

**Report of
The Commission to Review
Landlord-Tenant Laws**

December 15, 1998

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Report of
The Commission to Review Landlord-Tenant Laws
Pursuant to Executive Order .01.01.1998.27

Submitted to
Governor Parris N. Glendening

December 15, 1998

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Commission to Review Landlord-Tenant Laws

December 15, 1998

The Honorable Parris N. Glendening
Governor of Maryland
State House
Annapolis, Maryland 21401

Dear Governor Glendening:

On behalf of the Commission to Review Landlord-Tenant Laws, I am pleased to submit the Commission's report and recommendations for changes to Title 8 of the Real Property Article, Annotated Code of Maryland. The Commission has worked diligently to review the landlord tenant laws and has solicited input from a large number of interested parties. All Commission meetings were open to the public. Representatives of tenant and landlord groups were invited to attend and encouraged to share their views on the need for, and the substance of, changes to landlord tenant laws. Everyone who attended the meetings was able to fully participate in the decision making process. Voting, however, was limited to Commission members.

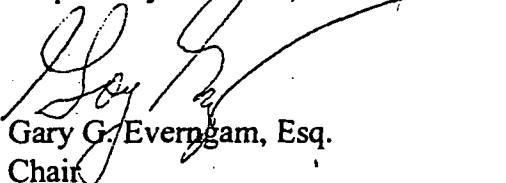
The report recommends a number of changes to Title 8 designed to correct existing inconsistencies in the law, improve the efficiency and effectiveness of resolving disputes between landlords and tenants, and make the law more user friendly. Additionally, the Commission proposes that the text of the Title be made gender neutral. The proposed changes address issues that both landlords and tenants agreed were ambiguous or problematic in actual practice. We endeavored to reach consensus on proposed solutions and have compiled a package of changes, which when considered as a whole, balance the often-competing interests of landlords and tenants, while improving efficiency in the courts.

The Executive Order establishing the Commission provides that the Commission terminates on December 15, 1998. Despite the considerable accomplishments of the Commission, the short existence of the Commission leaves work that needs to be done. To that end, we urge you to extend the life of the Commission in order that the process that you have started may continue.

I am available at your convenience to discuss the Commission's report and recommendations in greater detail. The Commission members will continue to make themselves available, at your request, to support their recommendations, should you choose to move forward on them during the 1999 Session of the General Assembly.

Thank you for this opportunity to serve you and the citizens of Maryland. It has been a privilege to work with the dedicated members of the Commission, as well as the staff of the Department of Housing and Community Development and the Office of the Attorney General.

Respectfully submitted,



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Chair

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**Report
of
The Commission to Review Landlord Tenant Laws**

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Introduction and Process

On June 22, 1998, Governor Parris N. Glendening signed Executive Order 01.01.1998.16 establishing the Commission to Review Landlord-Tenant Laws. The Governor charged the Commission with reviewing Title 8 of the Real Property Article of the Annotated Code of Maryland and providing recommendations for revisions needed to enhance the equity, efficiency, and effectiveness of the landlord-tenant laws. The Executive Order required a final report from the Commission on or before December 15, 1998, at which time the executive order would be of no further force or effect.

The membership of the Commission, as specified in the Executive Order, includes:

- ❖ one member of the Senate, appointed by the president of the Senate;
- ❖ one member of the House of Delegates, appointed by the Speaker;
- ❖ one member of the Judiciary appointed by the Chief Judge of the Maryland Court of Appeals;
- ❖ the Secretary of the Department of Housing and Community Development or a designee;
- ❖ the Attorney General or a designee; and
- ❖ 12 members appointed by the Governor with knowledge of landlord tenant issues, including representatives of :
 - ◆ landlords with an inventory of 25 or less units;
 - ◆ landlords with an inventory of more than 25 units;
 - ◆ tenants;
 - ◆ municipal and county governments;
 - ◆ legal community; and
 - ◆ financial community.

The Executive Order further requires the Governor's appointees to represent the various geographic regions of the State and a balance of the interests of landlords and tenants. On November 9, 1998, Executive Order 01.01.1998.16 was amended to add two additional members to the Commission (The amended Executive Order, 01.01.1998.27). This change was made at the request of tenant advocacy groups in Baltimore City, which maintained that there was insufficient representation of their community on the Commission. To balance the addition of another tenant advocate, an additional member representing landlord interests was added. The two additional members began their membership on the Commission at the December 3, 1998 meeting. A complete list of the members of the Commission is attached as Appendix B.

The Governor appointed Gary G. Everngam, Esq. as chairman of the Commission. Mr. Everngam has been an active practitioner of landlord tenant law for more than 20 years. Mr. Everngam also serves on the Montgomery County Landlord Tenant Commission as a tenant designated member and he is a coauthor of Maryland Landlord Tenant Law Practice and Procedure, 1st and 2nd editions, Michie Company, 1983 and 1994.

The Commission met at least once every two weeks between September 9, 1998 and December 10, 1998 in Crownsville, Maryland. Meetings were open to the public and interested persons were encouraged to attend and share their concerns, suggestions and issues. To ensure that the concerns of nonmember individuals and organizations were addressed, the chair actively solicited the participation of representatives from Legal Aid, the Public Justice Center, the Maryland Multi-family Housing Association (MMHA), The Apartment and Office Building Association (AOBA), POA of Greater Baltimore (POA) and private landlords. Every effort was made to provide a forum for the expression of the views of each of these groups and, generally, all members of the landlord tenant community. The Chair informally sought the views and suggestions of judges, lawyers, tenants, the Montgomery County Department of Housing, the clerks of the various District Courts and the Chairman of the Montgomery County Delegation. The substantial participation and input, both in person and in writing, of nonmember individuals and groups is reflected in the Commission's meeting minutes. The Commission welcomed and appreciated the expertise and assistance provided by all who participated.

To ensure thorough review and discussion of Landlord Tenant laws, the Chairman brought to the first meeting of the Commission an outline of Title 8 and his suggested areas for review and potential revision. He also invited all members and guests to submit any additional areas for review and study. Once the list of topics for review was identified, the Commission agreed upon a work schedule for its deliberations. Identified sections of the law generally were reviewed three times. First, the subject and section were presented as new business and the Chairman or other Commission member would explain the current state of the law and the perceived problems that should be addressed. There was a general discussion of the section during this first look at the topic. The topic was then brought back to the Commission at a subsequent meeting as old business. At this time, the specific language of the section was provided to the members along with an outline of the prior discussion, the issues raised, and any comments received from outside groups. During this second discussion of the section, the Commission focused on reaching consensus concerning the need for change and identifying the scope of any changes to be proposed. Prior to final decision on any proposed revisions, staff from the Department of Housing and Community Development prepared specific statutory language for the Commission's review and approval. The section was then discussed a third and final time, with this discussion culminating in a vote concerning proposed changes to the applicable section. A few sections of the law were reviewed only once or twice, if the Commission decided that it had reached a consensus and additional discussion was unnecessary.

This process of reviewing each topic or section three times enabled the Commission to ensure that all members had the opportunity to participate in the discussion. It also permitted members to reflect on discussions and to solicit additional feedback when appropriate before making a final decision. The Commission endeavored to ensure that all subjects were handled in a thoughtful and balanced manner and that both tenant and landlord interests were fully discussed.

Major Recommendations

This section of the report highlights the major changes to the landlord tenant law that the Commission is recommending. The next section provides more detail on all the proposed changes, as well as information on sections of the law which were discussed but for which no changes were recommended.

The Commission strongly believed that improving the communications between landlord and tenant (including prospective landlords and prospective tenants) from the outset would help eliminate disputes between the parties and make the resolution of disputes easier should they arise.

Written Leases (§8-208)

One change the Commission deemed necessary was that there should be a written lease that fully conveys the obligations of the landlord and tenant. Currently, written leases are optional. While oral leases may be appropriate for some landlords who own very few rental units, landlords who are in this business should be required to use a written lease. Therefore, amendments have been drafted to require landlords who own five or more rental units throughout the State to use a written lease. The Commission also recommends that §8-203.1 be merged into §8-208 so that the required contents of a lease would be located in one place.

Security Deposits (§8-203)

In addressing security deposits, the Commission makes three major recommendations. First, landlords should have more flexibility in how they deposit or invest security deposits, while remaining responsible for ensuring that tenants receive the money owed them from their security deposits after tenancies end. Landlords should be able to hold security deposits in an interest bearing account in a federally insured financial institution with branches in Maryland, in an insured certificate of deposit, or in a federal or State of Maryland security. Second, landlords should be able to use security deposit funds to recover damages caused by tenants, their guests and invitees, to common areas and to major appliances and furnishings. Third, the Commission decided that it would be better to have a separate section (new §8-203,2) dealing with security deposit receipts.

Protective Orders (§8-118)

This section deals with protective orders in nonpayment of rent cases. The Commission recommends that a provision be included for payment to be made to the landlord, and not the court, in certain circumstances and to clarify when the payments of rent under the protective order commence. Additionally, a new section, §8-118.1, is proposed to cover protective orders in wrongful detainer cases. §8-118.1 is equivalent in content to §8-118, but a separate section was thought to be needed in order to eliminate confusion occasioned by the very different nature of the actions.

Early Termination of Leases (§8-212.1)

Existing law allows military personnel to terminate their leases early if they receive orders requiring deployment out of the area. The Commission recommends that this right be extended to those incurring disabilities or illnesses which prevent them from continuing to live in their current residences and to instances where employees are involuntarily transferred out of the area.

Retaliatory Eviction (§8-208.1)

The Commission recommends that the Retaliatory Eviction section receive considerable modifications. Now, the law prohibits a landlord from evicting a tenant solely because the tenant has asserted certain rights. This requirement makes it almost impossible to prove that an eviction was retaliatory because a landlord could easily offer some other reason for the eviction. The Commission believes that it should be easier to demonstrate that a retaliatory eviction has taken place and that a penalty should be imposed on a landlord who is found to have done a retaliatory eviction.

Failure to Pay Rent (§8-401)

This section deals with situations where a landlord seeks to evict a tenant for nonpayment of rent and the case is not resolved before the next payment of rent is due. Now, a landlord has to file a separate case for each instance where rent is not paid. The Commission recommends that a landlord be allowed to amend its filing to include all rent that has come due as of the date the court considers the merits of the case. This would reduce the number of cases that a court has to hear, reduce costs for both the landlord and tenant, and reduce the number of without the right of redemption, because fewer people would receive more than three judgments in a 12 month period. Opponents of the change felt strongly that it was unfair to force the tenant to pay for the second month's rent without the opportunity for a separate trial, that this solution does not fix the inherent problem of judicial congestion, and that adopting the change would make it much more difficult for tenants to redeem the property by paying the amount of rent determined to be due before officials conducted the eviction. Opponents believe that the changes could result in more evictions.

Wrongful Detainer (NEW §8-402.3)

A new section is proposed for wrongful detainer. Currently, the actions of forcible entry and detainer are found in British statute and are procedurally governed by the Tenant Holding Over section (§8-402). The British statutory law is very difficult to locate and understand. A separate section is needed to modernize the law and to clarify the distinctions between a tenant holding over and a nontenant in possession. The new section would deal with nontenants in possession – i.e., it would mainly be applicable in cases of foreclosure and trespass.

Wrongful Eviction (NEW §8-402.4)

Another new section is proposed which refers to situations where a landlord circumvents the legal system and evicts a tenant without a court order. This is a misdemeanor in Baltimore City, but not elsewhere. The landlord could be prosecuted under other statutes, but this seldom happens. The new proposal, which pertains to residential cases only, would allow a tenant to go to court and get an immediate, temporary order allowing the tenant back into the premises. This proposal requires that the District Court has original civil jurisdiction for wrongful evictions. This is a change to the Courts and Judicial Proceedings Article. It is the one instance where the Commission is recommending a change to an Article other than the Real Property Article.

Jury Demands (NEW §§8-601 to 605)

The Commission believes that a new subtitle should be enacted that would define how the District Court should handle jury demands. No one knows how to handle jury demands. The process refers to Maryland Rules and Procedures, which do not really apply here. District Court judges interpret the process differently, and this results in confusion.

Gender Neutral Legislation

Finally, Title 8 is replete with gender specific references. The Commission has prepared a gender neutral version of Title 8 and recommends that it be submitted to the General Assembly for its consideration.

Other Issues

An issue was brought before the Commission concerning situations where one tenant is sued for eviction, but all tenants are actually evicted. It was suggested that in §8-402 the word tenant be made plural to make it clear that all tenants would have to be sued. The Commission thought that a better solution would be to change the §7-301(c) of the Courts and Judicial Proceedings Article to require the fee to be set on a per case basis not on a per tenant basis. This is the situation in Baltimore City, and the Commission believes it should be the case Statewide. However, the Commission viewed this change to be beyond its purview and recommends that the Administration takes this action.¹

The tenant holding over language in Title 8A of the Real Property Article is virtually identical to §8-402. The Commission believes that the changes it has proposed for

¹ The Commission suggests the following language:

(4) IN SUMMARY EJECTMENT ACTIONS, THE DISTRICT COURT SHALL PROVIDE FOR A UNIFORM STATEWIDE SERVICE FEE FOR EACH LOCATION TO WHICH A SUMMONS IS AFFIXED OR POSTED, WITH AN ADDITIONAL SERVICE FEE FOR EACH TENANT FOR WHOM PERSONAL SERVICE IS REQUESTED BY THE PLAINTIFF.

§8-402 should be incorporated into §8A-1702. However, this change is beyond the Commission's purview.²

² The Commission suggests the following language:

(a) (3) Any action to recover damages under this section may be brought by suit separate from the eviction or removal proceeding or in the same action and in any court having jurisdiction over the amount in issue. **THE COURT MAY ALSO GIVE JUDGMENT IN FAVOR OF THE LANDLORD FOR THE AMOUNT OF RENT DETERMINED TO BE DUE TOGETHER WITH COSTS OF THE SUIT IF THE COURT FINDS THAT THE RESIDENTIAL TENANT WAS PERSONALLY SERVED WITH A SUMMONS, OR, IN THE CASE OF ANY OTHER TENANCY, THERE WAS SUCH SERVICE OF PROCESS OR SUBMISSION TO THE JURISDICTION OF THE COURT AS WOULD SUPPORT A JUDGMENT IN CONTRACT OR TORT. A TENANT WHO WAS NOT PERSONALLY SERVED WITH A SUMMONS SHALL NOT BE SUBJECT TO PERSONAL JURISDICTION OF THE COURT IF THAT TENANT ASSERTS THAT THE APPEARANCE IS FOR THE PURPOSE OF DEFENDING AN IN REM ACTION PRIOR TO THE TIME THAT EVIDENCE IS TAKEN BY THE COURT.**

and

(b) (5) **ACCEPTANCE OF RENT AFTER NOTICE BUT BEFORE EVICTION SHALL NOT OPERATE AS A WAIVER OF ANY NOTICE TO QUIT, NOTICE OF INTENT TO VACATE OR ANY JUDGMENT FOR POSSESSION UNLESS THE PARTIES SPECIFICALLY OTHERWISE AGREE IN WRITING. ANY RENT ACCEPTED SHALL BE FIRST APPLIED TO THE RENT OR THE EQUIVALENT OF RENT APPORTIONED TO THE DATE THAT THE LANDLORD ACTUALLY RECOVERS POSSESSION OF THE PREMISES, THEN TO COURT COSTS, INCLUDING COURT AWARDED DAMAGES AND LEGAL FEES AND THEN TO ANY LOSS OF RENT CAUSED BY THE HOLDOVER. ANY PAYMENT WHICH IS ACCEPTED IN EXCESS OF THE FOREGOING SHALL NOT BEAR INTEREST BUT WILL BE RETURNED TO THE TENANT IN THE SAME MANNER AS SECURITY DEPOSITS UNDER §8-203 BUT SHALL NOT BE SUBJECT TO THE PENALTIES OF THAT SECTION.**

Detailed Section Review

This section details the Commission's deliberations on each section of Title 8 that it addressed. After briefly describing the purpose of the section and the issue that requires attention, a summary of the Commission's deliberations is presented along with recommended legislative language to address the issue.

§8-112 -- Termination of Tenancy for Fire

Purpose of Section:

- ❖ The purpose of this section is to terminate a tenancy and all liability to pay rent if the property becomes untenantable by reason of a fire or unavoidable accident where the term of the lease is less than seven years.

Issues:

- ❖ Does the termination of the tenancy terminate the right to possession.
- ❖ Who should make the determination as to whether or not the premises are untenantable.
- ❖ The determination of "untenantability" is a question of fact and should be made on a case by case basis.
- ❖ The right to possession terminates with the tenancy.

Decision:

- ❖ The Commission unanimously agreed that no changes were needed to §8-112.

§8-118 -- Protective Orders

Purpose of Section:

- ❖ Section 8-118 pertains to disputes surrounding the nonpayment of rent. When such disputes arise, a tenant may request a trial by jury if the dollar amount in dispute exceeds the jurisdictional limit for trial by jury. The case then transferred to the Circuit Court because the District Court does not have jurisdiction to conduct jury trials. The delay caused by the jury demand may result in a request by the landlord for the District Court to enter an order requiring future rents shall be paid into the registry of the circuit court. Landlord-tenant law was purposefully designed to be expeditious. Since the tenant could occupy the premises for several months once the case goes to the Circuit Court, the protective order is designed to

ensure that the funds are available to be disbursed in accordance with the court's ultimate order.

Issues:

- ❖ The Lucky Ned Pepper case held that only prospective rents could be paid into the Court, but did not define the term "prospective."
- ❖ If no rent is paid into the court registry after a protective order is issued, the tenant loses the right to a jury trial, but is still entitled to a bench trial. Because of delays in this process, the landlord may lose a substantial amount of rent if the tenant fails to pay rent without justification.
- ❖ Agreement was reached within the Committee that protective orders should start with the next rent payment that is due after the filing and that the justification required issuing a protective order should be "legal justification."
- ❖ Additionally, the judge, and to some extent the parties, should have discretion on where the rents are to be paid -- either to the Court, or directly to the landlord. Acceptance of rent by the landlord should not constitute a waiver of the basis for the landlord's claim. Also, new language should be added to (c)(1) to clarify that when the protective order is being paid, the certification of nonpayment of rent should be by the person receiving the rent.

Decision:

- ❖ The Commission unanimously approved to recommend the following changes to §8-118.

Recommended Bill Language:

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 IMMEDIATELY shall enter an order directing the tenant or anyone holding under the tenant to pay all rents as they come due during the pendency of the action, as prescribed in subsection (b) of this section. **THE ORDER SHALL REQUIRE THE RENT TO BE PAID AS AND WHEN DUE UNDER THE LEASE STARTING WITH THE NEXT RENT DUE DATE AFTER THE ACTION WAS FILED.**

(b) The District Court shall order that the rents be paid:

(1) into the registry of an escrow account of:

[(1)] (I) The clerk of the circuit court; or

[(2)] (II) 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; OR

(2) **TO THE LANDLORD IF BOTH THE TENANT AND LANDLORD AGREE OR AT THE DISCRETION OF THE DISTRICT COURT.**

(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 as it comes due pursuant to the terms of the order, the circuit court, on motion of the landlord and certification of the clerk, **THE LANDLORD**, or agency of the status of the account, shall conduct a hearing within 30 days.

(2) [At the hearing the landlord must show that the escrow order is valid and that the tenant has failed to comply with the order.] **THE DISTRICT COURT'S ESCROW ORDER AND THE CLERK'S CERTIFICATION ARE PRESUMED TO BE VALID.**

(3) The tenant may dispute the validity or terms of the District Court's escrow order or raise any other defense[, including any legal justification,] to the tenant's alleged noncompliance with the order.

(4) If the circuit court determines that the [landlord has sustained the burden of showing that the escrow order is valid and that the tenant,] **FAILURE TO PAY IS** without [cause] **LEGAL JUSTIFICATION**, [has failed to comply with the District Court's order,] the court may treat the tenant's prayer for jury trial as waived, and can either immediately conduct a nonjury trial or set the matter for a future nonjury trial on the merits of the landlord's claim.

(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.

§8-118.1 – NEW Protective Orders – Wrongful Detainer

Purpose of Section:

- ❖ This section is analogous to §8-118, which the Commission has already addressed, but applies to wrongful detainer cases.

Issues:

- ❖ The Commission had thought it too confusing to include wrongful detainer in §8-118.
- ❖ Some commission members thought that it would be better if the process part of §8-118.1 referred back to §8-118 rather than repeating the language here. However, X and Y require sufficiently different wording to make this change effective.

Decision:

- ❖ A motion was made to adopt the language which follows. The motion was approved unanimously.

Recommended Bill Language:

8-118.1.

(A) IN AN ACTION UNDER §8-402.3 OF THIS TITLE IN WHICH A PARTY PRAYS A JURY TRIAL, THE DISTRICT COURT IMMEDIATELY SHALL ENTER AN ORDER DIRECTING THE PERSON OR ENTITY IN POSSESSION TO PAY THE MONTHLY FAIR RENTAL VALUE OF THE

PREMISES THAT IS SUBJECT TO THE ACTION, OR SUCH OTHER AMOUNT AS THE COURT MAY DETERMINE IS PROPER, STARTING AS OF THE DATE THE ACTION WAS FILED, AS REQUIRED IN SUBSECTION (B) OF THIS SECTION. THE ORDER SHALL REQUIRE THE AMOUNT DETERMINED BY THE COURT TO BE PAID WITHIN 5 DAYS OF THE DATE OF THE ORDER.

(B) THE DISTRICT COURT SHALL ORDER THAT THE AMOUNT DETERMINED BY THE COURT BE PAID:

(1) INTO THE REGISTRY OF AN ESCROW ACCOUNT OF THE CLERK OF THE CIRCUIT COURT; OR

(2) TO THE PLAINTIFF IF BOTH THE DEFENDANT AND THE PLAINTIFF AGREE OR AT THE DISCRETION OF THE DISTRICT COURT.

(C) (1) IF THE PERSON OR ENTITY FAILS TO PAY UNDER THE TERMS OF THE ORDER, THE CIRCUIT COURT, ON MOTION OF THE PERSON OR ENTITY CLAIMING POSSESSION AND CERTIFICATION OF THE CLERK OR THE PLAINTIFF, IF THE PAYMENT IS MADE TO THE PLAINTIFF, OF THE STATUS OF THE ACCOUNT, SHALL CONDUCT A HEARING WITHIN 30 DAYS.

(2) THE DISTRICT COURT'S ESCROW ORDER AND THE CLERK'S CERTIFICATION ARE PRESUMED TO BE VALID.

(3) THE PERSON OR ENTITY IN POSSESSION MAY DISPUTE THE VALIDITY OR TERMS OF THE DISTRICT COURT'S ESCROW ORDER OR RAISE ANY OTHER DEFENSE TO THE PERSON'S ALLEGED NONCOMPLIANCE WITH THE ORDER.

(D) IF THE CIRCUIT COURT DETERMINES THAT THE FAILURE TO PAY IS WITHOUT LEGAL JUSTIFICATION, THE COURT MAY TREAT THE PERSON OR ENTITY IN POSSESSION'S PRAYER FOR JURY TRIAL AS WAIVED, AND CAN IMMEDIATELY CONDUCT A NONJURY TRIAL OR SET THE MATTER FOR A FUTURE NONJURY TRIAL ON THE MERITS OF THE CLAIM OF THE PERSON OR ENTITY CLAIMING POSSESSION. IF THE CIRCUIT COURT, ON MOTION DETERMINES THAT EITHER PARTY IS ENTITLED TO POSSESSION AS A MATTER OF LAW, THE COURT SHALL ENTER A JUDGMENT IN FAVOR OF THAT PARTY FOR POSSESSION OF THE PROPERTY AND FOR ANY OTHER APPROPRIATE RELIEF.

(E) UPON FINAL DISPOSITION OF THE ACTION, THE CIRCUIT COURT SHALL ORDER DISTRIBUTION OF THE ESCROW ACCOUNT IN ACCORDANCE WITH THE JUDGMENT. IF NO JUDGMENT IS ENTERED, THE CIRCUIT COURT SHALL ORDER DISTRIBUTION TO THE PARTY ENTITLED TO THE ESCROW ACCOUNT AFTER HEARING.

§8-202 -- Lease Option Agreements

Purpose of Section:

❖ From time to time leases contain a lease option agreement. Lease option agreements are agreements, which give the tenant the right to buy the property that is subject to the lease. The law requires that certain information be given to the tenant who has entered into a lease option agreement. If the information is not provided both the lease and the option are voided.

Issues:

- ❖ Under the current statute, if the lease option agreement is defective, the lease, not just the option provision, is voided.
One party may lose a lease due to the failure of the other party to comply with the statute
- ❖ It appears that this section was designed to insure that consumers know that an option to purchase is different from an unqualified right to purchase.
- ❖ The section assumes that both parties would want to terminate the entire agreement if the lease option does not comply with the statute.
- ❖ The Commission considered 1) whether the entire transaction should be void for failure to comply with the statute, 2) whether it is advisable to amend the statute to provide that the option agreement was separate from the lease, 3) which party should suffer the consequences of failure to comply with the statute and 4) whether the option to purchase and the lease should be independently void or voidable.
- ❖ The Commission considered the fact that lease option agreements may be drafted by either party to the transaction.
- ❖ The consensus of the Commission was that the lease and the option should be separate and that the party that did not draft the lease option agreement should have an election to void the lease, the option or both.

Decision:

- ❖ The Commission by unanimous vote approved the following changes to §8-202.

Recommended Bill Language:

8-202.

(a) For the purposes of this section, a "lease option agreement" means any [lease agreement containing a] clause **IN A LEASE AGREEMENT OR SEPARATE DOCUMENT** that confers on the tenant some power, either qualified or unqualified, to purchase the landlord's interest in the property.

(b) [No] A lease option agreement to purchase improved residential property, with or without a ground rent, executed after July 1, 1971 [is valid, unless it contains] **SHALL CONTAIN** a statement in capital letters: **THIS IS NOT A CONTRACT TO BUY**. In addition, the agreement shall contain a clear statement of its purpose and effect with respect to the ultimate purchase of the property which is the subject of the lease option.

(C) IF A LEASE OPTION AGREEMENT FAILS TO COMPLY WITH SUBSECTION (B) OF THIS SECTION AND IS OTHERWISE ENFORCEABLE, THE LEASE, THE LEASE OPTION AGREEMENT, OR BOTH MAY BE VOIDED AT THE OPTION OF THE PARTY THAT DID NOT DRAFT THE LEASE OPTION AGREEMENT.

§8-203 – Security Deposits

Purpose of Section:

- ❖ This section defines the term “security deposit.” It specifies the manner in which security deposits are to be held and returned, the interest rate that landlords must pay on security deposits and the tenant’s right to information concerning the condition of the premises. The section imposes penalties for failure to give a receipt, the failure to give a list of damages at the beginning of the tenancy, the failure to notify the tenant of the claims against the deposit and the failure to return the deposit within a specified period of time.

Issues:

- ❖ The current law may create a technical ambiguity because it defines a security deposit as given by a tenant to a landlord. Security deposits are usually given before the landlord-tenant relation is established. Using the definition in the statute, the deposit does not meet the definition of security deposit at the time it is taken. The Arthur Treacher’s Fish and Chips cases suggest that it would be wise to revise the definition of security deposit to include prospective landlords and prospective tenants.
- ❖ The current statute does not define leased premises. There is confusion as to what damages may be assessed against the deposit.
- ❖ The section requires the landlord to notify the tenant within thirty days after the end of the tenancy of the amount the landlord intends to withhold and the actual costs incurred to repair damages. If the landlord fails to give this notice, the statute provides that the landlord forfeits the right to withhold any security deposit despite the fact that there is no obligation to return the deposit until 45 days after the end of the tenancy.
- ❖ The section presents an issue as to the statutory requirement to deposit the funds into a bank or savings institution located in Maryland. Given that the statute requires that the landlord pay 4% simple interest on security deposits and that the passbook rates are now below 4%, some landlords have established the practice of purchasing Certificates of Deposit, or similar instruments, totaling the sum of all the security deposits they hold. The current law does not specifically authorize this procedure.
- ❖ Concerns were voiced regarding the definition of “leased premises.” It was unclear as to whether this definition covered damage to items such as common areas, stoves and appliances. Suggestions were offered to amend that language to include “damages to items appurtenant to the tenancy.”
- ❖ The word “landlord” should include prospective landlords as well as actual landlords because security deposits often are taken before a lease is signed or the tenant moves into the unit and hence a landlord-tenant relationship is created.

- ❖ In (b)(2), the minimum \$50 should be removed because it is too small an amount to be relevant today.
- ❖ The definitions in (a) and (g)(1) regarding the uses of security deposits need to be made compatible.
- ❖ The requirement in this section for certified mail is unnecessary.
- ❖ A subcommittee on this topic was convened, and several pertinent issues were agreed upon after discussion with the Commission as a whole:
 - ◆ There should be an accounting of the security deposits and a separation of funds before the transfer of rental property.
 - ◆ The Commission should not recommend changes to the interest rate paid on security deposits nor to how the interest payable is calculated.
 - ◆ Security deposits should be held in financial institutions licensed to do business in this state to ensure that these deposits are not subject to attachment. Landlords should be able to have a large CD or other secured fund source, which covers all outstanding security deposits and interest.
 - ◆ An issue was raised concerning the landlord's ability to use the security deposit to recover damages in common areas, as well as the burden of proving causation for damages -- the consensus was that tenants should be held responsible for their damages or damages of their guests or invitees in common areas; tenants should be charged the actual cost of repair and not an average for all damages.
 - ◆ The requirement that the landlord notify the tenant of the amount the landlord intends to withhold and the actual costs incurred not more than 30 days after the termination of the tenancy or suffer a forfeiture of the right to withhold the security deposit is illogical. The information can be given just as well at the time the security deposit is returned. There is not significant impact upon the tenant if the 30-day notice requirement is changed to a 45-day notice requirement that coincides with the time for the return of the security deposit.
 - ◆ The current requirement that a receipt be issued to the tenant and kept by the landlord for 2 years is good. However, to insure that the receipt properly informs the tenant of the rights and obligations relative to the security deposit law, the contents of the receipt should be specified by the statute.

Decision:

- ❖ A motion was made to adopt the language which follows. The motion was approved by a vote of 8 in favor and 1 opposed.

Recommended Bill Language:

8-203

(a) In this section **THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

(1) **"LANDLORD" MEANS A LANDLORD OR A PROSPECTIVE LANDLORD.**

(2) **"SECURITY ["security] deposit" means any payment of money, including payment of the last month's rent in advance of the time it is due, given to a landlord by a tenant in order to protect the landlord against nonpayment of rent or damage to the leased premises, COMMON AREAS, MAJOR APPLIANCES AND FURNISHINGS.**

(3) **"TENANT" MEANS A TENANT OR A PROSPECTIVE TENANT.**

(b) (1) A landlord may not impose a security deposit in excess of the equivalent of two months' rent[, or \$50, whichever is greater,] per dwelling unit, regardless of the number of tenants.

(2) If a landlord charges more than the equivalent of two months' rent[, or \$50, whichever is greater,] per dwelling unit as a security deposit, the tenant may recover up to threefold the extra amount charged, plus reasonable attorney's fees.

(3) An action under this section may be brought at any time during the tenancy or within two years after its termination.

(c) [(1)] The landlord shall give the tenant a receipt for the security deposit. The receipt may be included in a written lease.

[(2)] The landlord shall be liable to the tenant in the sum of \$25 if the landlord fails to provide a written receipt for the security deposit.

(3) The receipt or lease shall contain language informing the tenant of his rights under this section to receive from the landlord a written list of all existing damages if the tenant makes a written request of the landlord within 15 days of the tenant's occupancy.]

