

CB 33-2020

LAW OFFICES

HOWARD COUNTY COURTS  
BOSTON

**SAGAL, FILBERT,  
QUASNEY & BETTEN, P.A.**

600 WASHINGTON AVENUE, SUITE 300  
TOWSON, MARYLAND 21204

Telephone: 410-823-1881

Fax: 410-823-8032

HOWARD CASSIN  
(1951 - 2005)

STUART L. SAGAL  
ALVIN J. FILBERT, JR  
DANIEL W. QUASNEY  
ALAN BETTEN  
KIMBERLY A. MANUELIDES  
RICK M. GRAMS\*  
CHRISTOPHER L. MERRILL

\*Admitted in MD and PA

May 1, 2020

**VIA FIRST CLASS MAIL**

**VIA EMAIL: [lizwalsh@howardcountymd.gov](mailto:lizwalsh@howardcountymd.gov), [debjung@howardcountymd.gov](mailto:debjung@howardcountymd.gov),  
[christinarigby@howardcountymd.gov](mailto:christinarigby@howardcountymd.gov)**

Honorable Liz Walsh  
Honorable Deb Jung  
Honorable Christina Rigby  
George Howard Building  
3430 Court House Drive  
Ellicott City, Maryland 21043

**RE: Bill No. 33-2020**

Dear Council Persons Walsh, Jung & Rigby:

The undersigned represents a number of property management companies who manage multi-family, residential and commercial real estate in Howard County, Maryland. My law practice has concentrated, for more than 30 years, in the area of "Landlord/Tenant" law. I have recently had the opportunity to read the above referenced Bill. My concerns relate to likely unintended consequences relating to portions of the Bill.

The proposed Bill "applies to rented housing of all kinds including mobile homes and mobile home lots and rented commercial space of all kinds".

The Bill applies during the period of time encompassed by the health emergency as declared by Governor Hogan "and for a period of time after the emergency equal to the duration of the emergency but no longer than three months". During such timeframe, a landlord or mobile home park owner may not "terminate a tenancy, Lease, or Rental Agreement" and "shall not notify a tenant or mobile home park resident of any change in a Lease or Rental Agreement". Furthermore, the Bill requires that:

A landlord or mobile home park owner must inform a tenant or mobile home resident in writing to disregard any such notice of a material change to the lease or rental agreement if:

- (1) The landlord or mobile home park owner provided the notice to the tenant or mobile home park resident before or during the emergency...

My concerns fall under three categories:

1. **Residential Leases and Mobile Home Parks** – The Bill proports to allow a tenant, but not a landlord to terminate a tenancy, lease or rental agreement (collectively “Lease”), which Lease by its own terms, previously agreed upon, may terminate during the applicable time period. The Bill could unconstitutionally impact Leases that were previously entered into between the parties.

The Bill further does not address the potential need of a residential landlord to terminate a Lease “for cause”. For example, within the past two weeks, our firm has been referred the following matters:

- a. A tenant’s child went into a clothes closet within their apartment and set a bath towel on fire.
- b. Two college students rented a townhome within which to reside and a single vehicle garage behind the townhome. The single vehicle garage is part of a row of similar garages. The two college students have allowed four of their friends to move into the garage where they installed carpeting on the floor and set up a gas heater and cooking facilities. The Garage Lease specifically prohibits its use for residential purposes.
- c. A tenant in a luxury high rise apartment building maintains that the pandemic is a “conspiracy” and is upset because of the landlord’s decision to discontinue providing free coffee and tea in the building’s common area (so as to discourage the gathering of tenants) and claims this is how the “3<sup>rd</sup> Reich” began. When this tenant then began leaving trash in the hallway and was asked to remove a doormat that he keeps putting in the hallway, the tenant purchased a crossbow and attached the receipt for the purchase of the crossbow to our client’s Lease Violation Letter, along with the box in which the crossbow was purchased, in front of his apartment door. The landlord’s personnel have interpreted these actions as an implicit threat to their safety. These actions were reported to the Police who deemed the matter to be a “civil” dispute between a landlord and tenant. Copies of relevant online postings and photographs are attached hereto.

2. **Commercial Leases-** With commercial tenancies, the Bill prohibits a landlord from terminating the Lease of a commercial tenant who, in default of their Lease, fails to carry fire insurance on the landlord's building. The Bill also fails to distinguish between previously negotiated Lease provisions and between "small" and "large" landlords and tenants. An individual landlord could have an existing Lease with Walmart, which, by its terms, provides for a rental increase during the applicable period of time encompassed by the Bill. Was it really your tenant to prevent that Lease provision from taking effect?

In addition, what would happen if a landlord had entered into a long-term Lease with a new tenant, but cannot convey possession of the leased premises due to the Bill, the new tenant might cancel the Lease, leaving the with empty space and/or sue the landlord.

3. **Conflict with State Law-** The proposed local Bill, not only prohibits evictions during the current "health emergency", but also for a period of time after the emergency not to exceed three months. State Law, under Sections 8-401, 8-402 and 8-402.1 of the Real Property Article allow for evictions for non-payment of rent, for tenants who hold over beyond the expiration of their Lease and for tenants who commit a substantial breach of Lease. When there is a conflict between local and state law, state law prevails.

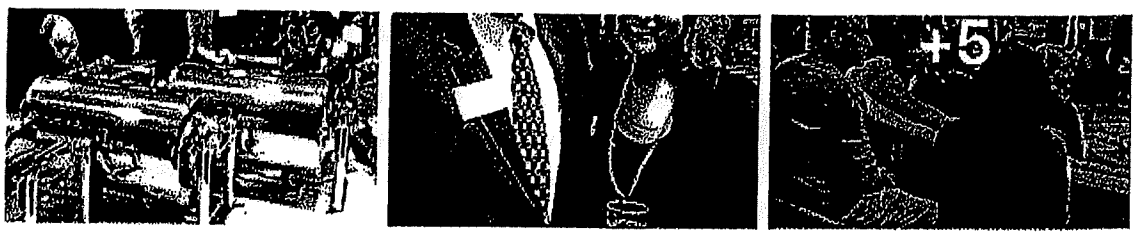
It is my hope that you will consider the concerns raised herein and either withdraw your bill or amend same to address these issues.

Very Truly Yours,



Stuart I. Sagal

Posted by [redacted]



Like Comment Share

188 people reached >

Boost Post

4

Most Relevant v



[redacted]

The management of this building is so concerned about coronavirus that they have become STINGY WITH THE TEA

So the economy popped just after I signed a lease and now I am their subordinate

This is exactly how it happened in Germany

2h Like Reply Message

JUST MOVED IN A FEW WEEKS AGO AND AFTER BEING PROMISED BY LEASING THAT THE AMENITIES HAVE BEEN CLOSED FOR 48 HOURS NOW THE MANAGEMENT OF THIS BUILDING SEEM TO THINK I AM THERE EMPLOYEE AND CAN BE GROUNDED BY THEM

I HAVEN'T EVEN LEVED HERE MONTH AND THE WALLS ARE ALREADY CLOSING IN ON ME

TALKING WITH MANAGEMENT IS LIKE PLEADING WITH THE FUCKING 3rd REICH

DON'T EVER CONTEMPLATE LEASING HERE

I HAVE ALREADY CONTACTED THE CITY AND A LAWYER

BALTIMORE IS ONLY OUTDONE IN ITS LEVEL OF CORRUPTION BY WASHINGTON DC

AND I HAVE NEVER FELT SO SPOOKED SCARED OR VIOLATED

THEY HAVE BEEN MONITORING MY ONLINE

## Sayers, Margery

---

**From:** Pat Dudley <patd.newvision@gmail.com>  
**Sent:** Monday, May 18, 2020 12:46 PM  
**To:** CouncilMail  
**Subject:** RE: Rent Increase Proclamation

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Hello,

I have seen information on the internet about Montgomery ceasing Landlords from rental increases for the next 12 months. I have also seen some news on Howard County doing the same. Will the council be meeting soon to decide whether this will happen or not? As a renter of a home in Howard County and as a small business owner being affected by Covid-19, this would be helpful to all concerned.

