Sue Waller made a motion to adopt the FIST language as revised. Mary Helen McNeal asked if the Commission had already discussed the FIST policy and the adoption of it into the model lease. Mr. Lenrow said that Ms. Judith Filner, who is in charge of the FIST policy implementation, had attended the September, 1989 meeting of the Commission. Mr. Lenrow said that the Commission basically supported removal of tenants who were dealing drugs from an apartment.

Ms. Sakamoto-Wengel noted that there are a number of provisions in the FIST language that go beyond what a landlord may do under existing law. For example, the policy says that a family member convicted of a drug-related crime must move out within ten days. Mr. Lenrow noted that the FIST policy would be enforceable through the lease.

Mr. Abrams and other members of the Commission discussed the difficulty of proving the violation of the FIST provision of a lease. The Chair asked Mr. Lenrow to research the padlock law and legal implications of the FIST policy, and to report at the next meeting.

Mr. Abrams suggested that language be added to the cover page of the model leases to suggest that the user consult an attorney. Mr. Bregman noted that it is customary to include such a suggestion in published forms. Mr. Lenrow noted that the language appears at the top of the first full page of the lease. The Commission decided to include the language on the cover page as well as on the first page.

Revision of the Code: Mr. Bregman says that he needs the help of a law clerk to make progress on the revision. He said that he had not received any applications for the law clerk position. The reporter said that the job had been listed at the University of Baltimore Law School, and that she would have it listed at University of Maryland and Washington, D.C. area schools. Mr. Bregman will report back at the January meeting.

Legislation: Ms. Waller reported that she has not seen any pre-filed bills as yet. She said that Jacqueline Rogers and Ardath Cade have been touring the low income housing stock in various parts of the state, including the Eastern Shore, Montgomery County, Annapolis and Baltimore City. She has heard that there will be money in the budget for weatherization and for removal of lead paint.

The Chair asked the reporter to invite Secretary Jacqueline Rogers and Ardath Cade to the December meeting.

The Chair reported that he has not heard of any bills proposed by the judiciary.

New Business: The Chair welcomed Mary Helen McNeal as a new member of the Commission. She is a tenant representative.

The Property Owners Association of Greater Baltimore has published a Survival Guide for Rental Housing Management, and provided a copy for the Chair and for the reporter that are available for viewing by the Commission.

The reporter noted that the Chair has sent a letter to the Governor asking for appointment of another tenant representative to replace an individual who has missed all meetings this year. The reporter also distributed the Maryland Real Property Code 1989 pocket parts.

Motion to adjourn carried at 8:05 p.m.

Prepared by:

Jane Schukoske

Jane Schukoske, Reporter

GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
Minutes of the Meeting of January 9, 1990
Columbia Hilton, 5485 Twin Knolls Road
Columbia, Maryland

Present: Abrams, Bregman, Ciotola (Chair), Harris, Lenrow, McNeal, Piccinini, Sakamoto-Wengel and Stokes, (Quorum).

Hon. Joseph A. Ciotola, Chairperson, chaired the meeting and Jane Schukoske, Reporter, took the minutes. The meeting was called to order at 7:55 p.m.

Approval of the minutes of the November meeting: Motion was made and seconded to approve the minutes as sent out. Motion carried.

Location of upcoming meetings: On February 13 and March 13, 1990, the regular monthly meetings will be held at the Department of Transportation Building at Baltimore-Washington International Airport.

Subcommittee Reports:

Videotape: Susan Weiss indicated that she expects her agency will finish drafting its portion of the script in the next week, and then will comment on the portions drafted by Patricia Martin-Smith and Vicki Watts.

Mr. Bregman reported that he had again contacted Sugar Ray Leonard's lawyer. Mr. Bregman says that he needs to send a letter stating when and where the videotape will be shot, and what Mr. Leonard would be asked to do, and to send a copy of the script for his lawyer's review. He also needs to know how long a commitment he is being asked to make. The Chair asked Mr. Bregman to provide a copy of the script to Sugar Ray Leonard after the Commission has approved it, presumably in February.