(d) [(1)] If the landlord imposes a security deposit, on written request, he promptly shall provide the tenant with a written list of all existing damages. The request must be made within 15 days of the tenant's occupancy.

(2) Failure to provide the tenant with this written statement renders the landlord liable to the tenant for threefold the amount of the security deposit. The total amount of damages shall be subject to a setoff for damages and unpaid rent which reasonably could be withheld under this section.

(e)] (1) The landlord shall maintain all security deposits in a [banking or savings] **FEDERALLY INSURED FINANCIAL institution, AS DEFINED IN §1-101 OF THE FINANCIAL INSTITUTIONS ARTICLE, WHICH DOES BUSINESS** in the State. The account shall be **MAINTAINED AT A BRANCH OF THE FINANCIAL INSTITUTION WHICH IS LOCATED WITHIN THE STATE AND SHALL BE** devoted exclusively to security deposits and bear interest. **A SECURITY DEPOSIT SHALL BE DEPOSITED IN THE ACCOUNT WITHIN 30 DAYS AFTER THE LANDLORD RECEIVES IT. THE ACCOUNT SHALL BE SUFFICIENTLY LARGE TO COVER ALL SECURITY DEPOSITS AND ACCRUED INTEREST FOR WHICH THE LANDLORD IS LIABLE.**

(2) [A security deposit shall be deposited in the account within 30 days after the landlord receives it.] **IN LIEU OF THE ACCOUNT DESCRIBED IN SUBSECTION (E)(1) OF THIS SECTION, THE**

LANDLORD MAY HOLD THE SECURITY DEPOSIT IN AN INSURED CERTIFICATE OF DEPOSIT AT A BRANCH OF A FEDERALLY INSURED FINANCIAL INSTITUTION, AS DEFINED IN §1-101 OF THE FINANCIAL INSTITUTIONS ARTICLE, LOCATED IN THE STATE OR IN A SECURITY ISSUED BY THE FEDERAL GOVERNMENT OR THE STATE OF MARYLAND. THE CERTIFICATE OF DEPOSIT OR SECURITY SHALL BE SUFFICIENTLY LARGE TO COVER ALL SECURITY DEPOSITS AND ACCRUED INTEREST FOR WHICH THE LANDLORD IS LIABLE.

(3) In the event of sale or transfer of [any sort, including receivership or bankruptcy, the security deposit is binding on the successor in interest to the person to whom the deposit is given. Security deposits are free from any attachment by creditors] **THE LANDLORD'S INTEREST IN THE LEASED PREMISES, INCLUDING RECEIVERSHIP OR BANKRUPTCY:**

(I) THE LANDLORD OR THE LANDLORD'S ESTATE SHALL REMAIN LIABLE TO THE TENANT AND THE TRANSFEREE FOR MAINTENANCE OF THE SECURITY DEPOSIT AS REQUIRED BY LAW, AND THE WITHHOLDING AND RETURN OF SECURITY DEPOSIT PLUS INTEREST AS REQUIRED BY LAW, AS TO ALL OR ANY PORTION OF THE SECURITY DEPOSIT THAT THE LANDLORD FAILS TO DELIVER TO THE TRANSFEREE TOGETHER WITH AN ACCOUNTING SHOWING THE AMOUNT AND DATE OF THE ORIGINAL DEPOSIT, THE RECORDS OF THE INTEREST RATES APPLICABLE TO THE SECURITY DEPOSIT, IF ANY, THE NAME AND LAST KNOWN ADDRESS OF THE TENANT FROM, OR ON WHOSE BEHALF THE DEPOSIT WAS RECEIVED, A CALCULATION OF INTEREST THAT IS PAYABLE TO THE TENANT AS OF THE DATE OF TRANSFER AND A COPY OF ANY LIST OF DAMAGES THAT WAS PROVIDED TO THE TENANT FOR ANY TENANT WHOSE TENANCY TERMINATED WITHIN ONE YEAR PRIOR TO THE DATE OF TRANSFER..

(II) THE TRANSFEREE SHALL BE LIABLE TO THE TENANT FOR THE SECURITY DEPOSIT THAT THIS SECTION REQUIRES TO BE TRANSFERRED, WHETHER OR NOT IT IS ACTUALLY RECEIVED FROM THE LANDLORD.

(4) Any successor in interest is liable to the tenant for failure to return the security deposit, together with interest, as provided in this section.

[(f)](E) (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, less any damages rightfully withheld.

(2) Interest shall accrue at six-month intervals from the day the tenant gives the landlord the security deposit. Interest is not compounded.

(3) Interest shall be payable only on security deposits of \$50 or more.

(4) If the landlord, without a reasonable basis, fails to return any part of the security deposit, plus accrued interest, within 45 days after the termination of the tenancy, the tenant has an action of up to threefold of the withheld amount, plus reasonable attorney's fees.

[(g)](F) (1) The security deposit, or any portion thereof, may be withheld for unpaid rent, damage due to breach of lease or for damage **BY THE TENANT OR THE TENANT'S FAMILY, AGENTS, EMPLOYEES, GUESTS OR INVITEES IN EXCESS OF ORDINARY WEAR AND TEAR** to the leased premises [by the tenant, his family, agents, employees, or social guests in excess of ordinary wear and tear], **COMMON AREAS, MAJOR APPLIANCES AND FURNISHINGS OWNED BY THE LANDLORD.** The tenant has the right to be present when the landlord or [his] **THE LANDLORD'S** agent inspects the premises in order to determine if any damage was done to the premises, if the tenant notifies the landlord by [certified]**FIRST CLASS** mail of [his] **THE TENANT'S** intention to move, the date of moving, and his new address. The notice to be furnished by the tenant to the landlord shall be mailed at least 15 days prior to the date of moving. Upon receipt of the notice, the landlord shall notify the tenant by [certified]**FIRST CLASS** mail of the time and date when the premises are to be inspected.

The date of inspection shall occur within five days before or five days after the date of moving as designated in the tenant's notice. The tenant shall be advised of [his] **THE TENANT'S** rights under this subsection in writing at the time of his payment of the security deposit. Failure by the landlord to comply with this requirement forfeits the right of the landlord to withhold any part of the security deposit for damages.

(2) The security deposit is not liquidated damages and may not be forfeited to the landlord for breach of the rental agreement, except in the amount that the landlord is actually damaged by the breach.

(3) In calculating damages for lost future rents any amount of rents received by the landlord for the premises during the remainder if any, of the tenant's term, shall reduce the damages by a like amount.

[(h)](G) (1) If any portion of the security deposit is withheld, the landlord shall present by first-class mail directed to the last known address of the tenant, within **[30] 45** days after the termination of the tenancy, a written list of the damages claimed under subsection **(g)(1)** together with a statement of the cost actually incurred.

(2) If the landlord fails to comply with this requirement, he forfeits the right to withhold any part of the security deposit for damages.

[(i)](H) (1) The provisions of subsections **[(f)(1), (f)(4), (h)(1), and (h)(2)](E)(1), (E)(4), (G)(1), AND (G)(2)** are inapplicable to a tenant who has been evicted or ejected for breach of a condition or covenant of a lease prior to the termination of the tenancy or who has abandoned the premises prior to the termination of the tenancy.

(2) A tenant specified in paragraph (1) may demand return of the security deposit by giving written notice by first-class mail to the landlord within 45 days of being evicted or ejected or of abandoning the premises. The notice shall specify the tenant's new address. The landlord, within 30 days of receipt of such notice, shall present, by first-class mail to the tenant, a written list of the damages claimed under subsection **[(g)(1)](F)(1)** together with a statement of the costs actually incurred. Within 45 days of receipt of the notice, the landlord shall return to the tenant the security deposit together with simple interest which has accrued in the amount of 4 percent per annum, less any damages rightfully withheld.

(3) If a landlord fails to send the list of damages required by paragraph (2), the right to withhold any part of the security deposit for damages is forfeited. If a landlord fails to return the security deposit as required by paragraph (2), the tenant has an action of up to threefold of the withheld amount, plus reasonable attorney's fees.

(4) Except to the extent specified, this subsection may not be interpreted to alter the landlord's duties under subsections **[(f) and (h)](E) AND (G)**.

[(j)](I) No provision of this section may be waived in any lease.

§8-203.2 – NEW Security Deposit Receipts

Purpose of Section:

- ❖ This new section of law would clarify the current general requirement for a receipt contained in §8-203(c)(2). The purpose of the clarification is to ensure that landlords know the information they are required to give and that tenants would be better informed of their rights. The existing penalty provisions for failure to give a receipt has been retained.

Issues:

- ❖ It was the consensus of the group that a penalty provision should be added to the proposed language because an equivalent provision was deleted from §8-203 earlier.
- ❖ Additionally, it was decided that landlords should be required to provide “actual cost of repairs” to tenants rather than “reasonably estimated costs”.

Decision:

- ❖ A motion was made to accept the proposed language (see attached language) with the restoration of the penalty provision and the requirement for actual cost reporting. This motion was passed by a vote of 14 to 1.
- ❖ A motion was made to adopt the language which follows. The motion was approved by a vote of 14 in favor and 1 opposed.

Recommended Bill Language:

8-203.2.

(A) A RECEIPT FOR A SECURITY DEPOSIT SHALL NOTIFY THE TENANT OF THE FOLLOWING:

(1) THE RIGHT TO HAVE THE DWELLING UNIT INSPECTED BY THE LANDLORD IN THE TENANT'S PRESENCE FOR THE PURPOSE OF MAKING A WRITTEN LIST OF DAMAGES THAT EXIST AT THE COMMENCEMENT OF THE TENANCY IF THE TENANT SO REQUEST IN WRITING WITHIN 15 DAYS OF THE TENANT'S OCCUPANCY;

(2) THE RIGHT TO BE PRESENT WHEN THE LANDLORD INSPECTS THE PREMISES AT THE END OF THE TENANCY IN ORDER TO DETERMINE IF ANY DAMAGE WAS DONE TO THE PREMISES IF THE TENANT NOTIFIES THE LANDLORD IN WRITING AT LEAST 15 DAYS PRIOR TO THE DATE OF THE TENANT'S INTENDED MOVE, OF THE TENANT'S INTENT TO MOVE, THE DATE OF MOVING, AND THE TENANT'S NEW ADDRESS;

(3) THE LANDLORD'S OBLIGATION TO CONDUCT THE INSPECTION WITHIN 5 DAYS BEFORE OR AFTER THE TENANT'S STATED DATE OF INTENDED MOVING;

(4) THE LANDLORD'S OBLIGATION TO NOTIFY THE TENANT IN WRITING OF THE DATE OF THE INSPECTION;

(5) THE TENANT'S RIGHT TO RECEIVE, BY FIRST CLASS MAIL, DELIVERED TO THE LAST KNOWN ADDRESS OF THE TENANT, A WRITTEN LIST OF THE CHARGES AGAINST THE SECURITY DEPOSIT CLAIMED BY THE LANDLORD AND THE ACTUAL COSTS, WITHIN 45 DAYS AFTER THE TERMINATION OF THE TENANCY;

(6) THE OBLIGATION OF THE LANDLORD TO RETURN ANY UNUSED PORTION OF THE SECURITY DEPOSIT, BY FIRST CLASS MAIL, ADDRESSED TO THE TENANT'S LAST KNOWN ADDRESS WITHIN 45 DAYS AFTER THE TERMINATION OF THE TENANCY; AND

(7) A STATEMENT THAT FAILURE OF THE LANDLORD TO COMPLY WITH THE SECURITY LAW MAY RESULT IN THE LANDLORD BEING LIABLE TO THE TENANT FOR A PENALTY OF UP TO 3 TIMES THE SECURITY DEPOSIT, PLUS REASONABLE ATTORNEY'S FEES.

(B) THE LANDLORD SHALL RETAIN A COPY OF THE RECEIPT FOR A PERIOD OF 2 YEARS AFTER THE TERMINATION OF THE TENANCY, ABANDONMENT OF THE PREMISES OR EVICTION OF THE TENANT, AS THE CASE MAY BE.

(C) THE LANDLORD SHALL BE LIABLE TO THE TENANT IN THE SUM OF \$25 IF THE LANDLORD FAILS TO PROVIDE A WRITTEN RECEIPT FOR THE SECURITY DEPOSIT.

§8-205 -- Landlord to Give Tenant Receipt

Purpose of Section:

- ❖ This section of the law deals with when a landlord must give a tenant a receipt for the payment of rent.

Issues:

- ❖ Except for Anne Arundel County, a receipt is required only when a residential tenant makes payment in person other than by means of a check. As a result, tenants who pay by money order or who do not pay in person are put at a disadvantage if they have to provide proof of payment, because it is difficult and time consuming to get proof.
- ❖ It was the consensus of the committee that receipt issuance should be mandatory if payment is made in cash or upon the request of the tenant. This recommended change does not affect Anne Arundel County.
- ❖ At the December 10, 1998 meeting, this section was brought up again because a penalty had not been decided on at the November 12, 1998 meeting. It was decided that the penalty should mirror the \$25 penalty in §8-203, which relates to security deposits.

Decision:

- ❖ At the November 12, 1998 meeting, a motion was made to adopt the language which follows. The motion was approved unanimously.
- ❖ At the December 10, 1998 meeting, a motion was made to add a \$25 penalty for not providing a receipt as required by this section. The motion was approved by a vote of 7 in favor, 2 opposed, and 2 abstentions.

Recommended Bill Language:

8-205.

(a) In Anne Arundel County, unless the tenant makes payment by check or rents the property for commercial or business purposes, if property is leased for any definite term or at will, the landlord shall give the tenant a receipt showing payment and the time period which the payment covers. On conviction of violating this section, any person or agent shall forfeit the rent for the period in question.

(b) Except [in Anne Arundel County] **AS OTHERWISE PROVIDED IN THIS SUBSECTION (A) OF THIS SECTION**, [when the tenant makes payment in person, other than by check,] the landlord or landlord's agent shall give the tenant a receipt **IF THE TENANT:**

(1) **MAKES PAYMENT IN CASH; OR**

(2) **REQUESTS A RECEIPT.**

(C) **IN ADDITION TO ANY OTHER PENALTY, THE LANDLORD SHALL BE LIABLE TO THE TENANT IN THE SUM OF \$25 IF THE LANDLORD FAILS TO PROVIDE A WRITTEN RECEIPT AS REQUIRED BY THIS SECTION.**

§8-208 & 8-203.1 – Written Leases

Purpose of Section:

- ❖ §8-203.1 stipulates what must be contained in a written lease for residential property if the landlord owns more than 4 units in a jurisdiction and would place required and prohibited lease provisions in one section.
- ❖ §8-208 stipulates what must not be contained in a written lease for residential property if the landlord owns more than 4 units in a jurisdiction.

Issue:

- ❖ Combining these two sections would clear up much of the confusion arising from the duplicative functions that they perform.
- ❖ A second issue to be resolved with these sections was whether or not landlords should be required to use written leases. This issue first arose because of the practice of some landlords to operate without a written lease. The lack of a written document causes a variety of problems that may not have occurred had there been a written lease.
- ❖ The consensus of the Commission on the first issue was that it was indeed correct to consolidate the two sections into a single section of code, given that both sections are highly related.

- ❖ Discussion on the second topic centered on the fact that a written lease is likely to lead to less potential confusion should issues arise about a tenancy. Arguments were also offered that stated that requiring a written lease might well chill relationships between both the landlord and the tenant by prohibiting casual oral agreements for more informal leases.
- ❖ The consensus of the Commission on the second issue was that written leases should be required if the landlord owns a total of 5 or more rental units throughout the State. No consensus was reached on the topic of penalties for failure to have a written lease if so required.

Decision:

- ❖ A motion was made to repeal §8-203.1 and consolidate it into §8-208.
- ❖ A motion was made to adopt the language which follows. The motion was approved unanimously.

Recommended Bill Language:

8-208.

(a) (1) AFTER SEPTEMBER 30, 1999, ANY LANDLORD WHO OFFERS 5 OR MORE DWELLING UNITS FOR RENT IN THE STATE MAY NOT RENT A UNIT WITHOUT USING A WRITTEN LEASE.

(2) IF A LANDLORD FAILS TO COMPLY WITH PARAGRAPH (1) OF THIS SUBSECTION, THE TERM OF THE TENANCY IS PRESUMED TO BE ONE YEAR FROM THE DATE OF THE TENANT'S FIRST OCCUPANCY UNLESS THE TENANT ELECTS TO END THE TENANCY AT AN EARLIER DATE.

(B) A LANDLORD WHO RENTS USING A WRITTEN LEASE SHALL PROVIDE, UPON WRITTEN REQUEST FROM ANY PROSPECTIVE APPLICANT FOR A LEASE, A COPY OF THE PROPOSED FORM OF LEASE IN WRITING, COMPLETE IN EVERY MATERIAL DETAIL, EXCEPT FOR THE DATE, THE NAME AND ADDRESS OF THE TENANT, THE DESIGNATION OF THE PREMISES, AND THE RENTAL RATE, WITHOUT REQUIRING EXECUTION OF THE LEASE OR ANY PRIOR DEPOSIT.

(C) A LEASE SHALL INCLUDE:

(1) A STATEMENT THAT THE PREMISES WILL BE MADE AVAILABLE IN A CONDITION PERMITTING HABITATION, WITH REASONABLE SAFETY, IF THAT IS THE AGREEMENT, OR IF THAT IS NOT THE AGREEMENT, A STATEMENT OF THE AGREEMENT CONCERNING THE CONDITION OF THE PREMISES; AND

(2) THE LANDLORD'S AND THE TENANT'S SPECIFIC OBLIGATION AS TO HEAT, GAS, ELECTRICITY, WATER, AND REPAIR OF THE PREMISES.

(D) A [lease] LANDLORD may not [contain] INCLUDE IN A LEASE OR FORM OF LEASE any [of the following provisions]PROVISION THAT:

(1) [A provision whereby]HAS the tenant [authorizes]AUTHORIZE any person to confess judgment on a claim arising out of the lease[.];

(2) [A provision whereby]HAS the tenant [agrees]AGREE to waive or to forego any right or remedy provided by applicable law[.];

(3) [A provision providing]PROVIDES for a penalty for the late payment of rent in excess of 5% of the amount of rent due for the rental period for which the payment was delinquent[.]

(4) In the case of leases under which the rent is paid in weekly rental installments, PROVIDES FOR A LATE[a] penalty of MORE THAN \$3 [may be charged for the late payment of rent; however, these late penalties for rent paid under a lease providing for weekly rental installments shall constitute, in the aggregate, no] PER WEEK OR A TOTAL OF more than \$12 per month[.];

[(4)](5) [Any provision whereby]HAS the tenant [waives]WAIVE the right to a jury trial[.];

[(5)](6) [Any provision whereby]HAS the tenant [agrees]AGREE to a period required for landlord's notice to quit less than that provided by applicable law; provided, however, that neither party is prohibited hereby from agreeing to a longer notice period than that required by applicable law[.];

[(6)](7) [Any provision authorizing]AUTHORIZES the landlord to take possession of the leased premises, or the tenant's personal property [therein] unless the lease has been terminated by action of the parties or by operation of law, and [such]THE personal property has been abandoned by the tenant without the benefit of formal legal process[.];

[(7)](8) [Any provision that is deemed to be]IS against public policy and void pursuant to § 8-105; OR

(9) PERMITS A LANDLORD TO COMMENCE AN EVICTION PROCEEDING OR ISSUE A NOTICE TO QUIT SUBSTANTIALLY AS RETALIATION AGAINST ANY TENANT FOR PLANNING, ORGANIZING, OR JOINING A TENANT ORGANIZATION WITH THE PURPOSE OF NEGOTIATING COLLECTIVELY WITH THE LANDLORD.

[(b)](E) (1) [If any]EXCEPT FOR A LEASE CONTAINING AN AUTOMATIC RENEWAL PERIOD OF ONE MONTH OR LESS, A lease [shall contain]THAT CONTAINS a provision calling for an automatic renewal of the lease term unless prior notice is given by the party or parties seeking to terminate the lease, [any such]SHALL HAVE THE provision [shall be] distinctly set apart from any other provision of the lease and provide a space for the written acknowledgement of THE tenant's agreement to the automatic renewal provision[, except leases containing an automatic renewal period of one (1) month or less].

(2) [Any such]AN AUTOMATIC RENEWAL provision THAT IS not specifically accompanied by either the tenant's initials, signature, or witnessed mark, [shall be]IS unenforceable by the landlord.

[(2)](F) No provision of this section shall be deemed to be a bar to the applicability of supplementary rights afforded by any public local law enacted by the General Assembly or any ordinance or local law enacted by any municipality or political subdivision of this State; provided, however, that no such law can diminish or limit any right or remedy granted under the provisions of this section.

[(c)](G) (1) Any lease provision which is prohibited by terms of this section shall be unenforceable by the landlord.

(2) If the landlord includes in any lease a provision prohibited by this section or made unenforceable by §§ 8-105 or 8-203 of this title, at any time subsequent to July 1, 1975, and tenders a lease containing such a provision or attempts to enforce or makes known to the tenant an intent to enforce any such provision, the tenant may recover any actual damages incurred as a reason thereof, including reasonable attorney's fees.

[(d)](H) If any word, phrase, clause, sentence, or any part or parts of this section shall be held unconstitutional by any court of competent jurisdiction such unconstitutionality shall not affect the validity of the remaining parts of this section.

§8-208.1 & §8-206 – Retaliatory Eviction

Purpose of Sections:

- ❖ §8-206 is local law, pertaining to retaliatory evictions in Montgomery County only. It prohibits eviction from residential property if the cause of the eviction was retaliation for the tenant's complaint or lawsuit against the landlord or for the tenant being a member of a tenant's organization.
- ❖ §8-208.1 also a retaliatory eviction law but it applies to all localities other than Montgomery County. Currently, to be retaliatory, an eviction must be based solely on certain actions of the tenant. However, the section specifically allows eviction on the basis of expiration of a notice to quit, breach of a lease, nonpayment of rent, non-renewal of a lease at the expiration of its term and after the giving of appropriate notice to quit.

Issues:

- ❖ These two statutes are similar in purpose but different in scope and application. The Commission considered the advisability of merging the two statutes
- ❖ §8-208.1 ostensibly proscribes a landlord from seeking an eviction, increasing the rent or decreasing essential services if a tenant engages in certain defined, protected, conduct such as filing a complaint or joining a tenant association. The requirement that the landlord's decision to evict be based solely upon certain conduct presents a standard that is very difficult, if not impossible, to prove. If the landlord is motivated by a desire to retaliate but can articulate any other reason for an eviction then the eviction is not solely for a retaliatory purpose and the tenant receives no protection. Additionally, subsection (f) states the prohibition on retaliation shall not alter a landlord's right to not renew a lease or to terminate a tenancy because of a breach of a lease or as otherwise permitted by law. Subsection (f) thus exempts all of the possessory actions from the defense of retaliatory eviction. This section offers virtually no protection for a tenant.
- ❖ §8-206 applies to Montgomery County. Delegate Barve stated to the Chairman that changes to this section of the law would have to be approved by the Montgomery County Delegation, and that it was too late to file a local bill. He requested that no changes be made.
- ❖ The Commission considered that §8-208.1 used the term "retaliatory eviction" but seemed to be designed to prohibit retaliatory conduct by the landlord. The Commission further considered rewriting the section using the term "retaliatory conduct" as opposed to "retaliatory eviction," expanding the operation of the statute to apply to any action by the

landlord against the tenant which was retaliatory (i.e., civil suits as well as possessory actions), and providing for penalties for “retaliatory conduct.”

- ❖ The use of the term “solely” is a problem because it does not permit the finding of retaliation when retaliation was a major reason, but not the only reason, for the landlord’s action. The Commission believes that substituting the word “substantially” for “solely” would make the statute more effective.
- ❖ Some members of the Commission believed that there is a need to separate retaliatory conduct from conduct that is legal. For example, at the expiration of a lease or under circumstances specified by the parties in the lease, the tenant should have no expectation of tenancy beyond that which the contract provides, and a landlord should be able to terminate the tenancy without the motive being questioned.
- ❖ The Commission considered whether it would be wise to alter the requirement that the tenant’s complaint be in writing in order to form a basis for a claim of retaliation. Some members of the Commission’s believe that the existence of the complaint was a matter of proof for the court and no writing should be required. An oral complaint by the tenant would be sufficient if proved. Others believe that the requirement for a written complaint was necessary to establish retaliation based upon a complaint.

Decision:

- ❖ For §8-206, it was the consensus of the Commission that no changes should be made because it is a local issue that should be left up to Montgomery County.
- ❖ At the Commission’s November 24, 1998 meeting, a motion was made to substitute the word “substantially” for the word “solely”; that as a penalty the tenant should be given the option to have the judge extend the lease by six months to a year after the termination date; that the landlord be granted attorneys’ fees if it is found that the tenant’s allegation of retaliatory eviction was in bad faith; and that in old subsection (f) (the new subsection (G)), the words “not inconsistent with this section” be added to the end of the language in question. The motion failed by a vote of 3 in favor, 4 opposed, and 2 abstentions.
- ❖ At the Commission’s December 3, 1998 meeting, §8-208.1 was reconsidered. An amendment to the motion of November 24, 1998 was offered that would change the language in the new section (G) to what appears in the text which follows, while leaving the change of the word “solely” to “substantially” in section (a). The amendment was adopted by a vote of 14 in favor and 1 opposed. The vote was then taken on the motion to approve the changes to §8-208.1 as amended. The motion was adopted with a vote of 10 in favor, 1 opposed and 1 abstention.

Recommended Bill Language:

8-208.1.

(a) No landlord shall evict a tenant of any residential property or arbitrarily increase the rent or decrease the services to which the tenant has been entitled for any of the following reasons:

- (1) [Solely]SUBSTANTIALLY because the tenant or [his] THE TENANT'S agent has filed a written complaint, or complaints, with the landlord or with any public agency or agencies against the landlord; or
- (2) [Solely]SUBSTANTIALLY because the tenant or [his] THE TENANT'S agent has filed a lawsuit, or lawsuits, against the landlord; or
- (3) [Solely]SUBSTANTIALLY because the tenant is a member or organizer of any tenants' organization.

(b) Evictions described in subsection (a) of this section shall be called "retaliatory evictions."

(c) **IF IN ANY EVICTION PROCEEDING THE COURT FINDS IN FAVOR OF A TENANT ON THE BASIS OF ANY OF THE AFOREMENTIONED RETALIATORY EVICTION DEFENSES, THEN, IF THE TENANT SO REQUESTS PRIOR TO THE ENTRY OF JUDGMENT, THE COURT SHALL ORDER THAT THE TENANT'S LEASE BE EXTENDED FOR A PERIOD OF NOT LESS THAN 6 MONTHS NOR MORE THAN 12 MONTHS FROM THE THEN CURRENT TERMINATION DATE OF THE LEASE, UPON THE SAME TERMS AND CONDITIONS AS EXISTED AS OF THE DATE OF THE INITIATION OF THE EVICTION PROCEEDING BY THE LANDLORD.**

(D) (1) If in any eviction proceeding the judgment be in favor of the tenant for any of the aforementioned defenses, the court may enter judgment for reasonable attorney fees and court costs against the landlord.

(2) **IF IN ANY EVICTION PROCEEDING THE COURT FINDS THAT A TENANT'S ASSERTION OF A RETALIATORY EVICTION DEFENSE WAS IN BAD FAITH OR WITHOUT SUBSTANTIAL JUSTIFICATION, THE COURT MAY ENTER JUDGMENT FOR REASONABLE ATTORNEY FEES AND COURT COSTS AGAINST THE TENANT.**

[(d)](E) The relief provided under this section is conditioned upon:

(1) In the case of tenancies measured by a period of one month or more, 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.

(2) In the case of [periodic tenancies measured by the] TENANCIES REQUIRING weekly payment of rent, 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, the court having not entered against the tenant 3 judgments of possession for rent due and unpaid.

[(e)](F) No eviction shall be deemed to be a "retaliatory eviction" for purposes of this section upon the expiration of a period of 6 months following the determination of the merits of the initial case by a court (or administrative agency) of competent jurisdiction.

[(f)](G) Nothing in this section may be interpreted to alter the landlord's or the tenant's rights [arising from breach of any provision of a lease, or either party's right] to terminate or not renew a [lease pursuant to the terms of the lease or the provisions of other applicable law]TENANCY GOVERNED BY A WRITTEN/LEASE FOR A STATED TERM OF GREATER THAN ONE MONTH AT THE EXPIRATION OF THE TERM OR AT SUCH OTHER TIME AS THE PARTIES MAY SPECIFICALLY AGREE.

[(g)](H) 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.

§8-210 – Information to be Posted by Landlord

Purpose of Section:

This section requires landlords to provide their tenants with information about the name, address and telephone number of the owner or management entity. This information may be posted at the property, contained in a lease or in a rental receipt.

Issues:

The major issue is whether providing the information in a lease or rental receipt is sufficient or if it also should be posted.

The Consensus of the Commission was that if the information is contained in a lease or a receipt, it need not be posted. If there is no lease, the default should be that notice be sent to the name in which the rent is paid where the rent is paid or where the tax bill goes.

Decision:

A motion was made to adopt the following language. The motion was approved by a vote of 8 in favor and 1 opposed.

Recommended Bill Language:

8-210.

(a) (1) The owner of any residential rental property shall post a sign in a conspicuous place on that property listing the name, address, and telephone number of:

(I) the owner of the property; [or]

(II) **THE CURRENT** management entity, if any; **AND**

(III) **THE PERSON AUTHORIZED TO ACCEPT SERVICE ON BEHALF OF THE OWNER.**

(2) [This] **THE information REQUIRED TO BE POSTED UNDER PARAGRAPH (1) OF THIS SUBSECTION** may be included in the written lease, if any, or in the rental receipt, in lieu of posting a sign.

(3) **IF A LANDLORD FAILS TO COMPLY WITH PARAGRAPHS (1) OR (2) OF THIS SUBSECTION, NOTICE SHALL BE DEEMED TO BE PROPER IF THE TENANT SENDS NOTICE TO THE PERSON TO WHOM RENT IS PAID AT THE ADDRESS WHERE THE RENT OR TAX BILL IS SENT.**

(b) (1) This subsection applies only in Montgomery County.

(2) In this subsection, "development" has the meaning provided in §11B-101 of this article.

(3) Before execution by a tenant of a lease for an initial term of 125 days or more, the owner of any residential rental property within any condominium or development shall provide to the prospective tenant, to the extent applicable, a copy of the rules, declaration, and recorded covenants and restrictions that limit or affect the use and occupancy of the property or common areas and to which the owner is obligated. The written lease shall include a statement, if applicable, that the obligations of the owner that limit or affect the use and occupancy of the property are enforceable against the owner's tenant.

§8-211 – Repair of Dangerous Defects

Purpose of Section:

- ❖ This section provides tenants with a mechanism to require landlords to repair dangerous defects in residential rental properties. After providing notice to the landlord, if the defects are not corrected in a reasonable time, the tenant may ask the court to have the rent placed in escrow until the defects are corrected. A tenant may raise the issue affirmatively in a rent escrow action or defensively in a rent case.