*Kind regards,*

*Pat Dudley, LCPC-S, NCC  
Psychotherapist  
New Vision Counseling, LLC  
7360 Grace Drive  
Columbia, MD 21044  
410-200-9825  
[patd.newvision@gmail.com](mailto:patd.newvision@gmail.com)  
[www.newvision-counseling.net](http://www.newvision-counseling.net)*



**TO:** Howard County Council

**FROM:** Maryland Multi-Housing Association

**SUBJECT:** Bill No. 33-2020

**DATE:** May 18, 2020

**POSITION:** Favorable with Amendments

This testimony is offered on behalf of Maryland Multi-Housing Association (MMHA). We are a professional trade association established in 1996, whose members consists of owners and managers of more than 210,000 rental housing homes in over 870 apartment communities. Our members house over 556,000 residents of the State of Maryland and we have 250 associate member companies who supply goods and services to the multi-housing industry. Lastly, MMHA members manage 93 apartment communities with over 22,300 units in Howard County.

Council Bill 33-2020 prohibits residential and commercial housing providers from increasing rents, unreasonably or arbitrarily decreasing promised services like electricity or water, terminating an existing lease, or making any other material changes to existing lease terms that are detrimental to residents during any Governor-declared emergency and up to three months thereafter. Similar protections apply to mobile home park residents.

MMHA supports the goal of this legislation and fully understands that COVID-19 is not just compromising public health; it also threatens the financial viability of individuals and businesses, including renters and housing providers. This is an extremely difficult time. We recognize that renters are not immune from facing these unprecedented challenges. We appreciate the sponsors' efforts to protect residents who may have lost jobs, faced health and childcare challenges, and are struggling to make ends meet.

Like everyone else, residential housing providers have changed their operations to accommodate the consequences of this pandemic. Whether it is voluntarily creating payment plans, waiving late fees, sharing government and community resources with residents, or not raising rents, MMHA members are engaging with residents to ensure that they and the communities we serve are safe and secure.

As indicated in the attached, MMHA has three suggested amendments to ensure that our necessary operations are maintained.

- Similar to Anne Arundel County legislation and the recently passed Montgomery County ordinance (B18-20E - Landlord-Tenant Relations - Rent Stabilization During Emergencies), we ask for an ability to increase rent by no more than 3%.



- In the event of a breach of lease caused by resident who compromises health or safety, we believe a residential housing provider should be able to terminate the lease. Residential housing providers unfortunately confront residents who cause intentional fires and destruction, commit domestic abuse and conduct other criminal behavior. An amendment that allows termination of the lease in these instances would ensure the safety of all the residents in the community.
- MMHA urges the Council to make this legislation prospective to avoid complications with leases that have already renewed since the Emergency Order from the Governor on March 5, 2020. It is common practice for management companies to send lease renewal offers out 90 days in advance, so reversing formerly agreed upon increases for many residents may be strenuous on members who are working with reduced staffing. The right to receive rent is a **vested property right** under the Maryland Declaration of Rights (See Muskin v SDAT 422 MD 544 (2011)). The Maryland Constitution's standard regarding the validity of retroactive civil legislation is **whether vested rights are impaired by the legislation** (See Dua v Comcast 370 MD 604 (2002)). Under Dua, retroactively applying this statute would in fact abrogate or impair vested property rights (including contractual rights) and violate the Maryland Constitution.

For these reasons, we respectfully request support Bill No. 33-2020 with the amendments.

For more information, please contact Aaron Greenfield at 410.446.1992





Amendments  
Bill No. 33-2020

Amendment No. 1

On page 3, line 4, following “FEE” insert “BY MORE THAN 3%”

Amendment No. 2

On page 3, line 7, following “AGREEMENT” insert “UNLESS THERE IS A BREACH OF LEASE CAUSED BY A HEALTH OR SAFETY RISK”

Amendment No. 3

On page 4, add line 7 and insert “*Section 3. And Be It Further Enacted by the County Council of Howard County, Maryland, that this Act applies prospectively.*”

## Sayers, Margery

---

**From:** Richard B. Talkin <rbtoffice@aol.com>  
**Sent:** Sunday, May 17, 2020 1:10 PM  
**To:** CouncilMail  
**Subject:** Council Bill 33-2020

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Councilmembers:

Thank you for the opportunity to comment on Council Bill 33-2020,

With respect to commercial properties, I suggest that an amendment be added that the prohibition on the right to terminate a commercial tenancy, lease or rental agreement shall not apply if defaults under the agreement (including non-payment of rent) occurred at least 30 days prior to the declaration or proclamation of the state of emergency or emergency.

In addition, the three month period after the emergency seems excessive as to commercial properties. Commercial lenders have generally been giving three months of relief during the Covid 19 situation, but commercial property owners need to continue paying for utilities, cleaning, maintenance and other costs even during this three month period and, of course, the three months after. The inability to act with respect to a defaulting tenant for a six month period could be extremely harmful and detrimental in many ways.

I would be pleased to discuss this with you.

Thank you for your consideration.

Richard B. Talkin  
5100 Dorsey Hall Drive  
Ellicott City, MD 21042-7870  
(410) 964-0300  
(410) 964-2008 Fax

The information contained in this email message is information protected by attorney-client and/or the attorney/work product privilege. It is intended only for the use of the individual named above and the privileges are not waived by virtue of this having been sent by email. If the person actually receiving this email or any other reader of the email is not the named recipient or the employee or agent responsible to deliver it to the named recipient, any use, dissemination, distribution, or copying of the communication is strictly prohibited. If you have received this communication in error, please immediately contact the sender.



Main 410-715-1437  
Fax 410-715-1489  
Web www.hcar.org

May 15, 2020

The Honorable Deb Jung, Chairperson  
Howard County Council  
George Howard Building  
3430 Court House Drive  
Ellicott City, MD 21043

RE: CB 33-2020, Rental Protection and Stability Act

Chairperson Jung and Members of the Council,

On behalf of the Howard County Association of REALTORS® (HCAR), an organization representing over 2,000 real estate professionals, we write to offer the following revisions to CB 33, creating a prohibition on rental terminations and rent increases during a state of emergency.

First, we ask that Howard County follow the lead of other localities in applying this bill to the current COVID emergency only, as proposed under Amendment 3. Many of our smaller landlords and property managers have expressed concerns about its extension to future state or local emergency declarations because of the uncertainty it introduces into the residential leasing process. It is our fear that rental housing providers will not be willing to take this financial risk and remove their properties from the market altogether. That will result in fewer housing options and higher rents for County residents.

Second, we believe that relief of this kind should be targeted to those who truly require assistance due to job loss or severe reductions in income. According to the National Multifamily Housing Council, approximately 80% of renters were able to make their rental payments this month. Every renter able to meet their lease obligations provides landlords with additional resources to assist other tenants who cannot. An across the board rental freeze could reduce their flexibility to provide rental relief to those who need it most.

Finally, we must note that rent increases are often not arbitrary, but rather cover increasing costs faced by the property owner themselves. This can include increased property taxes, insurance costs or dues and assessments for condominium and homeowner's associations. Contrary to widespread belief, many landlords do not realize large profit margins from their rental properties; in fact, some smaller landlords rent their properties to break even or even at a loss in certain circumstances.



**Main** 410-715-1437  
**Fax** 410-715-1489  
**Web** www.hear.org

We would encourage the Council to examine ways to provide relief not just to renters, but also to rental owners who are facing their own financial burdens and may be unable to find relief under the current framework of federal and state programming.

HCAR's property manager members and rental property owners have reported a strong desire to work with their tenants to make it through this state of emergency, whether through rent relief, payment plans, extensions of expiring leases, and more. Both they and tenant-focused organizations recognize that the provision of rental housing is a partnership between owners and renters. If one fails, so too does the other.

We hope that these revisions to CB 33 enable both tenants and landlords to weather this state of emergency and to preserve rental housing options in Howard County moving forward.

Sincerely,

Lisa Wissel  
President, Howard County Association of REALTORS®

## Sayers, Margery

---

**From:** Walsh, Elizabeth  
**Sent:** Monday, May 18, 2020 1:22 PM  
**To:** Pat Dudley; CouncilMail  
**Subject:** RE: Rent Increase Proclamation

Hi Pat! Great timing! The Council votes on this bill tonight. And although here in Howard County the protections would extend only to three months beyond the State of Emergency, its sponsors are optimistic that the relief—in combination with residential rent relief and/or State and federal business assistance—will provide a significant additional measure of support to our constituents. If you are in favor of this bill, may I ask you please to write us back—this same email address ([councilmail@howardcountymd.gov](mailto:councilmail@howardcountymd.gov))—and let us know that you support CB33 (The Rental Protection and Stability Act). It would help to know which of us represents you, too. (You can find that out here: <https://data.howardcountymd.gov/DataExplorer/Search.aspx?Application=CouncilMember>.)

A full summary of the bill is here: <https://apps.howardcountymd.gov/olis/PrintSummary.aspx?LegislationID=12504>.

