

# **Access to Counsel Task Force**

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**Erin Bradley and Aaron Greenfield**

**October 11, 2021**



# MMHA and AOBA

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- As the leading voices for housing providers in Maryland, MMHA and AOBA members own or manage more than 340,000 housing units and house more than 650,000 Marylanders.
- MMHA and AOBA serve the multi-housing industry and our communities by promoting and maintaining the highest professional standards of excellence. We provide education, information, legislative and advocacy services, enabling our members to operate successfully while contributing to the community around us.

# Housing Industry - State Benefit

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- 455.5K apartment homes (48% built before 1980).
- The renovation and repair of apartments helps preserve Maryland's older more affordable units, contributing \$1B to the local economy annually and creating 5K jobs.
- The operation of Maryland's apartment homes contributes \$3.5B to the local economy each year (including \$1.0B in property taxes), creating 6K jobs.
- Maryland requires 6K new apartments annually to meet the needs of growing population.



# Current Landscape for Housing Providers

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## ➤ **Emergency Rent Control**

- 6 counties have instituted rent control policies for the duration of Governor Hogan's emergency order and an extended time thereafter.
- Revenue has significantly decreased while the costs of goods and services have increased.

## ➤ **Evictions Declined**

- Compared to July 2019, evictions declined by more than 59% in July 2021. Data published by the District Court of Maryland continues to show that evictions have declined significantly since the beginning of the pandemic.
- Warrants of Restitution, which are required to be obtained prior to an eviction, declined by 83% in July 2021 compared to July 2019.

# Current Landscape for Housing Providers

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## ➤ **Delayed Court Processes**

- The time between an eviction filing and an eviction hearing has increased exponentially. Examples:
  - Baltimore City has scheduled some September filings for February 2022 hearings, but most remained unscheduled.
  - Prince George's County has a delay of more than 9 months between a filing and a hearing.

## ➤ **Late Fee Restrictions**

- Baltimore City, Howard County, and Prince George's County currently prohibit late fees. Baltimore County prohibits late fees for impacted residents.



## Eviction Quick Facts

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- The following information is based on a pre-pandemic snapshot of data from the District Court of Maryland.
- 96.86% of tenants that received an eviction filing avoided eviction.
  - 86% of represented tenants in NYC's Right to Counsel Program remained housed.
- The total appearance rate (tenants appearing divided by total number of FTPR cases) for FTPR filings was 3.15%.
- During this time period, more than 98% of eviction cases stemmed from FTPR.

# FTPR Eviction Process

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## ➤ **Notice**

- Tenants are provided with 10 days of notice prior to an FTPR eviction filing. Notice includes contact information for organizations that provide legal support.

## ➤ **Filing**

- After a filing and before a hearing, tenants are served with notice via mail and tacking of the complaint at the property.

## ➤ **Trial**

- The extreme delay between a filing and a hearing has created a de facto eviction moratorium.