Issues:

- ❖ The existence of dangerous defects in the property may be used as a defense to a suit for nonpayment of rent. Many times it appears that tenants are not giving notice of the intent to use the defect as a defense to a rent suit. Some tenants may use the defense as a delaying tactic. If there is a defect in the property that the tenant claims as the justification for nonpayment of rent, some believe that defect should not be a defense to a nonpayment of rent unless the landlord received notice prior to the trial and had sufficient time to correct the defect.
- ❖ The Commission examined the need for (1) notice of the defect to the landlord or the landlord's employee as a prerequisite for using that defect as a defense in a rent suit, (2) the means of giving notice and (3), the timing of notice if the tenant intends to use a dangerous defect as a defense to a suit for rent.
- ❖ If written notice was required, it would be unlikely that the landlord would be surprised by the tenant bringing up the defect for the first time at trial. Additionally, the nature and scope of the tenant's contentions would be specified in a manner which would give the landlord notice of the intended defense and an opportunity to correct the condition prior to the initial trial date. If written notice is not required, it may be more likely that the tenant will appear at trial and make general allegations of dangerous defects and that the landlord would claim that the tenant is raising the claim for the first time.
- ❖ Written comments from at least one landlord suggested that lack of notice was not a problem so long as the court continued the case and ordered that the rent be paid into the registry of the court.

- ❖ Some members of the Commission were concerned that some tenants are unable to write and that a requirement for written notice would deprive the tenants most affected by dangerous conditions of the protection of the statute.
- ❖ The Commission could not reach consensus as to the need for written notice.

Decision:

- ❖ The consensus of the Commission was that there was no need to amend this section because the issues can best be handled by the court.

§8-212.1 – Liability of Military Personnel Receiving Certain Orders

Purpose of Section:

- ❖ This section currently provides relief from continued obligations under a lease for military personnel who receive certain change of duty orders.

Issues:

- ❖ The main issue for the Commission was whether this section should be expanded to cover other tenant situations unrelated to military service such as loss of employment, illness and death of a major wage earner.
- ❖ The Commission also considered the advisability of providing a statutory plan for disposition of a deceased tenant's property and recovery of the premises if a tenant dies and there is no remaining occupant of the apartment.
- ❖ Opponents of changing the section to include nonmilitary-based relief for tenants suggested that, since the landlord's creditors make no provision for relieving the landlord's obligations, this section of the law should not be expanded. Additionally, it was suggested that since the issue is rarely raised, it should be left alone.
- ❖ Proponents of the change suggested that there was need for expanding the operation of the statute. They noted that Montgomery County has a provision that relieves a specific exemption for, disability, catastrophic illness, or involuntary transfers.
- ❖ Further discussion centered on the death of a tenant, and the procedures for landlords relating to the disposition of property.
- ❖ The consensus of the Commission was that this provision should be broadened to include catastrophic illness, disability and involuntary job transfer as reasons for the early

termination of a lease. A tenant exercising the right under this section would be liable for one additional month's rent

- ❖ No consensus could be reached on the revised subsection concerning the death of a tenant.

Decision:

- ❖ A motion was made to adopt the language which follows. The motion was approved unanimously.

Recommended Bill Language:

8-212.1

(A) Notwithstanding any other provision of this title, if a person who is on active duty with the United States military enters into a residential lease of property and subsequently receives permanent change of station orders or temporary duty orders for a period in excess of 3 months, any liability of the person for rent under the lease may not exceed: (1) 30 days' rent after written notice and proof of the assignment is given to the landlord; and (2) the cost of repairing damage to the premises caused by an act or omission of the tenant.

(B) (1) FOLLOWING COMPLETION OF THE INITIAL TERM OF LEASE, A TENANT MAY TERMINATE A TENANCY OF GREATER THAN ONE MONTH OR A TENANCY REQUIRING MORE THAN ONE MONTH'S NOTICE BY GIVING THE LANDLORD ONE MONTH'S WRITTEN NOTICE IF THE TENANT PROVIDES PROOF TO THE LANDLORD THAT THE TENANT:

(I) HAS BEEN INVOLUNTARILY TRANSFERRED BY THE TENANT'S EMPLOYER TO A LOCATION THAT REQUIRES A CHANGE IN RESIDENCE; OR

(II) HAS AN ILLNESS OR DISABILITY THAT SUBSTANTIALLY INTERFERES WITH THE TENANT'S ONGOING ABILITY TO LIVE INDEPENDENTLY AND NECESSITATES A MOVE FROM THE PROPERTY.

(2) AS A CONDITION TO ASSERTING RIGHTS UNDER THIS SUBSECTION, A TENANT MUST VACATE THE PREMISES ON OR BEFORE THE DATE SPECIFIED IN THE NOTICE TO THE LANDLORD.

(3) IN ADDITION TO RENT OWED THROUGH THE END OF THE NOTICE PERIOD, A TENANT WHO EXERCISES THE RIGHTS PROVIDED IN PARAGRAPH (1) OF THIS SUBSECTION, SHALL BE LIABLE TO THE LANDLORD FOR ONE MONTH'S RENT UNDER THE LEASE.

(4) NOTHING IN THIS SUBSECTION SHALL ALTER THE PARTIES' RIGHTS AND OBLIGATIONS WITH RESPECT TO THE CONDITION OF THE PREMISES OR THE WITHHOLDING AND RETURN OF ANY SECURITY DEPOSIT.

§8-213 – Application for Leases: Deposits

Purpose of Section:

- ❖ A landlord who rents five or more dwelling units at one location must provide an explanation of the liabilities that the tenant incurs upon signing the application. The application fee is

limited to \$25 unless the landlord can demonstrate higher actual costs. Application fees, in excess of what the landlord may retain, may be kept by the landlord as rent if the tenant terminates the tenancy within 15 days.

Issues:

- ❖ Discussion of this section focused on the accounting requirements for the application fee. Currently, a landlord must account for the use of any application fee only if the application fee exceeds \$25. If the application fee exceeds \$25 the landlord must return all fees above the amount actually expended. The practical ramification of this is that many landlords spend in excess of the \$25, but only collect \$25 due to the added expense and time involved with the accounting requirement.
- ❖ A second issue is the need for a landlord to be able to retain excess application fees if the tenant terminates the tenancy within 15 days of the earlier of signing the lease or moving in to the dwelling. This provision creates the impression that the tenant has the right to terminate the lease within 15 days after moving in to the premises. This is false.
- ❖ Some Commission members suggested that the baseline for accounting be raised to \$40 or \$50. Those opposed to that change argued that since landlords frequently process multiple applications for one apartment. The consensus of the Commission was to leave this part of §8-213 as is because it was not a major issue.
- ❖ The consensus of the Commission was to delete subsection (c), dealing with the early termination fee, and to keep the rest of the section unchanged. The amount of money involved is usually insignificant and section (c) creates an impression that the tenant has some right to terminate the lease when, in fact, there is no such right.

Decision:

- ❖ At the November 12, 1998 meeting, a motion was made to adopt the language which follows. The motion was approved unanimously.

Recommended Bill Language:

§ 8-213.

- (a) An application for a lease shall contain a statement which explains:
 - (1) The liabilities which the tenant incurs upon signing the application; and
 - (2) The provisions of subsections (b)[, (c),] and [(d)] (C) of this section.
- (b) (1) If a landlord requires from a prospective tenant any fees other than a security deposit as defined by §8-203(a) of this subtitle, and these fees exceed \$25, then the landlord shall return the fees, subject to the exceptions below, or be liable for twice the amount of the fees in damages. The return shall be made not later than 15 days following the date of occupancy or the written communication, by either party to the other, of a decision that no tenancy shall occur.

(2) The landlord may retain only that portion of the fees actually expended for a credit check or other expenses arising out of the application, and shall return that portion of the fees not actually expended on behalf of the tenant making application.

(c) [If, within 15 days of the first to occur of occupancy or signing a lease, a tenant decides to terminate the tenancy, the landlord may also retain that portion of the fees which represents the loss of rent, if any, resulting from the tenant's action.

(d)] This section does not apply to any landlord who offers four or less dwelling units for rent on one parcel of property or at one location, or to seasonal or condominium rentals.

§8-214 – Pets and the Elderly Tenant

Purpose of Section:

- ❖ In Montgomery County, within certain limits a landlord may not prohibit an elderly tenant from keeping a household pet, unless specifically prohibited in writing at the time occupancy took place.

Issues:

- ❖ The issue was whether or not to recommend that elderly tenants across the State should be allowed to keep a household pets.
- ❖ The consensus of the Commission was that, since federal ADA rules already dealt with the issue of “service animals” and since additional regulation would entail more paperwork, this requirement would be both too duplicative and too burdensome.

Decision:

- ❖ The consensus of the Commission was that no changes be made to the section. A motion to this effect passed unanimously.

§8-401 – Failure to Pay Rent

Purpose of Section:

- ❖ This section of the law establishes a means for the landlord to recover possession of the property if the tenant fails to pay rent. As the law is currently applied, each time a tenant fails to pay the rent a new case must be filed. Courts generally do not permit amending an existing filing to increase the amount due to the landlord despite the holding in Robertson v Davis.

Issues:

- ❖ If a tenant fails to pay rent and the case is heard after the next month's rent is due, should the court determine the total amount due as of the date the court hears the case or should the court consider only the amount due as of the date the complaint was. Past efforts to change this and allow the landlord to amend the amount due to include the second month's rent have failed. However, the first such effort in 1997, HB 1158, passed in the legislature with only one vote against passage. However, HB 1158 was vetoed. In 1998 the Senate passed a similar bill, SB 621, with only six votes against. The bill failed in committee on the last day of the session.
- ❖ Proponents of the change suggested that consolidation of claims would reduce both landlord costs and judicial congestion. Additionally, it would reduce the number of people who receive three adverse judgments in 12 months and who are then liable for summary ejectment.
- ❖ Opponents of the change felt strongly that it was unfair to force the tenant to pay for the second month's rent without the opportunity for a separate trial and that this solution does not fix the inherent problem of judicial congestion. In addition, opponents felt strongly that adopting the change would make it much more difficult for tenants to redeem the property by paying the amount of rent determined to be due before officials conducted the eviction.
- ❖ It was the consensus of the committee that no accrual of rent should occur if a hearing was held within 5 days of filing. It was further suggested that accrual of rent occur only if there was a written lease, that it accrue at the option of the landlord, and that eviction could not be obtained if only late fees which accrue after suit was filed are due on the date the judgment is requested.

Decision:

- ❖ A motion was made to adopt the language which follows. The motion was approved with 9 in favor and 3 opposed..

Recommended Bill Language:

8-401.

(a) 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.

(b) (1) Whenever any landlord shall desire to repossess any premises to which [he]THE LANDLORD is entitled under the provisions of subsection (a) of this section, [he]THE LANDLORD or [his]THE LANDLORD'S duly qualified agent or attorney shall make [his]THE LANDLORD'S written complaint under oath or affirmation, before the District Court of the county wherein the property is situated, describing in general terms the property sought to be repossessed, and also setting forth the name of the tenant to whom the property is rented or [his]THE TENANT'S assignee or subtenant with the amount of rent AND ANY LATE FEES due and unpaid; and praying by warrant to repossess the premises, together with judgment for the amount of rent due [and costs], COSTS AND ANY LATE FEES FOR THE PURPOSE OF THE COURT'S DETERMINATION UNDER SUBSECTION

(C) OF THIS SECTION, THE LANDLORD SHALL ALSO SPECIFY THE AMOUNT OF RENT DUE FOR EACH RENTAL PERIOD UNDER THE LEASE, THE DAY THAT THE RENT IS DUE FOR EACH RENTAL PERIOD, AND ANY LATE FEES FOR OVERDUE RENT PAYMENTS. The District Court shall issue its summons, directed to any constable or sheriff of the county entitled to serve process, and ordering [him]THE CONSTABLE OR SHERIFF to notify by first-class mail the tenant, assignee, or subtenant to appear before the District Court at the trial to be held on the fifth day after the filing of the complaint, to answer the landlord's complaint to show cause why the prayer of the landlord should not be granted, and the constable or sheriff shall proceed to serve the summons upon the tenant, assignee or subtenant in the property or upon [his]THE TENANT'S, ASSIGNEE'S, OR SUBTENANT'S known or authorized agent, but if for any reason, neither the tenant, assignee or subtenant, nor [his]THE TENANT'S, ASSIGNEE'S, OR SUBTENANT'S agent, can be found, then the constable or sheriff shall affix an attested copy of the summons conspicuously upon the property. The affixing of the summons upon the property after due notification to the tenant, assignee, or subtenant by first-class mail shall conclusively be presumed to be a sufficient service to all persons to support the entry of a default judgment for possession of the premises, together with court costs, in favor of the landlord, but it shall not be sufficient service to support a default judgment in favor of the landlord for the amount of rent due.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, in Wicomico County, in an action to repossess any premises under this section, service of process on a tenant may be directed to any person authorized under the Maryland Rules to serve process.

(c) (1) If, at the trial on the fifth day indicated in subsection (b) of this section, the court is satisfied that the interests of justice will be better served by an adjournment to enable either party to procure [his]THEIR necessary witnesses, [he]THE COURT may adjourn the trial for a period not exceeding one day, except that if the consent of all parties is obtained, the trial may be adjourned for a longer period of time.

(2) (I) If, when the trial occurs, it appears to the satisfaction of the court, that the rent, or any part of the rent[, is]AND LATE FEES ARE actually due and unpaid[, the court shall determine]:

1. IF THE TRIAL OCCURS WITHIN THE TIME SPECIFIED BY SECTION (B)(1), THE COURT SHALL DETERMINE the amount of rent AND LATE FEES due AS OF THE DATE THE COMPLAINT WAS FILED; OR IF THE TRIAL DOES NOT OCCUR WITHIN THE TIME SPECIFIED BY SECTION (B)(1) AND THE LANDLORD SO REQUESTS, THE COURT SHALL DETERMINE THE AMOUNT OF RENT AND LATE FEES DUE AS OF THE DATE OF THE JUDGMENT, INCLUDING RENT ACCRUING AFTER THE FILING OF THE COMPLAINT AND NOT MORE THAN ONE MONTH'S WORTH OF LATE FEES; and

2. EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH THE COURT SHALL, enter a judgment in favor of the landlord for possession of the premises.

(II) The court may also give judgment in favor of the landlord for the amount of rent determined to be due together with costs of the suit if the court finds that the actual service of process made on the defendant would have been sufficient to support a judgment in an action in contract or tort.

(3) The court, when entering the judgment, shall also order the tenant to yield and render possession of the premises to the landlord, or [his]THE LANDLORD'S agent or attorney, within 4 days after the trial.

(4) The court may, upon presentation of a certificate signed by a physician certifying that surrender of the premises within this 4-day period would endanger the health or life of the tenant or any other occupant of the premises, extend the time for surrender of the premises as justice may require. However, the court may not extend the time for the surrender of the premises beyond 15 days after the trial.

(5) However, if the tenant, or someone for [him]THE TENANT, at the trial, or adjournment of the trial, tenders to the landlord the rent determined by the court to be due and unpaid, together with the costs of the suit, the complaint against the tenant shall be entered as being satisfied.

(d) (1) Subject to the provisions of paragraph (2) of this subsection, if judgment is given in favor of the landlord, and the tenant fails to comply with the requirements of the order within 4 days, the court shall, at any time after the expiration of the 4 days, issue its warrant, directed to any official of the county entitled to serve process, ordering [him]THE OFFICIAL to cause the landlord to have again and repossess the property by putting [him]THE LANDLORD (or [his]THE LANDLORD'S duly qualified agent or attorney for [his]THE LANDLORD'S benefit) in possession thereof, and for that purpose to remove from the property, by force if necessary, all the furniture, implements, tools, goods, effects or other chattels of every description whatsoever belonging to the tenant, or to any person claiming or holding by or under said tenant. If the landlord does not order a warrant of restitution within sixty days from the date of judgment or from the expiration date of any stay of execution, whichever shall be the later, the judgment for possession shall be stricken.

(2) (i) The administrative judge of any district may stay the execution of a warrant of restitution of a residential property, from day to day, in the event of extreme weather conditions.

(ii) When a stay has been granted under this paragraph, the execution of the warrant of restitution for which the stay has been granted shall be given priority when the extreme weather conditions cease.

(e) In any action of summary ejection for failure to pay rent where the landlord is awarded a judgment giving [him]THE LANDLORD 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]THE LANDLORD'S agent all past due rent and late fees, AS DETERMINED BY THE COURT UNDER SUBSECTION (C) OF THIS SECTION, plus all court awarded costs and fees, at any time before actual execution of the eviction order. This subsection does not apply to any tenant against whom 3 judgments of possession have been entered for rent due and unpaid in the 12 months prior to the initiation of the action to which this subsection otherwise would apply.

(f) The tenant or the landlord may appeal from the judgment of the District Court to the circuit court for any county at any time within 4 days from the rendition of the judgment. The tenant, in order to stay any execution of the judgment, shall give a bond to the landlord with one or more sureties, who are owners of sufficient property in the State of Maryland, with condition to prosecute the appeal with effect, and answer to the landlord in all costs and damages mentioned in the judgment, and such other damages as shall be incurred and sustained by reason of the appeal. The bond shall not affect in any manner the right of the landlord to proceed against the tenant, assignee or subtenant for any and all rents that may become due and payable to the landlord after the rendition of the judgment.

§8-402 – Tenant Holding Over

Purpose of Section:

- ❖ When a lease is alleged to have terminated because of expiration or notice, the landlord must give 1 month's notice (except in Montgomery County where two months notice may be required). A tenant who remains beyond the termination date shall be liable to the landlord for the actual damages caused by the holding over.

Issues:

- ❖ The issue with this section surrounds subsection (b)(4), which causes forcible entry and detainer to be procedurally governed by this section. The substantive law of forcible entry and detainer is found in the British statutes. The problem is that the law surrounding forcible entry and detainer is unclear and difficult to locate and understand. Without changing the substance the law should be modernized and placed in its own section.

- ❖ When a lease is alleged to have terminated because of expiration or notice, the landlord must give 1 month's notice, however, no definition is provided for what constitutes that notice. In subsection (6), if rent is accepted for a later period after notice is given, it could constitute a waiver of that notice.
- ❖ It was the consensus of the committee that the forcible entry and detainer language be moved into its own section and clarified.
- ❖ Supplemental language was offered to avoid the issue of waiver by acceptance of rent after notice or judgment but while the tenant is still in possession. The issue frequently causes needless delay.
- ❖ It was suggested that in (a)(3) the last sentence should be clarified to exclude residential tenants.
- ❖ When a landlord accepts rent after notice is given or a judgment is obtained it raises an issue of waiver. This may work a hardship upon the landlord and is a benefit to the tenant.

Decision:

- ❖ A motion was made to adopt the following language. This motion was adopted by a vote of 11 in favor, 1 opposed, and 1 abstention.

Recommended Bill Language:

8-402.

(a) (1) A tenant under any lease or someone holding under [him]THE TENANT, who shall unlawfully hold over beyond the termination of the lease, shall be liable to the landlord for the actual damages caused by the holding over.

(2) The damages awarded to a landlord against the tenant or someone holding under [him]THE TENANT, may not be less than the apportioned rent for the period of holdover at the rate under the lease.

(3) Any action to recover damages under this section may be brought by suit separate from the eviction or removal proceeding or in the same action and in any court having jurisdiction over the amount in issue. **THE COURT MAY ALSO GIVE JUDGMENT IN FAVOR OF THE LANDLORD FOR THE AMOUNT OF RENT DETERMINED TO BE DUE TOGETHER WITH COSTS OF THE SUIT IF THE COURT FINDS THAT THE RESIDENTIAL TENANT WAS PERSONALLY SERVED WITH A SUMMONS, OR, IN THE CASE OF ANY OTHER TENANCY, THERE WAS SUCH SERVICE OF PROCESS OR SUBMISSION TO THE JURISDICTION OF THE COURT AS WOULD SUPPORT A JUDGMENT IN CONTRACT OR TORT. A TENANT OTHER THAN A RESIDENTIAL TENANT WHO WAS NOT PERSONALLY SERVED WITH A SUMMONS SHALL NOT BE SUBJECT TO PERSONAL JURISDICTION OF THE COURT IF THAT TENANT ASSERTS THAT THE APPEARANCE IS FOR THE PURPOSE OF DEFENDING AN IN REM ACTION PRIOR TO THE TIME THAT EVIDENCE IS TAKEN BY THE COURT.**

(4) Nothing contained herein is intended to limit any other remedies which a landlord may have against a holdover tenant under the lease or under applicable law.

(b) (1) (i) Where any interest in property shall be leased for any definite term or at will, and the landlord shall desire to repossess the property after the expiration of the term for which it was leased and shall give notice in writing one month before the expiration of the term or determination of the will to the tenant or to the person actually in possession of the property to remove from the property at the end of the term, and if the tenant or person in actual possession shall refuse to comply, the landlord may make complaint in writing to the District Court of the county where the property is located.

(ii) The court shall issue a summons directed to any constable or sheriff of the county entitled to serve process, ordering the constable or sheriff to notify the tenant, assignee, or subtenant to appear on a day stated in the summons before the court to show cause why restitution should not be made to the landlord. 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. If, for any reason those persons 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.

(iii) Upon the failure of either of the parties to appear before the court on the day stated in the summons, the court may continue the case to a day not less than six nor more than ten days after the day first stated and notify the parties of the continuance.

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

(3) [If the tenant or person in possession shall allege that the title to the leased property is disputed and claimed by some person whom he shall name, by virtue of a right or title accruing or happening since the commencement of the lease, by descent or deed from or by devise under the last will or testament of the landlord, and if thereupon the person so claiming shall forthwith appear, or upon a summons to be immediately issued by the District Court and, made returnable within six days next following, shall appear before the court and shall, under oath, declare that he believes that he is entitled in manner aforesaid to the leased property and shall, with two sufficient securities, enter into bond to the plaintiff, in such sum as the court shall think is a proper and reasonable security to said plaintiff or parties in interest, to prosecute with effect his claim at the next term of the circuit court for the county, then the District Court shall forbear to give judgment for restitution and costs. If the said claim shall not be prosecuted as

aforsaid, the District Court shall proceed to give judgment for restitution and costs and issue its warrant within ten days after the end of said term of court.

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

(ii) This paragraph [(4)] (3), so far as it relates to notices, does not apply in Baltimore City.

(iii) In Montgomery County, except in the case of single family dwellings, the notice by the landlord shall be two months in the case of residential tenancies with a term of at least month to month but less than from year to year.

[(5)] (4) When the tenant shall give notice by parol to the landlord or to [his]THE LANDLORD'S agent or representatives, at least one month before the expiration of the lease or tenancy in all cases except in cases of tenancies from year to year, and at least three months' notice in all cases of tenancy from year to year (except in all cases of farm tenancy, the notice shall be six months), of the intention of the tenant to remove at the end of that year and to surrender possession of the property at that time, and the landlord, [his]THE LANDLORD'S agent, or representative shall prove the notice from the tenant by competent testimony, it shall not be necessary for the landlord, [his]THE LANDLORD'S agent or representative to provide a written notice to the tenant, but the proof of such notice from the tenant as aforesaid shall entitle [his]THE landlord to recover possession of the property hereunder. This subparagraph shall not apply in Baltimore City.

(5) ACCEPTANCE OF RENT AFTER NOTICE BUT BEFORE EVICTION SHALL NOT OPERATE AS A WAIVER OF ANY NOTICE TO QUIT, NOTICE OF INTENT TO VACATE OR ANY JUDGMENT FOR POSSESSION UNLESS THE PARTIES SPECIFICALLY OTHERWISE AGREE IN WRITING. ANY RENT ACCEPTED SHALL BE FIRST APPLIED TO THE RENT OR THE EQUIVALENT OF RENT APPORTIONED TO THE DATE THAT THE LANDLORD ACTUALLY RECOVERS POSSESSION OF THE PREMISES, THEN TO COURT COSTS, INCLUDING COURT AWARDED DAMAGES AND LEGAL FEES AND THEN TO ANY LOSS OF RENT CAUSED BY THE HOLDOVER. ANY PAYMENT WHICH IS ACCEPTED IN EXCESS OF THE FOREGOING SHALL NOT BEAR INTEREST BUT WILL BE RETURNED TO THE TENANT IN THE SAME MANNER AS SECURITY DEPOSITS UNDER §8-203 BUT SHALL NOT BE SUBJECT TO THE PENALTIES OF THAT SECTION.

(c) Unless stated otherwise in the written lease and initialed by the tenant, when a landlord consents to a holdover tenant remaining on the premises, the holdover tenant becomes a periodic week-to-week tenant if [he]THE TENANT was a week-to-week tenant before [his]THE TENANT'S holding over, and a periodic month-to-month tenant in all other cases.

§8-402.1 – Breach of Lease

Purpose of Section:

- ❖ When a lease provides that the landlord may repossess the premises if the tenant breaches the lease, and 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.

Issues:

- ❖ Currently, if the tenancy is for a stated term, and the tenant breaches the lease, the court must find that the breach is significant enough to warrant eviction. However, there are no objective standards determining what constitutes a significant breach.
- ❖ Changes to this section to provide guidance on the standards of "significant" breach may be warranted, but these standards will have to be dual -- one for State law and another for federal law.
- ❖ At a later meeting, a proposal was made that acceptance of rent after notice should not constitute a waiver of any notice to quit. This section should have the same wording as §8-402.

Decision:

- ❖ Language was suggested which included examples of substantial breach and an anti-waiver provision.
- ❖ At the December 3, 1998 meeting, motion was made to include this language in the section. This motion failed by a vote of 4 in favor and 8 opposed.
- ❖ At the December 10, 1998 meeting, a motion was made to include the following section on waiver. The motion was approved unanimously.

Recommended Language:

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 refuses to comply, the landlord may make complaint in writing to the District Court of the county where the premises is located. The court shall summons immediately the tenant or person in possession to appear before the court on a day stated in the summons to show cause, if any, why restitution of the possession of the leased premises should not be made to the landlord.

(2) If, for any reason, the tenant or person in actual possession cannot be found, the constable or sheriff shall affix an attested copy of the summons conspicuously on the property. After notice is sent to the tenant or person in possession by first-class mail, the affixing of the summons on the property shall be conclusively presumed to be a sufficient service to support restitution.

(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 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]THE TENANT 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 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 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 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] THAT PARTY'S counsel at least five 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.

(C) ACCEPTANCE OF RENT AFTER NOTICE BUT BEFORE EVICTION SHALL NOT OPERATE AS A WAIVER OF ANY NOTICE OF BREACH OF LEASE OR ANY JUDGMENT FOR POSSESSION UNLESS THE PARTIES SPECIFICALLY OTHERWISE AGREE IN WRITING. ANY RENT ACCEPTED SHALL BE FIRST APPLIED TO THE RENT OR THE EQUIVALENT OF RENT APPORTIONED TO THE DATE THAT THE LANDLORD ACTUALLY RECOVERS POSSESSION OF THE PREMISES, THEN TO COURT COSTS, INCLUDING COURT AWARDED DAMAGES AND LEGAL FEES AND THEN TO ANY LOSS OF RENT CAUSED BY THE BREACH OF LEASE. ANY PAYMENT WHICH IS ACCEPTED IN EXCESS OF THE FOREGOING SHALL NOT BEAR INTEREST BUT WILL BE RETURNED TO THE TENANT IN THE SAME MANNER AS SECURITY DEPOSITS UNDER §8-203 BUT SHALL NOT BE SUBJECT TO THE PENALTIES OF THAT SECTION.

§8-402.3 – NEW Wrongful Detainer

Purpose of Section:

- ❖ This new section would replace the British statutes pertaining to forcible entry and detainer, clarify the cause of action, apply to a non-tenant in possession of property, and would mainly be applicable in cases of foreclosure and trespass.

Issues:

- ❖ This law is currently procedurally governed by 8-402 (Tenant Holding Over). Making the section independent would clarify the procedure.
- ❖ The addition of this section was deemed necessary because the substantive law of forcible entry and detainer is found in British statutory law that is difficult to find and understand.
- ❖ Forcible entry and detainer is used mainly in cases where a non-tenant is in possession of property, and occurs most frequently in cases of foreclosure. It is a tool that is used by persons entitled to possession to recover possession from non-tenants.
- ❖ Discussion was mainly on subsection (d), which deals with eliminating counter or cross claims. While some members thought this should not be restricted, the consensus of the Commission was that there should be no counter or cross claims because the section deals with wrongful possession situations only.

- ❖ This action is currently known as forcible entry and detainer. The Court of Appeals in Moxley versus Ackers held that force was no longer an element of these actions. It was the consensus of the Commission to change the reference to wrongful detainer throughout the title to avoid the implication that force is an element of the action..

Decision:

- ❖ A motion was made that this new section be adopted with the following language. This motion was adopted by a vote of 9 in favor, 1 opposed and 1 abstention.

Recommended Bill Language:

8-402.3

(A) IN THIS SUBTITLE "WRONGFUL DETAINER" MEANS TO HOLD POSSESSION OF A PROPERTY WITHOUT THE RIGHT OF POSSESSION.

(B) A PERSON MAY NOT HOLD POSSESSION OF PROPERTY UNLESS THE PERSON IS ENTITLED TO POSSESSION OF THE PROPERTY UNDER THE LAW.

(C) (1) IF A PERSON OTHER THAN A TENANT VIOLATES SUBSECTION (B) OF THIS SECTION, A PERSON CLAIMING POSSESSION MAY MAKE COMPLAINT IN WRITING TO THE DISTRICT COURT OF THE COUNTY IN WHICH THE PROPERTY IS LOCATED.

(2) ON RECEIPT OF A COMPLAINT UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE COURT SHALL SUMMONS IMMEDIATELY THE PERSON IN POSSESSION TO APPEAR BEFORE THE COURT ON THE DAY SPECIFIED IN THE SUMMONS TO SHOW CAUSE, IF ANY, WHY RESTITUTION OF THE POSSESSION OF THE PROPERTY TO THE PERSON FILING THE COMPLAINT SHOULD NOT BE MADE.

(3) IF, FOR ANY REASON, THE PERSON IN ACTUAL POSSESSION CANNOT BE FOUND, THE PERSON AUTHORIZED TO SERVE PROCESS BY THE MARYLAND RULES SHALL AFFIX AN ATTESTED COPY OF THE SUMMONS CONSPICUOUSLY ON THE PROPERTY.

(4) IF NOTICE OF THE SUMMONS IS SENT TO THE PERSON IN POSSESSION BY FIRST CLASS MAIL, THE AFFIXING OF THE SUMMONS IN ACCORDANCE WITH PARAGRAPH (3) OF THIS SUBSECTION SHALL CONSTITUTE SUFFICIENT SERVICE TO SUPPORT RESTITUTION OF POSSESSION.

(D) A COUNTER CLAIM OR CROSS CLAIM MAY NOT BE FILED IN AN ACTION BROUGHT UNDER THIS SECTION.

(E) (1) IF THE DISTRICT COURT DETERMINES THAT THE COMPLAINANT IS LEGALLY ENTITLED TO POSSESSION, THE DISTRICT COURT SHALL:

(I) GIVE JUDGMENT FOR RESTITUTION OF THE POSSESSION OF THE PROPERTY TO THE COMPLAINANT; AND

(II) ISSUE ITS WARRANT TO THE SHERIFF OR CONSTABLE COMMANDING THE SHERIFF OR CONSTABLE TO DELIVER POSSESSION TO THE COMPLAINANT.

(2) THE DISTRICT COURT MAY ALSO GIVE JUDGMENT IN FAVOR OF THE COMPLAINANT FOR DAMAGES DUE TO THE WRONGFUL DETAINER AND FOR COURT COSTS AND ATTORNEY FEES IF:

(I) THE COMPAINANT CLAIMED DAMAGES IN THE COMPLAINT; AND

(II) THE COURT FINDS THAT:

1. THE PERSON IN ACTUAL POSSESSION WAS PERSONALLY SERVED WITH THE SUMMONS; OR

2. THERE WAS SERVICE OF PROCESS OR SUBMISSION TO THE JURISDICTION OF THE COURT AS WOULD SUPPORT A JUDGMENT IN CONTRACT OR TORT.