Thank you for your note!



Liz Walsh, Council Member  
Howard County Council  
Serving District 1: Ellicott City, Dorsey's Search, Elkridge & Hanover  
3430 Court House Drive  
Ellicott City, MD 21043  
410.313.2001

---

**From:** Pat Dudley <patd.newvision@gmail.com>  
**Sent:** Monday, May 18, 2020 12:46 PM  
**To:** CouncilMail <CouncilMail@howardcountymd.gov>  
**Subject:** RE: Rent Increase Proclamation

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Hello,

I have seen information on the internet about Montgomery ceasing Landlords from rental increases for the next 12 months. I have also seen some news on Howard County doing the same. Will the council be meeting soon to decide whether this will happen or not? As a renter of a home in Howard County and as a small business owner being affected by Covid-19, this would be helpful to all concerned.

*Kind regards,*

Pat Dudley, LCPC-S, NCC  
Psychotherapist  
New Vision Counseling, LLC  
7360 Grace Drive  
Columbia, MD 21044  
410-200-9825  
[patd.newvision@gmail.com](mailto:patd.newvision@gmail.com)  
[www.newvision-counseling.net](http://www.newvision-counseling.net)

## Sayers, Margery

---

**From:** Jung, Deb  
**Sent:** Tuesday, May 19, 2020 1:55 PM  
**To:** Sayers, Margery  
**Subject:** FW: CB 33-20 - Retroactivity is Unconstitutional  
**Attachments:** RMI Memo.pdf

---

**From:** Aaron Greenfield <agreenfield@mmhaonline.org>  
**Sent:** Tuesday, May 19, 2020 12:53 PM  
**To:** Yungmann, David <dyungmann@howardcountymd.gov>; Jung, Deb <djung@howardcountymd.gov>; lwalsh@howardcountymd.gov; Jones, Opel <ojones@howardcountymd.gov>; Rigby, Christiana <crigby@howardcountymd.gov>  
**Cc:** Adam Skolnik <askolnik@mmhaonline.org>; Jessie Keller <jkeller@mmhaonline.org>  
**Subject:** CB 33-20 - Retroactivity is Unconstitutional

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Hello Chairwoman Jung and Members of the Council,

I understand that the Council will go into a closed session this afternoon to discuss CB 33-2020, the rent relief bill. In part, I assume this is to discuss the retroactivity with the Office of Law, which we are against. In preparation for this meeting, we wanted to make sure that you have the attached memo (based upon the recent Baltimore City legislation) and brief summary of case law below demonstrating that retroactivity would impair vested rights.

1. The right to receive rent is a **vested property right** under the Maryland Declaration of Rights- Muskin v SDAT 422 MD 544 ( 2011)
2. The MD Constitution's standard regarding the validity of retroactive civil legislation is **whether vested rights are impaired by the legislation** Dua v Comcast 370 MD 604 ( 2002)
3. Retroactive civil statutes abrogating or impairing vested property rights ( including contractual rights) violate the Maryland Constitution- Dua
4. Per Muskin the right to receive rent and the reversionary interest in rented property are inseparable and together are one vested property right.
5. Raising rent after notice of and the agreement of the tenant to the increase becomes a part of the contract which is part and parcel of the landlord's vested property right.
6. Thus any statute that retroactively impairs or abrogates the already agreed to rent increase contract unconstitutionally impairs the LL's vested property right.

Please let me know if you have any questions.

Thanks,

Aaron

## MEMORANDUM

DATE: May 7, 2020  
TO: Kathy Howard  
FROM: Davy Prevas  
RE: Retrospective challenge to Mayor and City Council Bill 20-0526

### **Issue**

Whether Section 8-4(D)(2) of the proposed amendment to Mayor and City Council Bill 20-0526 violates a constitutional protection against *ex post facto* legislation.

### **Brief Answer**

The City Solicitor is incorrect in her finding that Section 8-4(D)(2) of Proposed Mayor and City Council Bill 20-0526 would not be unconstitutional *ex post facto* legislation. Here, the Solicitor relies on *Block v. Hirsh*, a United States Supreme Court case utilizing a rational basis analysis, to defend the bill. Because the Maryland Constitution is more protective than the federal constitution against legislation that retrospectively abrogates vested rights, *Block* should be treated merely as potentially persuasive authority. Maryland law requires an inquiry on whether a retrospectively-applied statute is found to abrogate vested rights or takes property without just compensation, not whether the statute has a rational basis. A court would draw authority instead from other Maryland cases interpreting the Maryland Declaration of Rights and Constitution to inquire on whether the law abrogates any vested rights. Under *Muskin v. State Dept. of Assessments*, the Court of Appeals held that the contractual right to receive ground rent is a vested right under Maryland law. It would likely follow that the contractual right to receive rent is a vested right under Maryland law as well, and that no legislation can retrospectively affect that right.

### **Facts**

The Baltimore City Council has introduced City Council Bill 20-0526 – Baltimore City COVID-19 Renter Relief Act. The bill would add language to Subtitle 8 (Rent Increases) of Article 13 (Housing and Urban Renewal) of the City Code. Under Section 8-4(D)(2) of the bill, any rental increases already agreed to or enacted before March 5, 2020 would be outlawed.<sup>1</sup>

---

<sup>1</sup> Section 8-4(D)(2) of the bill states that a landlord must inform a tenant to disregard any notice of rental fee increase if: (1) the landlord provided the notice to the tenant prior to an emergency; and (2) the effective date of the increase would occur on or after the date the emergency began. The bill defines emergency as “the catastrophic health emergency declared by the Governor of Maryland on March 5, 2020.” The City Solicitor’s office has additionally recommended the addition of a maximum fine of \$1,000 for violating Section 8-5 of Article 13 of the City Code.



On May 6, 2020, the Baltimore City Solicitor's office offered an opinion that the Section 8-4(D)(2) is a constitutional exercise of a State's rights during an emergency, and does not violate any bar on retrospective legislation.

## Analysis

Article 24 of the Maryland Declaration of Rights provides: "[N]o man ought to be taken or imprisoned or disseized of his freehold, liberties or privilege, . . . or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land."<sup>2</sup> Maryland Constitution, Article III, §40, provides:

The General Assembly shall enact no Law authorizing private property to be taken for public use, without just compensation . . . being first paid or tendered to the party entitled to such compensation.<sup>3</sup>

These provisions "have been shown, through a long line of Maryland cases, to prohibit the retrospective reach of statutes that would result in the taking of vested property rights. *Muskin v. State Dep't of Assessments & Taxation*, 422 Md. 544, 556 (2011).

The Solicitor's office relies on *Block v. Hirsh*, a 1921 Supreme Court case to assert that a landlord's right to charge rent can be modified in an emergency. In *Block v. Hirsh*, a landlord argued that a Washington D.C. emergency statute allowing tenants to remain in their rental property beyond the expiration of the term of their lease so long as rent payments were continued was an unconstitutional taking of his property rights. The Court found that the statute's provisions were necessary to address housing issues resulting from a public emergency. The Court held that the statute was not unconstitutional because its requirements had a reasonable relation to the relief sought.

In *Dua v. Comcast Cable of Maryland*, the Court of Appeals of Maryland rejected the application of the rational basis test as the state constitutional standard of determining validity of a retroactive statute under Articles 19 and 24 of the Maryland Declaration of Rights and Article III, § 40, of the Maryland Constitution. The Court wrote: "The state constitutional standard for determining the validity of retroactive civil legislation is whether vested rights are impaired and *not* whether the state has a rational basis." 370 Md. 604, 623. The Court also stated that "[B]ecause of the numerous opinions by this Court dealing with the constitutionality of retroactive civil statutes, principles of stare decisis dictate the result . . . Thus in applying Article 24 of the Declaration of Rights and Article III, § 40, of the Maryland Constitution to the present cases, there is little reason to rely on non-binding out-of-state authority." *Id.* Given the holding in *Dua*, it is unlikely that a court would put any weight on the holding of *Block* as it applies to the

---

<sup>2</sup> Article 24 of the Declaration of Rights expresses the same concept as 'due process of law in the Fourteenth Amendment' to the Constitution. *Ellis v. McKenzie*, 457 Md. 323, 333 (2018).

<sup>3</sup> Maryland Constitution, Article III, §40, expresses the same concepts as the Taking Clause of the Fifth Amendment and the Due Process Clause of the Fourteenth Amendment. *Ellis v. McKenzie*, 457 Md. 323, 333 (2018).