## ➤ **Warrant of Restitution**

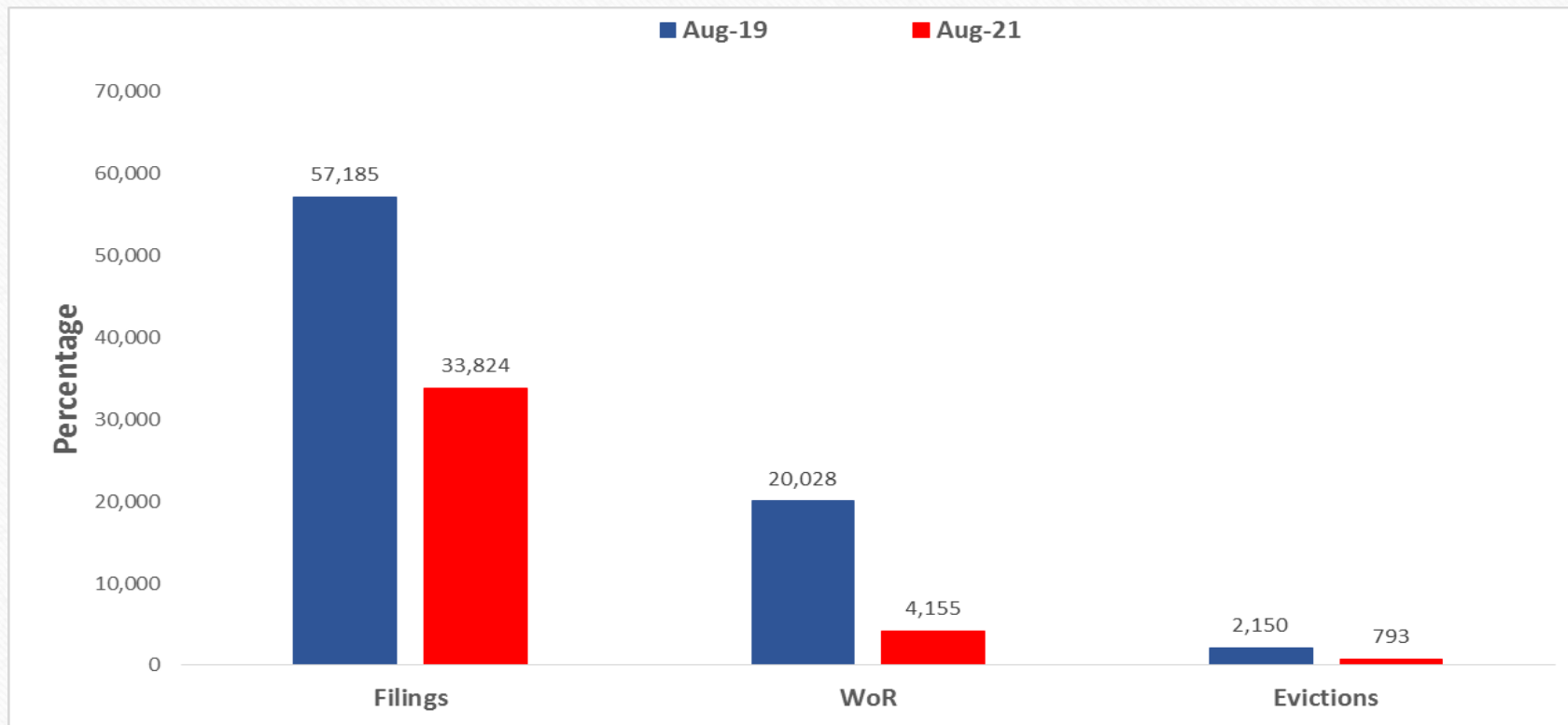
- After a judgement in favor of a housing provider is entered, the housing provider can pursue a warrant prior to an eviction.

## ➤ **Eviction**

- A tenant may pay and stay at anytime prior to an eviction, up to and including the time when the sheriff knocks on the door.