(3) A PERSON IN ACTUAL POSSESSION WHO IS NOT PERSONALLY SERVED WITH A SUMMONS IS NOT SUBJECT TO THE PERSONAL JURISDICTION OF THE DISTRICT COURT IF THE PERSON APPEARS IN RESPONSE TO THE SUMMONS AND PRIOR TO THE TIME THAT EVIDENCE IS TAKEN BY THE DISTRICT COURT, ASSERTS THAT THEIR APPEARANCE IS ONLY FOR THE PURPOSE OF DEFENDING AN IN REM ACTION.

(F) (1) NOT LATER THAN 10 DAYS FROM THE ENTRY OF THE JUDGMENT OF THE DISTRICT COURT, EITHER PARTY MAY APPEAL TO THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE PROPERTY IS LOCATED.

(2) THE PERSON IN ACTUAL POSSESSION OF THE PROPERTY MAY RETAIN POSSESSION UNTIL THE DETERMINATION OF THE APPEAL IF THE PERSON:

(I) FILES WITH THE DISTRICT COURT AN AFFIDAVIT THAT THE APPEAL IS NOT TAKEN FOR DELAY;

(II) FILES SUFFICIENT BOND WITH ONE OR MORE SECURITIES CONDITIONED ON DILIGENT PROSECUTION OF THE APPEAL; OR

(III) PAYS TO THE COMPLAINANT:

1. THE FAIR RENTAL VALUE OF THE PROPERTY FOR THE ENTIRE PERIOD OF POSSESSION UP TO THE DATE OF JUDGMENT;

2. ALL COURT COSTS IN THE CASE;

3. ALL LOSSES OR DAMAGES OTHER THAN THE FAIR RENTAL VALUE OF THE PROPERTY UP TO THE DAY OF JUDGMENT THAT THE COURT DETERMINED TO BE DUE BECAUSE OF THE DETENTION OF POSSESSION; AND

4. THE FAIR RENTAL VALUE OF THE PROPERTY DURING THE PENDENCY OF THE APPEAL.

(3) ON APPLICATION OF EITHER PARTY, THE COURT SHALL SET A HEARING DATE FOR THE APPEAL THAT IS NOT LESS THAN 5 DAYS OR MORE THAN 15 DAYS AFTER THE APPLICATION FOR APPEAL.

(4) NOTICE OF THE ORDER FOR A HEARING SHALL BE SERVED ON THE PARTIES OR THE PARTIES' COUNSELS NOT LESS THAN 5 DAYS BEFORE THE HEARING.

(G) IF THE JUDGMENT OF THE DISTRICT COURT SHALL BE IN FAVOR OF THE LANDLORD; A WARRANT SHALL BE ISSUED BY THE APPELLATE COURT TO THE SHERIFF, WHO SHALL PROCEED IMMEDIATELY TO EXECUTE THE WARRANT.

§8-402.4 – NEW Wrongful Eviction

Purpose of Section:

- ❖ This section refers to situations where a landlord circumvents the legal system and evicts a tenant without a court order. This is a misdemeanor in Baltimore City, but not elsewhere. The landlord could be prosecuted under other statutes, but this seldom happens.

Issues:

- ❖ This proposal, which pertains to residential cases only, would allow a tenant to go to court and get an immediate, temporary order allowing the tenant back in to the premises.
- ❖ Additionally, prosecution takes time and does not address the immediate need for a civil action, or the need for a lawyer in order to get a hearing in Circuit Court, which would also take time.
- ❖ Issues were raised concerning the potential for abuse of this proposed section, as well as concerns regarding the length of time that it takes to remedy an illegal eviction.
- ❖ A hearing would occur within 5 days in the District Court to determine if the temporary order should be made permanent.

Decision:

- ❖ In addition to adding §8-402.4 to the Real Property Article, the Commission believes that a change to the Courts and Judicial Proceedings Article is necessary because the District Court would need to exclusive original civil jurisdiction in these situations. This is the one instance where the Commission is including a recommendation to amend a section of law not in Title 8 of the Real Property Article. The change is in §4-401 of the Courts and Judicial Proceedings Article.
- ❖ An amendment was proposed to delete some of the relief that was proposed, namely: ordering a stay, for a period determined by the court, of any attempt by the landlord to pursue legal remedies to terminate the tenancy; awarding damages or ordering a continuance for the purpose of a further hearing to determine damages; and awarding any other appropriate relief.
- ❖ A motion was made to adopt this amendment. The vote on this motion was 9 in favor, 3 opposed and 1 abstention.

- ❖ A motion was made to adopt the amended language, which follows. The vote on this motion was 10 in favor and 3 opposed.

Recommended Bill Language:

8-402.4

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "LANDLORD" INCLUDES THE LANDLORD'S AGENT.

(3) "WRONGFUL EVICTION" MEANS ANY ACT BY THE LANDLORD, WITHOUT LEGAL OR COURT AUTHORITY, THAT ACTUALLY OR CONSTRUCTIVELY:

(I) REMOVES A TENANT FROM THE RENTAL PROPERTY; OR

(II) PREVENTS A TENANT'S ACCESS TO THE RENTAL PROPERTY.

(4) A "WRONGFUL EVICTION" MAY INCLUDE THE LANDLORD'S EFFORT TO SIGNIFICANTLY DIMINISH ESSENTIAL SERVICES, SUCH AS GAS, ELECTRICITY, WATER, HEAT OR LIGHT, TO WHICH THE TENANT IS ENTITLED UNDER THE TERMS OF THE TENANCY.

(B) IN THE EVENT THAT A LANDLORD EXECUTES OR ATTEMPTS TO EXECUTE A WRONGFUL EVICTION OF A RESIDENTIAL TENANT, THE TENANT MAY FILE A COMPLAINT IN DISTRICT COURT. THE COURT SHALL DIRECT THE SHERIFF TO SERVE A COPY OF THE COMPLAINT ON THE LANDLORD WITHIN 3 DAYS OF THE FILING AND THE HEARING SHALL BE HELD ON THE 5TH DAY AFTER THE FILING.

(C) UPON THE FILING OF THE COMPLAINT, THE COURT SHALL CONDUCT AN IMMEDIATE EMERGENCY HEARING. AT THIS HEARING, THE COURT MAY ISSUE A TEMPORARY ORDER IF THERE ARE REASONABLE GROUNDS TO BELIEVE A WRONGFUL EVICTION HAS OCCURRED AND IT CLEARLY APPEARS THAT IMMEDIATE AND SUBSTANTIAL HARM WILL RESULT TO THE TENANT IN THE ABSENCE OF A TEMPORARY ORDER. THE ORDER SHALL REMAIN IN EFFECT UNTIL THE DATE OF THE FULL ADVERSARY HEARING. THE ORDER MAY INCLUDE, BUT IS NOT LIMITED TO, ANY OR ALL OF THE FOLLOWING:

(1) ORDERING THE LANDLORD TO IMMEDIATELY CEASE AND REMEDY ALL WRONGFUL CONDUCT; OR

(2) ORDERING THE LANDLORD, BY WHATEVER MEANS NECESSARY, TO IMMEDIATELY PERMIT THE TENANT TO RESUME OCCUPANCY.

(D) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, A COURT MAY ONLY ISSUE A TEMPORARY ORDER IF A BOND IS FILED. THE BOND SHALL BE IN AN AMOUNT APPROVED BY THE COURT. IF JUSTICE SO REQUIRES OR THE TENANT'S FINANCIAL CIRCUMSTANCES SO MERIT, THE COURT MAY WAIVE THE BOND REQUIREMENT.

(E) THE TENANT SHALL MAKE EFFORTS, COMMENSURATE WITH THE CIRCUMSTANCES, TO NOTIFY THE LANDLORD OF THE EMERGENCY HEARING. HOWEVER, THE EMERGENCY HEARING SHALL GO FORWARD AND THE TEMPORARY ORDER MAY BE GRANTED, WITHOUT WRITTEN OR VERBAL NOTICE TO THE LANDLORD, IF THE COURT

FINDS THAT APPROPRIATE NOTIFICATION EFFORTS WERE MADE. IF THE LANDLORD IS NOT PRESENT FOR THE EMERGENCY HEARING, THE JUDGE MAY COMMUNICATE INFORMALLY WITH THE LANDLORD OR THE LANDLORD'S ATTORNEY.

(F) IF A TEMPORARY ORDER IS GRANTED, IT SHALL DELINEATE THE SPECIFICS OF THE ORDER AND CONTAIN A STATEMENT THAT THE LANDLORD MAY FILE FOR MODIFICATION OR DISSOLUTION OF THE ORDER. THE SHERIFF SHALL IMMEDIATELY SERVE THE ORDER ON THE LANDLORD AND ENSURE THAT IT IS ENFORCED. HOWEVER, THE ORDER SHALL BE BINDING ON THE LANDLORD UPON ACTUAL NOTICE OF IT BY ANY MEANS. UPON MOTION BY THE TENANT, THE COURT MAY WAIVE THE COST OF SERVICE OF THE ORDER.

(G) THE LANDLORD MAY FILE FOR MODIFICATION OR DISSOLUTION OF THE TEMPORARY ORDER. THE COURT SHALL SCHEDULE THE HEARING AS SOON AS POSSIBLE. AT THIS HEARING, THE TENANT HAS THE BURDEN OF SHOWING THAT THE ORDER SHOULD CONTINUE.

(H) AT THE FULL ADVERSARY HEARING, IF THE COURT FINDS THAT THE LANDLORD'S ACT IS A WRONGFUL EVICTION, THE COURT SHALL MAKE APPROPRIATE FINDINGS OF FACT AND ISSUE AN ORDER AND INJUNCTION AS JUSTICE REQUIRES. SUCH AN ORDER MAY INCLUDE, BUT IS NOT LIMITED TO, ANY OR ALL OF THE FOLLOWING:

(1) ORDERING THE LANDLORD TO IMMEDIATELY CEASE AND REMEDY ALL WRONGFUL CONDUCT;

(2) ORDERING THE LANDLORD, BY WHATEVER MEANS NECESSARY, TO IMMEDIATELY PERMIT THE TENANT TO RESUME OCCUPANCY; AND

(3) AWARDING AN ABATEMENT OF ANY RENT THAT MAY BE DUE OR MAY BECOME DUE.

(I) A TENANT AGGRIEVED BY ANY OF THE ACTS DESCRIBED IN SUBSECTION (A) OF THIS SECTION MAY SEEK RELIEF UNDER THIS SECTION AND ANY OTHER APPLICABLE LAW.

Courts and Judicial Proceedings §4-401.

Except as provided in § 4-402 of this subtitle, and subject to the venue provisions of Title 6 of this article, the District Court has exclusive original civil jurisdiction in:

(1) An action in contract or tort, if the debt or damages claimed do not exceed \$25,000, exclusive of prejudgment or postjudgment interest, costs, and attorney's fees if attorney's fees are recoverable by law or contract;

(2) An action of replevin, regardless of the value of the thing in controversy;

(3) A matter of attachment before judgment, if the sum claimed does not exceed \$25,000, exclusive of prejudgment or postjudgment interest, costs, and attorney's fees if attorney's fees are recoverable by law or contract;

(4) An action involving landlord and tenant, distraint, or [forcible entry and]WRONGFUL detainer, regardless of the amount involved;

(5) A grantee suit brought under § 14-109 of the Real Property Article;

(6) A petition for injunction relating to the use, disposition, encumbrances, or preservation of property that is:

- (i) Claimed in a replevin action, until seizure under the writ; or
 - (ii) Sought to be levied upon in an action of distress, until levy and any removal;
- (7) A petition of injunction filed by:
- (i) A tenant in an action under § 8-211 of the Real Property Article or a local rent escrow law; [or]
 - (ii) A person who brings an action under § 14-120 of the Real Property Article; OR

(III) A TENANT IN A WRONGFUL EVICTION ACTION UNDER § 8-402.4 OF THE REAL PROPERTY ARTICLE;

(8) A petition filed by a county or municipality, including Baltimore City, for enforcement of local health, housing, fire, building, electric, licenses and permits, plumbing, animal control, and zoning codes for which equitable relief is provided;

(9) Proceedings under Article 27, § 264 or § 297 of the Code for the forfeiture or return of moneys involved in a gambling or controlled dangerous substances seizure where the amount involved, excluding any interest and attorney's fees, if attorney's fees are recoverable by law or contract, does not exceed \$20,000;

(10) A proceeding for adjudication of:

- (i) A municipal infraction as defined in Article 23A, § 3(b)(1) of the Code;
- (ii) A Commission infraction as defined in Article 28, § 5-113 of the Code;
- (iii) A WSSC infraction as defined in Article 29, § 18-104.1 of the Code, concerning rules and regulations governing publicly owned watershed property;
- (iv) A WSSC infraction as defined in Article 29, § 18-104.2 of the Code, concerning WSSC regulations governing:

1. Erosion and sediment control for utility construction; and
2. Plumbing, gasfitting, and sewer cleaning;

(v) A zoning violation for which a civil penalty has been provided pursuant to Article 66B, § 7.01 or Article 28, § 8-120(c) of the Code;

(vi) A violation of an ordinance enacted:

1. By a charter county for which a civil penalty is provided under Article 25A, § 5(A) of the Code; or
2. By the Mayor and City Council of Baltimore for which a civil penalty is provided by ordinance;

(vii) A citation for a Code violation issued under Article 27, § 403 of the Code;

(viii) A civil infraction relating to a violation of the Fair Election Practices Act of the election laws as provided under Article 33, § 13-604 of the Code;

(ix) A violation of an ordinance or regulation enacted by a county without home rule, under authority granted under Article 25 of the Code, or any provision of the Code of Public Local Laws for that county, for which a civil penalty is provided;

(x) A civil infraction that is authorized by law to be prosecuted by a sanitary commission; or

(xi) A subdivision violation for which a civil penalty has been provided in accordance with Article 66B, § 5.05(d) of the Code;

(11) A proceeding for adjudication of a civil penalty for any violation under § 5-1001 of the Environment Article, § 21-1122 of the Transportation Article, § 21-1414 of the Transportation Article, or Article 41, § 2-101(c-1) of the Code or any rule or regulation issued pursuant to those sections;

(12) A proceeding to enforce a civil penalty assessed by the Maryland Division of Labor and Industry under Title 5 of the Labor and Employment Article where the amount involved does not exceed \$20,000; and

(13) A proceeding for a civil infraction under § 21-202.1 of the Transportation Article.

§8-403 – Rent Paid Into a Court or Administrative Entity

Purpose of Section:

❖ This section applies to situations where the court orders an adjournment of more than one week. The tenant is to pay all rent due to the court. If the tenant does not comply with the order, the Court will give judgment in favor of the landlord and issue a warrant for possession.

Issues:

- ❖ This section is analogous to §8-118, which the Commission has already addressed, but applies to cases in District Court. It requires a hearing on the non-payment of rent issue only.
- ❖ The discussion centered on the propriety of holding a hearing on the merits prior to eviction.
- ❖ An amendment was offered which deleted the word “legal” at the end of the 4th line from the bottom (see attached language).

Decision:

- ❖ A motion was made to adopt the following language. This motion passed by a vote of 9 in favor and 2 opposed.

Recommended Bill Language:

8-403.

If the court in any case brought [pursuant to § 8-401 or § 8-402] **UNDER §8-401, §8-402, OR §8-402.3** orders an adjournment of the trial for a longer period than provided for in the section under which the case has been instituted, the tenant or [anyone holding under him]**PERSON IN POSSESSION** shall pay [all rents due and as they come due] into the court exercising jurisdiction in the case **AN AMOUNT AND IN THE MANNER DETERMINED BY THE COURT TO BE APPROPRIATE AS SPECIFIED IN §8-118 OR, IN THE CASE OF WRONGFUL DETAINER, §8-118.1.** However, the court may order [the] A tenant to pay rents due and as come due into an administrative agency of any county which is empowered by local law to hold rents in escrow pending investigation and disposition of complaints by tenants; the court also may refer that case to the administrative agency for investigation and report to the court. [A tenant shall pay into the court the amount of rent]**THE PAYMENT INTO THE COURT SHALL BE** due on or before the date to which the trial is adjourned or within seven days after adjournment if the trial is adjourned more than seven days, or to the administrative agency within seven days after the court has ordered the rent paid into an administrative agency. If [the tenant fails to pay rent due within this period, or as it comes due], **ON MOTION OF THE PLAINTIFF AND AFTER THE HEARING, THE COURT DETERMINES THAT THE PAYMENT WAS NOT MADE AS ORDERED BY THE COURT AND THAT THERE IS NO LEGAL JUSTIFICATION FOR THE FAILURE TO PAY,** the court, [on motion of the landlord,] shall give judgment in favor of the [landlord] **PLAINTIFF** and issue a warrant for possession in accordance with the provisions of [§ 8-401(c) and (d)] **THE SECTION UNDER WHICH THE CASE IS BROUGHT.**

§8-406 – NEW Plea of Title

Purpose of Section:

- ❖ The new section is mainly the existing §8-402(b)(3), but its application has been expanded.

Issues:

- ❖ The issue is a procedural one. The section allows a tenant to raise a defense that the District Court cannot deal with – it must go to Circuit Court.
- ❖ This new section was needed due to the fact that wrongful detainer language was being moved to its own section.
- ❖ Language was offered which applied this section to all possessory actions.

Decision:

- ❖ A motion was made to adopt the language which follows. The motion was approved unanimously.

Recommended Bill Language:

8-406.

(A) IN THIS SECTION "CLAIMANT" MEANS THE PERSON IDENTIFIED BY A TENANT OR PERSON IN POSSESSION AS SOMEONE WHO CLAIMS TITLE TO THE PROPERTY LEASED OR POSSESSED BY THE TENANT OR PERSON IN POSSESSION.

(B) IN ANY ACTION BROUGHT UNDER THIS SUBTITLE 4, IF THE TENANT OR PERSON IN POSSESSION SHALL ALLEGE THAT THE TITLE TO THE PROPERTY IS DISPUTED AND IN THE CASE OF A LEASE, THAT TITLE IS CLAIMED BY A CLAIMANT WHOM THE TENANT SHALL NAME, BY VIRTUE OF A RIGHT OR TITLE ACCRUING OR HAPPENING SINCE THE COMMENCEMENT OF THE LEASE, BY DESCENT OR DEED FROM OR BY DEVISE UNDER THE LAST WILL OR TESTAMENT OF THE LANDLORD AND, OTHERWISE, IF THE PERSON IN POSSESSION OR ANY CLAIMANT IS ALLEGED TO HAVE TITLE, THEN THE DISTRICT COURT SHALL FORBEAR TO GIVE JUDGMENT FOR POSSESSION AND COSTS. THE TENANT OR PERSON IN POSSESSION SO CLAIMING SHALL CAUSE A SUMMONS TO BE IMMEDIATELY ISSUED TO THE CLAIMANT BY THE DISTRICT COURT AND MADE RETURNABLE WITHIN 6 DAYS NEXT FOLLOWING. THE CLAIMANT SHALL APPEAR BEFORE THE COURT AND SHALL UNDER OATH, DECLARE THAT THE CLAIMANT CLAIMS TITLE TO THE PROPERTY WHICH IS THE SUBJECT OF THE ACTION AND SHALL, WITH TWO SUFFICIENT SECURITIES, ENTER INTO BOND TO THE PLAINTIFF OR PARTIES IN INTEREST, IN SUCH SUM AS THE COURT SHALL DETERMINE TO BE PROPER AND REASONABLE SECURITY TO SAID PLAINTIFF OR PARTIES IN INTEREST, TO PROSECUTE WITH EFFECT THE CLAIMANT'S CLAIM IN THE CIRCUIT COURT FOR THE COUNTY. IF THE SAID CLAIM SHALL NOT BE COMMENCED IN THE CIRCUIT COURT WITHIN 10 DAYS OF THE FIRST APPEARANCE OF THE CLAIMANT IN THE DISTRICT COURT, THE DISTRICT COURT SHALL PROCEED TO GIVE JUDGMENT FOR POSSESSION AND COSTS AND ISSUE ITS WARRANT.

§§8-601 - 605 – NEW Jury Demands

Purpose of Section:

- ❖ This new subtitle would define how the District Court should handle jury demands.

Issues:

- ❖ No one knows how to handle jury demands. The process refers to civil rules that do not really apply here. District Court judges interpret the process differently, and this results in confusion.

- ❖ In the past, a demand for a jury trial automatically went to Circuit Court where that Court determined if it should grant a jury trial. Now, a preliminary decision is made by the District Court.
- ❖ Questions were raised about the need to have sanctions for frivolous cases reaching the Circuit Court. Sanctions did not seem to be relevant because a decision would be made by the District Court about sending a case to the Circuit Court for a jury trial.
- ❖ Discussion on time for filing centered on whether or not ten days was sufficient. Some members thought that filing should occur at the first scheduled appearance, not a specific number of days, because it was difficult to know when the clock began. Others thought that ten days was sufficient. A compromise was reached to make the time for filing the earlier of 15 days or the first scheduled appearance, or some longer time if all parties agreed.

Decision:

- ❖ A motion was made to adopt the following language. It was approved by a vote of 8 in favor, 2 opposed and 1 abstention.

Recommended Bill Language:

8-601.

ANY PARTY TO AN ACTION BROUGHT IN THE DISTRICT COURT UNDER THIS TITLE 8 IN WHICH THE AMOUNT IN CONTROVERSY MEETS THE REQUIREMENTS FOR A TRIAL BY JURY MAY, IN ACCORDANCE WITH THIS SUBSECTION, DEMAND A TRIAL BY JURY.

8-602.

A JURY DEMAND MUST BE MADE BY A WRITTEN PLEADING TITLED "JURY DEMAND." A JURY DEMAND UNDER THIS SUBSECTION SHALL BE FILED WITH THE COURT WITHIN:

(A) FIFTEEN DAYS OF POSTING IN THE EVENT OF POSTING OR 15 DAYS FROM SERVICE IN THE EVENT OF PERSONAL SERVICE; OR

(B) AT THE PARTIES' FIRST SCHEDULED APPEARANCE BEFORE THE COURT; WHICHEVER OCCURS SOONER, PROVIDED, HOWEVER,

(C) THAT THE TIME FOR FILING THE JURY DEMAND MAY BE EXTENDED BY AGREEMENT OF ALL PARTIES, THAT EXTENSION SHALL NOT BE LATER THAN A TRIAL IN THE ACTION.

8-603.

(A) A PROVISION CONTAINED WITHIN A RESIDENTIAL LEASE IN WHICH A TENANT IS OCCUPYING THE SPACE AS THAT TENANT'S PRIMARY RESIDENCE WHICH WAIVES A TRIAL BY JURY SHALL BE INVALID AND UNENFORCEABLE.

(B) A PROVISION IN ANY LEASE OTHER THAN THOSE SPECIFIED IN §8-603(A) WHICH WAIVES A TRIAL BY JURY SHALL BE VALID AND ENFORCEABLE.

8-604.

(A) A DEMAND FOR TRIAL BY JURY UNDER THIS SUBSECTION SHALL BE SUBJECT TO REVIEW BY THE DISTRICT COURT.

(B) IF THE JURY DEMAND IS FILED AT THE FIRST SCHEDULED APPEARANCE IN ACCORDANCE WITH §8-602(B), THEN ANY PARTY TO THE ACTION CONTESTING THE JURY DEMAND SHALL, AT THE FIRST SCHEDULED APPEARANCE, OBJECT TO THE JURY DEMAND AND DESCRIBE THE BASIS OF THE INVALIDITY OF THE JURY DEMAND.

(C) IF THE JURY DEMAND IS FILED AT A TIME OTHER THAN FIRST SCHEDULED APPEARANCE IN ACCORDANCE WITH §8-602(A) OR §8-602(C), THEN ANY OTHER PARTY TO THE ACTION CONTESTING THE VALIDITY OF THE JURY DEMAND SHALL FILE AN "OBJECTION TO JURY DEMAND" WITHIN 10 DAYS OF THE FILING OF THE JURY DEMAND WHICH SUCH OBJECTION SHALL DESCRIBE THE BASIS OF THE INVALIDITY OF THE JURY DEMAND, PROVIDED, HOWEVER, THAT THE "OBJECTION TO JURY DEMAND" SHALL BE FILED AT TRIAL IF THE TRIAL OCCURS PRIOR TO THE EXPIRATION OF THE PERIOD SET FORTH IN §602(A) OR THE JURY DEMAND IS FILED AT TRIAL IN ACCORDANCE WITH §8-602(C).

(D) IN THE EVENT THAT A JURY DEMAND AND AN "OBJECTION TO JURY DEMAND" IS FILED IN ACCORDANCE WITH §§8-602 AND 8-604:

(1) IF AN "OBJECTION TO JURY DEMAND" IS FILED UNDER §8-604(B), THE COURT SHALL CONSIDER THE VALIDITY OF THE JURY DEMAND AT THE TIME OF THE FIRST SCHEDULED APPEARANCE.

(2) IF AN "OBJECTION TO JURY DEMAND" IS FILED UNDER §8-604(C) AT A TIME OTHER THAN TRIAL, THE COURT SHALL SET THE OBJECTION IN FOR A HEARING.

(3) IF THE "OBJECTION TO JURY DEMAND" IS FILED AT THE TIME OF TRIAL UNDER §8-604(C), THE COURT SHALL CONSIDER THE VALIDITY OF THE JURY DEMAND AT TRIAL.

(4) IF THE FIRST SCHEDULED APPEARANCE IS SET PRIOR TO A HEARING DATE UNDER §8-604(D)(2), THEN THE "OBJECTION TO JURY DEMAND" SHALL BE CONSIDERED BY THE COURT AT THE FIRST SCHEDULED APPEARANCE AND THE HEARING DATE SHALL BE REMOVED.

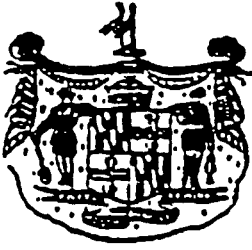
(E) IN THE EVENT A JURY DEMAND IS FILED PRIOR TO THE FIRST SCHEDULED APPEARANCE AND THE TIME FOR FILING AN OBJECTION UNDER 8-604(C) SHALL NOT HAVE EXPIRED PRIOR TO THE FIRST SCHEDULED APPEARANCE, AND ALL OTHER PARTIES TO THE ACTION FILE A "NON-OBJECTION TO JURY DEMAND" AT LEAST ONE DAY PRIOR TO THE FIRST SCHEDULED APPEARANCE, OR IF THE TIME FOR FILING AN OBJECTION UNDER 8-604(C) SHALL HAVE EXPIRED PRIOR TO THE FIRST SCHEDULED APPEARANCE AND NO OBJECTION HAVING BEEN FILED, THEN THE ACTION SHALL BE REMOVED FROM THE DOCKET AND TRANSFERRED TO THE CIRCUIT COURT.

(F) IN THE EVENT THAT A JURY DEMAND IS MADE UNDER THIS SUBSECTION, THE DISTRICT COURT SHALL NOT BE DIVESTED OF JURISDICTION AND THE MATTER SHALL NOT BE REMOVED TO THE CIRCUIT COURT UNTIL SUCH TIME AS THE DISTRICT COURT HAS REVIEWED THE JURY DEMAND, PROVIDED, HOWEVER, THAT ANY HEARING ON THE

VALIDITY OF A JURY DEMAND UNDER THIS SUBSECTION MUST OCCUR WITHIN 30 DAYS OF THE DATE OF JURY DEMAND.

(G) THE DISTRICT COURT'S REVIEW OF THE VALIDITY OF A JURY DEMAND SHALL BE LIMITED TO: TIMELINESS OF THE JURY DEMAND, THE AMOUNT IN CONTROVERSY AND THE EXISTENCE OF A VALID WAIVER. IN THE EVENT THAT THE DISTRICT COURT FINDS THAT THE JURY DEMAND IS INVALID, THE MATTER SHALL PROCEED IN THE DISTRICT COURT; HOWEVER, UPON CONCLUSION OF THE DISTRICT COURT TRIAL ANY PARTY FILING A JURY DEMAND DETERMINED INVALID BY THE COURT MAY INCLUDE THE VALIDITY OF THE JURY DEMAND IN AN APPEAL, AS SET FORTH UNDER THESE RULES.

APPENDIX A



The State of Maryland
Executive Department

EXECUTIVE ORDER

01.01.1998.27

Commission to Review Landlord-Tenant Laws

(Amends Executive Order 01.01.1998.16)

- WHEREAS, Governor Marvin Mandel created a Landlord-Tenant Laws Study Commission in 1970 to study State and local laws, regulations and ordinances in the area of landlord-tenant law, and to formulate an all-encompassing revision and consolidation of landlord-tenant law in the State;
- WHEREAS, The successor to the Landlord-Tenant Laws Study Commission was the Governor's Advisory Council on Landlord Tenant Affairs which was created in September 1990 by Governor William Donald Schaefer to advise the Governor on landlord and tenant issues, but ceased operating in December 1993;
- WHEREAS, The Commission and the Council served an important role in identifying and analyzing problems in the State's landlord-tenant laws;
- WHEREAS, Further review of the State's landlord-tenant laws is necessary, including the review of procedures to resolve problems in landlord-tenant affairs, time frames for legal actions and the handling of financial transactions; and
- WHEREAS, A new Commission consisting of representatives from landlord and tenant organizations, State and local government, industry and citizens meeting to review and improve Maryland's landlord-tenant laws will benefit all of the citizens of the State.
- NOW, THEREFORE, I, PARRIS N. GLENDENING, GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND THE LAWS OF MARYLAND, HEREBY PROCLAIM THE FOLLOWING ORDER, EFFECTIVE IMMEDIATELY:

A. There is a Commission to Review Landlord-Tenant Laws.

B. The membership shall consist of:

(1) One member of the Senate of Maryland appointed by the President of the Senate;

(2) One member of the House of Delegates appointed by the Speaker of the House;

(3) One member of the judiciary appointed by the Chief Judge of the Maryland Court of Appeals;

(4) The Secretary of Housing and Community Development or designee;

(5) The Attorney General or his designee; and

(6) Up to [twelve] FOURTEEN members appointed by the Governor with knowledge of landlord-tenant issues, including representatives of:

(a) Landlords with an inventory of 25 or less units;

(b) Landlords with an inventory of 25 or more units;

(c) Tenants;

(d) Municipal and county governments;

(e) Legal community;

(f) Financial community; and

(g) Any other group with relevant knowledge and experience in the issues.

(7) The members appointed by the Governor shall represent balance between landlord and tenant perspectives and represent various geographic areas of the State.

C. The Governor shall designate a chairperson from among the members of the Commission.

D. Members who are appointed by virtue of their office may designate, in writing, an alternate to represent them on the Commission and exercise their power to vote.

E. The Governor may remove any member of the Commission for any cause adversely affecting the member's ability or willingness to perform the member's duties.

F. Scope. The duties of the Commission are:

(1) Review Title 8 of the Real Property Article of the Annotated Code of Maryland; and

(2) Provide recommendations to the Governor and the General Assembly for revisions needed to enhance the equity, efficiency and effectiveness of the landlord-tenant laws.

G. Procedures.

(1) The Commission shall meet at times and places to be determined by the members.

(2) The chairperson of the Commission may designate committees from among its members to address issues relating to the specific duties of the Commission and to consult as needed with other interested groups.

(3) A majority of members of the Commission shall constitute a quorum for the transaction of any business.

H. Staff support for the Commission to Review Landlord-Tenant Laws shall be provided by the Department of Housing and Community Development.