Maryland's retroactive statute laws. The correct test would instead be whether the retrospective law *abrogate vested rights*.

A "vested right" is "something more than a mere expectation based on the anticipated continuance of the existing law; it must have become a title, legal or equitable, to the present or future enjoyment of a property." *Muskin v. State Dept. of Assessments and Taxation*, 422 Md. 544, 560. Contractual and property interests existing before the enactment of a statute, including reversionary interests in land and contractual rental interests have been found to be vested rights under Maryland law. *Muskin v. State Dep't of Assessments & Taxation*, 422 Md. 544, 560 (2011) (holding that "There can be no reasonable doubt that the reversionary interest to real property and the contractual right to receive ground rent are vested rights under Maryland law."); *Harvey v. Sines*, 228 Md. App. 283, 137 (finding that a vested right includes that which is regarded as a property right under state property law); *Dua v. Comcast Cable of Maryland*, 370 Md. 604, 629 (2002) (holding "retrospective statutes abrogating vested property rights (including contractual rights) violate the Maryland Constitution."). Following precedent, the right to receive rental payments on an existing lease would be a vested property right so long as an agreement is already made.<sup>4</sup>

Here, Section 8-4(D)(2) of Proposed Mayor and City Council Bill 20-0526 would retroactively bar rental increases that a landlord has already undertaken since the state emergency order took effect on March 5, 2020.<sup>5</sup> The bill requires that a landlord rescind any notice of rental fee increase if the increase notice was sent before effective emergency date and would take effect after the effective emergency date. This would undue already settled lease terms. Notices of rental increase are typically sent out to tenants 90 to 30 days before the expiration of the original lease term.<sup>6</sup> Tenants must also agree in writing to the rental increase. This is done either through the signing of a new lease form or through an acknowledgement to go along with an initial lease containing a rent increase clause. Once an acknowledgement is signed, a new lease is formed for that term. The new rental amount is thus vested in the new lease. Any interference with the agreement would be a violation of the landlords vested property and contractual right.

---

<sup>4</sup> The holding in *Muskin* did not address whether the right to receive ground rent payments and the reversionary interest in a ground lease were vested separately. The court wrote that "[a contractual right to receive ground rent payments and the reversionary interest to re-enter the property in the event of a default] cannot be separated one from the other; together they are the essence of this unique property interest and as such, vested rights analysis must consider them together." 422 Md. 544, 559-556 (2011).

<sup>5</sup> The Solicitor's Office concedes that the City Council intends that Section 8-4(D)(2) law be retroactive.

<sup>6</sup> There are no state regulations on a notice period for a residential rent increases and the notice period is usually spelled out in the original lease. However, Baltimore City Code, Housing and Urban Renewal, Article 13, § 8-3, presumes a notice of rent increase to be received by tenant no more than 60 days before expiration of the lease, unless the lease requires a longer notice period, but not more than 90 days. A typical rental increase notice would be agreed upon and signed up to three months before the increase takes place.

## **Conclusion**

The retrospective nature of Section 8-4(D)(2) would violate the vested rights of a landlord under the precedent of Maryland law. Unlike federal standards under the 5<sup>th</sup> and 14<sup>th</sup> amendments, Maryland analysis does not require inquire into the reasonableness of the legislative intent. The only standard to consider is whether the retrospective law violates a person's vested rights. Vested rights include a person's existing rights in property or under a contract. A lease agreement contains both property and contractual interests making it a vested right. A law retrospectively abolishing a right under a lease agreement is thus unconstitutional under Maryland Law. Already existing rental increase agreements cannot be abolished under Maryland Law without compensation.

## Sayers, Margery

---

**From:** Jung, Deb  
**Sent:** Tuesday, May 19, 2020 1:54 PM  
**To:** Sayers, Margery  
**Subject:** FW: Letter of support for CB33-2020, on behalf of Bita Dayhoff, Community Action Council of Howard County  
**Attachments:** CB33-2020 letter of support.pdf

---

**From:** Blades, Stephanie <sblades@cac-hc.org>  
**Sent:** Tuesday, May 19, 2020 1:18 PM  
**To:** Walsh, Elizabeth <ewalsh@howardcountymd.gov>; Jung, Deb <djung@howardcountymd.gov>; Rigby, Christiana <crigby@howardcountymd.gov>  
**Cc:** Dayhoff, Bita (bdayhoff@cac-hc.org) <bdayhoff@cac-hc.org>  
**Subject:** Letter of support for CB33-2020, on behalf of Bita Dayhoff, Community Action Council of Howard County

Hello Councilmembers Walsh, Jung and Rigby,  
I'm sending the attached letter of support for CB33-2020 your way on behalf of Bita Dayhoff, President at the Community Action Council of Howard County.

Please let us know if you have any questions and thank you for the support on behalf of so many Howard County families in need of assistance.

### *Stephanie Blades*

*Executive Assistant  
Community Action Council of Howard County, MD, Inc.  
9820 Patuxent Woods Drive  
Columbia, MD 21046  
410-313-6473 (ph)  
410-313-6479 (fax)  
Visit our website [here](#)>  
Find us on Facebook [here](#)>  
Find us on Twitter (@HoCoCAC) [here](#)>*

**COVID-19 RESPONSE**  **Community Action Council**  
of Howard County  
HELPING PEOPLE. CHANGING LIVES.

*The Community Action Council is committed to supporting our community at all times, particularly when families are facing economic challenges.*

Reach out to us if you are in need of support with Food,  
Energy, & Housing Costs

Together, we are stronger. Learn how YOU can help.

[www.cac-hc.org](http://www.cac-hc.org)

#### CONFIDENTIALITY NOTICE

This message and the accompanying documents are intended only for the use of the individual or entity to which they are addressed and may contain information that is privileged, confidential, or exempt from disclosure under applicable law. If the reader of this email is not the intended recipient, you are hereby notified that you are strictly prohibited from reading, disseminating, distributing, or

copying this communication. If you have received this email in error, please notify the sender immediately and destroy the original transmission.



**Community Action Council  
of Howard County**

HELPING PEOPLE. CHANGING LIVES.

*Bitu Dayhoff, President*

---

May 19, 2020

Ms. Elizabeth Walsh, Council Member  
Howard County Council  
George Howard Building  
3430 Court House Drive  
Ellicott City, MD 21043

Re: CB 33-2020

Dear Ms. Walsh,

Thank you for taking the lead in anticipating and taking measures to mitigate the hardship that so many Howard County residents and families will face if rents and housing costs rise or their tenancies are terminated through eviction for failure to pay rent once the moratorium on evictions terminates. The Community Action Council of Howard County (CAC) has been working tirelessly to provide stability to low-income individuals and families during this time of crisis and recognizes that these residents' needs will only be exacerbated if their rent burdens increase or they become homeless upon eviction. Therefore, CAC supports the Emergency Council Bill 33-2020 (CB 33-2020) prohibition on rent increases and tenancy terminations (evictions) during a safe-harbor period of up to three (3) months.

We appreciate your consideration for and efforts on behalf of all of Howard County's residents whose limited financial resources put them at greater risk of homelessness during this pandemic. CB33-2020 will help these individuals and families maintain housing stability in the immediate future while they search for and work towards long-term, sustainable housing solutions. CAC looks forward to working with the County Council and Administration on such longer-term solutions and is available to discuss future bills and programs to that effect.

Thank you.

Respectfully,

Bitu Dayhoff, President

Cc: Deb Jung and Christiana Mercer-Rigby, Co-sponsors CB 33-2020

---

**Community Action Council of Howard County, Maryland, Inc.**

9820 Patuxent Woods Drive  
Columbia, Maryland 21046  
[www.cac-hc.org](http://www.cac-hc.org)

410-313-6440 (phone)  
410-313-6479 (fax)

## Sayers, Margery

---

**From:** Cee C <kimbrownci@gmail.com>  
**Sent:** Monday, May 18, 2020 7:47 PM  
**To:** Walsh, Elizabeth  
**Cc:** CouncilMail  
**Subject:** Re: Question about Howard County Rental  
**Attachments:** image003.png

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Yes I will support this bill!

On Mon, May 18, 2020, 7:24 PM Walsh, Elizabeth <[ewalsh@howardcountymd.gov](mailto:ewalsh@howardcountymd.gov)> wrote:

Hello there! We are voting on the bill tonight. I am hopeful it will pass, but not certain. Were it to pass, the restriction in Howard County would bar any increases in rent during the State of Emergency and some period of time thereafter. May I assume that you would support what is before us as CB33? Also, do you mind please sharing with us, whether you're in an apartment complex or renting a house? And in what general neighborhood?