Emergency Grants: Jay Lenrow said that he had received a response from Secretary Colvin to the Commission's letter and thought there had been a misunderstanding. Judge Ciotola said that there were too many steps and too much travel for tenants to obtain Emergency Assistance under the present system. Secretary Colvin said that her agency wants to streamline the process if possible. She asked George Sinclair to describe the current system.

Mr. Sinclair noted that Emergency Assistance (EA) is funded by the state and Emergency Assistance to Families with Children (EAFC) is funded 50% by the state and 50% by the federal government. To change EAFC, a change to the "state plan" must be federally approved. The agency has two concerns about using a summons for eviction for non-payment of rent: (1) the validity of the debt, and (2) the time frame between issuance of complaint and the threatened emergency. Mr. Sinclair suggested that he work with Commission representatives to develop options and see how the federal agency responds.

Secretary Colvin said that she is interested in exploring compliance with the federal requirements which imposes the least number of requirements on the applicant. Judge Ciotola asked Jay Lenrow and Mary Helen McNeal to work on the issue. Secretary Colvin indicated that George Sinclair is the appropriate contact person from her agency.

Tenant Counseling, Landlord Training and Resource List: Ms. Sakamoto-Wengel reported that she is trying to see if the state will fund the printing of brochures listing tenant resources. She called Ardath Cade of the Department of Housing and Community Development to request that her agency pay for the printing of the materials she has assembled. Roger Lee Fink said he would serve as a contact person and that he believed it would be permissible. Ms. Sakamoto-Wengel indicated she compiled the materials according to 13 regions of the State.

Model Leases: Mr. Lenrow presented revised cover pages for the model leases. Mr. Lenrow noted that the Commission is discussing the FIST language proposed by the governor for inclusion in the model leases, and he described the purpose of the model leases. Mr. Lenrow said that Ms. Judith Filner, who is in charge of the FIST policy implementation, had attended the September, 1989 meeting of the Commission. Mr. Lenrow said that he had revised the FIST language to make it easier to read.

Mr. Lenrow stated that when the FIST language as revised was proposed at the November, 1989 Commission meeting, some Commission members raised constitutional questions about aspects of the program. Mr. Fink noted that FIST language has been revised since May, 1989, particularly regarding the clearinghouse listing of evicted tenants.

Mr. Fink said that Secretary Rogers and Ardath Cade sent their regrets about their inability to attend the Commission meeting.

Mr. Fink said the program has been changed. Mr. Fink distributed copies of the departmental legislation to the reporter. He said under the proposed departmental legislation, landlords would not report tenants to the State but to consumer credit reporting agencies. Mr. Abrams noted that the landlord has a difficult burden of proof under the FIST clause. Mr. Fink said that most leases already prohibit illegal acts in the rental premises. Mr. Fink said that the civil standard of proof - the preponderance of the evidence - applies. He said that the FIST Program will serve a public awareness purpose, to let tenants known what behavior is not acceptable.

The Chair asked Mr. Lenrow about his research on the padlock law, and Mr. Lenrow said he had found nothing on it. Mr. Harris said that a unit has been raided a number of times and involved in illegal activity, the police may padlock the unit.

Mr. Lenrow said that the Commission has questions about the FIST language but is proud of and interested in disseminating the Model Leases. Mr. Abrams said that he would rather have general language rather than specific language to avoid a defense that other specific acts were not listed. The Chair suggested use of a notice that warned that use of drugs is a violation of the lease as determined by a court of competent jurisdiction. Mr. Fink said that he will work with the Commission. The Chair asked Mr. Lenrow and Ms. McNeal to work with Mr. Fink. The subcommittee is to report back to the Commission at the next meeting.

Revision of the Code: Mr. Bregman says that he hired a University of Baltimore law graduate to work on the revision. Mr. Bregman said that Virginia has adopted the Uniform Act, and that he is using it as a model. He said he has consulted Steven Davison's 1976 article on the Uniform Landlord-Tenant Act. He said he believes he will have a draft for the February meeting.