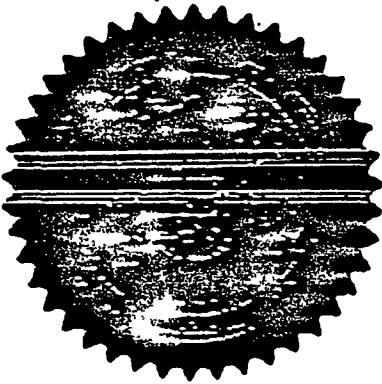
I. The members of the Commission may not receive any compensation for their services, but may receive reimbursement for reasonable expenses incurred in the performance of their duties in accordance with the State Standard Travel Regulations.

J. All departments and agencies of State government shall cooperate with the Commission and furnish information and such other assistance as may be necessary and available to further the purposes of this Order.

K. The Commission shall submit its final report to the Governor and the General Assembly including recommendations for revisions to the Annotated Code of Maryland as it relates to landlord-tenant laws on or before December 15, 1998.

L. This Executive Order shall terminate and be of no further effect after December 15, 1998.

GIVEN Under My Hand and the Great Seal of the State of Maryland, in the City of Annapolis, this 9th Day of November, 1998.




Parris N. Glendening
Governor

ATTEST:


John T. Willis
Secretary of State

APPENDIX B

Members of the Commission, Staff and Guests

Commission Members:

Gary G. Everngam, Esq., Chair
Schuman, Kane, Felts & Everngam, Chtd.
Montgomery County

Gary M. Brooks
NationsBank
Baltimore City

Henderson J. Brown, IV, Esq.
District of Columbia Water & Sewer
Authority
Prince George's County

Honorable Josef B. Brown
District Court of Maryland for District 5
Prince George's County

Honorable Richard F. Colburn
Senate of Maryland
Dorchester County

Krista E. Chell
Montgomery County

Charlene Y. Edmonds
Frederick County

Glenn C. Etelson, Esq.
Conroy, Ballman & Dameron
Montgomery County

James H. Haynes, Ph.D.
Haynes Properties, Inc.
Baltimore City

David H. Hillman
Southern Management Corporation
Vienna, Virginia

J. Jeffrey Hutter, Sr.
TWR Communications
Allegany County

Honorable Perry L. Jones, Jr.
Mayor of Union Bridge
Carroll County

Honorable Carolyn J. Krysiak
Maryland House of Delegates
Baltimore City

Gertrude E. McGowan
Anne Arundel County

John H. Nethercut, Esq.
Consumer Protection Division
Office of the Attorney General
Baltimore City

Patricia Rynn Sylvester
Maryland Department of Housing and
Community Development
Howard County

Honorable Rochelle Spector
Baltimore City Council
Baltimore City

Honorable Cornelius J. Vaughey
District Court of Maryland for District 6
Montgomery County

Kenneth M. Walden, Esq.
Public Justice Center
Baltimore City

Commission Staff:

(From the Maryland Department of
Housing and Community Development)

Robert P. Goodman, Ph.D.
Director of Research

Jay Spies, Esq.
Special Assistant to the Secretary

Kevin J. Leonard, Esq.
Assistant Attorney General

Guests:

Terri Cooke
Legal Aid Bureau

Michael Gisriel
Maryland Multi-Housing Association

Daniel Hatcher
Legal Aid Bureau

Lesa Hoover
Apartment Owners and Builders Association

Katherine Howard
Maryland Multi-Housing Association

Franklin Johnson
Legal Aid Bureau

Ruth Ann Norton
Coalition to End Childhood Lead Poisoning

Charles Piccinni
Property Owners Association

Alfred Singer
Property Owners Association

G. Wesley Stewart
Coalition to End Childhood Lead Poisoning

Michael Winer
Southern Management Corporation

A BILL ENTITLED

AN ACT concerning

Real Property — Landlord-Tenant Actions

FOR the purpose of revising Title 8 of the Real Property Article of the Annotated Code of Maryland, entitled, “Landlord and Tenant”; clarifying the rent escrow procedures to be followed in certain landlord-tenant actions; providing miscellaneous requirements for lease option agreements, security deposits, landlords’ receipts, and residential leases; clarifying the procedures to be followed in instances of retaliatory evictions; providing for the termination of certain residential leases upon a tenant’s involuntary employment transfer, illness, or disability; authorizing the District Court to award certain late fees and additional accruing installments of rent in certain summary ejectment actions; authorizing the District Court to enter judgments for unpaid rent under certain circumstances in certain tenant holding over actions; authorizing a tenant who has not been personally served with a summons to make a limited appearance in certain landlord-tenant actions without becoming subject to the personal jurisdiction of the court; providing that the acceptance of rent under certain circumstances shall not constitute a waiver of certain rights absent a specific written agreement to the contrary; defining certain terms; establishing procedures to be followed in wrongful detainer actions; providing a cause of action for the wrongful eviction of a tenant; establishing procedures to be followed where the title to real property is claimed to be disputed in a landlord-tenant action; clarifying the procedures to be followed when a party in certain landlord-tenant actions elects a trial by jury; authorizing the District Court to exercise injunctive powers in certain landlord-tenant actions; and generally relating to the rights and obligations of landlords and tenants and actions involving landlord and tenant.

BY repealing and reenacting, with amendments,

Article - Real Property

Section 8-118, 8-202, 8-203, 8-205, 8-208, 8-208.1, 8-210, 8-212.1, 8-213, 8-401, 8-402, 8-402.1 and 8-403

Annotated Code of Maryland

(1996 Replacement Volume and 1998 Supplement)

BY adding,

Article - Real Property

Section 8-118.1, 8-203.2, 8-402.3, 8-402.4, 8-406 and 8-601 through 8-604, inclusive

Annotated Code of Maryland

(1996 Replacement Volume and 1998 Supplement)

BY repealing,

Article - Real Property

Section 8-203.1

Annotated Code of Maryland

(1996 Replacement Volume and 1998 Supplement)

BY repealing and reenacting, with amendments,
Article - Courts and Judicial Proceedings
Section 4-401
Annotated Code of Maryland
(1998 Replacement Volume)

-----Circle as appropriate-----

- | | |
|---------------------------------------|--|
| (ed) October 1 effective date | (sev) severability clause |
| (eed) emergency effective date | (sii) salary increase not to affect
incumbent |
| (aed) abnormal effective date : _____ | Office _____ |

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

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 **IMMEDIATELY** shall enter an order directing the tenant or anyone holding under the tenant to pay all rents as they come due during the pendency of the action, as prescribed in subsection (b) of this section. **THE ORDER SHALL REQUIRE THE RENT TO BE PAID AS AND WHEN DUE UNDER THE LEASE STARTING WITH THE NEXT RENT DUE DATE AFTER THE ACTION WAS FILED.**

(b) The District Court shall order that the rents be paid:

(1) into the registry of an escrow account of:

[(1)] (I) The clerk of the circuit court; or

[(2)] (II) 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; **OR**

(2) **TO THE LANDLORD IF BOTH THE TENANT AND LANDLORD AGREE OR AT THE DISCRETION OF THE DISTRICT COURT.**

(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 as it comes due pursuant to the terms of the order, the circuit court, on motion of the landlord and certification of the clerk, **THE LANDLORD**, or agency of the status of the account, shall conduct a hearing within 30 days.

(2) [At the hearing the landlord must show that the escrow order is valid and that the tenant has failed to comply with the order.] **THE DISTRICT COURT'S ESCROW ORDER AND THE CLERK'S CERTIFICATION ARE PRESUMED TO BE VALID.**

(3) The tenant may dispute the validity or terms of the District Court's escrow order or raise any other defense[, including any legal justification,] to the tenant's alleged noncompliance with the order.

(4) If the circuit court determines that the [landlord has sustained the burden of showing that the escrow order is valid and that the tenant,] **FAILURE TO PAY IS** without [cause] **LEGAL JUSTIFICATION**, [has failed to comply with the District Court's order,] the court may treat the

tenant's prayer for jury trial as waived, and can either immediately conduct a nonjury trial or set the matter for a future nonjury trial on the merits of the landlord's claim.

(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.

8-118.1.

(A) IN AN ACTION UNDER § 8-402.3 OF THIS TITLE IN WHICH A PARTY PRAYS A JURY TRIAL, THE DISTRICT COURT IMMEDIATELY SHALL ENTER AN ORDER DIRECTING THE PERSON OR ENTITY IN POSSESSION TO PAY THE MONTHLY FAIR RENTAL VALUE OF THE PREMISES THAT IS SUBJECT TO THE ACTION, OR SUCH OTHER AMOUNT AS THE COURT MAY DETERMINE IS PROPER, STARTING AS OF THE DATE THE ACTION WAS FILED, AS REQUIRED IN SUBSECTION (B) OF THIS SECTION. THE ORDER SHALL REQUIRE THE AMOUNT DETERMINED BY THE COURT TO BE PAID WITHIN 5 DAYS OF THE DATE OF THE ORDER.

(B) THE DISTRICT COURT SHALL ORDER THAT THE AMOUNT DETERMINED BY THE COURT BE PAID:

(1) INTO THE REGISTRY OF AN ESCROW ACCOUNT OF THE CLERK OF THE CIRCUIT COURT; OR

(2) TO THE PLAINTIFF IF BOTH THE DEFENDANT AND THE PLAINTIFF AGREE OR AT THE DISCRETION OF THE DISTRICT COURT.

(C) (1) IF THE PERSON OR ENTITY FAILS TO PAY UNDER THE TERMS OF THE ORDER, THE CIRCUIT COURT, ON MOTION OF THE PERSON OR ENTITY CLAIMING POSSESSION AND CERTIFICATION OF THE CLERK OR THE PLAINTIFF, IF THE PAYMENT IS MADE TO THE PLAINTIFF, OF THE STATUS OF THE ACCOUNT, SHALL CONDUCT A HEARING WITHIN 30 DAYS.

(2) THE DISTRICT COURT'S ESCROW ORDER AND THE CLERK'S CERTIFICATION ARE PRESUMED TO BE VALID.

(3) THE PERSON OR ENTITY IN POSSESSION MAY DISPUTE THE VALIDITY OR TERMS OF THE DISTRICT COURT'S ESCROW ORDER OR RAISE ANY OTHER DEFENSE TO THE PERSON'S ALLEGED NONCOMPLIANCE WITH THE ORDER.

(D) IF THE CIRCUIT COURT DETERMINES THAT THE FAILURE TO PAY IS WITHOUT LEGAL JUSTIFICATION, THE COURT MAY TREAT THE PERSON OR ENTITY IN POSSESSION'S PRAYER FOR JURY TRIAL AS WAIVED, AND CAN

IMMEDIATELY CONDUCT A NONJURY TRIAL OR SET THE MATTER FOR A FUTURE NONJURY TRIAL ON THE MERITS OF THE CLAIM OF THE PERSON OR ENTITY CLAIMING POSSESSION. IF THE CIRCUIT COURT, ON MOTION DETERMINES THAT EITHER PARTY IS ENTITLED TO POSSESSION AS A MATTER OF LAW, THE COURT SHALL ENTER A JUDGMENT IN FAVOR OF THAT PARTY FOR POSSESSION OF THE PROPERTY AND FOR ANY OTHER APPROPRIATE RELIEF.

(E) UPON FINAL DISPOSITION OF THE ACTION, THE CIRCUIT COURT SHALL ORDER DISTRIBUTION OF THE ESCROW ACCOUNT IN ACCORDANCE WITH THE JUDGMENT. IF NO JUDGMENT IS ENTERED, THE CIRCUIT COURT SHALL ORDER DISTRIBUTION TO THE PARTY ENTITLED TO THE ESCROW ACCOUNT AFTER HEARING.

8-202.

(a) For the purposes of this section, a "lease option agreement" means any [lease agreement containing a] clause **IN A LEASE AGREEMENT OR SEPARATE DOCUMENT** that confers on the tenant some power, either qualified or unqualified, to purchase the landlord's interest in the property.

(b) [No] A lease option agreement to purchase improved residential property, with or without a ground rent, executed after July 1, 1971 [is valid, unless it contains] **SHALL CONTAIN** a statement in capital letters: **THIS IS NOT A CONTRACT TO BUY**. In addition, the agreement shall contain a clear statement of its purpose and effect with respect to the ultimate purchase of the property which is the subject of the lease option.

(C) IF A LEASE OPTION AGREEMENT FAILS TO COMPLY WITH SUBSECTION (B) OF THIS SECTION AND IS OTHERWISE ENFORCEABLE, THE LEASE, THE LEASE OPTION AGREEMENT, OR BOTH MAY BE VOIDED AT THE OPTION OF THE PARTY THAT DID NOT DRAFT THE LEASE OPTION AGREEMENT.

8-203.

(a) In this section **THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

(1) **"LANDLORD" MEANS A LANDLORD OR A PROSPECTIVE LANDLORD.**

(2) **"SECURITY ["security] deposit" means any payment of money, including payment of the last month's rent in advance of the time it is due, given to a landlord by a tenant in order to protect the landlord against nonpayment of rent or damage to the leased premises, COMMON AREAS, MAJOR APPLIANCES AND FURNISHINGS.**

(3) "TENANT" MEANS A TENANT OR A PROSPECTIVE TENANT.

(b) (1) A landlord may not impose a security deposit in excess of the equivalent of two months' rent[, or \$50, whichever is greater,] per dwelling unit, regardless of the number of tenants.

(2) If a landlord charges more than the equivalent of two months' rent[, or \$50, whichever is greater,] per dwelling unit as a security deposit, the tenant may recover up to threefold the extra amount charged, plus reasonable attorney's fees.

(3) An action under this section may be brought at any time during the tenancy or within two years after its termination.

(c) [(1)] The landlord shall give the tenant a receipt for the security deposit. The receipt may be included in a written lease.

[(2)] The landlord shall be liable to the tenant in the sum of \$25 if the landlord fails to provide a written receipt for the security deposit.

(3) The receipt or lease shall contain language informing the tenant of his rights under this section to receive from the landlord a written list of all existing damages if the tenant makes a written request of the landlord within 15 days of the tenant's occupancy.]

(d) [(1)] If the landlord imposes a security deposit, on written request, he promptly shall provide the tenant with a written list of all existing damages. The request must be made within 15 days of the tenant's occupancy.

(2) Failure to provide the tenant with this written statement renders the landlord liable to the tenant for threefold the amount of the security deposit. The total amount of damages shall be subject to a setoff for damages and unpaid rent which reasonably could be withheld under this section.

(e) (1) The landlord shall maintain all security deposits in a [banking or savings] **FEDERALLY INSURED FINANCIAL** institution, **AS DEFINED IN §1-101 OF THE FINANCIAL INSTITUTIONS ARTICLE, WHICH DOES BUSINESS** in the State. The account shall be **MAINTAINED AT A BRANCH OF THE FINANCIAL INSTITUTION WHICH IS LOCATED WITHIN THE STATE AND SHALL BE** devoted exclusively to security deposits and bear interest. **A SECURITY DEPOSIT SHALL BE DEPOSITED IN THE ACCOUNT WITHIN 30 DAYS AFTER THE LANDLORD RECEIVES IT. THE ACCOUNT SHALL BE SUFFICIENTLY LARGE TO COVER ALL SECURITY DEPOSITS AND ACCRUED INTEREST FOR WHICH THE LANDLORD IS LIABLE.**

(2) [A security deposit shall be deposited in the account within 30 days after the landlord receives it.] **IN LIEU OF THE ACCOUNT DESCRIBED IN SUBSECTION (E)(1) OF THIS SECTION, THE LANDLORD MAY HOLD THE SECURITY DEPOSIT IN AN INSURED CERTIFICATE OF DEPOSIT AT A BRANCH OF A FEDERALLY INSURED FINANCIAL INSTITUTION, AS DEFINED IN §1-101 OF THE FINANCIAL INSTITUTIONS ARTICLE,**

LOCATED IN THE STATE OR IN A SECURITY ISSUED BY THE FEDERAL GOVERNMENT OR THE STATE OF MARYLAND. THE CERTIFICATE OF DEPOSIT OR SECURITY SHALL BE SUFFICIENTLY LARGE TO COVER ALL SECURITY DEPOSITS AND ACCRUED INTEREST FOR WHICH THE LANDLORD IS LIABLE.

(3) In the event of sale or transfer of [any sort, including receivership or bankruptcy, the security deposit is binding on the successor in interest to the person to whom the deposit is given. Security deposits are free from any attachment by creditors] **THE LANDLORD'S INTEREST IN THE LEASED PREMISES, INCLUDING RECEIVERSHIP OR BANKRUPTCY:**

(I) THE LANDLORD OR THE LANDLORD'S ESTATE SHALL REMAIN LIABLE TO THE TENANT AND THE TRANSFEREE FOR MAINTENANCE OF THE SECURITY DEPOSIT AS REQUIRED BY LAW, AND THE WITHHOLDING AND RETURN OF SECURITY DEPOSIT PLUS INTEREST AS REQUIRED BY LAW, AS TO ALL OR ANY PORTION OF THE SECURITY DEPOSIT THAT THE LANDLORD FAILS TO DELIVER TO THE TRANSFEREE TOGETHER WITH AN ACCOUNTING SHOWING THE AMOUNT AND DATE OF THE ORIGINAL DEPOSIT, THE RECORDS OF THE INTEREST RATES APPLICABLE TO THE SECURITY DEPOSIT, IF ANY, THE NAME AND LAST KNOWN ADDRESS OF THE TENANT FROM, OR ON WHOSE BEHALF THE DEPOSIT WAS RECEIVED, A CALCULATION OF INTEREST THAT IS PAYABLE TO THE TENANT AS OF THE DATE OF TRANSFER AND A COPY OF ANY LIST OF DAMAGES THAT WAS PROVIDED TO THE TENANT FOR ANY TENANT WHOSE TENANCY TERMINATED WITHIN ONE YEAR PRIOR TO THE DATE OF TRANSFER.

(II) THE TRANSFEREE SHALL BE LIABLE TO THE TENANT FOR THE SECURITY DEPOSIT THAT THIS SECTION REQUIRES TO BE TRANSFERRED, WHETHER OR NOT IT IS ACTUALLY RECEIVED FROM THE LANDLORD.

(4) Any successor in interest is liable to the tenant for failure to return the security deposit, together with interest, as provided in this section.

~~[(f)](E)~~ (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, less any damages rightfully withheld.

(2) Interest shall accrue at six-month intervals from the day the tenant gives the landlord the security deposit. Interest is not compounded.

(3) Interest shall be payable only on security deposits of \$50 or more.

(4) If the landlord, without a reasonable basis, fails to return any part of the security deposit, plus accrued interest, within 45 days after the termination of the tenancy, the tenant has an action of up to threefold of the withheld amount, plus reasonable attorney's fees.

~~[(g)](F)~~ (1) The security deposit, or any portion thereof, may be withheld for unpaid rent, damage due to breach of lease or for damage **BY THE TENANT OR THE TENANT'S FAMILY,**

AGENTS, EMPLOYEES, GUESTS OR INVITEES IN EXCESS OF ORDINARY WEAR AND TEAR to the leased premises [by the tenant, his family, agents, employees, or social guests in excess of ordinary wear and tear], **COMMON AREAS, MAJOR APPLIANCES AND FURNISHINGS OWNED BY THE LANDLORD**. The tenant has the right to be present when the landlord or [his]THE LANDLORD'S agent inspects the premises in order to determine if any damage was done to the premises, if the tenant notifies the landlord by [certified]FIRST CLASS mail of [his]THE TENANT'S intention to move, the date of moving, and [his]THE TENANT'S new address. The notice to be furnished by the tenant to the landlord shall be mailed at least 15 days prior to the date of moving. Upon receipt of the notice, the landlord shall notify the tenant by [certified]FIRST CLASS mail of the time and date when the premises are to be inspected. The date of inspection shall occur within five days before or five days after the date of moving as designated in the tenant's notice. The tenant shall be advised of [his]THE TENANT'S rights under this subsection in writing at the time of [his]THE TENANT'S payment of the security deposit. Failure by the landlord to comply with this requirement forfeits the right of the landlord to withhold any part of the security deposit for damages.

(2) The security deposit is not liquidated damages and may not be forfeited to the landlord for breach of the rental agreement, except in the amount that the landlord is actually damaged by the breach.

(3) In calculating damages for lost future rents any amount of rents received by the landlord for the premises during the remainder if any, of the tenant's term, shall reduce the damages by a like amount.

[(h)](G) (1) If any portion of the security deposit is withheld, the landlord shall present by first-class mail directed to the last known address of the tenant, within [30]45 days after the termination of the tenancy, a written list of the damages claimed under subsection (g)(1) together with a statement of the cost actually incurred.

(2) If the landlord fails to comply with this requirement, he forfeits the right to withhold any part of the security deposit for damages.

[(i)](H) (1) The provisions of subsections **[(f)(1), (f)(4), (h)(1), and (h)(2)](E)(1), (E)(4), (G)(1), AND (G)(2)** are inapplicable to a tenant who has been evicted or ejected for breach of a condition or covenant of a lease prior to the termination of the tenancy or who has abandoned the premises prior to the termination of the tenancy.

(2) A tenant specified in paragraph (1) may demand return of the security deposit by giving written notice by first-class mail to the landlord within 45 days of being evicted or ejected or of abandoning the premises. The notice shall specify the tenant's new address. The landlord, within 30 days of receipt of such notice, shall present, by first-class mail to the tenant, a written list of the damages claimed under subsection **[(g)(1)](F)(1)** together with a statement of the costs actually incurred. Within 45 days of receipt of the notice, the landlord shall return to the tenant the security deposit together with simple interest which has accrued in the amount of 4 percent per annum, less any damages rightfully withheld.

(3) If a landlord fails to send the list of damages required by paragraph (2), the right to withhold any part of the security deposit for damages is forfeited. If a landlord fails to return the security deposit as required by paragraph (2), the tenant has an action of up to threefold of the withheld amount, plus reasonable attorney's fees.

(4) Except to the extent specified, this subsection may not be interpreted to alter the landlord's duties under subsections [(f) and (h)](E) AND (G).

[(j)](I) No provision of this section may be waived in any lease.

[8-203.1.

(a) After January 1, 1975, any landlord who offers more than 4 dwelling units for rent on one parcel of property or at one location and who rents by means of written leases, shall:

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

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

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

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

(b) No landlord subject to subsection (a) may embody any of the following provisions in any lease or form of lease and if any provision is embodied, it is against public policy and void:

(1) Any provision purporting to authorize the landlord to take possession of the premises or the tenant's personal property except pursuant to law; and

(2) Any provision purporting to permit a landlord to commence an eviction proceeding or issue a notice to quit solely and exclusively, without any other basis, as retaliation against any tenant for planning, organizing, or joining a tenant organization with the purpose of negotiating collectively with the landlord.

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

8-203.2.

(A) A RECEIPT FOR A SECURITY DEPOSIT SHALL NOTIFY THE TENANT OF THE FOLLOWING:

(1) THE RIGHT TO HAVE THE DWELLING UNIT INSPECTED BY THE LANDLORD IN THE TENANT'S PRESENCE FOR THE PURPOSE OF MAKING A WRITTEN LIST OF DAMAGES THAT EXIST AT THE COMMENCEMENT OF THE TENANCY IF THE TENANT SO REQUEST IN WRITING WITHIN 15 DAYS OF THE TENANT'S OCCUPANCY;

(2) THE RIGHT TO BE PRESENT WHEN THE LANDLORD INSPECTS THE PREMISES AT THE END OF THE TENANCY IN ORDER TO DETERMINE IF ANY DAMAGE WAS DONE TO THE PREMISES IF THE TENANT NOTIFIES THE LANDLORD IN WRITING AT LEAST 15 DAYS PRIOR TO THE DATE OF THE TENANT'S INTENDED MOVE, OF THE TENANT'S INTENTION TO MOVE, THE DATE OF MOVING, AND THE TENANT'S NEW ADDRESS;

(3) THE LANDLORD'S OBLIGATION TO CONDUCT THE INSPECTION WITHIN 5 DAYS BEFORE OR AFTER THE TENANT'S STATED DATE OF INTENDED MOVING;

(4) THE LANDLORD'S OBLIGATION TO NOTIFY THE TENANT IN WRITING OF THE DATE OF THE INSPECTION;

(5) THE TENANT'S RIGHT TO RECEIVE, BY FIRST CLASS MAIL, DELIVERED TO THE LAST KNOWN ADDRESS OF THE TENANT, A WRITTEN LIST OF THE CHARGES AGAINST THE SECURITY DEPOSIT CLAIMED BY THE LANDLORD AND THE ACTUAL COSTS, WITHIN 45 DAYS AFTER THE TERMINATION OF THE TENANCY;

(6) THE OBLIGATION OF THE LANDLORD TO RETURN ANY UNUSED PORTION OF THE SECURITY DEPOSIT, BY FIRST CLASS MAIL, ADDRESSED TO THE TENANT'S LAST KNOWN ADDRESS WITHIN 45 DAYS AFTER THE TERMINATION OF THE TENANCY; AND

(7) A STATEMENT THAT FAILURE OF THE LANDLORD TO COMPLY WITH THE SECURITY LAW MAY RESULT IN THE LANDLORD BEING LIABLE TO THE TENANT FOR A PENALTY OF UP TO 3 TIMES THE SECURITY DEPOSIT, PLUS REASONABLE ATTORNEY'S FEES.

(B) THE LANDLORD SHALL RETAIN A COPY OF THE RECEIPT FOR A PERIOD OF 2 YEARS AFTER THE TERMINATION OF THE TENANCY, ABANDONMENT OF THE PREMISES OR EVICTION OF THE TENANT, AS THE CASE MAY BE.

(C) THE LANDLORD SHALL BE LIABLE TO THE TENANT IN THE SUM OF \$25 IF THE LANDLORD FAILS TO PROVIDE A WRITTEN RECEIPT FOR THE SECURITY DEPOSIT.

8-205.

(a) In Anne Arundel County, unless the tenant makes payment by check or rents the property for commercial or business purposes, if property is leased for any definite term or at will, the landlord shall give the tenant a receipt showing payment and the time period which the payment covers. On conviction of violating this section, any person or agent shall forfeit the rent for the period in question.

(b) Except [in Anne Arundel County] **AS OTHERWISE PROVIDED IN THIS SUBSECTION (A) OF THIS SECTION**, [when the tenant makes payment in person, other than by check,] the landlord or landlord's agent shall give the tenant a receipt **IF THE TENANT:**

(1) **MAKES PAYMENT IN CASH; OR**

(2) **REQUESTS A RECEIPT.**

(C) IN ADDITION TO ANY OTHER PENALTY, THE LANDLORD SHALL BE LIABLE TO THE TENANT IN THE SUM OF \$25 IF THE LANDLORD FAILS TO PROVIDE A WRITTEN RECEIPT AS REQUIRED BY THIS SECTION.

8-208.

(a) (1) **AFTER SEPTEMBER 30, 1999, ANY LANDLORD WHO OFFERS 5 OR MORE DWELLING UNITS FOR RENT IN THE STATE MAY NOT RENT A UNIT WITHOUT USING A WRITTEN LEASE.**

(2) **IF A LANDLORD FAILS TO COMPLY WITH PARAGRAPH (1) OF THIS SUBSECTION, THE TERM OF THE TENANCY IS PRESUMED TO BE ONE YEAR FROM THE DATE OF THE TENANT'S FIRST OCCUPANCY UNLESS THE TENANT ELECTS TO END THE TENANCY AT AN EARLIER DATE.**

(B) A LANDLORD WHO RENTS USING A WRITTEN LEASE SHALL PROVIDE, UPON WRITTEN REQUEST FROM ANY PROSPECTIVE APPLICANT FOR A LEASE, A COPY OF THE PROPOSED FORM OF LEASE IN WRITING, COMPLETE IN EVERY MATERIAL DETAIL, EXCEPT FOR THE DATE, THE NAME AND ADDRESS OF THE TENANT, THE DESIGNATION OF THE PREMISES, AND THE RENTAL RATE, WITHOUT REQUIRING EXECUTION OF THE LEASE OR ANY PRIOR DEPOSIT.

(C) A LEASE SHALL INCLUDE:

(1) A STATEMENT THAT THE PREMISES WILL BE MADE AVAILABLE IN A CONDITION PERMITTING HABITATION, WITH REASONABLE SAFETY, IF THAT IS THE AGREEMENT, OR IF THAT IS NOT THE AGREEMENT, A STATEMENT OF THE AGREEMENT CONCERNING THE CONDITION OF THE PREMISES; AND

(2) THE LANDLORD'S AND THE TENANT'S SPECIFIC OBLIGATION AS TO HEAT, GAS, ELECTRICITY, WATER, AND REPAIR OF THE PREMISES.

(D) A [lease] LANDLORD may not [contain] INCLUDE IN A LEASE OR FORM OF LEASE any [of the following provisions]PROVISION THAT:

(1) [A provision whereby]HAS the tenant [authorizes]AUTHORIZE any person to confess judgment on a claim arising out of the lease[.];

(2) [A provision whereby]HAS the tenant [agrees]AGREE to waive or to forego any right or remedy provided by applicable law[.];

(3) [A provision providing]PROVIDES for a penalty for the late payment of rent in excess of 5% of the amount of rent due for the rental period for which the payment was delinquent[.]

(4) In the case of leases under which the rent is paid in weekly rental installments, PROVIDES FOR A LATE[a] penalty of MORE THAN \$3 [may be charged for the late payment of rent; however, these late penalties for rent paid under a lease providing for weekly rental installments shall constitute, in the aggregate, no] PER WEEK OR A TOTAL OF more than \$12 per month[.];

[(4)](5) [Any provision whereby]HAS the tenant [waives his]WAIVE THE right to a jury trial[.];

[(5)](6) [Any provision whereby]HAS the tenant [agrees]AGREE to a period required for landlord's notice to quit less than that provided by applicable law; provided, however, that neither party is prohibited hereby from agreeing to a longer notice period than that required by applicable law[.];

[(6)](7) [Any provision authorizing] AUTHORIZES the landlord to take possession of the leased premises, or the tenant's personal property [therein] unless the lease has been terminated by action of the parties or by operation of law, and [such]THE personal property has been abandoned by the tenant without the benefit of formal legal process[.];

[(7)](8) [Any provision that is deemed to be]IS against public policy and void pursuant to § 8-105; OR

(9) PERMITS A LANDLORD TO COMMENCE AN EVICTION PROCEEDING OR ISSUE A NOTICE TO QUIT SUBSTANTIALLY AS RETALIATION AGAINST ANY TENANT FOR PLANNING, ORGANIZING, OR JOINING A TENANT

ORGANIZATION WITH THE PURPOSE OF NEGOTIATING COLLECTIVELY WITH THE LANDLORD.

[(b))(E) (1) [If any]EXCEPT FOR A LEASE CONTAINING AN AUTOMATIC RENEWAL PERIOD OF ONE MONTH OR LESS, A lease [shall contain]THAT CONTAINS a provision calling for an automatic renewal of the lease term unless prior notice is given by the party or parties seeking to terminate the lease, [any such]SHALL HAVE THE provision [shall be] distinctly set apart from any other provision of the lease and provide a space for the written acknowledgement of THE tenant's agreement to the automatic renewal provision[, except leases containing an automatic renewal period of one (1) month or less].

(2) [Any such]AN AUTOMATIC RENEWAL provision THAT IS not specifically accompanied by either the tenant's initials, signature, or witnessed mark, [shall be]IS unenforceable by the landlord.

[(2))(F) No provision of this section shall be deemed to be a bar to the applicability of supplementary rights afforded by any public local law enacted by the General Assembly or any ordinance or local law enacted by any municipality or political subdivision of this State; provided, however, that no such law can diminish or limit any right or remedy granted under the provisions of this section.

[(c))(G) (1) Any lease provision which is prohibited by terms of this section shall be unenforceable by the landlord.