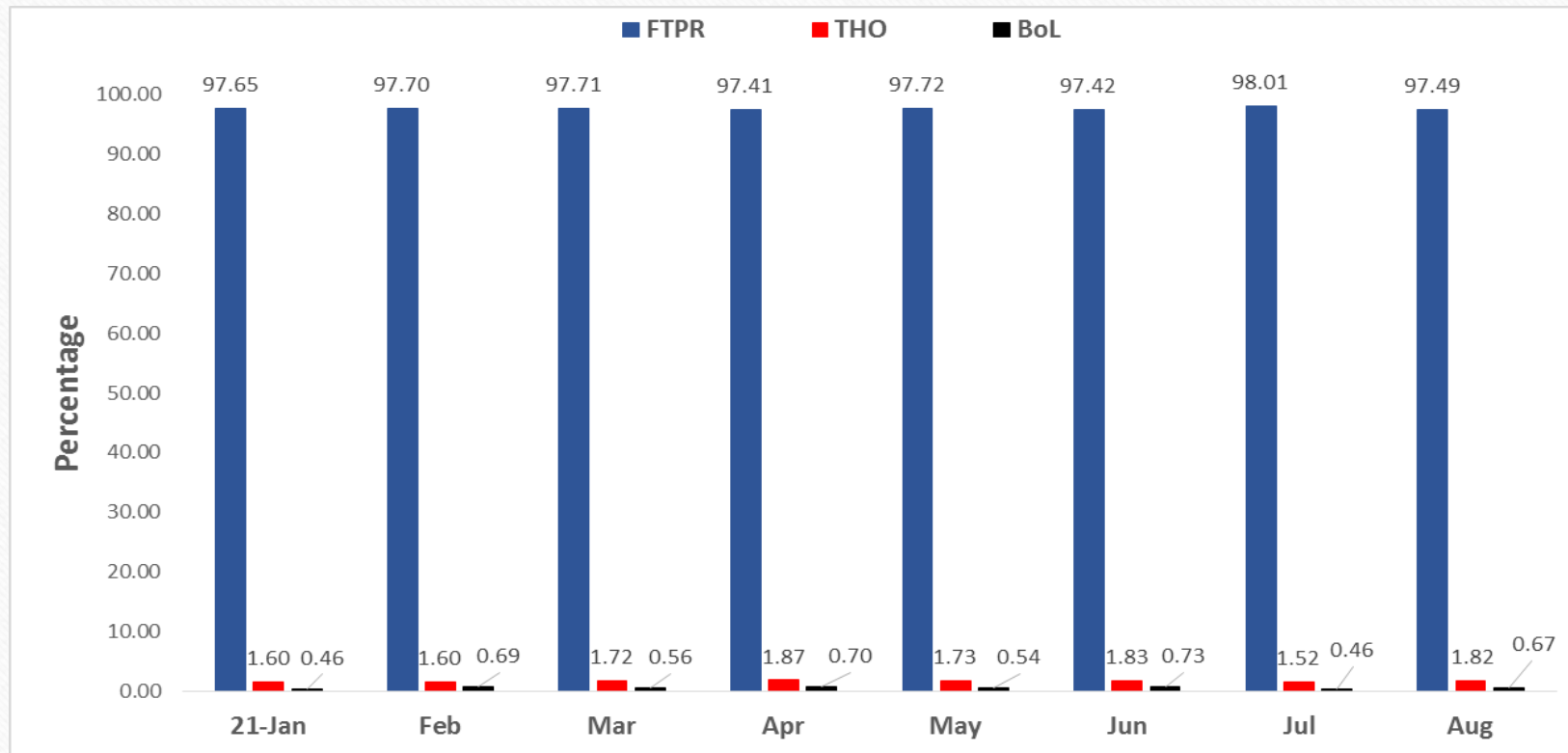


# August 2019 vs August 2021

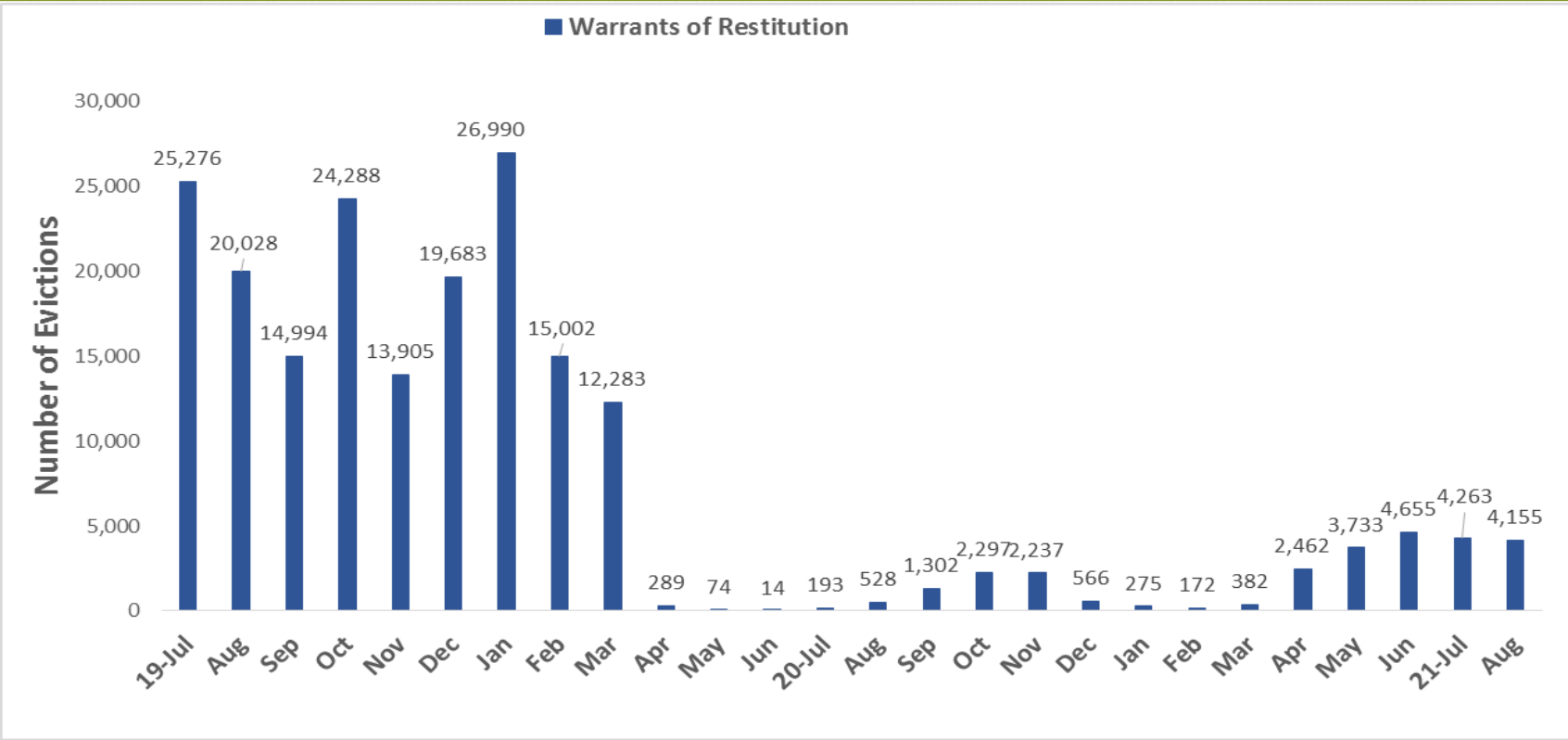




# 2021 Filing Composition

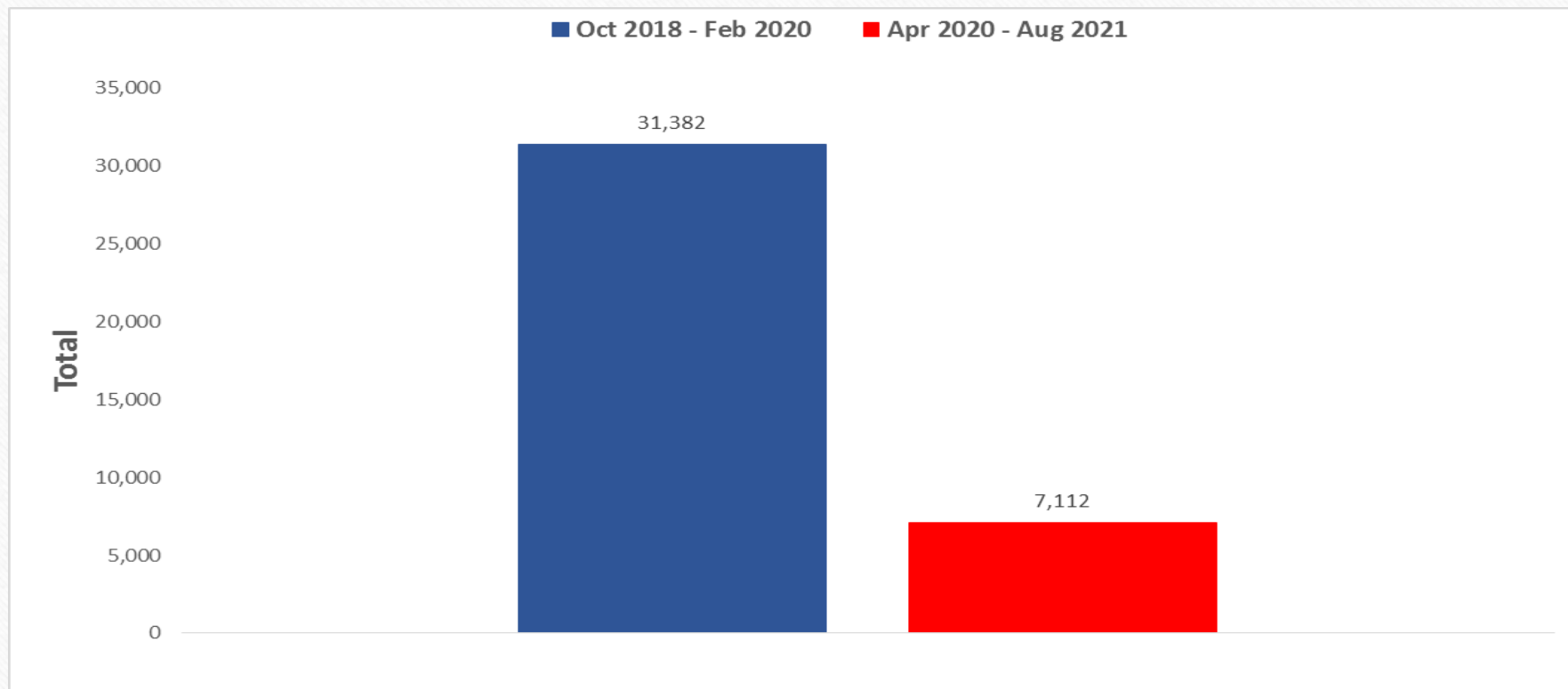


# Warrants of Restitution

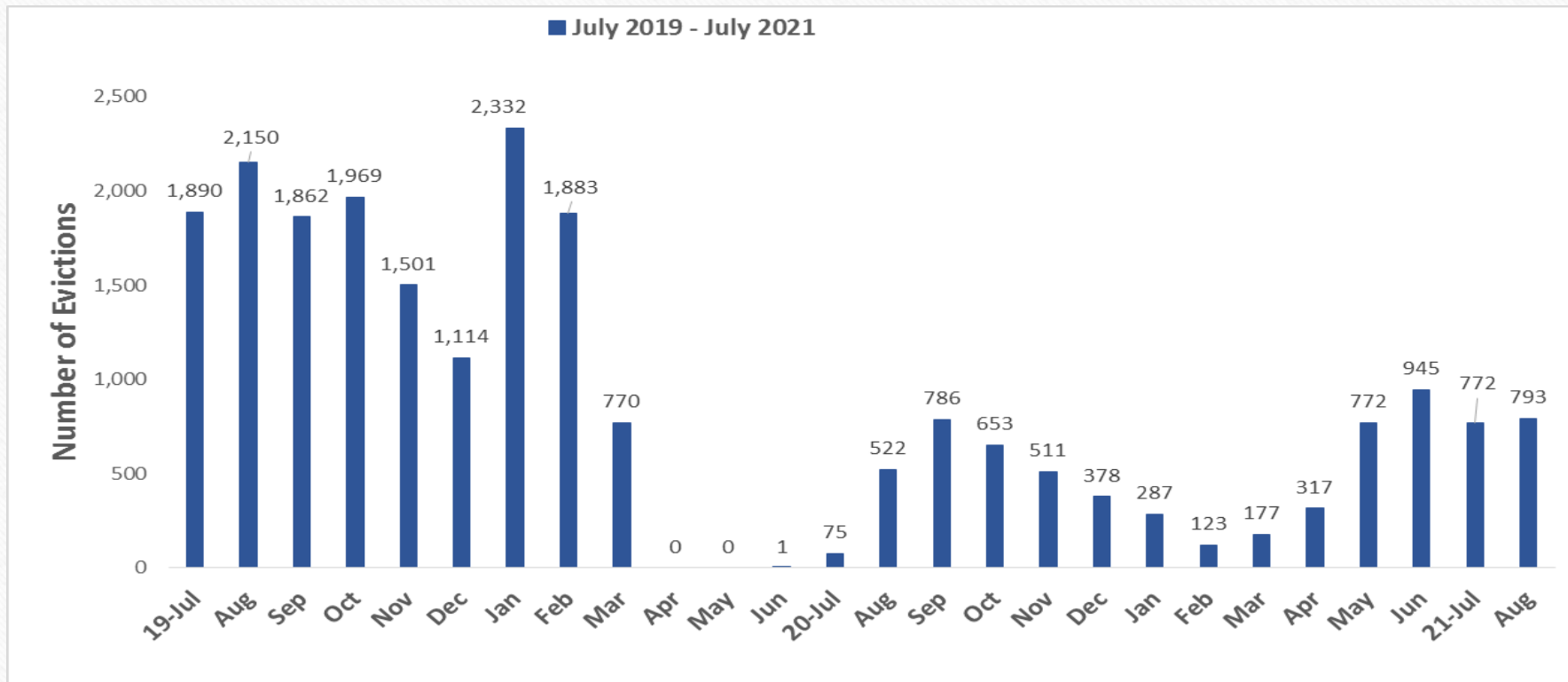




# Pre and Post Pandemic Eviction Comparison

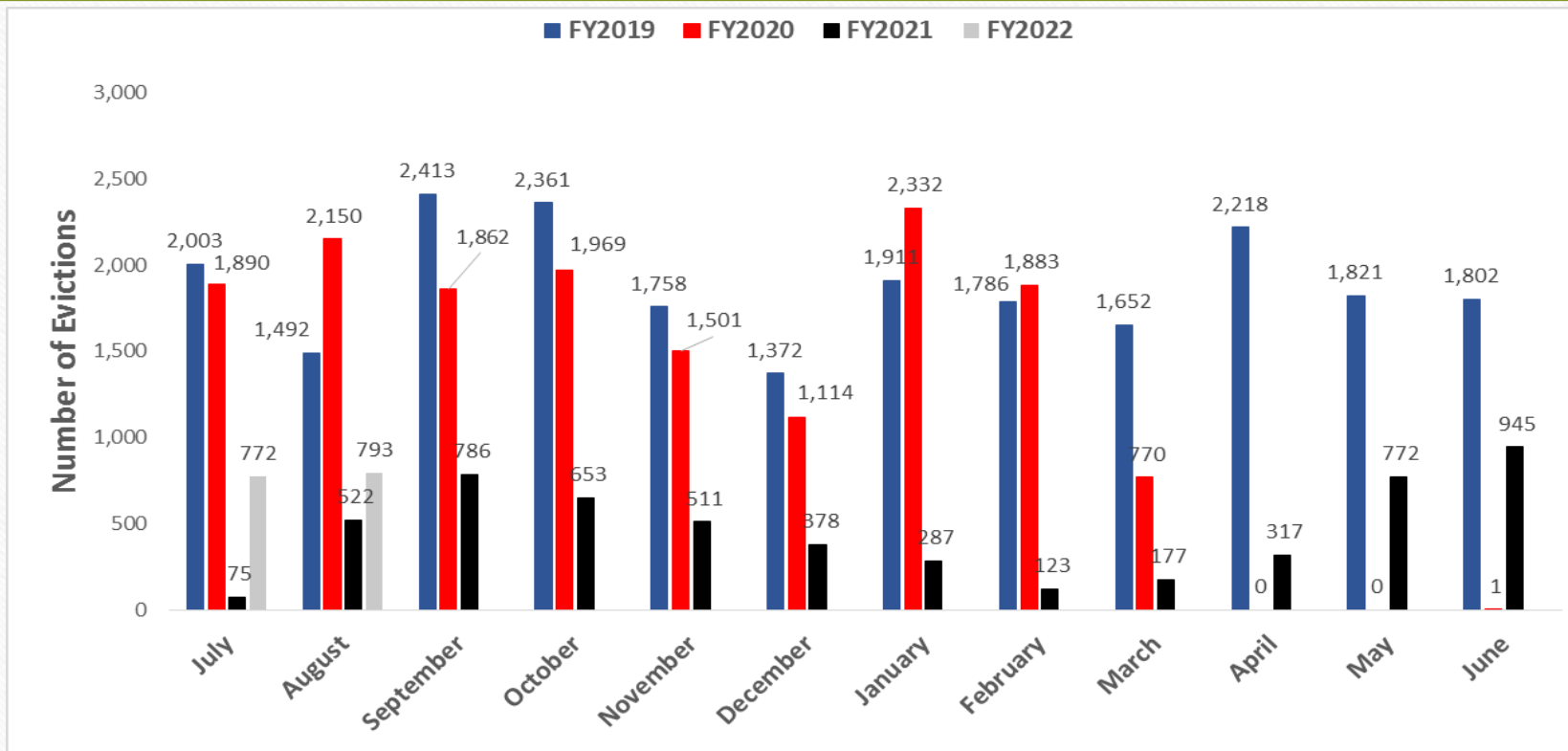


# Evictions

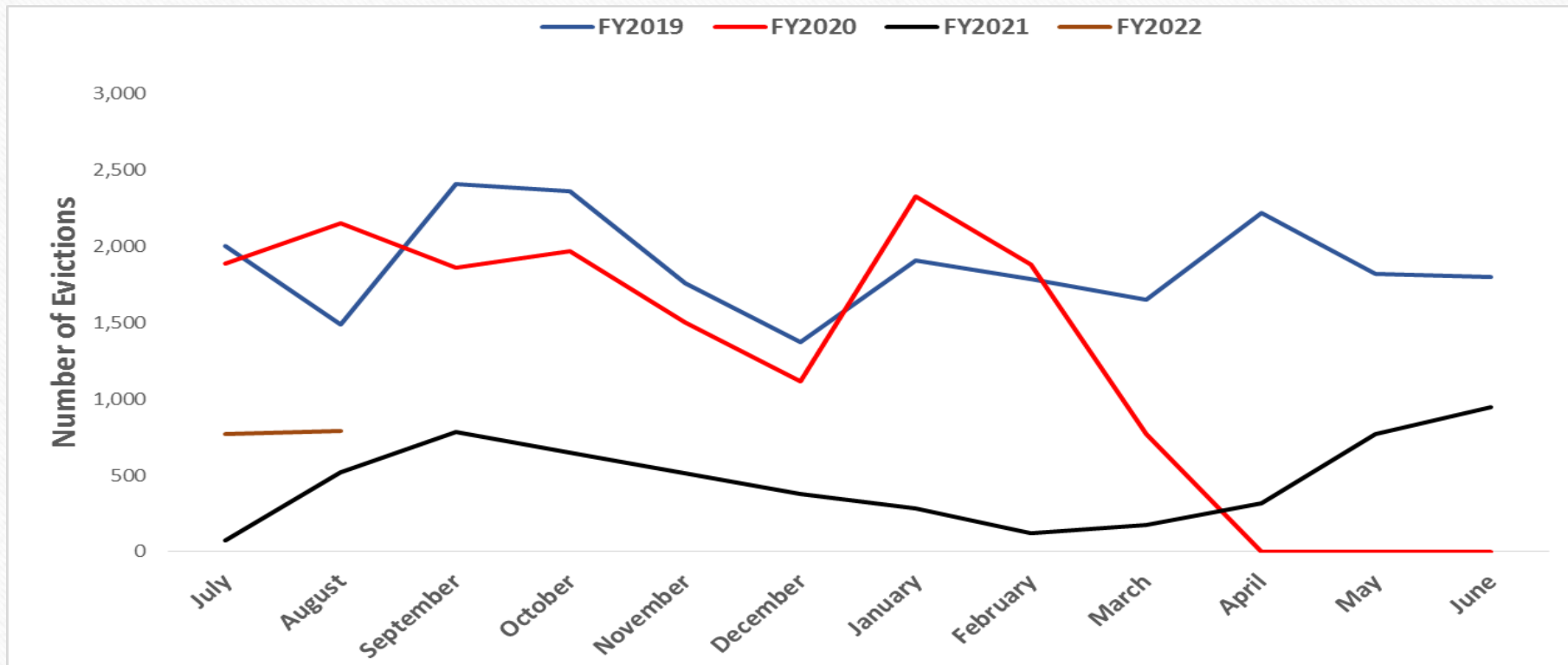




# Evictions by Fiscal Year



# Evictions by Fiscal Year





# Residents - Multiple Month Delinquency

Month	% Delinquent Owing Multiple Months of Rent
August '20	42.59%
September '20	36.47%
October '20	24.68%
