THE APARTMENT AND OFFICE BUILDING ASSOCIATION
OF METROPOLITAN WASHINGTON

THE VIRGINIA APARTMENT MANAGEMENT
ASSOCIATION

Please Oppose H.B. 1889
(Price – Extending Pandemic Eviction Procedures in Perpetuity)

H.B. 1889 would make permanent the temporary requirements adopted during the 2020 special session to help tenants remain safely housed during the COVID-19 global emergency. This includes extended court filing timelines and mandatory payment plans. These temporary provisions were passed with the support of the industry, which has been proactive in its efforts to assist tenants during the ongoing crisis. If implemented on a permanent basis, however, this decidedly one-sided will have a catastrophic impact on the operations of rental housing in Virginia and result in significantly increased financial burden for already struggling tenants.

Extending the Eviction Timeline Digs Tenants into a Deeper Financial Hole

Extending the procedural timeline for filing in court to reclaim possession of a unit does little to help a tenant who may be able to scrape together the resources to come back into good standing and actually piles additional burden on those who are unable to meet their financial obligations. Princeton University's 2018 report on evictions showed that roughly 85% of unlawful detainer motions in Virginia are canceled before reaching a court hearing with the housing provider and tenant coming to terms outside of the court process. For that 15% that is unable to make their rent payment prior to a court hearing, the tenant continues to accrue debt over an elongated timeline. The result is that the tenant still finds themselves facing eviction, but with a much heftier financial judgment. This only perpetuates the cycle of poverty.

Similarly, the results have not been positive for tenants offered payment plans during the pandemic. Housing providers report that the default rate on payment plans offered during the pandemic is around 60 percent. Where a tenant is able to make monthly installment payments, a payment plan can be a lifeline to help keep them safely housed. For the majority of tenants who are not able to pay both their monthly rent *and* monthly installments, they can do more harm than good.

Mandatory Payment Plans Place a Significant Strain on the Operations of a Community

Rental housing is a single revenue stream industry. When a housing provider cannot rely on timely payment of rent, it places a significant strain on the operations of a property. The housing provider remains responsible for covering all expenses related to the property's mortgage, payroll, utilities, taxes, and maintenance and renovation costs, not to mention new costs associated with disinfection and complying with regulatory mandates. The impact is particularly acute in market rate affordable housing where margins are already razor thin.

Mandating that housing providers offer payment plans, the terms of which the tenant may not be able to meet only contributes to the uncollectible debt incurred by the industry. The National Apartment Association projects that the rental housing industry in Virginia has already suffered more than $1 billion in losses during the pandemic. Placing further financial strain on housing providers will result in bankruptcies and a loss of affordable housing stock. Some housing providers have also moved to month-to-month tenancies to avoid such potential for uncollectible rent. This also has opposite of the intended effect, actually destabilizing housing.

A Holistic Review of Tenant Resources is Needed

The need for a more holistic review of tenant resources was acknowledged as part of the public discourse during the 2020 special session, but has not yet occurred. We have made numerous resources available to tenants over the last few legislative sessions without looking holistically at how these resources interplay with one another. The temporary requirement to offer tenants the option of a payment plan was adopted as part of the 2020 special session. Also during the 2020 special session, the code was amended to allow a 60-day stay of eviction for tenants whose income has been impacted by the pandemic. In 2019, we extended the right of redemption (a provision that allows a tenant to "pay to stay" upon appearing in court in response to an unlawful detainer) to allow the right to be exercised up to 48 hours prior to the actual eviction. Legislation was also adopted in 2019 authorizing localities to create their own eviction diversion programs - these are effectively a court-administered payment plan that a tenant can enter into at the back end of the process. We have taken the buffet approach, where tenants may make use of any or all of these resources. As an example, a tenant could enter into a payment plan, default on paying the required installments, then go to court and ask to be put into an eviction diversion program, which effectively constitutes rolling their snowballing debt into a second payment plan. It's like paying one credit card with another. Worse yet, a tenant could actually creatively string these various resources together to abuse the well-intended laws, going about 8 months into a 12-month lease term paying only once (see attached chart).

A More Targeted Approach is in Order

Ultimately, if a tenant has to make use of all of these various resources, they are likely in a unit that they cannot afford. That is untenable for both the housing provider and the tenant. Moreover, it is extremely rare for a tenant who falls behind by more than a month to be able to recover and come back into good standing. The longer the process gets dragged out, the deeper a hole the tenant will find themselves in as debt continues to accrue. Under a normal 45-60-day eviction process, a tenant may emerge with a judgment against them for $1,500. If you extend the process by another 60-90-120 days, that judgment may instead be as high as $6,000. This only exacerbates the cycle of poverty.

If mandatory payment plans are to be adopted, the General Assembly should consider making different resources mutually exclusive and instituting eligibility standards. Similar to any other area of business where one entity might offer credit to a customer, housing providers need some assurances that tenants are able to pay. Where a tenant has an otherwise strong payment history, is employed and can demonstrate the ability to come back into good standing by making installment payments, the industry absolutely wants to work with those tenants to keep them in place. Where a tenant does not have the capability of making such installments, a payment plan only draws out the process and contributes to their growing debt.