(2) If the landlord includes in any lease a provision prohibited by this section or made unenforceable by §§ 8-105 or 8-203 of this title, at any time subsequent to July 1, 1975, and tenders a lease containing such a provision or attempts to enforce or makes known to the tenant an intent to enforce any such provision, the tenant may recover any actual damages incurred as a reason thereof, including reasonable attorney's fees.

[(d))(H) If any word, phrase, clause, sentence, or any part or parts of this section shall be held unconstitutional by any court of competent jurisdiction such unconstitutionality shall not affect the validity of the remaining parts of this section.

8-208.1.

(a) No landlord shall evict a tenant of any residential property or arbitrarily increase the rent or decrease the services to which the tenant has been entitled for any of the following reasons:

(1) [Solely]SUBSTANTIALLY because the tenant or [his]THE TENANT'S agent has filed a written complaint, or complaints, with the landlord or with any public agency or agencies against the landlord; or

(2) [Solely]SUBSTANTIALLY because the tenant or [his]THE TENANT'S agent has filed a lawsuit, or lawsuits, against the landlord; or

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

(b) Evictions described in subsection (a) of this section shall be called "retaliatory evictions".

(c) **IF IN ANY EVICTION PROCEEDING THE COURT FINDS IN FAVOR OF A TENANT ON THE BASIS OF ANY OF THE AFOREMENTIONED RETALIATORY EVICTION DEFENSES, THEN, IF THE TENANT SO REQUESTS PRIOR TO THE ENTRY OF JUDGMENT, THE COURT SHALL ORDER THAT THE TENANT'S LEASE BE EXTENDED FOR A PERIOD OF NOT LESS THAN 6 MONTHS NOR MORE THAN 12 MONTHS FROM THE THEN CURRENT TERMINATION DATE OF THE LEASE, UPON THE SAME TERMS AND CONDITIONS AS EXISTED AS OF THE DATE OF THE INITIATION OF THE EVICTION PROCEEDING BY THE LANDLORD.**

(D) (1) If in any eviction proceeding the judgment be in favor of the tenant for any of the aforementioned defenses, the court may enter judgment for reasonable attorney fees and court costs against the landlord.

(2) **IF IN ANY EVICTION PROCEEDING THE COURT FINDS THAT A TENANT'S ASSERTION OF A RETALIATORY EVICTION DEFENSE WAS IN BAD FAITH OR WITHOUT SUBSTANTIAL JUSTIFICATION, THE COURT MAY ENTER JUDGMENT FOR REASONABLE ATTORNEY FEES AND COURT COSTS AGAINST THE TENANT.**

[(d)](E) The relief provided under this section is conditioned upon:

(1) In the case of tenancies measured by a period of one month or more, 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.

(2) In the case of [periodic tenancies measured by]TENANCIES REQUIRING the weekly payment of rent, 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, the court having not entered against the tenant 3 judgments of possession for rent due and unpaid.

[(e)](F) No eviction shall be deemed to be a "retaliatory eviction" for purposes of this section upon the expiration of a period of 6 months following the determination of the merits of the initial case by a court (or administrative agency) of competent jurisdiction.

[(f)](G) Nothing in this section may be interpreted to alter the landlord's or the tenant's rights [arising from breach of any provision of a lease, or either party's right] to terminate or not renew a [lease pursuant to the terms of the lease or the provisions of other applicable law]TENANCY GOVERNED BY A WRITTEN LEASE FOR A STATED TERM OF GREATER THAN ONE

MONTH AT THE EXPIRATION OF THE TERM OR AT SUCH OTHER TIME AS THE PARTIES MAY SPECIFICALLY AGREE.

[(g)](H) 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.

8-210.

(a) (1) The owner of any residential rental property shall post a sign in a conspicuous place on that property listing the name, address, and telephone number of:

(I) the owner of the property; [or]

(II) **THE CURRENT** management entity, if any; **AND**

(III) **THE PERSON AUTHORIZED TO ACCEPT SERVICE ON BEHALF OF THE OWNER.**

(2) [This] **THE** information **REQUIRED TO BE POSTED UNDER PARAGRAPH (1) OF THIS SUBSECTION** may be included in the written lease, if any, or in the rental receipt, in lieu of posting a sign.

(3) **IF A LANDLORD FAILS TO COMPLY WITH PARAGRAPHS (1) OR (2) OF THIS SUBSECTION, NOTICE SHALL BE DEEMED TO BE PROPER IF THE TENANT SENDS NOTICE TO THE PERSON TO WHOM RENT IS PAID AT THE ADDRESS WHERE THE RENT OR TAX BILL IS SENT.**

(b) (1) This subsection applies only in Montgomery County.

(2) In this subsection, "development" has the meaning provided in § 11B-101 of this article.

(3) Before execution by a tenant of a lease for an initial term of 125 days or more, the owner of any residential rental property within any condominium or development shall provide to the prospective tenant, to the extent applicable, a copy of the rules, declaration, and recorded covenants and restrictions that limit or affect the use and occupancy of the property or common areas and to which the owner is obligated. The written lease shall include a statement, if applicable, that the obligations of the owner that limit or affect the use and occupancy of the property are enforceable against the owner's tenant.

8-212.1.

(A) Notwithstanding any other provision of this title, if a person who is on active duty with the United States military enters into a residential lease of property and subsequently receives permanent change of station orders or temporary duty orders for a period in excess of 3 months, any liability of the person for rent under the lease may not exceed: (1) 30 days' rent after written notice and proof of the assignment is given to the landlord; and (2) the cost of repairing damage to the premises caused by an act or omission of the tenant.

(B) (1) FOLLOWING COMPLETION OF THE INITIAL TERM OF A LEASE, A TENANT MAY TERMINATE A TENANCY OF GREATER THAN ONE MONTH OR A TENANCY REQUIRING MORE THAN ONE MONTH'S NOTICE BY GIVING THE LANDLORD ONE MONTH'S WRITTEN NOTICE IF THE TENANT PROVIDES PROOF TO THE LANDLORD THAT THE TENANT:

(I) HAS BEEN INVOLUNTARILY TRANSFERRED BY THE TENANT'S EMPLOYER TO A LOCATION THAT REQUIRES A CHANGE IN RESIDENCE; OR

(II) HAS AN ILLNESS OR DISABILITY THAT SUBSTANTIALLY INTERFERES WITH THE TENANT'S ONGOING ABILITY TO LIVE INDEPENDENTLY AND NECESSITATES A MOVE FROM THE PROPERTY.

(2) AS A CONDITION TO ASSERTING RIGHTS UNDER THIS SUBSECTION, A TENANT MUST VACATE THE PREMISES ON OR BEFORE THE DATE SPECIFIED IN THE NOTICE TO THE LANDLORD.

(3) IN ADDITION TO RENT OWED THROUGH THE END OF THE NOTICE PERIOD, A TENANT WHO EXERCISES THE RIGHTS PROVIDED IN PARAGRAPH (1) OF THIS SUBSECTION, SHALL BE LIABLE TO THE LANDLORD FOR ONE MONTH'S RENT UNDER THE LEASE.

(4) NOTHING IN THIS SUBSECTION SHALL ALTER THE PARTIES' RIGHTS AND OBLIGATIONS WITH RESPECT TO THE CONDITION OF THE PREMISES OR THE WITHHOLDING AND RETURN OF ANY SECURITY DEPOSIT.

8-213.

(a) An application for a lease shall contain a statement which explains:

- (1) The liabilities which the tenant incurs upon signing the application; and
- (2) The provisions of subsections (b)[, (c), and (d)]AND (C) of this section.

(b) (1) If a landlord requires from a prospective tenant any fees other than a security deposit as defined by § 8-203(a) of this subtitle, and these fees exceed \$25, then the landlord shall return the fees, subject to the exceptions below, or be liable for twice the amount of the fees in damages. The return shall be made not later than 15 days following the date of occupancy or the written communication, by either party to the other, of a decision that no tenancy shall occur.

(2) The landlord may retain only that portion of the fees actually expended for a credit check or other expenses arising out of the application, and shall return that portion of the fees not actually expended on behalf of the tenant making application.

(c) [If, within 15 days of the first to occur of occupancy or signing a lease, a tenant decides to terminate the tenancy, the landlord may also retain that portion of the fees which represents the loss of rent, if any, resulting from the tenant's action.

(d)] This section does not apply to any landlord who offers four or less dwelling units for rent on one parcel of property or at one location, or to seasonal or condominium rentals.

8-401.

(a) 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.

(b) (1) Whenever any landlord shall desire to repossess any premises to which [he]THE LANDLORD is entitled under the provisions of subsection (a) of this section, [he]THE LANDLORD or [his]THE LANDLORD'S duly qualified agent or attorney shall make [his]THE LANDLORD'S written complaint under oath or affirmation, before the District Court of the county wherein the property is situated, describing in general terms the property sought to be repossessed, and also setting forth the name of the tenant to whom the property is rented or [his]THE TENANT'S assignee or subtenant with the amount of rent AND ANY LATE FEES due and unpaid; and praying by warrant to repossess the premises, together with judgment for the amount of rent due [and costs], COSTS AND ANY LATE FEES FOR THE PURPOSE OF THE COURT'S DETERMINATION UNDER SUBSECTION (C) OF THIS SECTION, THE LANDLORD SHALL ALSO SPECIFY THE AMOUNT OF RENT DUE FOR EACH RENTAL PERIOD UNDER THE LEASE, THE DAY THAT THE RENT IS DUE FOR EACH RENTAL PERIOD, AND ANY LATE FEES FOR OVERDUE RENT PAYMENTS. The District Court shall issue its summons, directed to any constable or sheriff of the county entitled to serve process, and ordering [him]THE CONSTABLE OR SHERIFF to notify by first-class mail the tenant, assignee, or subtenant to appear before the District Court at the trial to be held on the fifth day after the filing of the complaint, to answer the landlord's complaint to show cause why the prayer of the landlord should not be granted, and the constable or sheriff shall proceed to serve the summons upon the tenant, assignee or subtenant in the property or upon [his]THE TENANT'S, ASSIGNEE'S, OR SUBTENANT'S known or authorized agent, but if for any reason, neither the tenant, assignee or subtenant, nor [his]THE TENANT'S, ASSIGNEE'S, OR SUBTENANT'S agent, can be found, then the constable or sheriff shall affix an attested copy of the summons conspicuously upon the

property. The affixing of the summons upon the property after due notification to the tenant, assignee, or subtenant by first-class mail shall conclusively be presumed to be a sufficient service to all persons to support the entry of a default judgment for possession of the premises, together with court costs, in favor of the landlord, but it shall not be sufficient service to support a default judgment in favor of the landlord for the amount of rent due.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, in Wicomico County, in an action to repossess any premises under this section, service of process on a tenant may be directed to any person authorized under the Maryland Rules to serve process.

(c) (1) If, at the trial on the fifth day indicated in subsection (b) of this section, the court is satisfied that the interests of justice will be better served by an adjournment to enable either party to procure [his]THEIR necessary witnesses, [he]THE COURT may adjourn the trial for a period not exceeding one day, except that if the consent of all parties is obtained, the trial may be adjourned for a longer period of time.

(2) (I) If, when the trial occurs, it appears to the satisfaction of the court, that the rent, or any part of the rent[, is]AND LATE FEES ARE actually due and unpaid[, the court shall determine]:

1. IF THE TRIAL OCCURS WITHIN THE TIME SPECIFIED BY SECTION (B)(1), THE COURT SHALL DETERMINE the amount of rent AND LATE FEES due AS OF THE DATE THE COMPLAINT WAS FILED; OR IF THE TRIAL DOES NOT OCCUR WITHIN THE TIME SPECIFIED BY SECTION (B)(1) AND THE LANDLORD SO REQUESTS, THE COURT SHALL DETERMINE THE AMOUNT OF RENT AND LATE FEES DUE AS OF THE DATE OF THE JUDGMENT, INCLUDING RENT ACCRUING AFTER THE FILING OF THE COMPLAINT AND NOT MORE THAN ONE MONTH'S WORTH OF LATE FEES; and

2. EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH THE COURT SHALL, enter a judgment in favor of the landlord for possession of the premises.

(II) The court may also give judgment in favor of the landlord for the amount of rent determined to be due together with costs of the suit if the court finds that the actual service of process made on the defendant would have been sufficient to support a judgment in an action in contract or tort.

(3) The court, when entering the judgment, shall also order the tenant to yield and render possession of the premises to the landlord, or [his]THE LANDLORD'S agent or attorney, within 4 days after the trial.

(4) The court may, upon presentation of a certificate signed by a physician certifying that surrender of the premises within this 4-day period would endanger the health or life of the tenant or any other occupant of the premises, extend the time for surrender of the premises as justice may

require. However, the court may not extend the time for the surrender of the premises beyond 15 days after the trial.

(5) However, if the tenant, or someone for [him]THE TENANT, at the trial, or adjournment of the trial, tenders to the landlord the rent determined by the court to be due and unpaid, together with the costs of the suit, the complaint against the tenant shall be entered as being satisfied.

(d) (1) Subject to the provisions of paragraph (2) of this subsection, if judgment is given in favor of the landlord, and the tenant fails to comply with the requirements of the order within 4 days, the court shall, at any time after the expiration of the 4 days, issue its warrant, directed to any official of the county entitled to serve process, ordering [him]THE OFFICIAL to cause the landlord to have again and repossess the property by putting [him]THE LANDLORD (or [his]THE LANDLORD'S duly qualified agent or attorney for [his]THE LANDLORD'S benefit) in possession thereof, and for that purpose to remove from the property, by force if necessary, all the furniture, implements, tools, goods, effects or other chattels of every description whatsoever belonging to the tenant, or to any person claiming or holding by or under said tenant. If the landlord does not order a warrant of restitution within sixty days from the date of judgment or from the expiration date of any stay of execution, whichever shall be the later, the judgment for possession shall be stricken.

(2) (i) The administrative judge of any district may stay the execution of a warrant of restitution of a residential property, from day to day, in the event of extreme weather conditions.

(ii) When a stay has been granted under this paragraph, the execution of the warrant of restitution for which the stay has been granted shall be given priority when the extreme weather conditions cease.

(e) In any action of summary ejectment for failure to pay rent where the landlord is awarded a judgment giving [him]THE LANDLORD 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]THE LANDLORD'S agent all past due rent and late fees, **AS DETERMINED BY THE COURT UNDER SUBSECTION (C) OF THIS SECTION**, plus all court awarded costs and fees, at any time before actual execution of the eviction order. This subsection does not apply to any tenant against whom 3 judgments of possession have been entered for rent due and unpaid in the 12 months prior to the initiation of the action to which this subsection otherwise would apply.

(f) The tenant or the landlord may appeal from the judgment of the District Court to the circuit court for any county at any time within 4 days from the rendition of the judgment. The tenant, in order to stay any execution of the judgment, shall give a bond to the landlord with one or more sureties, who are owners of sufficient property in the State of Maryland, with condition to prosecute the appeal with effect, and answer to the landlord in all costs and damages mentioned in the judgment, and such other damages as shall be incurred and sustained by reason of the appeal. The bond shall not affect in any manner the right of the landlord to proceed against the tenant, assignee or subtenant for any and all rents that may become due and payable to the landlord after the rendition of the judgment.

8-402.

(a) (1) A tenant under any lease or someone holding under [him]THE TENANT, who shall unlawfully hold over beyond the termination of the lease, shall be liable to the landlord for the actual damages caused by the holding over.

(2) The damages awarded to a landlord against the tenant or someone holding under [him]THE TENANT, may not be less than the apportioned rent for the period of holdover at the rate under the lease.

(3) Any action to recover damages under this section may be brought by suit separate from the eviction or removal proceeding or in the same action and in any court having jurisdiction over the amount in issue. **THE COURT MAY ALSO GIVE JUDGMENT IN FAVOR OF THE LANDLORD FOR THE AMOUNT OF RENT DETERMINED TO BE DUE TOGETHER WITH COSTS OF THE SUIT IF THE COURT FINDS THAT THE RESIDENTIAL TENANT WAS PERSONALLY SERVED WITH A SUMMONS, OR, IN THE CASE OF ANY OTHER TENANCY, THERE WAS SUCH SERVICE OF PROCESS OR SUBMISSION TO THE JURISDICTION OF THE COURT AS WOULD SUPPORT A JUDGMENT IN CONTRACT OR TORT. A TENANT, OTHER THAN A RESIDENTIAL TENANT, WHO WAS NOT PERSONALLY SERVED WITH A SUMMONS SHALL NOT BE SUBJECT TO PERSONAL JURISDICTION OF THE COURT IF THAT TENANT ASSERTS THAT THE APPEARANCE IS FOR THE PURPOSE OF DEFENDING AN IN REM ACTION PRIOR TO THE TIME THAT EVIDENCE IS TAKEN BY THE COURT.**

(4) Nothing contained herein is intended to limit any other remedies which a landlord may have against a holdover tenant under the lease or under applicable law.

(b) (1) (i) Where any interest in property shall be leased for any definite term or at will, and the landlord shall desire to repossess the property after the expiration of the term for which it was leased and shall give notice in writing one month before the expiration of the term or determination of the will to the tenant or to the person actually in possession of the property to remove from the property at the end of the term, and if the tenant or person in actual possession shall refuse to comply, the landlord may make complaint in writing to the District Court of the county where the property is located.

(ii) The court shall issue a summons directed to any constable or sheriff of the county entitled to serve process, ordering the constable or sheriff to notify the tenant, assignee, or subtenant to appear on a day stated in the summons before the court to show cause why restitution should not be made to the landlord. 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. If, for any reason those persons 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.

(iii) Upon the failure of either of the parties to appear before the court on the day stated in the summons, the court may continue the case to a day not less than six nor more than ten days after the day first stated and notify the parties of the continuance.

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

(3) If the tenant or person in possession shall allege that the title to the leased property is disputed and claimed by some person whom he shall name, by virtue of a right or title accruing or happening since the commencement of the lease, by descent or deed from or by devise under the last will or testament of the landlord, and if thereupon the person so claiming shall forthwith appear, or upon a summons to be immediately issued by the District Court and, made returnable within six days next following, shall appear before the court and shall, under oath, declare that he believes that he is entitled in manner aforesaid to the leased property and shall, with two sufficient securities, enter into bond to the plaintiff, in such sum as the court shall think is a proper and reasonable security to said plaintiff or parties in interest, to prosecute with effect his claim at the next term of the circuit court for the county, then the District Court shall forbear to give judgment for restitution and costs. If the said claim shall not be prosecuted as aforesaid, the District Court shall proceed to give judgment for restitution and costs and issue its warrant within ten days after the end of said term of court.

(4) (i) The provisions of § 8-402(b) shall apply to all cases of tenancies from year to year, tenancies of the month and by the week. In case of tenancies from year to year (including tobacco farm tenancies), notice in writing shall be given three months before the expiration of the current year of the tenancy, except that in case of all other farm tenancies, the notice shall be given six months before the expiration of the current year of the tenancy; and in monthly or weekly

tenancies, a notice in writing of one month or one week, as the case may be, shall be so given[; and the same proceeding shall apply, so far as may be, to cases of forcible entry and detainer].

(ii) This paragraph [(4)](3), so far as it relates to notices, does not apply in Baltimore City.

(iii) In Montgomery County, except in the case of single family dwellings, the notice by the landlord shall be two months in the case of residential tenancies with a term of at least month to month but less than from year to year.

[(5)](4) When the tenant shall give notice by parol to the landlord or to [his]THE LANDLORD'S agent or representatives, at least one month before the expiration of the lease or tenancy in all cases except in cases of tenancies from year to year, and at least three months' notice in all cases of tenancy from year to year (except in all cases of farm tenancy, the notice shall be six months), of the intention of the tenant to remove at the end of that year and to surrender possession of the property at that time, and the landlord, [his]THE LANDLORD'S agent, or representative shall prove the notice from the tenant by competent testimony, it shall not be necessary for the landlord, [his]THE LANDLORD'S agent or representative to provide a written notice to the tenant, but the proof of such notice from the tenant as aforesaid shall entitle [his]THE landlord to recover possession of the property hereunder. This subparagraph shall not apply in Baltimore City.

(5) ACCEPTANCE OF RENT AFTER NOTICE BUT BEFORE EVICTION SHALL NOT OPERATE AS A WAIVER OF ANY NOTICE TO QUIT, NOTICE OF INTENT TO VACATE OR ANY JUDGMENT FOR POSSESSION UNLESS THE PARTIES SPECIFICALLY OTHERWISE AGREE IN WRITING. ANY RENT ACCEPTED SHALL BE FIRST APPLIED TO THE RENT OR THE EQUIVALENT OF RENT APPORTIONED TO THE DATE THAT THE LANDLORD ACTUALLY RECOVERS POSSESSION OF THE PREMISES, THEN TO COURT COSTS, INCLUDING COURT AWARDED DAMAGES AND LEGAL FEES AND THEN TO ANY LOSS OF RENT CAUSED BY THE HOLDOVER. ANY PAYMENT WHICH IS ACCEPTED IN EXCESS OF THE FOREGOING SHALL NOT BEAR INTEREST BUT WILL BE RETURNED TO THE TENANT IN THE SAME MANNER AS SECURITY DEPOSITS UNDER § 8-203 BUT SHALL NOT BE SUBJECT TO THE PENALTIES OF THAT SECTION.

(c) Unless stated otherwise in the written lease and initialed by the tenant, when a landlord consents to a holdover tenant remaining on the premises, the holdover tenant becomes a periodic week-to-week tenant if [he]THE TENANT was a week-to-week tenant before [his]THE TENANT'S holding over, and a periodic month-to-month tenant in all other cases.

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 refuses to comply, the landlord may make complaint in writing to the District

Court of the county where the premises is located. The court shall summons immediately the tenant or person in possession to appear before the court on a day stated in the summons to show cause, if any, why restitution of the possession of the leased premises should not be made to the landlord.

(2) If, for any reason, the tenant or person in actual possession cannot be found, the constable or sheriff shall affix an attested copy of the summons conspicuously on the property. After notice is sent to the tenant or person in possession by first-class mail, the affixing of the summons on the property shall be conclusively presumed to be a sufficient service to support restitution.

(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 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] **THE TENANT** 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 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 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 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] **THAT PARTY'S** counsel at least five 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.

(C) ACCEPTANCE OF RENT AFTER NOTICE BUT BEFORE EVICTION SHALL NOT OPERATE AS A WAIVER OF ANY NOTICE OF BREACH OF LEASE OR ANY JUDGMENT FOR POSSESSION UNLESS THE PARTIES SPECIFICALLY OTHERWISE AGREE IN WRITING. ANY RENT ACCEPTED SHALL BE FIRST APPLIED TO THE RENT OR THE EQUIVALENT OF RENT APPORTIONED TO THE DATE THAT THE LANDLORD ACTUALLY RECOVERS POSSESSION OF THE PREMISES, THEN TO COURT COSTS, INCLUDING COURT AWARDED DAMAGES AND LEGAL FEES AND THEN TO ANY LOSS OF RENT CAUSED BY THE BREACH OF LEASE. ANY PAYMENT WHICH IS ACCEPTED IN EXCESS OF THE FOREGOING SHALL NOT BEAR INTEREST BUT WILL BE RETURNED TO THE TENANT IN THE SAME MANNER AS SECURITY DEPOSITS UNDER § 8-203 BUT SHALL NOT BE SUBJECT TO THE PENALTIES OF THAT SECTION.

8-402.3

(A) IN THIS SUBTITLE "WRONGFUL DETAINER" MEANS TO HOLD POSSESSION OF A PROPERTY WITHOUT THE RIGHT OF POSSESSION.

(B) A PERSON MAY NOT HOLD POSSESSION OF PROPERTY UNLESS THE PERSON IS ENTITLED TO POSSESSION OF THE PROPERTY UNDER THE LAW.

(C) (1) IF A PERSON OTHER THAN A TENANT VIOLATES SUBSECTION (B) OF THIS SECTION, A PERSON CLAIMING POSSESSION MAY MAKE COMPLAINT IN WRITING TO THE DISTRICT COURT OF THE COUNTY IN WHICH THE PROPERTY IS LOCATED.

(2) ON RECEIPT OF A COMPLAINT UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE COURT SHALL SUMMONS IMMEDIATELY THE PERSON IN POSSESSION TO APPEAR BEFORE THE COURT ON THE DAY SPECIFIED IN THE SUMMONS TO SHOW CAUSE, IF ANY, WHY RESTITUTION OF THE POSSESSION OF THE PROPERTY TO THE PERSON FILING THE COMPLAINT SHOULD NOT BE MADE.

(3) IF, FOR ANY REASON, THE PERSON IN ACTUAL POSSESSION CANNOT BE FOUND, THE PERSON AUTHORIZED TO SERVE PROCESS BY THE MARYLAND RULES SHALL AFFIX AN ATTESTED COPY OF THE SUMMONS CONSPICUOUSLY ON THE PROPERTY.

(4) IF NOTICE OF THE SUMMONS IS SENT TO THE PERSON IN POSSESSION BY FIRST CLASS MAIL, THE AFFIXING OF THE SUMMONS IN ACCORDANCE WITH PARAGRAPH (3) OF THIS SUBSECTION SHALL CONSTITUTE SUFFICIENT SERVICE TO SUPPORT RESTITUTION OF POSSESSION.

(D) A COUNTER CLAIM OR CROSS CLAIM MAY NOT BE FILED IN AN ACTION BROUGHT UNDER THIS SECTION.

(E) (1) IF THE DISTRICT COURT DETERMINES THAT THE COMPLAINANT IS LEGALLY ENTITLED TO POSSESSION, THE DISTRICT COURT SHALL:

(I) GIVE JUDGMENT FOR RESTITUTION OF THE POSSESSION OF THE PROPERTY TO THE COMPLAINANT; AND

(II) ISSUE ITS WARRANT TO THE SHERIFF OR CONSTABLE COMMANDING THE SHERIFF OR CONSTABLE TO DELIVER POSSESSION TO THE COMPLAINANT.

(2) THE DISTRICT COURT MAY ALSO GIVE JUDGMENT IN FAVOR OF THE COMPLAINANT FOR DAMAGES DUE TO THE WRONGFUL DETAINER AND FOR COURT COSTS AND ATTORNEY FEES IF:

(I) THE COMPLAINANT CLAIMED DAMAGES IN THE COMPLAINT; AND

(II) THE COURT FINDS THAT:

1. THE PERSON IN ACTUAL POSSESSION WAS PERSONALLY SERVED WITH THE SUMMONS; OR

2. THERE WAS SERVICE OF PROCESS OR SUBMISSION TO THE JURISDICTION OF THE COURT AS WOULD SUPPORT A JUDGMENT IN CONTRACT OR TORT.

(3) A PERSON IN ACTUAL POSSESSION WHO IS NOT PERSONALLY SERVED WITH A SUMMONS IS NOT SUBJECT TO THE PERSONAL JURISDICTION OF THE DISTRICT COURT IF THE PERSON APPEARS IN RESPONSE TO THE SUMMONS AND PRIOR TO THE TIME THAT EVIDENCE IS TAKEN BY THE DISTRICT COURT, ASSERTS THAT THE APPEARANCE IS ONLY FOR THE PURPOSE OF DEFENDING AN IN REM ACTION.

(F) (1) NOT LATER THAN 10 DAYS FROM THE ENTRY OF THE JUDGMENT OF THE DISTRICT COURT, EITHER PARTY MAY APPEAL TO THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE PROPERTY IS LOCATED.

(2) THE PERSON IN ACTUAL POSSESSION OF THE PROPERTY MAY RETAIN POSSESSION UNTIL THE DETERMINATION OF THE APPEAL IF THE PERSON:

(I) FILES WITH THE DISTRICT COURT AN AFFIDAVIT THAT THE APPEAL IS NOT TAKEN FOR DELAY;

(II) FILES SUFFICIENT BOND WITH ONE OR MORE SECURITIES CONDITIONED ON DILIGENT PROSECUTION OF THE APPEAL; OR

(III) PAYS TO THE COMPLAINANT:

1. THE FAIR RENTAL VALUE OF THE PROPERTY FOR THE ENTIRE PERIOD OF POSSESSION UP TO THE DATE OF JUDGMENT;

2. ALL COURT COSTS IN THE CASE;

3. ALL LOSSES OR DAMAGES OTHER THAN THE FAIR RENTAL VALUE OF THE PROPERTY UP TO THE DAY OF JUDGMENT THAT

THE COURT DETERMINED TO BE DUE BECAUSE OF THE DETENTION OF POSSESSION; AND

4. THE FAIR RENTAL VALUE OF THE PROPERTY DURING THE PENDENCY OF THE APPEAL.

(3) ON APPLICATION OF EITHER PARTY, THE COURT SHALL SET A HEARING DATE FOR THE APPEAL THAT IS NOT LESS THAN 5 DAYS OR MORE THAN 15 DAYS AFTER THE APPLICATION FOR APPEAL.

(4) NOTICE OF THE ORDER FOR A HEARING SHALL BE SERVED ON THE PARTIES OR THE PARTIES' COUNSELS NOT LESS THAN 5 DAYS BEFORE THE HEARING.

(G) IF THE JUDGMENT OF THE DISTRICT COURT SHALL BE IN FAVOR OF THE LANDLORD, A WARRANT SHALL BE ISSUED BY THE APPELLATE COURT TO THE SHERIFF, WHO SHALL PROCEED IMMEDIATELY TO EXECUTE THE WARRANT.

8-402.4

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "LANDLORD" INCLUDES THE LANDLORD'S AGENT.

(3) "WRONGFUL EVICTION" MEANS ANY ACT BY THE LANDLORD, WITHOUT LEGAL OR COURT AUTHORITY, THAT ACTUALLY OR CONSTRUCTIVELY:

(I) REMOVES A TENANT FROM THE RENTAL PROPERTY;
OR

(II) PREVENTS A TENANT'S ACCESS TO THE RENTAL PROPERTY.

(4) A "WRONGFUL EVICTION" MAY INCLUDE THE LANDLORD'S EFFORT TO SIGNIFICANTLY DIMINISH ESSENTIAL SERVICES, SUCH AS GAS, ELECTRICITY, WATER, HEAT OR LIGHT, TO WHICH THE TENANT IS ENTITLED UNDER THE TERMS OF THE TENANCY.

(B) IN THE EVENT THAT A LANDLORD EXECUTES OR ATTEMPTS TO EXECUTE A WRONGFUL EVICTION OF A RESIDENTIAL TENANT, THE TENANT MAY FILE A COMPLAINT IN DISTRICT COURT. THE COURT SHALL DIRECT THE SHERIFF TO SERVE A COPY OF THE COMPLAINT ON THE LANDLORD WITHIN 3

DAYS OF THE FILING AND THE HEARING SHALL BE HELD ON THE 5TH DAY AFTER THE FILING.

(C) UPON THE FILING OF THE COMPLAINT, THE COURT SHALL CONDUCT AN IMMEDIATE EMERGENCY HEARING. AT THIS HEARING, THE COURT MAY ISSUE A TEMPORARY ORDER IF THERE ARE REASONABLE GROUNDS TO BELIEVE A WRONGFUL EVICTION HAS OCCURRED AND IT CLEARLY APPEARS THAT IMMEDIATE AND SUBSTANTIAL HARM WILL RESULT TO THE TENANT IN THE ABSENCE OF A TEMPORARY ORDER. THE ORDER SHALL REMAIN IN EFFECT UNTIL THE DATE OF THE FULL ADVERSARY HEARING. THE ORDER MAY INCLUDE, BUT IS NOT LIMITED TO, ANY OR ALL OF THE FOLLOWING:

(1) ORDERING THE LANDLORD TO IMMEDIATELY CEASE AND REMEDY ALL WRONGFUL CONDUCT; OR

(2) ORDERING THE LANDLORD, BY WHATEVER MEANS NECESSARY, TO IMMEDIATELY PERMIT THE TENANT TO RESUME OCCUPANCY.

