



SENT VIA E-MAIL

April 30, 2020

Honorable Lawrence J. Hogan
Governor
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Dear Governor Hogan:

The Public Justice Center, the Homeless Persons Representation Project, and the ACLU of Maryland urge you to immediately **extend and expand the statewide moratorium on evictions and utility shut-offs** in Maryland and commit to an emergency allocation of federal CARES Act funds, including Coronavirus Relief Funds (CRF), Community Development Block Grant (CDBG-CV) and Emergency Shelter Grant (ESG-CV), in the amount of at least **\$153,651,000 million for rental assistance** to prevent mass evictions after the moratorium ends. While this amount is just one-quarter of the estimated need for the months of April-July, it will allow the state and localities to implement a rental assistance effort and begin addressing the immediate needs of Maryland's renters and the rental industry.

We commend your leadership thus far in providing a compassionate and evidence-based response to the COVID-19 pandemic. Your swift action to pause evictions and utility terminations has helped Maryland families to shelter in place, doing their part to flatten the curve of the pandemic. Now, as we all look toward a recovery we hope will be safe and orderly, it is critical that Maryland immediately take further action to protect the public health as well as thousands of families that will not be able to pay rent on May 1st and who face a financial cliff when the moratoria end and the courts reopen in early June.

As the Chairman of the National Governors Association, you are already painfully aware that the COVID-19 pandemic has already resulted in widespread and devastating economic consequences, and that the number of unemployment claims filed in Maryland alone has exceeded 300,000 since mid-March. In the face of these staggering unemployment numbers and climbing medical costs, millions of people living in the United States—and the 1.8 million Marylanders living in 730,000 renter households—face the imminent threat of losing their homes or access to utility service when your emergency orders halting evictions and utility termination end, and the courts reopen. These consequences risk further spread of COVID-19 throughout Maryland and undermine efforts to protect public health and well-being. Moreover, the nearly guaranteed wave of

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evictions and utility shut-offs would inflict far-reaching and significant economic and social harm on hundreds of thousands of Maryland residents —particularly on women, people of color, children, low-wage workers, and other vulnerable communities.

Keeping all Marylanders stably housed during the pandemic is critical, but none more so than lower income workers, many of whom are in “essential” occupations. As you know, many working families live paycheck to paycheck, unable to save for the “rainy day” that has now come. This is particularly true of renters, many of whom were already living precariously before the pandemic, having to pay 30% or more of their income for rent. Even temporary declines of income and unreimbursed medical bills can quickly send low wage households down the spiral of housing instability, eviction, and even homelessness. Many of these households are the “essential,” but lower-wage, workers risking their lives to get through this health emergency: grocery workers, home health and hospital aides, janitors, transit workers, warehouse and delivery workers, etc. Maryland needs these workers to remain housed and working. Keeping low-wage households stably housed is also critically important from the perspectives of individual well-being and public health, yet they are at the greatest risk of housing instability.

COVID-19 is a pandemic and recession superimposed on a structural housing crisis, manifested by a high pre-COVID baseline of more than 650,000 eviction actions. During the 2008 recession, eviction filings statewide increased from about 500,000 per year to more than 600,000, and never returned to prior levels as rising rents have outpaced income growth.¹ The economic recovery from a COVID-19 induced recession may not be quick, and some public health experts project COVID-19 outbreaks may continue into 2021. For those who have already lost jobs, or suffered reductions in income, unemployment benefits have been slow in coming, and the temporary federal increase in unemployment insurance benefits is not sufficient on its own to ensure stable housing for lower income renters.

While the eviction moratorium has played an important emergency role in protecting renters, a longer-term solution for both renters and landlords is needed now. Tenants are still responsible for their rent payments, making them subject to eviction when the moratoria end. Landlords, especially small landlords, still need rent revenues to operate and maintain their housing units. Providing temporary rental assistance to unemployed and severely cost-burdened renters would keep at-risk tenants stably housed and protect both the state’s essential workforce and its supply of naturally occurring affordable housing units, many of which are owned by “Mom and Pop” landlords.

Local governments are scrambling to provide rental assistance to save renters, landlords and the real estate market. However, the cost of providing temporary rental assistance to

¹ Data compiled from Maryland Judiciary Statistical Reports, 2004 to 2018. For 2018, the number of eviction filings was 653,505. Baltimore County leads the state in eviction filings with Prince George’s County and Baltimore City, second and third. Filings in Baltimore City have actually declined slightly since 2004 while surging in other jurisdictions.

already rent burdened Marylanders who have lost their income through no fault of their own will far exceed what local jurisdictions alone can bear without help from the State. Baltimore City is exploring the use of at least \$10 million, almost all of its allocation of Community Development Block Grants from the federal CARES Act (CDBG-CV) to provide rental assistance, but based on unemployment data, we estimate the need to be about four times that level. Anne Arundel County moved quickly to contribute and expend \$2 million of its general funds and slots revenue for COVID-19 related eviction prevention, and anticipates providing more from its allocation of CDBG-CV. This week, Montgomery County has also committed an initial \$2 million. The state of Delaware moved immediately to contribute an initial \$1.5 million in state funds for temporary rental assistance, matched by \$500,000 from New Castle County, which has also been exhausted.