Thank you so much for your timely note!



---

**From:** Cee C <[kimbrownci@gmail.com](mailto:kimbrownci@gmail.com)>  
**Sent:** Monday, May 18, 2020 5:03 PM  
**To:** CouncilMail <[CouncilMail@howardcountymd.gov](mailto:CouncilMail@howardcountymd.gov)>  
**Subject:** Question about Howard County Rental

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Hello,

I am inquiring about the Howard County stability Act.

I got a rent increase of about 6%. Let me know what I can do. Also, correct me if I'm wrong but aren't people suppose to not increase your rent during this time? And if they do, no more than 2.5%? Please let me know asap because this take effect for me June 1 2020.



## Sayers, Margery

---

**From:** Cee C <kimbrownci@gmail.com>  
**Sent:** Monday, May 18, 2020 7:34 PM  
**To:** CouncilMail  
**Subject:** Rental Protection Stability Act

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Hello,

I sent a previous email, but I would like to provide some back story.

I am currently renting from an MIHU rental property in Howard County Md. At the end of March a rent increase of almost 6% was left at my door (in the middle of the night). I was told that I had a few days to provide a serious amount of documentation by April 1, 2020 to requalify WITH a rent increase. Long story short this rent increase is alot and couldn't have came at a tougher time. I'm not here to complain, I realize I'm not the only one struggling, but with the stability act what are my options?

Can Howard County do something about the 6% increase? As in decrease it to maybe 3%. I know Montgomery County is implementing something similar where rent can't be increase no more than 2.5%.

I spoke to an MIHU representative and they said and I quote "That cap is for general renting not a reduced program". So low income people get rental increases at a higher rate? I didnt understand.

I live in Elkridge Md in an apartment complex.

## Sayers, Margery

---

**From:** Cee C <kimbrownci@gmail.com>  
**Sent:** Monday, May 18, 2020 7:32 PM  
**To:** Walsh, Elizabeth  
**Cc:** CouncilMail  
**Subject:** Re: Question about Howard County Rental  
**Attachments:** image003.png

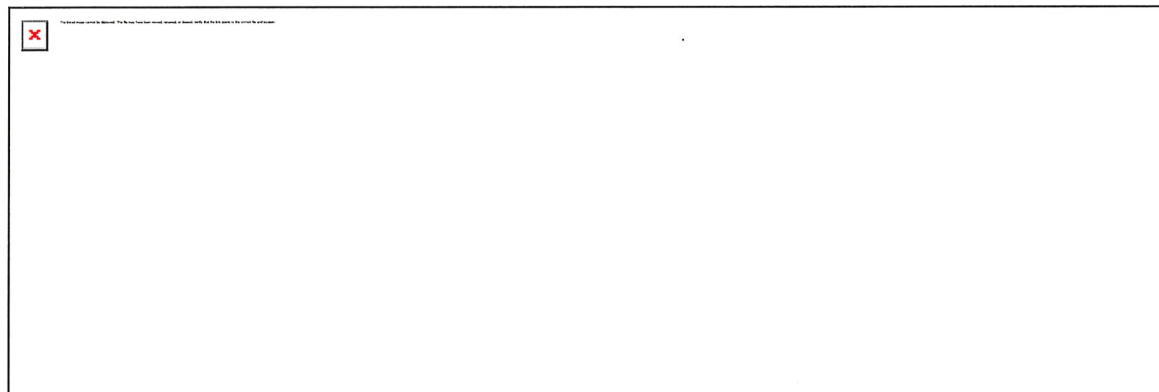
[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Was in the process of writing another email. I will shortly.

On Mon, May 18, 2020, 7:24 PM Walsh, Elizabeth <[ewalsh@howardcountymd.gov](mailto:ewalsh@howardcountymd.gov)> wrote:

Hello there! We are voting on the bill tonight. I am hopeful it will pass, but not certain. Were it to pass, the restriction in Howard County would bar any increases in rent during the State of Emergency and some period of time thereafter. May I assume that you would support what is before us as CB33? Also, do you mind please sharing with us, whether you're in an apartment complex or renting a house? And in what general neighborhood?

Thank you so much for your timely note!



---

**From:** Cee C <[kimbrownci@gmail.com](mailto:kimbrownci@gmail.com)>  
**Sent:** Monday, May 18, 2020 5:03 PM  
**To:** CouncilMail <[CouncilMail@howardcountymd.gov](mailto:CouncilMail@howardcountymd.gov)>  
**Subject:** Question about Howard County Rental

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Hello,

I am inquiring about the Howard County stability Act.

I got a rent increase of about 6%. Let me know what I can do. Also, correct me if I'm wrong but aren't people suppose to not increase your rent during this time? And if they do, no more than 2.5%? Please let me know asap because this take effect for me June 1 2020.

## Sayers, Margery

---

**From:** Walsh, Elizabeth  
**Sent:** Monday, May 18, 2020 7:25 PM  
**To:** Cee C; CouncilMail  
**Subject:** RE: Question about Howard County Rental

Hello there! We are voting on the bill tonight. I am hopeful it will pass, but not certain. Were it to pass, the restriction in Howard County would bar any increases in rent during the State of Emergency and some period of time thereafter. May I assume that you would support what is before us as CB33? Also, do you mind please sharing with us, whether you're in an apartment complex or renting a house? And in what general neighborhood?

Thank you so much for your timely note!



Liz Walsh, Council Member  
Howard County Council  
Serving District 1: Ellicott City, Dorsey's Search, Elkridge & Hanover  
3430 Court House Drive  
Ellicott City, MD 21043  
410.313.2001

---

**From:** Cee C <kimbrownci@gmail.com>  
**Sent:** Monday, May 18, 2020 5:03 PM  
**To:** CouncilMail <CouncilMail@howardcountymd.gov>  
**Subject:** Question about Howard County Rental

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Hello,

I am inquiring about the Howard County stability Act.

I got a rent increase of about 6%. Let me know what I can do. Also, correct me if I'm wrong but aren't people suppose to not increase your rent during this time? And if they do, no more than 2.5%? Please let me know asap because this take effect for me June 1 2020.

## Sayers, Margery

---

**From:** Walsh, Elizabeth  
**Sent:** Monday, May 18, 2020 5:55 PM  
**To:** CouncilMail  
**Cc:** Glendenning, Craig; Dvorak, Nicole  
**Subject:** CB33  
**Attachments:** RentalAssistanceDistributionCalc.xlsx; 2020.05.14 Percentage of Owner Occupied Housing Units.pdf

Hello, my Colleagues: I'm going to use some part of this break to make one last pitch to you about why I think we should pass CB33 tonight, as amended.

Here's where I am on amendments:

- Amendment 1, excluding from protection commercial tenants in default before the State of Emergency
- Amendment 2, adding payment plan provisions
- Amendment 5, prohibiting late fees assessment during the State of Emergency

I explained to Christiana already why I wouldn't probably support Amendment 3 (limiting this bill to just this State of Emergency): we could very possibly be in another State of Emergency for something similar, maybe even due to COVID19 if there is a second wave the latter half of this year or into calendar year 2021, and I'd rather this construct already be in place.

And I've since looked at Amendment 4 (prohibiting landlords from modifying leases without tenant consent), which I also won't support tonight, as I worry allowing it might contribute to the very power imbalance I'm seeking to address.

If one or both of these is your deal-maker, though, please let me know and let's make the deal (one-on-one).

Otherwise, here goes:

1. Renters comprise a quarter of all County households (per that 2018 Rental Survey, p. v, that I can't stop citing: <https://drive.google.com/file/d/1Rne8OA4QgG0dbxqjDrdgotoSz5gZ06H6/view>). If you wanted to map concentration of where those might be Kelly Cimino did just that in her 5-year plan we just approved as CR54, here: <https://apps.howardcountymd.gov/olis/PrintSummary.aspx?LegislationID=12454>. I've excerpted and attached the two pages).
2. I've heard suggestion—from newspaper accounts, mostly—that the rental assistance package announced by Executive Ball solves the whole problem, rendering this bill unnecessary. That all depends on how big the problem is, doesn't it. The attached spreadsheet shows just how fast that announced \$1.6M—at most, I'm assuming wrongly that all of CARES will go to rental assistance—will go. If just 10% of our 32,358 rental households apply and qualify, we can extend them a mere \$485 each. That doesn't cover anyone's one-month rent. Let alone two or three months' rent now past due.
3. We heard today that the local real estate market isn't seeing many defaults on the mortgage side because of the various forbearance programs in place for property owners; they're being taken advantage of. If you're a commercial landlord, you qualify for State and federal programming to reimburse your business loss, too. But there's nothing comparable in place (yet) for tenants. This bill isn't saying cancel or defer rent (like the forbearance programs do for those with mortgages), it's just holding the line for renters until things start to settle. That is, someone's rental financing obligations can't get more onerous than they already may be in the midst of a global pandemic.

