



Maryland Attorney General's
COVID-19 Access to Justice Task Force

Andre M. Davis, Vice Chair
Former Judge, U.S. Court of Appeals, 4th Cir.

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July 24, 2020

Via electronic mail

The Honorable Mary Ellen Barbera, Chief Judge
Court of Appeals of Maryland
361 Rowe Boulevard
Annapolis, Maryland 21401

The Honorable John P. Morrissey, Chief Judge
District Court of Maryland
Maryland Judicial Center
187 Harry S. Truman Parkway
Annapolis, Maryland 21401

Re: Extension of moratoria on evictions and debt collection cases

Dear Chief Judge Barbera and Chief Judge Morrissey:

On behalf of the Attorney General's COVID-19 Access to Justice Task Force,¹ I write to respectfully request that the Court extend its moratoria on eviction actions and debt collection

¹ A partnership between the Maryland Office of the Attorney General and the Maryland Access to Justice Commission, the Task Force brings together high-level and diverse leaders from the health, disaster recovery, business, government, and many other sectors to confront the civil legal issues exacerbated by the COVID-19 pandemic, including housing, consumer fraud and debt, public benefits, the looming deficit in civil legal aid funding, and the disparities in outcomes among communities of color. The Task Force will develop strategies, devise solutions, and drive reforms and innovations necessary to ensure equity, fairness, and access to justice for all Marylanders.

cases.² The moratoria should be continued until the COVID-19 crisis stabilizes sufficiently to enable Marylanders to return to work and have adequate resources to pay their rent and daily living expenses. Although this pandemic may be with us well into next year, our suggestion would be to extend the moratoria until at least January 31, 2021 in order to allow the General Assembly to enact, and the Governor to sign, emergency legislation to assist Marylanders with the housing and debt crises they currently face. The Task Force members appreciate the Court's efforts to hold eviction and debt collection actions in abeyance during these initial months of the COVID-19 emergency. We are concerned, however, that the State's continuing public health and economic challenges are such that resuming these actions now would place thousands of Marylanders at risk of potentially catastrophic homelessness and dislocation.

Extension of the moratoria is critical simply because the conditions underlying Marylanders' inability to pay rent and consumer debt remain largely unchanged. Many Marylanders were struggling to pay housing and other expenses before the COVID-19 crisis, and the pandemic has exacerbated these difficulties exponentially. Specifically:

- The disease continues unabated and disproportionately harms communities of color: The number of COVID-19 infections is continuing to increase both nationally and in Maryland, and the impact of the disease has fallen disproportionately on people of color. Black and Latinx Marylanders have experienced higher rates of infections and deaths, as well as higher burdens of job loss, food insecurity, and other factors that fuel the inability to meet financial obligations;³
- Economic conditions that will reduce unemployment and enable schools to reopen seem unlikely to improve significantly in the short term: Marylanders are still being encouraged to practice social distancing and to stay home to the extent possible. It looks increasingly like most Maryland schools will be operating remotely in the fall, making it difficult for many parents to return to work, even if their places of employment are open and they have not been laid off;
- Unemployment and other CARES Act benefits are inaccessible or slated to end soon: Congress has not extended unemployment and other CARES Act benefits beyond July 31, and the fate of efforts to provide further relief remains highly uncertain. Many Marylanders are also still having difficulty obtaining unemployment benefits; some applications are still

² Task Force members who are members of the Judiciary were recused from participating in this request.

³ Meredith Cohn, Nathan Ruiz, and Pamela Wood, Black Marylanders make-up largest group of Coronavirus cases as state releases racial breakdown for first time, Baltimore Sun, April 09, 2020 <https://www.baltimoresun.com/coronavirus/bs-md-coronavirus-race-data-20200409-ffim7y4bljcz3hjk4dmt773mp4-story.html>; <https://www.marylandmatters.org/covid-19-in-maryland-2/#pctcases>

pending at the Maryland Department of Labor, at least 100,000 applicants have been denied benefits,⁴ and many others are ineligible because of immigration status;

- Rental assistance is limited: Counties and municipalities have tried to allocate some of their CARES Act funding for rental assistance, but it is simply inadequate to meet the enormous need, and programs do not expect additional funding to be available until the end of August; and
- Court proceedings under COVID-19 conditions will make eviction and debt collection actions even more challenging for Marylanders: The dire circumstances of Marylanders hit hard by COVID-19 will make navigating new and complicated court procedures, whether online or in person, even more difficult, particularly for the vast majority who are self-represented in eviction and debt collection cases. Again, this hardship will disproportionately harm people of color, who were already excessively impacted by these suits⁵ and have had the highest rates of job loss during the pandemic.⁶

For example, with respect to Affidavit Judgment cases scheduled to begin July 20, 2020, where the Court will enter judgment if a debtor/defendant fails to file a Notice of Intention to Defend or appear at the hearing, only about 10% of defendants appear under normal circumstances. Under the unprecedented hardships imposed by the pandemic, we must anticipate that even this small percentage will decline sharply. It is unrealistic to expect that debtors who are currently unemployed or behind in their rent and other expenses, or unable to find childcare, will appreciate the implications and be able to respond to a summons for debts they do not believe they would be able to pay anyway.