The Chair recommended that the subcommittee look at the departmental legislation distributed by Mr. Fink for possible inclusion in the Commission's revision.

Legislation: The reporter distributed three pre-filed bills: H.B 128, S.B. 47 and S.B. 115.

New Business: The Chair noted that the annual attendance report has been made to the governor. There is now a vacancy for a tenant representative.

Mr. Sinclair noted that his agency mails 100,000 benefit checks once per month, and can include items in the mailing. He said that his agency may be able to include appropriate

Commission materials in the mailing. He also noted that the agency has 50 offices around the state and that most have video equipment. He said that the agency could copy and distributed the videotape to its offices. The Chair said the Commission appreciated the offer and will pursue it.

Motion to adjourn carried at 9:37 p.m.

Prepared by:

Jane Schukoske

Jane Schukoske, Reporter

MARYLAND GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
Minutes of the Meeting of February 13, 1990
Department of Transportation Building, Elm Road
Baltimore-Washington International Airport, Maryland

Present: Abrams, Bregman, Clarke, Harris, Lenrow, Martin-Smith, McNeal (Quorum), and Judith Filner, Coordinator of the FIST Program, guest.

Jay Lenrow, Vice Chairperson, chaired the meeting and Jane Schukoske, Reporter, took the minutes. The meeting was called to order at 7:30 p.m.

Approval of the minutes of the January meeting: Motion was made and seconded to approve the minutes as sent out. Motion carried.

Location of upcoming meetings: On March 13, April 17 and May 8, 1990, the regular monthly meetings will be held at the Department of Transportation Building at Baltimore-Washington International Airport.

Subcommittee Reports:

FIST Proposal and Model Leases: Mr. Lenrow introduced Judith Filner, Coordinator of the Families Insisting on Safe Tenancies (FIST) Program. Ms. Filner asked for questions on S.B. 771, copies of the sprint of which were available at the meeting. Commission members raised the following concerns.

Ms. Clarke noted that the bill's language refers to committing a drug violation, rather than conviction of such a charge. She said she had civil liberties problems with that difference. Ms. Filner said that the FIST language makes certain acts relating to drugs a breach of the lease. She pointed out that the actual lease language is in § 8-215 of the bill.

When asked if landlords will have to make the same kind of case for eviction under the bill as a state's attorney does for conviction, Ms. Filner said the Department does not think so, that for breach of lease a landlord must prove it by a civil standard, preponderance of the evidence. Some judges would require eye-witness testimony, or a police officer testifying to an arrest.

Mr. Abrams noted that the bill language (pages 4 - 6) amends §8-402 of the Real Property Article (Holding Over) and said that a landlord does not have to give a reason to terminate the tenancy of a tenant holding over; only notice to quit is required. He noted that the bill imposes additional requirements on landlords suing for tenant holding over that make eviction more difficult. Mr. Bregman said that §8-402.1 (Breach of Lease), referred to on pages 6 - 8 of the bill, is a more logical section to amend since it addresses tenant behavior that breaches the lease.

Further it was noted that the bill is impractical insofar as it refers to the filing by a landlord of an affidavit describing the facts upon which the alleged breach is based. A landlord would be reluctant to do so for fear of retaliation or of being sued. One member suggested posting a sign in the management office notifying tenants that permitting drug activity on the premises would be a violation of the lease; rather than having this bill.

Mr. Abrams stated that everybody's lease says that a tenant is not allowed to do anything on the premises that is in violation of the law. Judges often demand the same proof that would be needed for a criminal conviction. However, if a landlord brings a breach of lease case against a tenant for being a nuisance, the landlord may be able to prove the grounds by putting on testimony of the residence manager that there are, for example, fifteen people walking in and out of the apartment every day.

Ms. Filner said that landlords are free to proceed as they wish on their cases, and that the bill is to provide for those landlords who find that it works to be direct. She said that landlords have asked for a specific provision in the lease and an expedited procedure.