November '20	33.64%
December '20	36.82%
January '21	27.71%
February '21	21.22%
March '21	30.16%
April '21	26.15%
May '21	18.38%
June '21	16.67%
July '21	16.87%
August '21	16.78%



# Issues - Multiple Month Delinquency

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- Tenants that owe multiple months of unpaid rent are more likely to be evicted.
- Incentivizing housing providers to delay filings beyond one month places many residents at higher risk of eviction.
- Undue delays or continuances in FTFR cases, even those intended to benefit residents, that extend the process beyond one month of delinquent rent, may jeopardize a tenants ability to satisfy unpaid rent and remain in the property.



# Rental Assistance in Maryland

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➤ Emergency Rental Assistance Program 1 (ERAP1) and ERAP 2 provided Maryland and locals with more than \$700M in total rental assistance. ERAP 1 at \$401M and ERAP 2 at \$352M.

➤ **ERAP information from DHCD:**

➤ The distribution of assistance continues to rapidly accelerate: state program spending has increased by more than 60 percent from July to August. The \$135 million in relief includes \$65.7 million in state program spending and \$69.4 million in direct relief by local jurisdictions. Six counties—Carroll, Cecil, Frederick, Howard, Prince George’s and Wicomico—have utilized approximately 50 percent or more of their allocated resources to help tenants and landlords.

➤ In 2020, prior to the Emergency Rental Assistance Program, more than \$113 million in state, local and federal funds were allocated to rental assistance statewide to assist approximately 30,000 renters. Maryland will also receive an additional \$352 million through a second phase of the Emergency Rental Assistance Program (ERAP 2) and plans for distribution are under development.

# Strategic Targeted Eviction Prevention (STEP) Program

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- \$49 million has been allocated to the STEP Program
  - Baltimore County (\$21M); Baltimore City (\$16M); Harford (\$1M); Howard (\$5.6M); and Anne Arundel (\$5.4M).
- The program pays up to 12 months of back-rent, and residents are also eligible for up to 3 months of future rent.
  - Residents are also eligible for utility payments that may be owed to the housing provider, such as electric, water, sewer, and trash.
- The first iteration of the program provided on average \$4,300 per household.