4. David: Don't read this: Baltimore City, Montgomery County and Washington, DC already have passed similar legislation.

That's it! So easy! See you tonight!

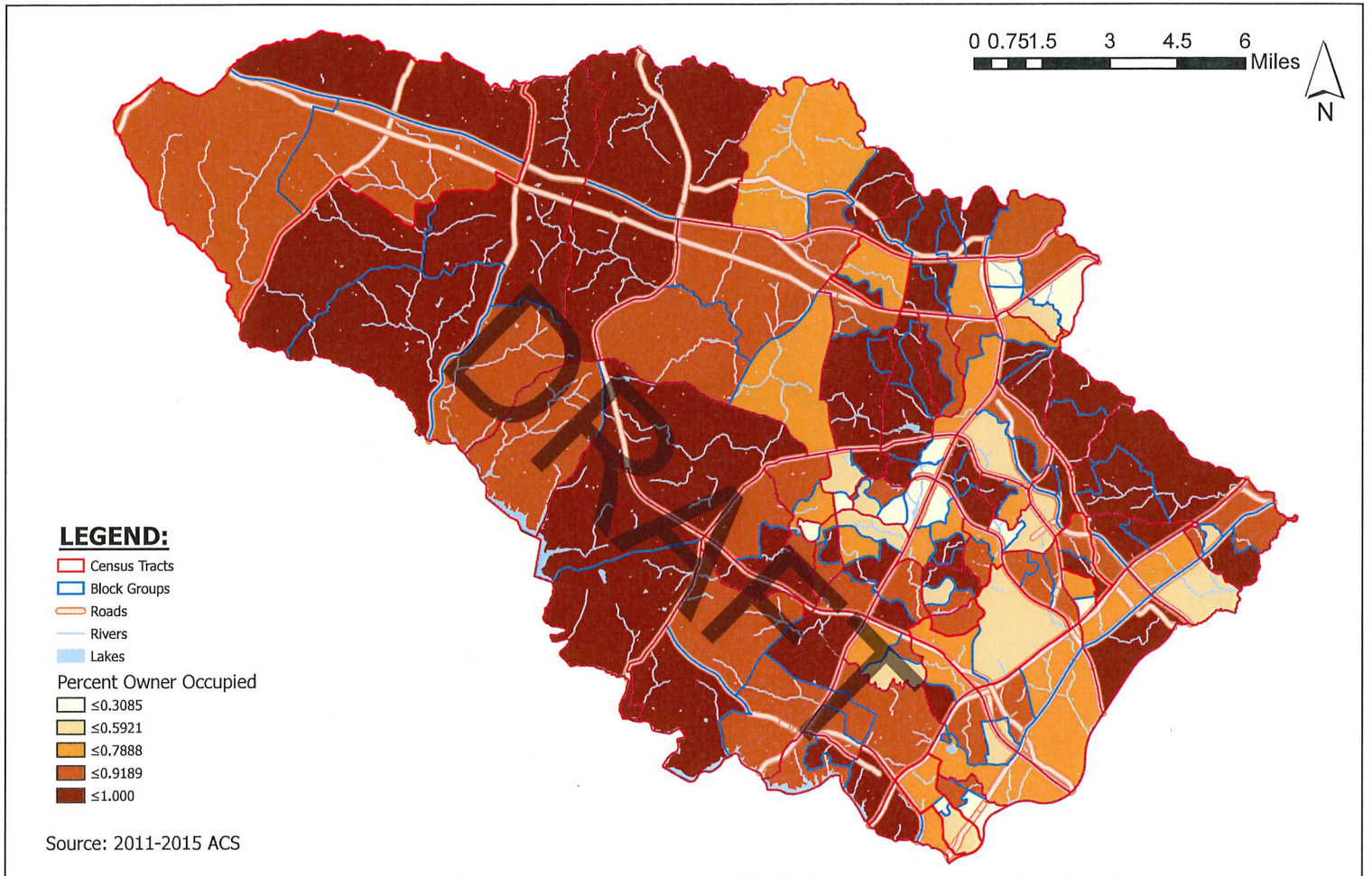
Current County Rental Assistance, as of May 8

Disaster Relief	\$	300,000	
MIHU	\$	500,000	
CARES	\$	770,000	\$ 1,570,000

23,000 Persons filed unemployment in Howard County, as of May 7

32,358 Rental households in multi-family housing, as of, December 2018 Rental Survey, p.v

Let's say	10% need help. That's	3,236	who would get	\$	485	each.
	20%	6,472		\$	243	
	30%	9,707		\$	162	
	40%	12,943		\$	121	
	50%	16,179		\$	97	

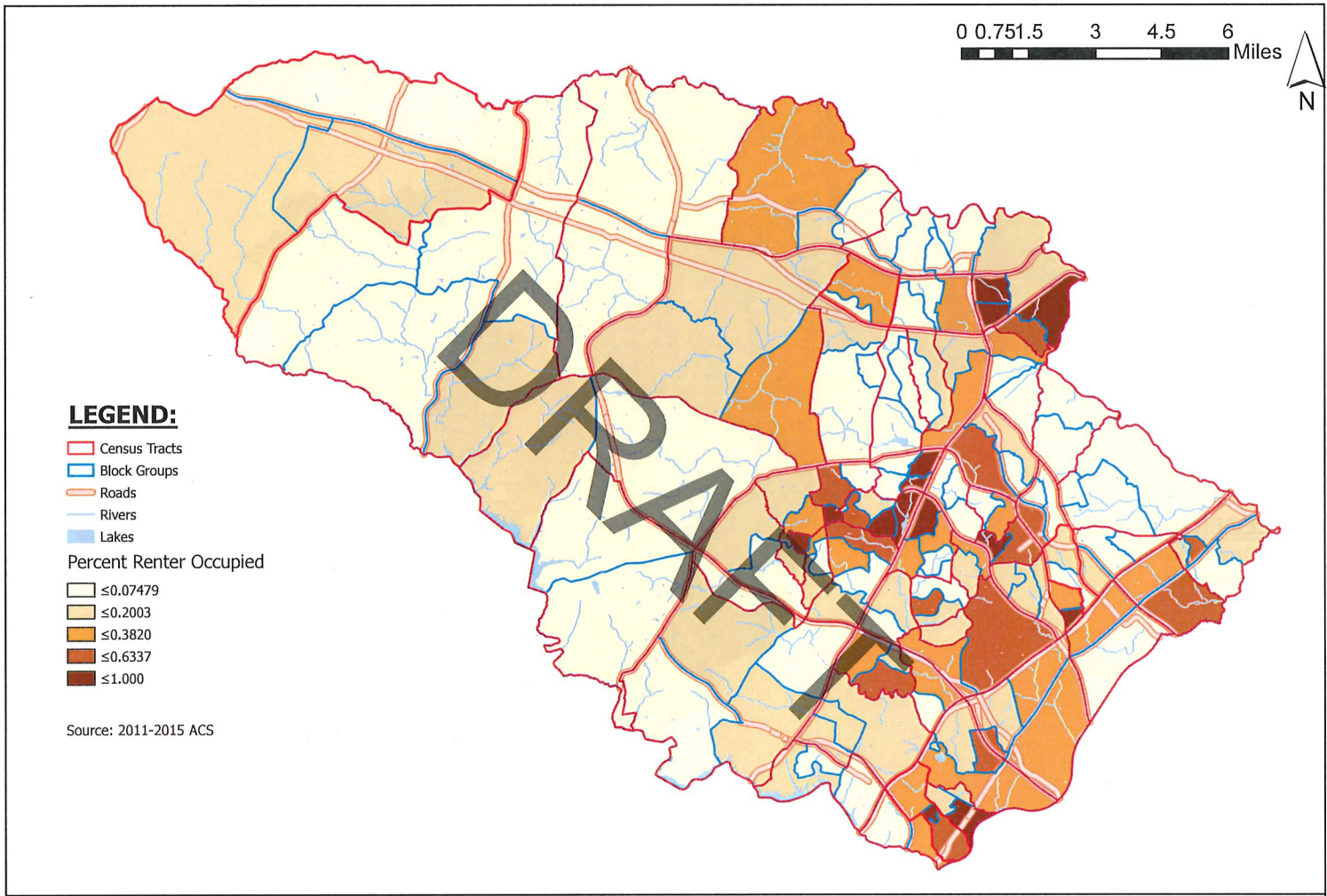


# Howard County, Maryland

## Percentage of Owner Occupied Housing Units







Howard County, Maryland  
 Percentage of Renter Occupied Units



May 18, 2020

**Re: LETTER OF CONCERN RE. CB33-2020 – Rental Payments during State of Emergency**

Dear Chairwoman Jung and Members of the Howard County Council:

The Howard County Chapter of the Maryland Building Industry Association (MBIA) writes concerning Council Bill 33-2020, which would prohibit landlords from increasing rent payment amounts or otherwise materially changing residential lease terms during a Governor-issued State of Emergency and for three months thereafter. Our industry understands that we are living in stressful, unprecedented times and many members of our community are facing financial challenges. We do not oppose the intent of this bill; however, we do have several concerns which we believe could be addressed with amendments.