Similarly, the District Court's announcement that it will begin hearing tenant holding over actions, breach of lease actions, and wrongful detainer actions effective July 20, 2020, and will begin processing warrants of restitution for failure to pay rent cases on July 25, 2020, poses risks to thousands of debtors and tenants whose COVID-19 reduced circumstances have not improved. Even with the delay in re-commencing "failure to pay rent" cases and extension of the moratorium

⁴ Jenny Fulginiti, Over 800,000 unemployment claims filed in Maryland since March 14, WBAL-TV 11, <https://www.wbal.com/article/over-800000-marylanders-have-filed-for-unemployment-since-march-14/32903620#>.

⁵ Maryland Consumer Rights Coalition, No Exit: How Maryland's Debt Collection Practices Deepen Poverty and Widen the Racial Wealth Gap 9 (2018); Tim Thomas et al., Baltimore Eviction Map, The Evictions Study (2020), available at <https://evictions.study/maryland/report/baltimore.html>.

⁶ Economic Policy Institute, Nearly 11% of the workforce is out of work with no reasonable chance of getting called back to a prior job, Working Economics Blog (June 29, 2020), available at <https://www.epi.org/blog/nearly-11-of-the-workforce-is-out-of-work-with-zero-chance-of-getting-called-back-to-a-prior-job/>) ("[U]nemployment rates are extremely elevated across all demographic groups. However, the highest rates are found among Black and brown workers, women, and particularly Hispanic, Asian, and Black women.").

on federally-funded housing evictions until the end of August, it is unlikely that the current hardships of the crisis will have improved by then, little more than a month from now.

By way of illustration, Maryland's percentage of adults who missed the prior month's rent or mortgage payment, or who had slight or no confidence in their ability to pay next month's rent or mortgage on time, has climbed back up in mid-July (27.3%) towards its level in late April (29.6%), after a notable dip in June (23.7%). These swings closely track Marylanders' access to CARES Act benefits.⁷ In sum, for reasons that also hold true with respect to debt collection cases, the State's ongoing COVID-19 crisis has not allowed for a sufficient stabilization of its rental housing market to allow tens of thousands of landlord-tenant actions to proceed without devastating consequences for Marylanders.

Additionally, while the Hogan Administration has allocated \$30 million for rental assistance, it is widely believed that this amount is woefully inadequate to meet the needs of Maryland tenants at risk of eviction. As House Environment and Transportation Committee Chairman Barve and Vice-Chairman Stein, in their July 8, 2020 letter to Maryland Department of Housing and Community Development Secretary Holt (attached), stated in requesting extension of the eviction moratorium:

[T]he uncertainty surrounding the proliferation of this virus and the need to keep individuals housed for their health and safety suggest a longer limitation on evictions is needed. An extension until January 31, 2021 will allow time for (1) appropriate planning to prevent a flood of new eviction proceedings as a result of COVID-19; (2) recovery of the State job market, thus allowing Maryland citizens to return to work and continue to pay their rents and address any overdue rent; and (3) the General Assembly and the Hogan administration to meet and consider emergency legislation meant to address the COVID-19 crisis.

Moreover, as explained in the July 17, 2021 letter from a number of public interest legal services organizations that represent and work with tenants in Maryland (attached), the pandemic has created access, technological, and other constraints that could give rise to procedural and due process issues that should be considered before the Court begins to hear these cases. The vast majority of tenants and debtors are self-represented and will lack access to assistance in navigating the procedural hurdles and other obstacles created by COVID-19.

The Task Force strongly believes that allowing landlord-tenant and debt collection cases to proceed at this juncture will only exacerbate what is already a dire situation for many Marylanders. Accordingly, we respectfully request that the Court immediately extend the moratoria until at least January 31, 2021. A few months reprieve would help the State avoid thousands of evictions, harm

⁷ U.S. Census Bureau, Housing Insecurity, Household Pulse Survey, available at https://www.census.gov/data-tools/demo/hhp/#/?s_state=00024&measures=HIR (scroll down to data table).

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to public health, and preventable suffering. It would give Marylanders much-needed time to continue working together to begin to overcome the extraordinary health and economic challenges of this pandemic.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian E. Frosh". The signature is fluid and cursive, with a large initial "B" and "F".

Brian E. Frosh
Attorney General

Enclosures (2)