The prospect for federal help is still uncertain. The CARES Act provides short-term, but minimal, relief for jurisdictions that they can use to provide rental assistance. The National League of Cities (NLC), real estate industry groups and affordable housing advocates have all joined in asking Congress for the \$100 billion that expert analysis says is needed to avert a tidal wave of evictions and foreclosures and stabilize the residential rental market during the coming recession. But Congress did not include housing assistance in the last stimulus bill, and has left renters, homeowners and the real estate industry hoping for a CARES Act II that includes rent relief. The NLC request includes rental assistance in the amount of \$1,843,817,756 for one year of rental assistance for 141,030 cost-burdened Marylanders with incomes below 50% of area median income expected to be at risk of housing instability and eviction during the pandemic and associated recession.²

But the state cannot afford to wait and hope for federal help. It must act immediately, in cooperation with its local partners, to stand up a robust rental assistance program. This will require an initial state contribution of at least \$153,650,000 from the State's allocation of CARES Act funds, and frankly, will need to be supplemented with general funds if Congress fails to act. The CARES Act I funds coming to Maryland that can be used for rental assistance include Coronavirus Relief Funds (CRF), Community Development Block Grant (CDBG-CV) and Emergency Shelter Grant (ESG-CV).

We have based this \$153.65 million request on the above estimate of \$1.843 billion for one year of statewide need for rental assistance and the following adjustments and assumptions to reduce costs:

- Four months of temporary rental assistance (rather than one year);
- Payments are made directly to landlords;
- Payments to landlords are 50% of lease rent (rather than 100%)
- Total statewide cost is \$307,302,959;

² See e.g. Andrew Aurand, Ph.D. et al., *NLIHC Research Note: The Need for Emergency Rental Assistance During the COVID-19 and Economic Crisis*, (April 3, 2020) <https://nlihc.org/sites/default/files/Need-for-Rental-Assistance-During-the-COVID-19-and-Economic-Crisis.pdf>

- Initial State contribution is 50% of statewide costs or **\$153,651,480**.

Based on our discussions with some local government officials and service providers, this would be a streamlined temporary rental assistance program designed to provide swift relief with minimal administrative burden and costs. We would be happy to provide further details, but in summary:

- The system would be designed so that landlords, rather than tens of thousands of individual tenants, would submit applications and supporting information electronically through an on-line portal that would be tied to existing local and state databases of rental housing.
- In lieu of administratively burdensome up-front verification requirements, landlords would certify to the accuracy of the information, such as rent and balances owed, and tenants would certify that they had lost substantial income. (These certifications would be made subject to recapture and legal penalties for perjury or fraud).
- Landlords would be required to accept the rent assistance provided as payment in full on behalf of the tenant. To ensure the purpose of preventing evictions, the landlord could not seek payment for the covered months from the tenant or the courts, and would have to enter into a payment plan for any amounts owed prior to April.
- Only units occupied by tenants meeting certain income eligibility criteria would be eligible.
- A portion of the funds should be used for eviction prevention housing counseling and/or legal services to ensure that tenants of landlords participating in this program are not evicted and that habitability codes at the subject properties are enforced.

Maryland Should Extend and Clarify the Moratorium on Evictions to at Least Parallel the Federal CARES Act for All Rental Properties In Maryland.

The eviction moratorium should be extended and expanded to at least July 27, 2020, for all rental properties in Maryland to run parallel to the Federal CARES Act that places a moratorium on evictions until that date (and a 30-day notice period beyond that) for all rental properties with a federally backed mortgage (Fannie, Freddie, FHA, etc.) or federal assistance, like a housing choice voucher. This would allow some additional breathing room for rental assistance to be operationalized. We cannot risk a wave of evictions that devastates families, jeopardizes public safety and dooms economic recovery, while the system is being put into place.