First, this measure applies to any state of emergency beyond the current crisis. We do not know what the future will hold; future emergencies may not necessitate rental assistance. Further, neighboring jurisdictions that are implementing similar legislative assistance are limiting the scope of their bills to this COVID-19 State of Emergency. We encourage the Council to do the same.

Second, we echo the Howard County Housing Commission's suggestion that this bill apply to renters to who demonstrate financial hardship due to pandemic-related health or economic issues. Many landlords and property management companies are individuals or small businesses who rely on rental payments for their own financial security. Increases are often necessary to keep up with rising economic costs, and tenants who can afford increases should be enabled to do so.

Third, the current bill prohibits termination of a lease. This is unfairly broad. Maryland law provides landlords with several causes of action for eviction besides failure to pay rent. Landlords should still be permitted to initiate legal action against tenants who pose a threat to the health or safety of the landlord or other tenants. Such a provision is unrelated to rent and in the best interests of the landlord and other tenants and community members.

Finally, MBIA supports the Maryland Multi-Housing Association's amendment that would make this bill prospective, rather than retrospective, to avoid complications with existing leases or leases that have renewed since the Governor's March Emergency Order. Reversing formerly agreed-upon increases for many residents would be confusing and possibly burdensome for landlords.

We believe these suggested amendments would lead to a more balanced approach that would lend assistance to those who need it most during these challenging times. MBIA would proudly support a bill that included amendments addressing these concerns. Thank you for your attention to this issue and your continued support of the local home building industry.

If you have any questions about these comments and would like to discuss MBIA's position further, please do not hesitate to contact me at [abailey@marylandbuilders.org](mailto:abailey@marylandbuilders.org) or (202) 815-4445.

Best regards,

Angelica Bailey, Esq., Vice President of Government Affairs

Cc: Councilman Opel Jones  
Councilmember Christiana Mercer Rigby  
Councilman David Yungmann

County Executive Calvin Ball  
Sameer Sidh, Chief of Staff to the County Executive  
Councilmember Elizabeth Walsh

## Sayers, Margery

---

**From:** joel hurewitz <joelhurewitz@gmail.com>  
**Sent:** Monday, May 18, 2020 4:35 PM  
**To:** CouncilMail  
**Cc:** Kuc, Gary  
**Subject:** CB33-2020 Testimony  
**Attachments:** Hurewitz - CB33-2020 Conflicts with Charter.pdf

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Dear Council,

Attached please find "CB33-2020 - RENTAL PROTECTION AND STABILITY ACT IS FLAWED AND CONFLICTS WITH THE CHARTER, CONSTITUTION AND STATE LAW"

Joel Hurewitz

**CB33-2020 - RENTAL PROTECTION AND STABILITY ACT  
IS FLAWED AND CONFLICTS WITH THE CHARTER, CONSTITUTION AND STATE LAW**

Testimony of Joel Hurewitz  
May 18, 2020

CB33-2020 is well-intended, but poorly drafted legislation. Short-term protection in the pandemic emergency is appropriate. However, long-term application to an emergency that might last many months or even years is very problematic. In addition, it is not clear why the protections afforded many tenants in the CARES Act are not sufficient. As Peter Engel stated in his letter on CB33-2020: "property owners are subject to numerous local, state, and federal restrictions on the operation of housing. Some of these restrictions come from the sources used to buy or develop the property. Other new requirements are in the CARES Act. CB 33-2020 should be amended to ensure that such existing requirements take precedence in the event of conflicts." The conflicts alluded to by Engel also appear to include the Howard County Charter and even the Maryland Constitution.

**Ambiguous Drafting Could be Interpreted to Apply to Short-Term and Event Rental Agreements**

The clause on Page 2, Line 25 states that the section applies to "rented commercial space of all kinds." Furthermore, Page 3, Line 7 prohibits the termination of a "lease or rental agreement." Taken together these clauses could be interpreted to apply not only to hotels and storage facilities, but to event and meeting rentals at hotels or village and neighborhood centers, churches, volunteer fire departments, Recreation and Parks facilities, restaurants, bowling alleys, miniature golf or pools and would prohibit their termination during an emergency. This is particularly paradoxical because it is in fact the health emergency and the social distancing rules which are requiring the cancellation of events including those at Recreation and Parks facilities and the many canceled weddings at Belmont. An amendment is needed to make it clear that the bill does not apply to short-term rentals or to "rental agreements" for event or meeting spaces.

**The Howard County Charter Prohibits Emergency Legislation from Creating a Vested Right or Interest**

Section 209(d) of the Howard County Charter provides in part that emergency bills "shall not include any measure creating or abolishing any office; changing the compensation, term, or duty of any officer; granting any franchise or special privilege; or **creating any vested right or interest.**" (emphasis added). There appear to be scenarios where a vested right or interest is created in the tenant who is either on a month-to-month lease or for a lease which expires during the emergency.

Surprisingly, there do not appear to be court cases in Maryland interpreting similar emergency legislation clauses in other county charters, State law, or the Maryland Constitution. (There are even few cases interpreting provisions in other states. See *Matthews v. Bailey, Governor*, 131 S.W.2d 425 (Ark. 1939) <https://casetext.com/case/matthews-v-bailey-governor-1>). However, the Maryland Court of Appeals has stated that

The definition of "vested rights" is more tricky.

A most natural definition of the term "vested" is "accrued" or, as dictionaries put it, "completed and consummated." But in that sense, any claim or interest which has come into being and been perfected as "a right" would have to be said to be vested....

\* \* \* \*

... It is impossible to discover the precise meaning of the term through which all of the decisions can be consistently explained. Most of the numerous attempts at definition are essentially circuitous in nature, as in the pronouncement that "a vested right, as that term is used in relation to constitutional guarantees, implies an interest which it is proper for the state to recognize and protect, and of which the individual may not be deprived arbitrarily without injustice." Thus "vested right" means simply a right which under particular circumstances will be protected from legislative interference. Another definition notes that a vested right is an immediate right of present enjoyment or a present fixed right of future enjoyment. 2 *id.* §§ 41.05, 41.06, at 369-70, 379 (footnotes omitted). See *Washington Nat'l Arena Ltd. Partnership v. Treasurer*, 287 Md. 38, 46 n. 4, 410 A.2d 1060, 1065 n. 4 ("[I]t has long been recognized that the term 'vested right' is conclusory—a right is vested when it has been so far perfected that it cannot be taken away by statute.") (quoting *Hochman, The Supreme Court and the Constitutionality of Retroactive Legislation*, 73 Harv. L.Rev. 692, 696 (1960)), *cert. denied*, 449 U.S. 834, 101 S.Ct. 106, 66 L.Ed.2d 40 (1980).

*Langston v. Riffe*, 754 A. 2d 389, (2000). CB33-2020 appears to create a fixed lease term for the duration of the emergency plus an additional three months. Thus, a tenant with a month-to-month or expired lease would by operation of law be given what amounts to an option to renew and would be entitled to a fixed lease or a "vested right" to occupy the premises. As the Courts have stated, this "is an immediate right of present enjoyment or a present fixed right of future enjoyment."

The difficulty in interpreting whether there is a vested right for the tenant is complicated because the landlord also has a vested right to repossess the property. The Court of Appeals has stated that "Maryland's Declaration of Rights and Constitution prohibit the retrospective reach of statutes that would have the effect of abrogating vested rights" *Muskin v. Assessments*, 30 A. 3d 962, (2011) (citing *Dua v. Comcast Cable of Md. Inc.*, 370 Md. 604, 630 n. 9, 805 A.2d 1061, 1076 n. 9 (2002)).