(D) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, A COURT MAY ONLY ISSUE A TEMPORARY ORDER IF A BOND IS FILED. THE BOND SHALL BE IN AN AMOUNT APPROVED BY THE COURT. IF JUSTICE SO REQUIRES OR THE TENANT'S FINANCIAL CIRCUMSTANCES SO MERIT, THE COURT MAY WAIVE THE BOND REQUIREMENT.

(E) THE TENANT SHALL MAKE EFFORTS, COMMENSURATE WITH THE CIRCUMSTANCES, TO NOTIFY THE LANDLORD OF THE EMERGENCY HEARING. HOWEVER, THE EMERGENCY HEARING SHALL GO FORWARD AND THE TEMPORARY ORDER MAY BE GRANTED, WITHOUT WRITTEN OR VERBAL NOTICE TO THE LANDLORD, IF THE COURT FINDS THAT APPROPRIATE NOTIFICATION EFFORTS WERE MADE. IF THE LANDLORD IS NOT PRESENT FOR THE EMERGENCY HEARING, THE JUDGE MAY COMMUNICATE INFORMALLY WITH THE LANDLORD OR THE LANDLORD'S ATTORNEY.

(F) IF A TEMPORARY ORDER IS GRANTED, IT SHALL DELINEATE THE SPECIFICS OF THE ORDER AND CONTAIN A STATEMENT THAT THE LANDLORD MAY FILE FOR MODIFICATION OR DISSOLUTION OF THE ORDER. THE SHERIFF SHALL IMMEDIATELY SERVE THE ORDER ON THE LANDLORD AND ENSURE THAT IT IS ENFORCED. HOWEVER, THE ORDER SHALL BE BINDING ON THE LANDLORD UPON ACTUAL NOTICE OF IT BY ANY MEANS. UPON MOTION BY THE TENANT, THE COURT MAY WAIVE THE COST OF SERVICE OF THE ORDER..

(G) THE LANDLORD MAY FILE FOR MODIFICATION OR DISSOLUTION OF THE TEMPORARY ORDER. THE COURT SHALL SCHEDULE THE HEARING AS SOON AS POSSIBLE. AT THIS HEARING, THE TENANT HAS THE BURDEN OF SHOWING THAT THE ORDER SHOULD CONTINUE.

(H) AT THE FULL ADVERSARY HEARING, IF THE COURT FINDS THAT THE LANDLORD'S ACT IS A WRONGFUL EVICTION, THE COURT SHALL MAKE APPROPRIATE FINDINGS OF FACT AND ISSUE AN ORDER AND INJUNCTION AS JUSTICE REQUIRES. SUCH AN ORDER MAY INCLUDE, BUT IS NOT LIMITED TO, ANY OR ALL OF THE FOLLOWING:

(1) ORDERING THE LANDLORD TO IMMEDIATELY CEASE AND REMEDY ALL WRONGFUL CONDUCT;

(2) ORDERING THE LANDLORD, BY WHATEVER MEANS NECESSARY, TO IMMEDIATELY PERMIT THE TENANT TO RESUME OCCUPANCY; AND

(3) AWARDING AN ABATEMENT OF ANY RENT THAT MAY BE DUE OR MAY BECOME DUE.

(I) A TENANT AGGRIEVED BY ANY OF THE ACTS DESCRIBED IN SUBSECTION (A) OF THIS SECTION MAY SEEK RELIEF UNDER THIS SECTION AND ANY OTHER APPLICABLE LAW.

8-403.

If the court in any case brought [pursuant to § 8-401 or § 8-402] **UNDER §§ 8-401, 8-402, OR 8-402.3** orders an adjournment of the trial for a longer period than provided for in the section under which the case has been instituted, the tenant or [anyone holding under him] **THE PERSON IN POSSESSION** shall pay [all rents due and as they come due] into the court exercising jurisdiction in the case **AN AMOUNT AND IN THE MANNER DETERMINED BY THE COURT TO BE APPROPRIATE AS SPECIFIED IN § 8-118 OR, IN THE CASE OF WRONGFUL DETAINER, §8-118.1.** However, the court may order [the] A tenant to pay rents due and as come due into an administrative agency of any county which is empowered by local law to hold rents in escrow pending investigation and disposition of complaints by tenants; the court also may refer that case to the administrative agency for investigation and report to the court. [A tenant shall pay into the court the amount of rent] **THE PAYMENT INTO THE COURT SHALL BE** due on or before the date to which the trial is adjourned or within seven days after adjournment if the trial is adjourned more than seven days, or to the administrative agency within seven days after the court has ordered the rent paid into an administrative agency. If [the tenant fails to pay rent due within this period, or as it comes due], **ON MOTION OF THE PLAINTIFF AND AFTER THE HEARING, THE COURT DETERMINES THAT THE PAYMENT WAS NOT MADE AS ORDERED BY THE COURT AND THAT THERE IS NO JUSTIFICATION FOR THE FAILURE TO PAY,** the court, [on motion of the landlord,] shall give judgment in favor of the [landlord] **PLAINTIFF** and issue a warrant for possession in accordance with the provisions of [§ 8-401(c) and (d)] **THE SECTION UNDER WHICH THE CASE IS BROUGHT.**

8-406.

(A) IN THIS SECTION "CLAIMANT" MEANS THE PERSON IDENTIFIED BY A TENANT OR PERSON IN POSSESSION AS SOMEONE WHO CLAIMS TITLE TO THE PROPERTY LEASED OR POSSESSED BY THE TENANT OR PERSON IN POSSESSION.

(B) IN ANY ACTION BROUGHT UNDER THIS SUBTITLE 4, IF THE TENANT OR PERSON IN POSSESSION SHALL ALLEGE THAT THE TITLE TO THE PROPERTY IS DISPUTED AND IN THE CASE OF A LEASE, THAT TITLE IS CLAIMED BY A CLAIMANT WHOM THE TENANT SHALL NAME, BY VIRTUE OF A RIGHT OR TITLE ACCRUING OR HAPPENING SINCE THE COMMENCEMENT OF THE LEASE, BY DESCENT OR DEED FROM OR BY DEVISE UNDER THE LAST WILL OR TESTAMENT OF THE LANDLORD AND, OTHERWISE, IF THE PERSON IN POSSESSION OR ANY CLAIMANT IS ALLEGED TO HAVE TITLE, THEN THE DISTRICT COURT SHALL FORBEAR TO GIVE JUDGMENT FOR POSSESSION AND COSTS. THE TENANT OR PERSON IN POSSESSION SO CLAIMING SHALL CAUSE A SUMMONS TO BE IMMEDIATELY ISSUED TO THE CLAIMANT BY THE DISTRICT COURT AND MADE RETURNABLE WITHIN 6 DAYS NEXT FOLLOWING. THE CLAIMANT SHALL APPEAR BEFORE THE COURT AND SHALL UNDER OATH, DECLARE THAT THE CLAIMANT CLAIMS TITLE TO THE PROPERTY WHICH IS THE SUBJECT OF THE ACTION AND SHALL, WITH TWO SUFFICIENT SECURITIES, ENTER INTO BOND TO THE PLAINTIFF OR PARTIES IN INTEREST, IN SUCH SUM AS THE COURT SHALL DETERMINE TO BE PROPER AND REASONABLE SECURITY TO SAID PLAINTIFF OR PARTIES IN INTEREST, TO PROSECUTE WITH EFFECT THE CLAIMANT'S CLAIM IN THE CIRCUIT COURT FOR THE COUNTY. IF THE SAID CLAIM SHALL NOT BE COMMENCED IN THE CIRCUIT COURT WITHIN 10 DAYS OF THE FIRST APPEARANCE OF THE CLAIMANT IN THE DISTRICT COURT, THE DISTRICT COURT SHALL PROCEED TO GIVE JUDGMENT FOR POSSESSION AND COSTS AND ISSUE ITS WARRANT.

8-601.

ANY PARTY TO AN ACTION BROUGHT IN THE DISTRICT COURT UNDER THIS TITLE 8 IN WHICH THE AMOUNT IN CONTROVERSY MEETS THE REQUIREMENTS FOR A TRIAL BY JURY MAY, IN ACCORDANCE WITH THIS SUBSECTION, DEMAND A TRIAL BY JURY.

8-602.

A JURY DEMAND MUST BE MADE BY A WRITTEN PLEADING TITLED "JURY DEMAND." A JURY DEMAND UNDER THIS SUBSECTION SHALL BE FILED WITH THE COURT WITHIN:

(A) FIFTEEN DAYS OF POSTING IN THE EVENT OF POSTING OR 15 DAYS FROM SERVICE IN THE EVENT OF PERSONAL SERVICE; OR

(B) AT THE PARTIES' FIRST SCHEDULED APPEARANCE BEFORE THE COURT; WHICHEVER OCCURS SOONER, PROVIDED, HOWEVER,

(C) THAT THE TIME FOR FILING THE JURY DEMAND MAY BE EXTENDED BY AGREEMENT OF ALL PARTIES, THAT EXTENSION SHALL NOT BE LATER THAN A TRIAL IN THE ACTION.

8-603.

(A) A PROVISION CONTAINED WITHIN A RESIDENTIAL LEASE IN WHICH A TENANT IS OCCUPYING THE SPACE AS THAT TENANT'S PRIMARY RESIDENCE WHICH WAIVES A TRIAL BY JURY SHALL BE INVALID AND UNENFORCEABLE.

(B) A PROVISION IN ANY LEASE OTHER THAN THOSE SPECIFIED IN §8-603(A) WHICH WAIVES A TRIAL BY JURY SHALL BE VALID AND ENFORCEABLE.

8-604.

(A) A DEMAND FOR TRIAL BY JURY UNDER THIS SUBSECTION SHALL BE SUBJECT TO REVIEW BY THE DISTRICT COURT.

(B) IF THE JURY DEMAND IS FILED AT THE FIRST SCHEDULED APPEARANCE IN ACCORDANCE WITH §8-602(B), THEN ANY PARTY TO THE ACTION CONTESTING THE JURY DEMAND SHALL, AT THE FIRST SCHEDULED APPEARANCE, OBJECT TO THE JURY DEMAND AND DESCRIBE THE BASIS OF THE INVALIDITY OF THE JURY DEMAND.

(C) IF THE JURY DEMAND IS FILED AT A TIME OTHER THAN FIRST SCHEDULED APPEARANCE IN ACCORDANCE WITH §8-602(A) OR §8-602(C), THEN ANY OTHER PARTY TO THE ACTION CONTESTING THE VALIDITY OF THE JURY DEMAND SHALL FILE AN "OBJECTION TO JURY DEMAND" WITHIN 10 DAYS OF THE FILING OF THE JURY DEMAND WHICH SUCH OBJECTION SHALL DESCRIBE THE BASIS OF THE INVALIDITY OF THE JURY DEMAND, PROVIDED, HOWEVER, THAT THE "OBJECTION TO JURY DEMAND" SHALL BE FILED AT TRIAL IF THE TRIAL OCCURS PRIOR TO THE EXPIRATION OF THE PERIOD SET FORTH IN §8-602(A) OR THE JURY DEMAND IS FILED AT TRIAL IN ACCORDANCE WITH §8-602(C).

(D) IN THE EVENT THAT A JURY DEMAND AND AN "OBJECTION TO JURY DEMAND" IS FILED IN ACCORDANCE WITH §§8-602 AND 8-604:

(1) IF AN "OBJECTION TO JURY DEMAND" IS FILED UNDER §8-604(B), THE COURT SHALL CONSIDER THE VALIDITY OF THE JURY DEMAND AT THE TIME OF THE FIRST SCHEDULED APPEARANCE.

(2) IF AN "OBJECTION TO JURY DEMAND" IS FILED UNDER §8-604(C) AT A TIME OTHER THAN TRIAL, THE COURT SHALL SET THE OBJECTION IN FOR A HEARING.

(3) IF THE "OBJECTION TO JURY DEMAND" IS FILED AT THE TIME OF TRIAL UNDER §8-604(C), THE COURT SHALL CONSIDER THE VALIDITY OF THE JURY DEMAND AT TRIAL.

(4) IF THE FIRST SCHEDULED APPEARANCE IS SET PRIOR TO A HEARING DATE UNDER §8-604(D)(2), THEN THE "OBJECTION TO JURY DEMAND" SHALL BE CONSIDERED BY THE COURT AT THE FIRST SCHEDULED APPEARANCE AND THE HEARING DATE SHALL BE REMOVED.

(E) IN THE EVENT A JURY DEMAND IS FILED PRIOR TO THE FIRST SCHEDULED APPEARANCE AND THE TIME FOR FILING AN OBJECTION UNDER §8-604(C) SHALL NOT HAVE EXPIRED PRIOR TO THE FIRST SCHEDULED APPEARANCE, AND ALL OTHER PARTIES TO THE ACTION FILE A "NON-OBJECTION TO JURY DEMAND" AT LEAST ONE DAY PRIOR TO THE FIRST SCHEDULED APPEARANCE, OR IF THE TIME FOR FILING AN OBJECTION UNDER §8-604(C) SHALL HAVE EXPIRED PRIOR TO THE FIRST SCHEDULED APPEARANCE AND NO OBJECTION HAVING BEEN FILED, THEN THE ACTION SHALL BE REMOVED FROM THE DOCKET AND TRANSFERRED TO THE CIRCUIT COURT.

(F) IN THE EVENT THAT A JURY DEMAND IS MADE UNDER THIS SUBSECTION, THE DISTRICT COURT SHALL NOT BE DIVESTED OF JURISDICTION AND THE MATTER SHALL NOT BE REMOVED TO THE CIRCUIT COURT UNTIL SUCH TIME AS THE DISTRICT COURT HAS REVIEWED THE JURY DEMAND, PROVIDED, HOWEVER, THAT ANY HEARING ON THE VALIDITY OF A JURY DEMAND UNDER THIS SUBSECTION MUST OCCUR WITHIN 30 DAYS OF THE DATE OF JURY DEMAND.

(G) THE DISTRICT COURT'S REVIEW OF THE VALIDITY OF A JURY DEMAND SHALL BE LIMITED TO: TIMELINESS OF THE JURY DEMAND, THE AMOUNT IN CONTROVERSY AND THE EXISTENCE OF A VALID WAIVER. IN THE EVENT THAT THE DISTRICT COURT FINDS THAT THE JURY DEMAND IS INVALID, THE MATTER SHALL PROCEED IN THE DISTRICT COURT; HOWEVER, UPON CONCLUSION OF THE DISTRICT COURT TRIAL ANY PARTY FILING A JURY DEMAND DETERMINED INVALID BY THE COURT MAY INCLUDE THE VALIDITY OF THE JURY DEMAND IN AN APPEAL, AS SET FORTH UNDER THESE RULES.

Courts and Judicial Proceedings

4-401.

Except as provided in § 4-402 of this subtitle, and subject to the venue provisions of Title 6 of this article, the District Court has exclusive original civil jurisdiction in:

(1) An action in contract or tort, if the debt or damages claimed do not exceed \$25,000, exclusive of prejudgment or postjudgment interest, costs, and attorney's fees if attorney's fees are recoverable by law or contract;

(2) An action of replevin, regardless of the value of the thing in controversy;

(3) A matter of attachment before judgment, if the sum claimed does not exceed \$25,000, exclusive of prejudgment or postjudgment interest, costs, and attorney's fees if attorney's fees are recoverable by law or contract;

(4) An action involving landlord and tenant, distraint, or [forcible entry and]WRONGFUL detainer, regardless of the amount involved;

(5) A grantee suit brought under § 14-109 of the Real Property Article;

(6) A petition for injunction relating to the use, disposition, encumbrances, or preservation of property that is:

(i) Claimed in a replevin action, until seizure under the writ; or

(ii) Sought to be levied upon in an action of distress, until levy and any removal;

(7) A petition of injunction filed by:

(i) A tenant in an action under § 8-211 of the Real Property Article or a local rent escrow law; [or]

(ii) A person who brings an action under § 14-120 of the Real Property Article;

OR

**(III) A TENANT IN A WRONGFUL EVICTION ACTION
UNDER § 8-402.4 OF THE REAL PROPERTY ARTICLE;**

(8) A petition filed by a county or municipality, including Baltimore City, for enforcement of local health, housing, fire, building, electric, licenses and permits, plumbing, animal control, and zoning codes for which equitable relief is provided;

(9) Proceedings under Article 27, § 264 or § 297 of the Code for the forfeiture or return of moneys involved in a gambling or controlled dangerous substances seizure where the amount involved, excluding any interest and attorney's fees, if attorney's fees are recoverable by law or contract, does not exceed \$20,000;

(10) A proceeding for adjudication of:

(i) A municipal infraction as defined in Article 23A, § 3(b)(1) of the Code;

(ii) A Commission infraction as defined in Article 28, § 5-113 of the Code;

(iii) A WSSC infraction as defined in Article 29, § 18-104.1 of the Code, concerning rules and regulations governing publicly owned watershed property;

(iv) A WSSC infraction as defined in Article 29, § 18-104.2 of the Code, concerning WSSC regulations governing:

1. Erosion and sediment control for utility construction; and

2. Plumbing, gasfitting, and sewer cleaning;

(v) A zoning violation for which a civil penalty has been provided pursuant to Article 66B, § 7.01 or Article 28, § 8-120(c) of the Code;

(vi) A violation of an ordinance enacted:

1. By a charter county for which a civil penalty is provided under Article 25A, § 5(A) of the Code; or

2. By the Mayor and City Council of Baltimore for which a civil penalty is provided by ordinance;

(vii) A citation for a Code violation issued under Article 27, § 403 of the Code;

(viii) A civil infraction relating to a violation of the Fair Election Practices Act of the election laws as provided under Article 33, § 13-604 of the Code;

(ix) A violation of an ordinance or regulation enacted by a county without home rule, under authority granted under Article 25 of the Code, or any provision of the Code of Public Local Laws for that county, for which a civil penalty is provided;

(x) A civil infraction that is authorized by law to be prosecuted by a sanitary commission; or

(xi) A subdivision violation for which a civil penalty has been provided in accordance with Article 66B, § 5.05(d) of the Code;

(11) A proceeding for adjudication of a civil penalty for any violation under § 5-1001 of the Environment Article, § 21-1122 of the Transportation Article, § 21-1414 of the Transportation Article, or Article 41, § 2-101(c-1) of the Code or any rule or regulation issued pursuant to those sections;

(12) A proceeding to enforce a civil penalty assessed by the Maryland Division of Labor and Industry under Title 5 of the Labor and Employment Article where the amount involved does not exceed \$20,000; and

(13) A proceeding for a civil infraction under § 21-202.1 of the Transportation Article.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 1999.

A BILL ENTITLED

AN ACT concerning

**Real Property - Landlord-Tenant Laws -
Gender Neutral Language**

FOR the purpose of providing for gender neutral language in Title 8 of the Real Property Article;
and generally relating to the landlord and tenant law and Real Property.

BY repealing and reenacting, with amendments,

Article - Real Property

Section 8-101, 8-106, 8-107, 8-109, 8-111, 8-113, 8-114, 8-116, 8-203, 8-204, 8-207, 8-208, 8-208.1, 8-208.3, 8-211, 8-211.1, 8-303 8-304, 8-305, 8-307, 8-311, 8-313 8-314, 8-315, inclusive, 8-320, 8-323, 8-324, 8-328, 8-331, 8-401, 8-402, 8-402.1 and 8-403.

Annotated Code of Maryland

(1996 Replacement Volume and 1998 Supplement)

-----Circle as appropriate-----

(ed) October 1 effective date (sev) severability clause

(eed) emergency effective date (sii) salary increase not to affect
incumbent

(aed) abnormal effective date : _____ Office _____

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article - Real Property

8-101.

A transferee of the reversion in leased property or of the rent has the same remedies by entry, action, or otherwise for nonperformance of any condition or agreement contained in the lease, as the original landlord would have had if the reversion or rent had remained in [him]THE ORIGINAL LANDLORD. A transferee of the reversion in leased property is subject to the same remedies, by action or otherwise, for nonperformance of any agreement contained in the lease, as the original landlord. This section applies to any transferee of a reversion in leased property, by voluntary grant or operation of law.

8-106.

If a landlord, having only an estate for life, dies on or before the day on which the rent that has been earned is payable and [his]THE LANDLORD'S death terminates the leasehold estate, [his]THE LANDLORD'S personal representative may recover from the tenant the full amount of the rent if death occurs on the day the rent is payable or a proportionate share of the rent if death occurs before this day.

8-107.

If there is no demand or payment for more than 20 consecutive years of any specific rent reserved out of a particular property or any part of a particular property under any form of lease, the rent conclusively is presumed to be extinguished and the landlord may not set up any claim for the rent or to the reversion in the property out of which it issued. The landlord also may not institute any suit, action, or proceeding to recover the rent or the property. However, if the landlord is under any legal disability when the period of 20 years of nondemand or nonpayment expires, [he]THE LANDLORD has two years after the removal of the disability within which to assert [his]THE LANDLORD'S rights.

8-109.

Uninterrupted possession for 12 months after the expiration of the lease containing a covenant for perpetual renewal of all or part of the leased premises by the tenant or any person claiming under [him]THE TENANT operates as a renewal with respect to the entire premises. It conclusively is presumed in reference to the whole or any part of the leased premises, of which possession is retained, and in favor of the tenant or of the person claiming under [him]THE TENANT, that a new lease of the whole of the leased premises was executed prior to the

expiration of the lease by the landlord named in it, or by the person rightfully claiming under the landlord, to the tenant, or the person rightfully claiming under the tenant for the additional term under the rent and on the covenants, conditions, and stipulations as were provided in the lease.

8-111.

If a tenant named in a lease or an assignee of a lease applies to [his]THE TENANT'S landlord for a renewal under a covenant in the lease giving [him]THE TENANT the right to renewal, and if the tenant cannot produce vouchers or satisfactory evidence showing payment of rent accrued for three years next preceding [his]THE LANDLORD'S demand and application, the landlord, before executing the renewal of the lease or causing it to be executed, is entitled to demand and recover not more than three years' back rent, in addition to any renewal fine that may be provided for in the lease. The tenant may plead this section in bar of the recovery of any larger amount of rent.

8-113.

A covenant or promise by the tenant to leave, restore, surrender, or yield the leased premises in good repair does not bind [him]THE TENANT to erect any similar building or pay for any building destroyed by fire or otherwise without negligence or fault on [his]THE TENANT'S part.

8-114.

The right of a tenant to remove fixtures erected by [him]THE TENANT is not lost or impaired by [his]THE TENANT'S acceptance of a subsequent lease of the same premises without any intermediate surrender of possession.

8-116.

(a) If tobacco is grown on leased property and the tenant fails to make reasonable progress within six months from September 1 to strip and place the tobacco on the market, the landlord may strip, pack, ship, and sell at the tenant's expense any time after March 1, tobacco grown on the leased premises by the tenant in any previous year. All expenses paid by the landlord in the stripping, packing, shipment, or sale shall be a first and prior lien on the tobacco and the proceeds of the sale, notwithstanding any other agreement or obligation of the tenant or provision of law.

(b) A tenant or [his]THE TENANT'S agent, who interferes, directly or indirectly with the stripping, packing, shipment, or sale of tobacco by the landlord, is guilty of a misdemeanor

and, on conviction, is subject to a fine of not less than \$100 or by imprisonment for not less than 90 days nor more than six months, or both.

8-203.

(a) In this section "security deposit" means any payment of money, including payment of the last month's rent in advance of the time it is due, given to a landlord by a tenant in order to protect the landlord against nonpayment of rent or damage to the leased premises.

(b) (1) A landlord may not impose a security deposit in excess of the equivalent of two months' rent, or \$50, whichever is greater, per dwelling unit, regardless of the number of tenants.

(2) If a landlord charges more than the equivalent of two months' rent, or \$50, whichever is greater, per dwelling unit as a security deposit, the tenant may recover up to threefold the extra amount charged, plus reasonable attorney's fees.

(3) An action under this section may be brought at any time during the tenancy or within two years after its termination.

(c) (1) The landlord shall give the tenant a receipt for the security deposit. The receipt may be included in a written lease.

(2) The landlord shall be liable to the tenant in the sum of \$25 if the landlord fails to provide a written receipt for the security deposit.

(3) The receipt or lease shall contain language informing the tenant of [his]THE TENANT'S rights under this section to receive from the landlord a written list of all existing damages if the tenant makes a written request of the landlord within 15 days of the tenant's occupancy.

(d) (1) If the landlord imposes a security deposit, on written request, [he]THE LANDLORD promptly shall provide the tenant with a written list of all existing damages. The request must be made within 15 days of the tenant's occupancy.

(2) Failure to provide the tenant with this written statement renders the landlord liable to the tenant for threefold the amount of the security deposit. The total amount of damages shall be subject to a setoff for damages and unpaid rent which reasonably could be withheld under this section.

(e) (1) The landlord shall maintain all security deposits in a banking or savings institution in the State. The account shall be devoted exclusively to security deposits and bear interest.

(2) A security deposit shall be deposited in the account within 30 days after the landlord receives it.

(3) In the event of sale or transfer of any sort, including receivership or bankruptcy, the security deposit is binding on the successor in interest to the person to whom the deposit is given. Security deposits are free from any attachment by creditors.

(4) Any successor in interest is liable to the tenant for failure to return the security deposit, together with interest, as provided in this section.

(f) (1) 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, less any damages rightfully withheld.

(2) Interest shall accrue at six-month intervals from the day the tenant gives the landlord the security deposit. Interest is not compounded.

(3) Interest shall be payable only on security deposits of \$50 or more.

(4) If the landlord, without a reasonable basis, fails to return any part of the security deposit, plus accrued interest, within 45 days after the termination of the tenancy, the tenant has an action of up to threefold of the withheld amount, plus reasonable attorney's fees.

(g) (1) The security deposit, or any portion thereof, may be withheld for unpaid rent, damage due to breach of lease or for damage to the leased premises by the tenant, [his]THE TENANT'S family, agents, employees, or social guests in excess of ordinary wear and tear. The tenant has the right to be present when the landlord or [his]THE LANDLORD'S agent inspects the premises in order to determine if any damage was done to the premises, if the tenant notifies the landlord by certified mail of [his]THE TENANT'S intention to move, the date of moving, and [his]THE TENANT'S new address. The notice to be furnished by the tenant to the landlord shall be mailed at least 15 days prior to the date of moving. Upon receipt of the notice, the landlord shall notify the tenant by certified mail of the time and date when the premises are to be inspected. The date of inspection shall occur within five days before or five days after the date of moving as designated in the tenant's notice. The tenant shall be advised of [his]THE TENANT'S rights under this subsection in writing at the time of [his]THE TENANT'S payment of the security deposit. Failure by the landlord to comply with this requirement forfeits the right of the landlord to withhold any part of the security deposit for damages.

(2) The security deposit is not liquidated damages and may not be forfeited to the landlord for breach of the rental agreement, except in the amount that the landlord is actually damaged by the breach.

(3) In calculating damages for lost future rents any amount of rents received by the landlord for the premises during the remainder if any, of the tenant's term, shall reduce the damages by a like amount.

(h) (1) If any portion of the security deposit is withheld, the landlord shall present by first-class mail directed to the last known address of the tenant, within 30 days after the termination of the tenancy, a written list of the damages claimed under subsection (g)(1) together with a statement of the cost actually incurred.

(2) If the landlord fails to comply with this requirement, [he]THE LANDLORD forfeits the right to withhold any part of the security deposit for damages.

(i) (1) The provisions of subsections (f)(1), (f)(4), (h)(1), and (h)(2) are inapplicable to a tenant who has been evicted or ejected for breach of a condition or covenant of a lease prior to the termination of the tenancy or who has abandoned the premises prior to the termination of the tenancy.

(2) A tenant specified in paragraph (1) may demand return of the security deposit by giving written notice by first-class mail to the landlord within 45 days of being evicted or ejected or of abandoning the premises. The notice shall specify the tenant's new address. The landlord, within 30 days of receipt of such notice, shall present, by first-class mail to the tenant, a written list of the damages claimed under subsection (g)(1) together with a statement of the costs actually incurred. Within 45 days of receipt of the notice, the landlord shall return to the tenant the security deposit together with simple interest which has accrued in the amount of 4 percent per annum, less any damages rightfully withheld.

(3) If a landlord fails to send the list of damages required by paragraph (2), the right to withhold any part of the security deposit for damages is forfeited. If a landlord fails to return the security deposit as required by paragraph (2), the tenant has an action of up to threefold of the withheld amount, plus reasonable attorney's fees.

(4) Except to the extent specified, this subsection may not be interpreted to alter the landlord's duties under subsections (f) and (h).

(j) No provision of this section may be waived in any lease.

8-204.

(a) This section is applicable only to single or multi-family dwelling units.

(b) A landlord shall assure [his]THE 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.

(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) 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]THE TENANT subsequent to the tenant's giving notice to the landlord of [his]THE TENANT'S inability to enter on the leased premises.

(f) The landlord may bring an action of eviction and damages against any tenant holding over after the end of [his]THE TENANT'S term even though the landlord has entered into a lease with another tenant, and [he]THE LANDLORD may join the new tenant as a party to the action.

8-207.

(a) The aggrieved party in a breach of a lease has a duty to mitigate damages if the damages result from the landlord's or tenant's:

- (1) Failure to supply possession of the dwelling unit;
- (2) Failure or refusal to take possession at the beginning of the term; or
- (3) Termination of occupancy before the end of the term.

(b) The provisions of subsection (a) do not impose an obligation to show or lease, the vacated dwelling unit in preference to other available units.

(c) If a tenant wrongly fails or refuses to take possession of or vacates the dwelling unit before the end of [his]THE TENANT'S term, the landlord may sublet the dwelling unit without prior notice to the tenant in default. The tenant in default is secondarily liable for rent for the term of [his]THE TENANT'S original agreement in addition to [his]THE TENANT'S liability for consequential damages resulting from [his]THE TENANT'S breach, if the landlord gives [him]THE TENANT prompt notice of any default by the sublessee.

(d) No provision in this section may be waived in any lease.

§ 8-208.

(a) A lease may not contain any of the following provisions:

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

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

(3) A provision providing for a penalty for the late payment of rent in excess of 5% of the amount of rent due for the rental period for which the payment was delinquent. In the case of leases under which the rent is paid in weekly rental installments a penalty of \$3 may be charged for the late payment of rent; however, these late penalties for rent paid under a lease providing for weekly rental installments shall constitute, in the aggregate, no more than \$12 per month.

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

(5) Any provision whereby the tenant agrees to a period required for landlord's notice to quit less than that provided by applicable law; provided, however, that neither party is prohibited hereby from agreeing to a longer notice period than that required by applicable law.

(6) Any provision authorizing the landlord to take possession of the leased premises, or the tenant's personal property therein unless the lease has been terminated by action of the parties or by operation of law, and such personal property has been abandoned by the tenant without the benefit of formal legal process.

(7) Any provision that is deemed to be against public policy and void pursuant to § 8-105.

(b) (1) If any lease shall contain a provision calling for an automatic renewal of the lease term unless prior notice is given by the party or parties seeking to terminate the lease, any such provision shall be distinctly set apart from any other provision of the lease and provide a space for the written acknowledgement of tenant's agreement to the automatic renewal provision, except leases containing an automatic renewal period of one (1) month or less. Any such provision not specifically accompanied by either the tenant's initials, signature, or witnessed mark, shall be unenforceable by the landlord.