Maryland can and should expand these CARES Act protections to all rental properties in the state, clarify that these protections apply to all eviction actions with narrow exceptions, and extend these protections for a period of time after July 27, 2020, if needed. Given the ongoing and unpredictable nature of the COVID-19 pandemic, the moratorium must, at a

minimum, continue until at least 45 days or longer³ after the following conditions are met: (1) the period for mandated or recommended social distancing has ended; (2) State health officials have determined the moratorium is no longer needed to control or limit the spread of COVID-19; and (3) the State has determined there are no further public health, economic, or other circumstances supporting the continued need for the moratorium. Moreover, an effective eviction moratorium should allow for extensions as necessary to allow tenants reasonable time to apply for and receive financial resources and assistance following the conclusion of the pandemic. Like the CARES Act, the moratorium should also guarantee that landlords and housing providers give at least 30 days' notice to evict a tenant upon expiration of the moratorium period.⁴

Maryland's Moratorium Must Apply to All Types of Evictions and Halt Every Stage of the Eviction Process.

Given the extraordinary circumstances that Maryland residents are facing, an effective eviction moratorium should not be limited to evictions for non-payment of rent. Rather, the moratorium must prohibit all evictions, regardless of the type of tenant or lease violation. Any exception to an eviction moratorium should be narrowly tailored to circumstances in which an individual's tenancy poses a serious and imminent health or safety threat that cannot be reduced or eliminated except by eviction.

Currently, your March 16, 2020 order bars issuances of judgments and warrants for restitution under Real Property Article Sections 8-401 (non-payment of rent) and 8-402.1 (breach of lease) only if the tenant can prove with sufficient documentation a COVID-related loss of income. This order does not bar actually filing a complaint for eviction. Neither does it bar evictions for month-to-month tenancies or at the end of a lease term, i.e. under Section 8-402 (tenant holding over). Many landlords in our experience are using this enormous loophole to continue an eviction process. For example, a significant number of our tenant-clients have informed their respective landlords of a temporary inability to pay rent due to a loss of income from COVID. These clients originally signed one-year leases, but then continued the tenancy thereafter, sometimes for years, on a month-to-month basis. The landlords have responded by giving these clients a 30-day notice to vacate – i.e., terminating their month-to-month leases. The landlord may then file a complaint for tenant holding over under RP § 8-402 and completely avoid your March 16 executive order.

Only Chief Judge Barbera's order at the moment precludes all evictions from moving forward. But going forward as the courts reopen, an [effective eviction moratorium](#) must prohibit landlords and housing providers from proceeding with any stage of the state law eviction process, including, but not limited to: (1) formal or informal issuance of eviction notices; (2) service of legal process in eviction actions; (3) filing of new eviction cases; (4)

³ See, e.g., Mass. H. 4647, *An Act Providing for a Moratorium on Evictions and Foreclosures During the COVID-19 Emergency*, <https://malegislature.gov/Bills/191/H4647>.

⁴ See, e.g., Coronavirus Aid, Relief, and Economic Security Act (CARES Act), § 4024.

eviction hearings; and (5) enforcing warrants of restitution, including warrants that were issued prior to the date that the moratorium went into effect.⁵ Moreover, to assure an orderly lifting of the moratorium, the order should extend or toll all court deadlines for pending eviction proceedings for at least 30 days after the moratorium is lifted as the federal CARES Act does. The moratorium should also prohibit landlords from imposing other adverse actions associated with the tenant's inability to pay rent due during the period of the public health emergency and moratorium, such as assessing late fees, filing adverse credit reports or blacklisting tenants, and retaliation for asserting one's rights under the moratorium.

For An Orderly Recovery, Maryland Must Also Prevent Mass Evictions After the Moratorium Ends.

By ensuring residents can comply with stay-at-home orders, the existing moratorium under Chief Judge Barbera's direction has helped prevent both the further spread of COVID-19 and the harmful aftermath of eviction, such as medical and mental health issues, financial hardship, and homelessness.⁶ However, permitting mass evictions to take place the moment the moratorium lifts will similarly cause huge upheavals in local communities, harm public health, and threaten families. For that reason, Maryland should commit to adopting policies that would prevent mass evictions once the moratorium ends. Key policies should include providing rental assistance as described above and requiring landlords to negotiate payment plans, establishing a right to free legal counsel to tenants facing eviction, and exploring other creative strategies for addressing this unprecedented threat to community stability. Such policies should provide meaningful mechanisms to ensure compliance by landlords and housing providers. For example, Maryland officials should issue guidance for housing courts to require landlords and housing providers to show that the premises are not subject to a federal or state moratorium, that they have not received rental assistance, and they have engaged in good faith negotiation of payment plans prior to filing for eviction.

Maryland Must Extend the Moratorium on Utility Shut-Offs That Now Expires June 1st.