Ms. Clarke asked if there is any remedy provided for tenants who are very upset because they have a neighbor trafficking in drugs, endangering children, and the landlord is not doing anything about it. Ms. Filner said there is not in this bill, but that tenant testimony can help landlords prove their case. Several other members voiced support for the idea.

It was observed that often a drug trafficker is not the tenant. It may be one child in a family. Ms. Filner said that this bill does not say that you have to get rid of the whole family if you've got a kid. The landlord can make decision to sever the tenancy if there are two people on the lease or he can permit the tenancy to continue if a particular person moves out, for example, an eighteen year old.

Ms. Filner said that the bill has two purposes:(A) to give landlords a lease addendum, and (B) to give landlords an expedited procedure for getting rid of tenants where they directly are going to evict for a breach.

It was noted that in Prince George's or Montgomery County, the court system will not be able to issue a summons within three days, as the bill would require. Ms. Filner said that the same kind of increased pressure that improved the performance of judges on the whole issue of DWI and DUI could result in improvement in this area as well.

It was observed that there is other serious criminal behavior that affects tenants for which an expedited procedure would be appropriate. For example, a rapist in a building would seriously threaten tenants.

Comment was made that if the bill had any effect, it would be to move drug trafficking into the street. Ms. Filner said that the public is better off having drug traffickers out in their cars than in an apartment building, because the police have better access.

As to the provisions on postponements of trial, it was noted that delays often come at the constable's scheduling of a put out. This is not addressed in the bill.

Ms. Clarke said that provisions for obtaining an injunction (p. 8, § 8-404) against someone selling drugs outside a complex were impractical. If criminal drug laws are not an effective deterrent, a civil injunction is unlikely to be. She said that the deterrence is a wonderful goal, but that the bill is very troubling. Several other members voiced agreement.

Mr. Abrams said that the provisions that would require a landlord to give ten days written notice identifying individuals allegedly engaged in prohibited activity would subject landlords to liability if the individuals are acquitted of criminal charges. Mr, Abrams suggested a provision that if the landlord abides by this law, the landlord shall not be subject to a suit for damages under any circumstances.

Ms. Filner replied that the agency feels it is important to balance the tenant's rights and the landlord's rights, and that it would be inappropriate to give landlords immunity from defamation in this statute.

Mr. Lenrow asked if the bill had been sent to the bar association Real Property section. Ms. Filner said that it had not but that the draft had been shown to landlord-tenant practitioners.

It was suggested that the provisions on breach of lease for drug trafficking be placed in a completely new section, e.g., § 8-402.3 of the Real Property article so that it does no affect the existing practice under §8-402 and 8-402.1.

It was observed that drug traffickers could easily use an alias rather than giving the name used on a lease if evicted, with the result that the permission for the credit bureau check as a practical matter is not that helpful. Ms. Filner noted that the credit bureau check in question is for future rentals, not for monetary credit. Commission members observed that drug traffickers might avoid these checks by renting in a friend's

name, and that they seem to be able to buy what they need. A credit bureau had indicated to one of the Commission members that the company did not want to be involved with this for fear of liability. Ms. Filner said that the credit bureau would not be liable unless their actions were malicious.

Ms. McNeal said that some legislators are concerned that this law would create a right to counsel in the eviction cases that would be filed because of the threat to the tenant's liberty interest and the potential criminal penalties.

Mr. Abrams noted that a landlord could abuse the law by threatening tenants with being reported under the law if they did not sleep with the landlord, for example. The tenant would be faced with not being able to rent for three years.

The Commission discussed whether it should take an action on the bill, given that the members present think the law already provides a remedy for breach of lease for criminal acts. The Vice Chair asked Commission members to send their comments on the bill to the reporter for the Commission, who will compile them and provide them to Mr. Lenrow and Ms. McNeal for review. The Commission comments will then be sent to Secretary Rogers.