# NAA's Breakdown of \$1 of Rent

There exists a misconception that rental housing owners enjoy large margins and can continue operating in the absence of rent payments.



Only **9 cents of every \$1** are returned to owners, including the many apartment owners who are themselves small businesses and rely on this revenue to make ends meet, and investors, which include public pensions and 401ks, on which many Americans rely—whether or not they reside in rental housing.

Approximately **39 cents of every \$1** pays for the mortgage on the property. Roughly two-thirds of the apartment industry has private lenders and are ineligible for federal mortgage forbearance via the CARES Act. This is a critical expense, as mortgage foreclosures put all residents at risk of losing their housing

**10 cents of every \$1** is spent on capital expenditures, including roof and HVAC replacement and other important repairs that help ensure quality housing for America's 40 million rental housing residents.

**27 cents of every \$1** covers payroll expenses, including paying employees who operate and maintain the property, ongoing maintenance, utilities, insurance and the like

**14 cents of every \$1** goes to property taxes, which in turn supports the community through financing for schools, teachers, emergency services and other important local needs.

Between mortgage payments and investor returns, which help support many Americans' retirement plans, and dollars put back into the apartment community to ensure quality living for residents, a rent payment is much more important than one might otherwise realize.



# Filing Fee Increases

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- **Fee Increases:** Several bills sought to increase the filing fee for a failure to pay rent proceeding and render the fee unrecoverable.
- **Other Jurisdictions:** Every surrounding jurisdiction allows recovery of the fee (DC, DE, NC, PA, VA, WV) and, according to JPR counsel, no state in the country prohibits recovery of the fee.
  - Proposed fee increases would have cost the industry between \$30M and \$73M annually.
- None of the other jurisdictions with Right to Counsel have funded the program with increased court fees.



# Filing Fee Considerations

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## ➤ Right to Redeem

- Tenants may pay unpaid rent and remain in the property anytime before an eviction takes place. Pursuant to Maryland law, tenants may exercise the right to redeem up to 4 times per year in Baltimore City and up to 3 times per year in the rest of the state.
- In practice, some landlords choose not to close the right of redemption. In those situations, tenants may utilize the option more than 3 or 4 times per year.

## ➤ Maryland's Loophole

- Tenants that pay after an eviction filing but before a hearing do not exercise one of their opportunities to redeem – tenants may utilize this option indefinitely. As such, housing providers would be exposed to an unrecoverable filing fee every month.

# Cost Comparison

➤ The filing fee is only the first of two costs in the eviction process.

Jurisdiction:	Maryland	Baltimore City	Virginia	Delaware
Filing Fee:	\$20 plus \$5 for each additional tenant.	\$30	\$46-\$56	\$45
Additional Fee:	\$40 Warrant of Restitution	\$50 Warrant of Restitution	\$25 Writ of Possession	\$40 Writ of Summary Possession
Total Costs:	\$60+	\$80	\$71-\$81	\$85

Filing fees in surrounding states are recoverable. Recoverability allows a judge to decide.



# Funding in Other Jurisdictions

Jurisdiction	Funding
New York City (2017)	Utilized mayoral funding and is expected to provide free legal services in approximately 125,000 cases per year to 400,000 New Yorkers.
Cleveland (2019)	September 2019, Cleveland passed legislation to provide a right to counsel for tenants who have incomes at or below 100% of the federal poverty guidelines and who have at least one child. The city appropriated \$300K in the budget and seeks funding from philanthropic sources.
Minneapolis (2019)	The City Council committee approved a \$650,000, two-year contract with Mid-Minnesota Legal Aid to assist low-income tenants who've received eviction notices to take on their landlords in housing court.
Los Angeles (2020)	September 2020, Los Angeles committed \$10M to provide legal representation to tenants in a one-year emergency program.
Massachusetts (2020)	October 2020, Massachusetts Governor announces \$12.3M for eviction diversion program funded by the state to offer legal representation to landlords and tenants.
Connecticut (2021)	Established a right to counsel in evictions program for certain tenants. The Governor recommended funding the program for FY 2022 and FY 2023 by utilizing \$20 million from the Coronavirus State Fiscal Recovery Fund.

# Affordable Housing

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- According to a housing needs assessment from DHCD, Maryland currently lacks approximately 85,000 rental units for low income households.
- To help address the shortage of affordable housing, Maryland should simultaneously incentivize new development and maintenance of naturally occurring affordable housing.
- Fees levied against housing providers ultimately inhibit the development and maintenance of affordable housing.