Thank you for extending your order of March 16, 2020, halting utility terminations, originally expiring on May 1st, for an additional month. In addition to issuing a comprehensive eviction moratorium, Maryland should comprehensively protect its

⁵ National Housing Law Project, *Protecting Renter and Homeowner Rights During Our National Health Crisis*, <https://www.nhlp.org/campaign/protecting-renter-and-homeowner-rights-during-our-national-health-crisis-2/>.

⁶ Matthew Desmond & Carl Gershenson, *Housing and Employment Insecurity among the Working Poor*, Oxford: Social Problems Advance Access 1–12 (Jan. 11, 2016), <http://scholar.harvard.edu/files/mdesmond/files/desmondgershenson.sp2016.pdf?m=1452638824>; see also Allison Bovell-Ammo & Megan Sandel, *The Hidden Health Crisis of Eviction*, Boston Univ. School of Public Health (Oct. 5, 2018), <https://www.bu.edu/sph/2018/10/05/the-hidden-health-crisis-of-eviction/>.

residents' access to critical utility services by continuing to prohibit utility shut-offs or disconnections for the duration of the pandemic, including termination of water utilities. Moreover, water utilities should commit to restoring previously disconnected utility services for residents without water or other services.

Failure to Act Will Disproportionately Harm Communities of Color—And Particularly Women of Color.

Just as communities of color are disproportionately impacted by COVID-19, even in “normal” times, people of color, and particularly Black women, [bear the burden of eviction](#).⁷ The ACLU’s Data Analytics team [analyzed national eviction data from 2012 to 2016](#), provided by the Eviction Lab at Princeton University, and found that on average, Black renters had evictions filed against them by landlords at nearly twice the rate of white renters.⁸ The harmful impact of eviction is further compounded by other racial, gender, and socioeconomic barriers—such as wealth gaps, pay disparities, and inequities in our healthcare system.

Critically, the aftermath of an eviction persists for decades, as tenants with prior eviction records face major obstacles to accessing future housing opportunities. Landlords routinely employ screening policies that deny housing to any renter previously named in an eviction case, regardless of whether the case was dismissed, occurred many years ago, or was filed on unlawful grounds.⁹ As a result, eviction often exacerbates and reproduces conditions of economic insecurity for low-income women and communities of color.

Utility shut-offs also disproportionately harm communities of color. A 2017 report by the NAACP found that Black households experience utility disconnections at a higher rate than financially similar white households. Similarly, another study revealed that residents in predominantly minority neighborhoods faced 27% higher energy cost burdens than those in predominantly white neighborhoods.¹⁰ Research further shows that Black communities

⁷ Matthew Desmond, *Poor Black Women Evicted at Alarming Rates, Setting Off a Chain of Hardship* (Mar. 2014), https://www.macfound.org/media/files/HHM_-_Poor_Black_Women_Are_Evicted_at_Alarming_Rates.pdf.

⁸ Sophie Beiers et al., *Clearing the Record: How Eviction Sealing Laws Can Advance Housing Access for Women of Color* (Jan. 10, 2020), <https://www.aclu.org/news/racial-justice/clearing-the-record-how-eviction-sealing-laws-can-advance-housing-access-for-women-of-color/>.

⁹ Sandra Park, *Unfair Eviction Screening Policies Are Disproportionately Blacklisting Black Women* (Mar. 30, 2017), <https://www.aclu.org/blog/womens-rights/violence-against-women/unfair-eviction-screening-policies-are-disproportionately>.

¹⁰ Kyle Miller, *The Hidden Cost in Housing Affordability* (Feb. 20, 2020), <https://www.planning.org/blog/9195636/hidden-cost-in-housing-affordability/>.

disproportionately experience higher water costs, water service terminations, and water liens, resulting in negative health and economic outcomes.¹¹

With the first of May upon us, and June 1st rapidly approaching, it is critical that Maryland act quickly to protect its residents against eviction and utility shut-offs. Maryland's actions will provide the certainty and stability that residents need to ensure that no one is at immediate risk of losing their homes while we work to find longer-term solutions to providing economic and financial support, and ensuring access to stable housing in the aftermath of the COVID-19 pandemic.

We encourage the State to act quickly in addressing the critical issues facing the residents of Maryland. If you have any questions or concerns, please contact Matt Hill or Zafar Shah at 410-625-9409, ext. 229 (Matt Hill) or ext. 237 (Zafar Shah) of the Public Justice Center. Thank you in advance for your time.

Sincerely,

/s/

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¹¹ The Thurgood Marshall Institute at the NAACP Legal Defense and Educational Fund, Inc., *Water/Color: A Study of Race & the Water Affordability Crisis in America's Cities* (May 2019), https://www.naacpldf.org/wp-content/uploads/Water_Report_Executive-Summary_5_21_19_FINAL-V2.pdf.

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