Emergency Grants: Mary Helen McNeal said that she had spoken with George Sinclair of the Department of Human Resources. He said that the department was concerned about the definition of an emergency, and about the effect a change in the definition would have on the cost of the program. Mr. Sinclair said that he would suggest to Secretary Calvin that summonses be used as verification in a pilot program, to see what the effect on cost would be.

Mr. Sinclair had asked that he be invited to meet with the Tenant Resources Subcommittee and with the Videotape Subcommittee, as he has suggestions about distribution of information and access to resources for production of duplicate tapes.

Ms. McNeal suggested that the Commission consider support of S.B. 817, a draft of which was distributed to the members. It amends the Social Services statute that describes ways of verifying an emergency in order to be eligible for Emergency Assistance or Emergency Assistance to Families with Children.

The Commission reviewed S.B. 817 and voted in support of it. The Vice Chair directed the reporter to send a letter expressing the Commission's support to the Chair of the Senate Finance Committee with a copy to Senator Irby, the sponsor.

Videotape: Patricia Martin-Smith reported that there is a subcommittee meeting scheduled with the Takoma Park Department of Housing staff on February 26, 1990 to review the completed script.

The Takoma Park City Council has nearly completed its changes to local law.

Mr. Bregman noted that Sugar Ray Leonard, who has tentatively agreed to serve as narrator for the videotape, wants to see the script and needs to know when and where the videotape will be shot, so that he may make a final decision on his involvement.

Ms. Martin-Smith asked the reporter for a copy of the resolution establishing the Commission, so that brief history on the Commission may be added to the script. The reporter agreed to send it.

Tenant Counseling, Landlord Training and Resource List: The matter was carried over to the next meeting due to Ms. Sakamoto-Wengel's absence.

Revision of the Code: Mr. Bregman reported enormous progress in the revision process. A copy of the revisions was available at the meeting, but Mr. Bregman noted that further revisions have already been made. He noted that revisor's notes are being written to serve as a guide to the reader.

Legislation: The reporter distributed a memo providing telephone numbers for Legislative Information in Annapolis so that Commission members may request bills or the status of bills as desired. A summary of landlord-tenant bills was attached.

Mr. Lenrow noted that the Commission has been asked to support H.B. 1186 with amendments proposed by the Public Justice Center. The law now permits landlords to be represented by a nonlawyer in summary ejectment proceedings. This bill, with the proposed amendments, would narrow the statute to permit a nonlawyer to represent landlords in Baltimore City only and expand it to permit nonlawyers to represent a tenant in summary ejectment proceedings in District Court in Baltimore City. This was the law until 1989, when in the course of code revision, the language was changed, apparently inadvertently.

The Commission voted in support of H.B. 1186 with the proposed amendments, and directed the reporter to send a letter to the Chair of the Judiciary Committee and to the sponsor of the bill, Delegate Montague.

New Business: The Vice Chair noted that the former reporter, Prof. Michele Gilligan has been named Associate Dean of the University of Baltimore Law School replacing Walter Rafalko who is retiring this summer. She is a visiting professor at American University Law School this year.

Motion to adjourn carried at 9:25 p.m.

Prepared by:

Jane Schukoske, Reporter

MARYLAND GOVERNOR'S LANDLORD-TENANT LAWS STUDY COMMISSION
Minutes of the Meeting of March 13, 1990
Department of Transportation Building, Elm Road
Baltimore-Washington International Airport, Maryland

Present: Abrams, Bregman, Clarke, Judge Ciotola, Lenrow, McNeal, Piccinini, Waller, Ballou-Watts.

Hon. Joseph A. Ciotola, chaired the meeting and Jane Schukoske, Reporter, took the minutes. The meeting was called to order at 7:30 P.M.

Approval of the minutes of the February meeting: Motion was made and seconded to approve the minutes as sent out. Motion carried.