(2) No provision of this section shall be deemed to be a bar to the applicability of supplementary rights afforded by any public local law enacted by the General Assembly or any ordinance or local law enacted by any municipality or political subdivision of this State; provided, however, that no such law can diminish or limit any right or remedy granted under the provisions of this section.

(c) (1) Any lease provision which is prohibited by terms of this section shall be unenforceable by the landlord.

(2) If the landlord includes in any lease a provision prohibited by this section or made unenforceable by §§ 8-105 or 8-203 of this title, at any time subsequent to July 1, 1975, and

tenders a lease containing such a provision or attempts to enforce or makes known to the tenant an intent to enforce any such provision, the tenant may recover any actual damages incurred as a reason thereof, including reasonable attorney's fees.

(d) If any word, phrase, clause, sentence, or any part or parts of this section shall be held unconstitutional by any court of competent jurisdiction such unconstitutionality shall not affect the validity of the remaining parts of this section.

8-208.1.

(a) No landlord shall evict a tenant of any residential property or arbitrarily increase the rent or decrease the services to which the tenant has been entitled for any of the following reasons:

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

(2) Solely because the tenant or [his]THE TENANT'S agent has filed a lawsuit, or lawsuits, against the landlord; or

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

(b) Evictions described in subsection (a) of this section shall be called "retaliatory evictions".

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

(d) The relief provided under this section is conditioned upon:

(1) In the case of tenancies measured by a period of one month or more, 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.

(2) In the case of periodic tenancies measured by the weekly payment of rent, 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, the court having not entered against the tenant 3 judgments of possession for rent due and unpaid.

(e) No eviction shall be deemed to be a "retaliatory eviction" for purposes of this section upon the expiration of a period of 6 months following the determination of the merits of the initial case by a court (or administrative agency) of competent jurisdiction.

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

(g) 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.

8-208.3.

Every landlord shall maintain a records system showing the dates and amounts of rent paid to [him]THE LANDLORD by [his]THE tenant or tenants and showing also the fact that a receipt of some form was given to each tenant for each cash payment of rent.

8-211.

(a) The purpose of this section is to provide tenants with a mechanism for encouraging the repair of serious and dangerous defects which exist within or as part of any residential dwelling unit, or upon the property used in common of which the dwelling unit forms a part. The defects sought to be reached by this section are those which present a substantial and serious threat of danger to the life, health and safety of the occupants of the dwelling unit, and not those which merely impair the aesthetic value of the premises, or which are, in those locations governed by such codes, housing code violations of a nondangerous nature. The intent of this section is not to provide a remedy for dangerous conditions in the community at large which exists apart from the leased premises or the property in common of which the leased premises forms a part.

(b) It is 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.

(c) This section applies to residential dwelling units leased for the purpose of human habitation within the State of Maryland. This section does not apply to farm tenancies.

(d) This section applies to all applicable dwelling units whether they are (1) publicly or privately owned or (2) single or multiple units.

(e) This section provides a remedy and imposes an obligation upon landlords to repair and eliminate conditions and defects which constitute, or if not promptly corrected will constitute, a fire hazard or a serious and substantial threat to the life, health or safety of occupants, including, but not limited to:

(1) Lack of heat, light, electricity, or 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 the charges;

(2) Lack of adequate sewage disposal facilities;

(3) Infestation of rodents in two or more dwelling units;

(4) The existence of any structural defect which presents a serious and substantial threat to the physical safety of the occupants; or

(5) The existence of any condition which presents a health or fire hazard to the dwelling unit.

(f) This section does not provide a remedy for the landlord's failure to repair and eliminate minor defects or, in those locations governed by such codes, housing code violations of a nondangerous nature. There is a rebuttable presumption that the following conditions, when they do not present a serious and substantial threat to the life, health and safety of the occupants, are not covered by this section:

(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; or

(4) The absence of air conditioning.

(g) In order to employ the remedies provided by this section, the tenant shall notify the landlord of the existence of the defects or conditions. Notice shall be given by (1) a written communication sent by certified mail listing the asserted conditions or defects, or (2) actual notice of the defects or conditions, or (3) a written violation, condemnation or other notice from an appropriate State, county, municipal or local government agency stating the asserted conditions or defects.

(h) The landlord has 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 which they present to the occupants. There is a rebuttable presumption that a period in excess of 30 days from receipt of notice is unreasonable.

(i) If the landlord refuses to make the repairs or correct the conditions, or if after a reasonable time [he]THE LANDLORD has failed to do so, the tenant may bring an action of rent escrow to pay rent into court because of the asserted defects or conditions, or the tenant may refuse to pay rent and raise the existence of the asserted defects or conditions as an affirmative defense to an action for distress for rent or to any complaint proceeding brought by the landlord to recover rent or the possession of the leased premises.

(j) (1) 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 this section.

(2) In addition to any other relief sought, if within 90 days after the court finds that the conditions complained of by the tenant exist the landlord has not made the repairs or corrected the conditions complained of, the tenant may file a petition of injunction in the District Court requesting the Court to order the landlord to make the repairs or correct the conditions.

(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 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 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, the court having not entered against the tenant 3 judgments of possession for rent due and unpaid.

(l) It is a sufficient defense to the allegations of the tenant that the tenant, [his]THE TENANT'S family, [his] agent, [his] employees, or [his] assignees or social guests have caused the asserted defects or conditions, or that the landlord or [his]THE LANDLORD'S agents were denied reasonable and appropriate entry for the purpose of correcting or repairing the asserted conditions or defects.

(m) 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:

(1) Order the termination of the lease and return of the leased premises to the landlord, subject to the tenant's right of redemption;

- (2) Order that the action for rent escrow be dismissed;
 - (3) 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; or
 - (4) Order the landlord to make the repairs or correct the conditions complained of by the tenant and found by the court to exist.
- (n) After rent escrow has been established, the court:
- (1) Shall, after a hearing, if so ordered by the court or one is requested by the landlord, order that the moneys in the escrow account be disbursed to the landlord after the necessary repairs have been made;
 - (2) May, after an appropriate hearing, order that some or all moneys in the escrow account be paid to the landlord or [his]THE LANDLORD'S agent, the tenant or [his]THE TENANT'S agent, or any other appropriate person or agency for the purpose of making the necessary repairs of the dangerous conditions or defects;
 - (3) 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;
 - (4) May, after an appropriate hearing, order that some or all moneys in the escrow account be disbursed to pay any mortgage or deed of trust on the property in order to stay a foreclosure;
 - (5) May, after a hearing, if one is requested by the tenant, order, if no repairs are made or if no good faith effort to repair is made within six months of the initial decision to place money in the escrow account, that the moneys in the escrow account be disbursed to the tenant. Such an order will not discharge the right on the part of the tenant to pay rent into court and an appeal will stay the forfeiture; or
 - (6) 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.
- (o) Except as provided in § 8-211.1(e) of this subtitle, in the event any county or Baltimore City is subject to a public local law or has enacted an ordinance or ordinances comparable in subject matter to this section, commonly referred to as a "Rent Escrow Law", any such ordinance or ordinances shall supersede the provisions of this section.

8-211.1.

(a) Notwithstanding any provision of law or any agreement, whether written or oral, if a lessor fails to comply with the applicable risk reduction standard under § 6-815 or § 6-819 of the Environment Article, the lessee may deposit [his]THE LESSEE'S rent in an escrow account with the clerk of the District Court for the district in which the premises are located.

(b) The right of a lessee to deposit rent in an escrow account does not preclude [him]THE LESSEE from pursuing any other right or remedy available to [him]THE LESSEE at law or equity and is in addition to them.

(c) Money deposited in an escrow account shall be released under the following terms and conditions:

(1) To the lessor upon compliance by the lessor with the applicable risk reduction standard; or

(2) To the lessee or any other person who has complied with the applicable risk reduction standard on presentation of a bill for the reasonable costs of complying with the applicable risk reduction standard.

(d) A lessee may not be evicted, the tenancy may not be terminated, and the rent may not be raised for a lessee who elects to seek the remedies under this section. It shall be presumed that any attempt to evict the lessee, to terminate the tenancy, or to raise the rent, except for nonpayment of rent, within two months after compliance with the applicable risk reduction standard is in retaliation for lessee's proceeding under this section and shall be void.

(e) This section shall preempt any public local law or ordinance concerning the deposit of rent into an escrow account based upon the existence of paint containing lead pigment on surfaces in or on a rental dwelling unit in the State and disposition of that rent.

8-303.

(a) An action of distress shall be brought by the landlord as plaintiff, [his]THE LANDLORD'S petition shall name the tenant as defendant and contain the following information:

(1) The name and address of the landlord,

(2) The name and address of the tenant, and

(3) The facts relating to (i) any assignment of a lease, if known, (ii) the premises leased, (iii) the date of the lease, (iv) the term of the lease, (v) the rent required to be paid by the lease, and (vi) the amount of the rent in arrears.

(b) The petition shall be under oath or affirmation of the plaintiff, or [his]PLAINTIFF'S agent, that the facts recited are true and correct.

(c) If a defendant is not a resident of, or amenable to service in a county where the leased premises are located, service may be made by certified mail, return receipt requested, bearing a postmark from the United States Postal Service. If this service is returned by the Post Office Department or refused by the addressee or [his]ADDRESSEE'S agent, then process shall be sent by first-class mail and the defendant returned as summoned.

8-304.

(a) When an action of distress is filed, the clerk shall issue an order directing the defendant to appear and show cause at a stated time why levy under an action of distress should not be made. The hearing may be not earlier than seven days from date of service on the defendant.

(b) In addition, the order shall:

(1) Direct the time within which service of the petition and show cause order shall be made on the defendant; and

(2) Inform the defendant that (i) [he]THE DEFENDANT may appear at the time stated and present evidence on [his]THE DEFENDANT'S behalf; and (ii) if [he]THE DEFENDANT fails to appear, all goods on the leased premises not exempted by law may be levied on and removed by the sheriff.

8-305.

(a) On a determination of reasonable probability, the court promptly shall issue an order directing that all goods on the leased premises not exempted by law shall be levied on. A copy of the order of levy shall be served on each tenant on the leased premises. If no tenant is found on the premises, a copy of the order shall be affixed in a prominent place on the interior of the leased premises.

(b) The officer making the levy then shall proceed to make an inventory of each article of goods distrained on and deliver a copy to each tenant found on the leased premises. If no tenant is found, [he]THE OFFICER shall affix a copy to the premises as provided above in the case of the order.

(c) The officer serving the order shall make a return of [his]THE OFFICER'S action to the court including the date and time of return.

(d) If the plaintiff by verified petition requests the court to include in the levy goods subject to distress and claimed to be on the leased premises but not included in the levy and inventory, the court, after service of a copy of the petition on the defendant and any person claiming an interest in the goods, shall conduct a hearing on the petition. The court may amend the levy and inventory to include those goods the court finds should be included.

8-307.

(a) The following are exempt from distress:

(1) Hand-powered and operated tools used by a tenant in [his]THE TENANT'S occupation or livelihood;

(2) Law books of an attorney;

(3) Hand-operated instruments of a physician;

(4) Medical books of a physician;

(5) Files and professional records of an attorney or physician; and

(6) The prior perfected security interest in all goods in which the tenant has an interest.

(b) The landlord in [his]THE LANDLORD'S petition shall certify as to the existence of a perfected security interest in any goods of the tenant. If the security interest was perfected prior to the levy under the distraint, the landlord either shall release the property from the distraint proceedings or pay to the holder of the security interest the balance due under the security interest. If the landlord pays the balance, it becomes a part of the costs in the distraint proceedings. However, the holder of the security interest, on demand by the landlord, shall give a true written statement of the balance due under the security interest, and, if the landlord pays the balance, the holder shall assign or release the security interest to the landlord.

8-311.

(a) Within seven days after the levy, any person who is not a tenant and whose goods are levied on under distress may file a petition with the court where the action of distress is pending for an order to exclude from levy the goods of the person not a tenant. The petition shall set forth the facts as to the ownership of the goods and shall be verified by the petitioner.

(b) A copy of the petition shall be served on the plaintiff and defendant. If service cannot be made on either, the petitioner shall certify this fact to the court in writing, stating the reason for it.

(c) After a hearing held on not more than ten days' notice, and on submission of proof satisfactory to the court that the goods are not the property of the tenant, the court shall issue an order excluding the goods from levy. This order authorizes the owner to remove [his]THE OWNER'S goods from the leased premises at the owner's expense free of any claim of the landlord.

(d) The order shall provide that the claimant shall remove [his]THE CLAIMANT'S goods at [his]THE CLAIMANT'S expense from the leased premises within a time to be fixed by the court. If the claimant fails to remove [his]THE CLAIMANT'S goods within the fixed time, then the goods claimed by [him]THE CLAIMANT no longer shall be excluded from distress and shall be subject to the landlord's claim for distress as though no petition for exclusion had been filed.

(e) If no petition to determine ownership of goods is filed by any third person within seven days after the date of a levy under distress, all goods on the leased premises and included in the inventory conclusively are presumed to be the goods of the tenant and may be disposed of according to the applicable provisions of this subtitle without any liability to the owner for the disposal.

8-313.

(a) The expense of removal of any goods from the leased premises to any other place for storage pending sale, including the expense of removal of goods which are affixed to the property, shall be included as a part of the costs of distress.

(b) An officer does not incur liability for removal of goods which are affixed to the property. The officer may require the plaintiff to mail or deliver an indemnity bond to [him]THE OFFICER to protect [him]THE OFFICER from any claim for damage or injury to any person or property caused by the officer's removal for sale of goods affixed to the property.

8-314.

(a) The defendant in an action of distress may file an answer, setting forth any defense [he]THE DEFENDANT may have to the action, including excessive rent distrained for or the rent sued is not distrainable.

(b) Hearing on the defendant's answer shall be held on not more than ten days' notice sent by regular mail to all parties and claimants. However, the court may postpone the hearing on due notice to all parties. At the hearing the court may determine and decide all issues raised, and issue an order of sale of the goods and may make any order in connection with them as required.

(c) In any final order for the sale of goods distrained, the court may increase the amount of the rent claim to an amount equal to the sum of the plaintiff's original claim plus rent accruing

after the filing of the petition for distress up to the day prior to the date of sale on which rent may fall due.

(d) If the tenant named as defendant in an action for distress fails to file an answer within seven days after a levy has been made, the court, on motion of the plaintiff or on its motion, may issue an order for sale of the goods distrained.

(e) The date of sale is in the discretion of the court but shall be held as soon as feasible.

8-315.

(a) If a tenant removes [his]THE TENANT'S goods from the leased premises, and the officer can find no goods of the tenant on the premises, [he]THE OFFICER shall report that fact to the court. If the court is satisfied the goods of the tenant have been removed, it may issue an order to follow goods under distress within six months after filing of an action of distress. The order shall authorize levy on the removed goods at any place the goods can be found within the jurisdiction of the court.

(b) If the goods are removed outside the court's jurisdiction, the plaintiff may file with the court in the jurisdiction where the goods are located, a certified copy of the original action of distress, together with a verified petition setting forth (i) the fact of the original petition for distress, (ii) the premises to which the tenant has removed the goods, and (iii) the name and address of the occupant of the premises. If the occupant of the premises to which the goods are removed is a person other than the tenant, an order shall be served by first-class mail or by an officer on the other person giving [him]THE OCCUPANT seven days from the date of service of the order to protest seizure of the goods. If not protested, the order becomes final and authorizes any officer to seize and remove the goods.

(c) Entry to premises under an order to follow goods under distress may be forcible.

8-320.

(a) Only those goods necessary to satisfy the claim for rent due and to pay all costs may be sold in a sale under distress. Any unsold goods shall be returned to the tenant if they have been removed or they shall be left on the premises. If a surplus of money remains after the sale and payment of the rent claim and all costs, it shall be returned to the tenant or paid as provided by order of the court. The cost of returning unsold goods to the premises, if removed, shall be included as costs of the sale.

(b) Before any distrainable goods of others are sold at a sale, the goods of the tenant shall be sold first and in their entirety, if necessary, to satisfy the claim for rent and costs. The sale of goods of others shall be made only to the extent necessary to satisfy the rent claim and all costs.

(c) If any surplus money or unsold goods remain in the possession of an officer on completion of proceedings in an action of distress and after payment of all claims and costs incurred, a judgment creditor or other person claiming a right to the money or goods may petition the court in which the action was brought for payment of [his]THE CREDITOR'S OR CLAIMANT'S judgment or claim out of the excess of money or goods, plus court costs expended by the creditor or claimant. After a hearing on the petition, the court may direct payment of the money or goods or order the sale of goods in the same manner and after proceedings similar to those in attachment or execution. Any exemption allowed by law is permitted in these proceedings if claimed.

8-323.

If the goods of a third party are distrained on and sold under an action of distress, the third party has a right of action against the tenant for damages for any loss sustained by the third party as a result of the levy and sale of [his]THE THIRD PARTY'S goods under distress. The action for damages may be brought before the court before which the original action was brought, regardless of any monetary limitation of the civil jurisdiction of the court. If the action for damages is brought in any other court, only a certified copy of the record in the original court need be filed as evidence of the proceedings.

8-324.

(a) If the plaintiff in an action of distress makes an election in writing, the court may declare the lease terminated and of no further force and effect. This election may be made only if all tenants have been served with a copy of the action of distress and after sale of all goods levied on. The court may not terminate any residential lease which runs for more than 15 years.

(b) If any tenant was not served with a copy of the action of distress, the court may declare the lease terminated if a copy of the nisi order of termination is twice returned non est as to the nonsummoned defendant.

(c) If the court declares a lease terminated under subsection (a), the court on application of the plaintiff, may issue its order or judgment of restitution of the premises. The court shall issue its warrant to the officer commanding [him]THE OFFICER to deliver immediately to the plaintiff, possession in full and ample manner as set forth in § 8-402(b). The costs of this action are the same as in the case of a tenant holding over.

8-328.

(a) If a tenant under a lease dies, or, if the tenant is a corporation and ceases to exist, distress may be brought against the tenant named in the lease regardless of death or nonexistence. The plaintiff shall give notice of an action of distress to the personal representative of a deceased

defendant or to any person who was an officer at the time the corporation ceased to exist and the plaintiff shall certify to the court that [he]THE PLAINTIFF has given notice. Then the plaintiff may proceed with levy and sale as provided in this subtitle.

(b) If a tenant dies and no personal representative is appointed by a court having jurisdiction, or if an officer of the nonexistent corporation cannot be found and, therefore, service of process is returned non est, then, on application of the plaintiff, an order may be passed requiring a copy of the petition for distress to be posted at the courthouse door at least one week before the date of sale. Failure of the plaintiff to apply for the order subjects [him]THE PLAINTIFF to suit by the personal representative of the deceased tenant, or by the officer or surviving directors of the nonexistent corporation for any loss or damage sustained. If the plaintiff makes application for the order, [he]THE PLAINTIFF is under no liability either to the estate of the deceased tenant, or to the surviving trustees or officers of the nonexistent corporation.

8-331.

If the court finds that any notice required under this subtitle to be sent by mail actually has not been received by the person to whom the notice was addressed and that injustice will result, the court shall order a stay of further proceedings until it is satisfied that the person has had an opportunity to protect [his]THE PERSON'S interests.

8-401.

(a) 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.

(b) (1) Whenever any landlord shall desire to repossess any premises to which [he]THE LANDLORD is entitled under the provisions of subsection (a) of this section, [he]THE LANDLORD or [his]THE LANDLORD'S duly qualified agent or attorney shall make [his]THE LANDLORD'S written complaint under oath or affirmation, before the District Court of the county wherein the property is situated, describing in general terms the property sought to be repossessed, and also setting forth the name of the tenant to whom the property is rented or [his]THE TENANT'S assignee or subtenant with the amount of rent due and unpaid; and praying by warrant to repossess the premises, together with judgment for the amount of rent due and costs. The District Court shall issue its summons, directed to any constable or sheriff of the county entitled to serve process, and ordering [him]THE CONSTABLE OR SHERIFF to notify by first-class mail the tenant, assignee, or subtenant to appear before the District Court at the trial to be held on the fifth day after the filing of the complaint, to answer the landlord's complaint to show cause why the prayer of the landlord should not be granted, and the constable or sheriff shall proceed to serve the summons upon the tenant, assignee or subtenant in the property or upon [his]THE TENANT'S, ASSIGNEE'S OR SUBTENANT'S known or

authorized agent, but if for any reason, neither the tenant, assignee or subtenant, nor [his]THE TENANT'S, ASSIGNEE'S, OR SUBTENANT'S agent, can be found, then the constable or sheriff shall affix an attested copy of the summons conspicuously upon the property. The affixing of the summons upon the property after due notification to the tenant, assignee, or subtenant by first-class mail shall conclusively be presumed to be a sufficient service to all persons to support the entry of a default judgment for possession of the premises, together with court costs, in favor of the landlord, but it shall not be sufficient service to support a default judgment in favor of the landlord for the amount of rent due.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, in Wicomico County, in an action to repossess any premises under this section, service of process on a tenant may be directed to any person authorized under the Maryland Rules to serve process.

(c) (1) If, at the trial on the fifth day indicated in subsection (b) of this section, the court is satisfied that the interests of justice will be better served by an adjournment to enable either party to procure [his]THEIR necessary witnesses, [he]THE COURT may adjourn the trial for a period not exceeding one day, except that if the consent of all parties is obtained, the trial may be adjourned for a longer period of time.

(2) If, when the trial occurs, it appears to the satisfaction of the court, that the rent, or any part of the rent, is actually due and unpaid, the court shall determine the amount of rent due and enter a judgment in favor of the landlord for possession of the premises. The court may also give judgment in favor of the landlord for the amount of rent determined to be due together with costs of the suit if the court finds that the actual service of process made on the defendant would have been sufficient to support a judgment in an action in contract or tort.

(3) The court, when entering the judgment, shall also order the tenant to yield and render possession of the premises to the landlord, or [his]THE LANDLORD'S agent or attorney, within 4 days after the trial.

(4) The court may, upon presentation of a certificate signed by a physician certifying that surrender of the premises within this 4-day period would endanger the health or life of the tenant or any other occupant of the premises, extend the time for surrender of the premises as justice may require. However, the court may not extend the time for the surrender of the premises beyond 15 days after the trial.

(5) However, if the tenant, or someone for [him]THE TENANT, at the trial, or adjournment of the trial, tenders to the landlord the rent determined by the court to be due and unpaid, together with the costs of the suit, the complaint against the tenant shall be entered as being satisfied.

(d) (1) Subject to the provisions of paragraph (2) of this subsection, if judgment is given in favor of the landlord, and the tenant fails to comply with the requirements of the order within 4 days, the court shall, at any time after the expiration of the 4 days, issue its warrant, directed to any official of the county entitled to serve process, ordering [him]THE OFFICIAL

to cause the landlord to have again and repossess the property by putting [him]THE LANDLORD (or [his]THE LANDLORD'S duly qualified agent or attorney for [his]THE LANDLORD'S benefit) in possession thereof, and for that purpose to remove from the property, by force if necessary, all the furniture, implements, tools, goods, effects or other chattels of every description whatsoever belonging to the tenant, or to any person claiming or holding by or under said tenant. If the landlord does not order a warrant of restitution within sixty days from the date of judgment or from the expiration date of any stay of execution, whichever shall be the later, the judgment for possession shall be stricken.

(2) (i) The administrative judge of any district may stay the execution of a warrant of restitution of a residential property, from day to day, in the event of extreme weather conditions.

(ii) When a stay has been granted under this paragraph, the execution of the warrant of restitution for which the stay has been granted shall be given priority when the extreme weather conditions cease.

(e) In any action of summary ejectment for failure to pay rent where the landlord is awarded a judgment giving [him]THE LANDLORD 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]THE LANDLORD'S agent all past due rent and late fees, plus all court awarded costs and fees, at any time before actual execution of the eviction order. This subsection does not apply to any tenant against whom 3 judgments of possession have been entered for rent due and unpaid in the 12 months prior to the initiation of the action to which this subsection otherwise would apply.

(f) The tenant or the landlord may appeal from the judgment of the District Court to the circuit court for any county at any time within 4 days from the rendition of the judgment. The tenant, in order to stay any execution of the judgment, shall give a bond to the landlord with one or more sureties, who are owners of sufficient property in the State of Maryland, with condition to prosecute the appeal with effect, and answer to the landlord in all costs and damages mentioned in the judgment, and such other damages as shall be incurred and sustained by reason of the appeal. The bond shall not affect in any manner the right of the landlord to proceed against the tenant, assignee or subtenant for any and all rents that may become due and payable to the landlord after the rendition of the judgment.

8-402.

(a) (1) A tenant under any lease or someone holding under [him]THE TENANT, who shall unlawfully hold over beyond the termination of the lease, shall be liable to the landlord for the actual damages caused by the holding over.

(2) The damages awarded to a landlord against the tenant or someone holding under [him]THE TENANT, may not be less than the apportioned rent for the period of holdover at the rate under the lease.

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

(4) Nothing contained herein is intended to limit any other remedies which a landlord may have against a holdover tenant under the lease or under applicable law.

(b) (1) (i) Where any interest in property shall be leased for any definite term or at will, and the landlord shall desire to repossess the property after the expiration of the term for which it was leased and shall give notice in writing one month before the expiration of the term or determination of the will to the tenant or to the person actually in possession of the property to remove from the property at the end of the term, and if the tenant or person in actual possession shall refuse to comply, the landlord may make complaint in writing to the District Court of the county where the property is located.

(ii) The court shall issue a summons directed to any constable or sheriff of the county entitled to serve process, ordering the constable or sheriff to notify the tenant, assignee, or subtenant to appear on a day stated in the summons before the court to show cause why restitution should not be made to the landlord. 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. If, for any reason those persons 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.

(iii) Upon the failure of either of the parties to appear before the court on the day stated in the summons, the court may continue the case to a day not less than six nor more than ten days after the day first stated and notify the parties of the continuance.

(2) If upon hearing the parties, or in case the tenant or person in possession shall neglect to appear after the summons and continuance the court shall find that the landlord had been in possession of the leased property, that the said lease or estate is fully ended and expired that due notice to quit as aforesaid had been given to the tenant or person in possession and that [he]THE TENANT OR PERSON IN POSSESSION had refused so to do, the court shall thereupon give judgment for the restitution of the possession of said premises and shall forthwith issue its warrant to the sheriff or a constable in the respective counties commanding [him]THE TENANT OR PERSON IN POSSESSION forthwith to deliver to the landlord possession thereof in as full and ample manner as the landlord was possessed of the same at the time when the leasing was made, and shall give judgment for costs against the tenant or person in possession so holding over. Either party shall have the right to appeal therefrom to the circuit court for the county within ten days from the judgment. If the tenant appeals and files with the

District Court an affidavit that the appeal is not taken for delay, and also a good and sufficient bond with one or more securities conditioned that [he]THE TENANT will prosecute the appeal with effect and well and truly pay all rent in arrears and all costs in the case before the District Court and in the appellate court and all loss or damage which the landlord may suffer by reason of the tenant's holding over, including the value of the premises during the time [he]THE TENANT shall so hold over, then the tenant or person in possession of said premises may retain possession thereof until the determination of said appeal. The appellate court shall, upon application of either party, set a day for the hearing of the appeal, not less than five nor more than 15 days after the application, and notice for the order for a hearing shall be served on the opposite party or [his]THAT PARTY'S counsel at least five days before the hearing. If the judgment of the District Court shall be in favor of the landlord, a warrant shall be issued by the appellate court to the sheriff, who shall proceed forthwith to execute the warrant.

(3) If the tenant or person in possession shall allege that the title to the leased property is disputed and claimed by some person whom [he]THE TENANT OR PERSON IN POSSESSION (THE CLAIMANT) shall name, by virtue of a right or title accruing or happening since the commencement of the lease, by descent or deed from or by devise under the last will or testament of the landlord, and if thereupon the person so claiming shall forthwith appear, or upon a summons to be immediately issued by the District Court and, made returnable within six days next following, shall appear before the court and shall, under oath, declare that [he]THE CLAIMANT believes that [he]THE CLAIMANT is entitled in manner aforesaid to the leased property and shall, with two sufficient securities, enter into bond to the plaintiff, in such sum as the court shall think is a proper and reasonable security to said plaintiff or parties in interest, to prosecute with effect [his]THE claim at the next term of the circuit court for the county, then the District Court shall forbear to give judgment for restitution and costs. If the said claim shall not be prosecuted as aforesaid, the District Court shall proceed to give judgment for restitution and costs and issue its warrant within ten days after the end of said term of court.

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

(ii) This paragraph (4), so far as it relates to notices, does not apply in Baltimore City.

(iii) In Montgomery County, except in the case of single family dwellings, the notice by the landlord shall be two months in the case of residential tenancies with a term of at least month to month but less than from year to year.

(5) When the tenant shall give notice by parol to the landlord or to [his]THE LANDLORD'S agent or representatives, at least one month before the expiration of the lease or tenancy in all cases except in cases of tenancies from year to year, and at least three months' notice in all cases of tenancy from year to year (except in all cases of farm tenancy, the notice shall be six months), of the intention of the tenant to remove at the end of that year and to surrender possession of the property at that time, and the landlord, [his]THE LANDLORD'S agent, or representative shall prove the notice from the tenant by competent testimony, it shall not be necessary for the landlord, [his]THE LANDLORD'S agent or representative to provide a written notice to the tenant, but the proof of such notice from the tenant as aforesaid shall entitle [his]THE landlord to recover possession of the property hereunder. This subparagraph shall not apply in Baltimore City.

(c) Unless stated otherwise in the written lease and initialed by the tenant, when a landlord consents to a holdover tenant remaining on the premises, the holdover tenant becomes a periodic week-to-week tenant if [he]THE TENANT was a week-to-week tenant before [his]THE TENANT'S holding over, and a periodic month-to-month tenant in all other cases.

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 refuses to comply, the landlord may make complaint in writing to the District Court of the county where the premises is located. The court shall summons immediately the tenant or person in possession to appear before the court on a day stated in the summons to show cause, if any, why restitution of the possession of the leased premises should not be made to the landlord.

(2) If, for any reason, the tenant or person in actual possession cannot be found, the constable or sheriff shall affix an attested copy of the summons conspicuously on the property. After notice is sent to the tenant or person in possession by first-class mail, the affixing of the summons on the property shall be conclusively presumed to be a sufficient service to support restitution.

(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 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]THE TENANT 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 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 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 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] THAT PARTY'S counsel at least five 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.

8-403.

If the court in any case brought pursuant to § 8-401 or § 8-402 orders an adjournment of the trial for a longer period than provided for in the section under which the case has been instituted, the tenant or anyone holding under [him] THE TENANT shall pay all rents due and as they come due into the court exercising jurisdiction in the case. However, the court may order the tenant to pay rents due and as come due into an administrative agency of any county which is empowered by local law to hold rents in escrow pending investigation and disposition of complaints by tenants; the court also may refer that case to the administrative agency for investigation and report to the court. A tenant shall pay into the court the amount of rent due on or before the date to which the trial is adjourned or within seven days after adjournment if the trial is adjourned more than seven days, or to the administrative agency within seven days after the court has ordered the rent paid into an administrative agency. If the tenant fails to pay rent due within this period, or as it comes due, the court, on motion of the landlord, shall give judgment in favor of the landlord and issue a warrant for possession in accordance with the provisions of § 8-401(c) and (d).

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 1999.

MSA SC 5458-51-3081

Dates: 2007/11/06

Description:

Scanning template, retrospective

From: Christine Alvey -6438, christia@mdsa.net, room 103

For: Government Publications retrospective scanning project

To: On Demand Scanning

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Item: 1. Report of the Commission to Review Landlord-Tenant Laws : submitted to Governor Parris N. Glendening / The Commission.

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