Location of upcoming meeting: April 17, 1990 will be held at the Department of Transportation Building at Baltimore-Washington International Airport. May 8, 1990 from 6:30 - 9:30 P.M. meeting will be held in Little Italy at Trattoria Petrucci, menu options and directions will be sent to you shortly. Guest: to be invited to the April meeting are: Michele Gilligan, Bar Assocition, Doug should be there in reference to the Code Revisions.

Subcommittee Reports:

Jay Lenrow proposed that most of the meeting last month was taken up with subcommittee reports.

Mary Helen McNeal's comments

S.B. 771. It's universal that everybody has said it was a bad bill.
It was drafted by the Attorney General's office. It started out that you did not have to have drug addicts in your building and other people didn't have to be disturbed by them except you can take the liability away and they didn't protect the innocent. This bill was drafted by someone who works for Kathryn McDonald.

Based on the February comments we have to send a letter to the legislature telling them what problems we have with the bill and carbon copy to the governor. The Governor knows it is going down the tube. He is very upset about the snack tax, because he promised the Developmental Disable that he would get them their money this year that they had asked for last year. The bill is in Senate Judicial proceedings and they are about to vote. They haven't voted yet. We are here to serve the Governor. Do we have to get the Governor's permission to hold our position.

What is our language in the lease now before the FIST bill, in the model lease: it is illegal. If a landlord wants to put someone out he has to come in with the supporting evidence that a laws been violated, its a breach of lease, what are we getting involved with the governor's legislature when we have the language that supports

what we want to say. The only reason we got involved was to satisfy him. The lease language is not as objectional as the bill. We didn't like it because of the phraseology.

Do we say we are an independent Commission appointed by the Governor and we have an obligation to make our feelings known about any pieces of significant legislature which point we send a letter to the Committee. We should study it. I think we have studied it. I call for a vote. I call for discussion. We are opposed to many parts. I feel that we should take a position. We are a L-T Study Laws Commission, this is the most obnoxious piece of legislature we have ever seen. I don't like the bill. Wouldn't it be awful if it was enacted in a law because we were studying it for another month. We should let the Governor know our position. We don't like this bill. The Commission needs to take a stand. Jane should write a letter to the Governor. We will change the letter from Mary Helen McNeal to the Chair, Jay Lenrow. We will carbon copy to Jacqueline Rogers. Send a copy to Senator Baker and just say the L-T Co feels the FIST language is not good and is laudable and technical practical constitutional problems make it unworkable. Just put in the front, just the front page.

I think we should inform the Governor of everything we've done this year. Next month we will send him a summary.

Video-Tape

Pat called and said she could not make this meeting. She met with the Tacoma Park Department of Housing and that everybody's reviewed the script and made recommendations that a segment of the script include a vignette with the Governor's landlord-tenant Commission holding a public forum and another vignette with the Tacoma Park Landlord-Tenant Commission addressing their specific rent stabilization policy.

Have the Commission ask questions like a forum. We haven't been on film. We never really had any questions. It will all be staged.

The idea for the films was that anyone can have local contact. Rent Control is Rent Stabilization. They should have their own segment. They are paying the bill. I would like to restrict them. I think they want to break it up and do something different. Let them keep rent stabilization in Tacoma Park.

Jay Lenrow, I testified before the Finance for the Commission. Sweeney was unable to make it, but sent message that he was in support of SB 817. Coalition for the Homeless, Legal Aid and various other groups all testified in favor of SB 817. The only party testifying against the bill was the Department of Human Resources, said it was going to cost them alot of money. When asked how it was going to cost them alot of money, she had no idea. This state employee was so ill-prepared to represent a state agency for general assembly. Senator Riley has not voted on the bill. Senator Riley, Barbara Hoffman was not there, we will have to see

how they vote. We sent the jury trial bill through, Baker supported it, Horn, he is a judge now. It comes out 12 to nothing. Baker recalls it, sends out something against it, a month later he says next year let's run that again. I said don't talk to me. Talk to Sweeney and Murphy. They can say anything they want to you but don't believe a thing until you see that vote. I can happily report that a judge in Montgomery County, on adoption (Can't hear it).

Contact with George Sinclair, you met with him. No progress. We decided to go forward. Keep pushing. There is Fact Sheet. Joyce had a baby boy! When did she have it, before the last meeting. Send her a note, send a gift, a rattle or something. We didn't send Vicki a rattle, let's get two rattles. Tell her we have a position for the baby on the Commission. We are all cheap. I will bring three rattles next time.

Code Revision:

It is divided into two sections with a brown divider. After the brown divider comes all the new laws, it is a merge of the two. I worked alot with the Virginia Act. I worked on making our law fact. It's not my job to mess with Maryland law. The mailing and posting ought to be plenty. I don't have any problems with it. I did clean up language.

If anyone has any suggestions or changes. When we are done it should go to the Bar and also Legislative Reference. It might be appropriate to put a notice in the Bar Journal to see if anyone such as Hillel who lives in the court, who has a practical suggestion. We should have this available. When we get done we will send it to the Bar Association. What locations would we put it at, the two law school libraries, Baltimore County Bar Library, or any other County Bar Libraries.

This is not an easy assignment to read. If people have problems with the L-T Laws, people like Hillel who have suggestions can send them in without reading the book. I will draft something to put in the Bar Journal. As a Bar they want to get into it. It would be a great source of feedback for us.

I have a problem with Uniform Law, there are no variations from the county to county, some legislature went in and changed something. The idea is to avoid that. 401-402 code, subsection b(2) there are not page numbers so it is very difficult. We are making a change here, but in Wicomico County we are going to do this another way. Why do we need this special for Anne Arundel County or etc. Why do we need this? I am more convinced than ever that we don't. In my commentary, I am raising the issue. Why does it have to be this way? My suggestion to that is when the Commission reads this we ought to uniform this. Any of the counties have their own little private procedures so when an attorney goes from one county to another county he knows he is practicing in the state of Maryland, as it stand right now, you go to Howard County and that judge makes

the lawyer swear under oath that the facts are correct. That is the way it is done. Nine judges everyone votes differently. Second suggestion, there are certain rules of practice and procedures beside the Code, for instance, a special process. If we are going to make it uniform, maybe any paper L-T may be served by special process... I can't get a $500 judgement without standing on my head and begging the judge for special processes. I think that when we read this, we should read it with an eye to make it uniform to all counties. So that it is not up to a judge. You are going to leave out the individual rules. So it will be a state wide bill. It will include all.

Let's start reviewing it next session devoting at least a half hour. As a group taking it page by page. Go through all of Subtitle One. In terms of legislation there is not been reported on. House Bill 1186, permitting non-lawyers to represent tenant's and landlord's. There are some amendments that have been discussed. It's being held up in Committee. They will have another discussion. Rule 18 allows students to represent if they are part of a clinical program. It also allows the landlord's agent. Why does there have to be any change? Rule 18, supercedes all of this. It permits landlord's to be represented but not tenants. They can appear for the landlord but they can't practice law. Rule 18 is state-wide, it only deals with students. This is saying that anyone can practice law, then why go to law school, it doesn't mean anything, those of us who worked hard and have certification, license doesn't mean very much. They aren't practicing law. The state law says that a partnership must be represented by a member of the board. If your agent says I am going to provide documents. Why should lawyers only have the right to do it. You can either draw the line or not draw the line. Problem is you have Legal Aid sending in Paralegal. It's the same as doctors, do I go into a hospital and start ordering people around? They are not acting as lawyer. There are thousands of cases, there is a woman sitting there with a whole stack of cards, saying, "judgment, judgment, judgment". You should be talking to the Maryland Bar if you want your right to practice protected. The City Bar supports it because Public Property Owner's Association is heavily involved using agents in the court to represent them in Landlord-Tenant. We want the rule to stay the way it is.

We still have a Tenant vacancy. We will have appointments shortly.

There are bills that are basically dead, unless they call them up.

I'm putting in for a raise for the members of this Commission.