The *Muskin* Court continued

Our holding in *Dua* applies completely to the questions presented in the present case. We said there that

[i]t has been firmly settled by this Court's opinions that the Constitution of Maryland prohibits legislation which retroactively abrogates vested rights. No matter how "rational" under particular circumstances, the State is constitutionally precluded from abolishing a vested property right or taking of a person's property and giving it to someone else.

*Id.* To determine whether Chapter 290 is constitutional under Maryland law, we evaluate whether the statute purports to apply retrospectively and abrogates a vested right or takes property without just compensation. If a retrospectively-applied statute is found to abrogate vested rights or takes property without just compensation, it is irrelevant whether the reason for enacting the statute, its goals, or its regulatory scheme is "rational." *Id.* (stating that the relevant standard for determining whether a retrospective statute is constitutional is "whether the vested rights are impaired and *not* whether the statute has a rational basis." (emphasis in original)).

The *Muskin* Court dealt with legislation for ground rent leases considered the meaning of "vested rights:"

#### B. Vested Rights.

A ground rent lease creates a bundle of vested rights for the ground rent owner, a contractual right to receive ground rent payments and the reversionary interest to re-enter the property in the event of a default or if the leaseholder fails to renew. These two rights cannot be separated one from the other; together they are the essence of this unique property interest, and as such, vested rights analysis must consider them together. As pointed out by the

SDAT, there is no Maryland case on point that has held that the rights created under a ground lease are vested rights. Courts have struggled with the difficulty of determining a precise definition of vested rights.

A vested right is "something more than a *mere expectation* based on the anticipated continuance of the existing law; *it must have become a title*, legal or equitable, to the present or future enjoyment of a property..." *Allstate Ins. Co. v. Kim*, 376 Md. 276, 298, 829 A.2d 611, 623 (2003) (citing *Godfrey v. State*, 84 Wash.2d 959, 963, 530 P.2d 630, 632 (Wash.1975)(emphasis in the original)). The ground rent owner has a legal title that is vested and a firm expectation for the future enjoyment of ground rent payments. The right to re-enter the property or eject the leaseholder secure the ground rent owner's future enjoyment of ground rental income. In *Dua*, we said that vested rights include "that which is regarded as a property right under Maryland property law." 370 Md. at 631, 805 A.2d at 1077. There can be no reasonable doubt that the reversionary interest to real property and the contractual right to receive ground rent are vested rights under Maryland law. *Heritage Realty*, 252 Md. at 11, 248 A.2d at 904 (recognizing the importance of the reversionary interest, stating that "[t]he owner [of the reversionary interest] is entitled to receive fair market value on condemnation"). As such, our holding in *Dua*, that retrospective statutes may not abrogate vested property rights, leads us to the conclusion that the extinguishment and transfer provisions of Chapter 290 are unconstitutional.

*Muskin*. Note again how the Court stated that "Courts have struggled with the difficulty of determining a precise definition of vested rights."

Similar to the right to re-enter with a ground rent, a landlord with a regular lease has a vested right to repossess the property at the termination of the lease. Maryland law provides that a landlord may give the tenant a Notice to Quit:

(b) Notice to quit. --

(1)(i) Where any tenancy is 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.

Md Real Property Code Ann § 8-402. By forcing the landlord to renew the lease would appear to deprive the landlord retrospectively of the statutorily vested right to repossess the property from the tenant.

### **§ 8-402 of the Real Property Code Preempts CB33-2020**

In addition, it would appear that § 8-402 preempts CB33 to the extent that it would limit the ability of a landlord to send a notice to quit and prohibit a landlord from repossessing the property. "A local ordinance is preempted by conflict when it prohibits an activity which is intended to be permitted by state law." *East Star v. Queen Anne's Co*, 38 A. 3d 524 (Court of Special Appeals 2012). Preemption is also particularly evident where there are specific provisions applicable only to Baltimore City and Montgomery County. See § 8-402 (3)(ii) and (iii). Tangentially related is what happens where the owner is unable or even does not want to renew its Howard County residential rental license? The bill cannot be drafted to force a landlord to allow a tenant to remain in possession after the expiration of a lease or rental agreement.

**Amendment 1 – Exception for Commercial Tenants in Default at Time of the Emergency  
But Not For Residential Tenants**

The exception for tenants in default at the time of the emergency is declared only applies to commercial tenants. Thus, does the bill give an incentive to residential tenants who were already in default or encourage those not in default to go into default and remain in possession of the leased property for months or even years?

**Amendment 3 – Bill Should Only Apply to the Current Pandemic Emergency**

Had it been in effect for the Ellicott City flooding, CB33 would have applied to the Flood State of Emergency. It could potentially also apply to an emergency caused by fire, tornado, snowstorm or civil unrest. The bill makes no allowance for terminating a lease or rental agreement when the facility is inaccessible or has been destroyed in the emergency. Nor does the bill have an exception for a property which becomes uninhabitable during the pandemic due to storm damage or fire. To give rental relief when there is an emergency from a tornado or flooding for just a few days does not necessarily have a nexus to rentals especially throughout the whole County. As stated in Engel’s letter, the bill should only apply to the current pandemic emergency.

Emergencies unrelated to the pandemic would not necessarily affect the ability of tenants to pay their rent. Governor Hogan placed Maryland under a opioid state of emergency in 2017. <https://governor.maryland.gov/wp-content/uploads/2018/12/Executive-Order-01012018.30.pdf> <https://wtop.com/maryland/2020/01/maryland-sees-slight-decline-in-opioid-overdose-deaths-state-tackles-crisis-with-new-plan/> In no way has this emergency affected most individuals financial situation and generally has become background noise as society and government continued to function until the COVID-19 state of emergency. More importantly, while Governor Hogan first declared the COVID-19 state of emergency on March 5, 2020 there was no practical effect on Maryland society until the Governor’s Order of March 12, 2020 Prohibiting Large Gatherings and Events and Closing Senior Centers. <https://governor.maryland.gov/wp-content/uploads/2020/03/Prohibiting-Large-Gatherings.pdf> Therefore, it seems likely that an underlying state of emergency for the pandemic now in its third month will last throughout the remainder of 2020 and into 2021. If the emergency lasts for more than a year, it could prohibit rent increases or terminations well into or even beyond 2021. Thus, there is an incentive for tenants to just not pay and await the landlord’s lawsuit for damages.

While Amendment 3 makes it clear that it only applies to the COVID-19 emergency, it also addresses a technicality that the Governor’s proclamation are for 30 days subject to renewal. See § 14-3A-02 (c)(2) and (3). It also clears up an interpretation of whether it is necessary for the emergency to be declared by both the Governor and County Executive. However, by not striking lines 22 and 23 there is an unclear reference to County Executive Orders without the antecedent provision.

**Amendment 5 – Prohibiting Late Fees Might Be Unconstitutional Retrospective Legislation**

Amendment 5 which prohibits late fees in existing leases and rental agreements would appear to deprive the landlords of their vested rights retrospectively as discussed above.

**Conclusion**

CB33-2020 needs to be amended and stripped-down to only those elements which afford protections to tenants. The ambiguous application to event and meetings rental agreements needs to be clarified. Those elements which are in conflict with the Charter, State law, or the Maryland Constitution need to be stricken.

## Sayers, Margery

---

**From:** Pat Dudley <patd.newvision@gmail.com>  
**Sent:** Monday, May 18, 2020 2:55 PM  
**To:** CouncilMail  
**Subject:** RE: Support for CB33-2020

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Hello Ms. Jung,

I am in support of the bill listed above in my email. As a renter of a home in Howard County and a small business owner providing Psychotherapy to patients this bill supports my efforts to remain housed without a rental increase during this pandemic. I opened my practice right before the state shut down. As you might imagine, it has been a struggle to manage bills. I do realize I am in the type of business that will pick up due to the current situation. I am concerned about the long-term impact of financial recovery during this time and beyond. I am also concerned about the long-term mental health impact on many individuals locally, and at the state level. I have found that "normal" people are struggling; adding financial pressures may be the tipping point for many families.

Additionally, my other concern is the added financial burden of a rental increase for the residents of Howard County many who are unemployed, underemployed, or those of lower socioeconomic status. This bill should extend beyond 3 months and should be in line with Montgomery County. In fact, there really should be a statewide initiative regarding rent stability without increases for at least the next year.

Again, I am in support of the proclamation, and I am hopeful that the council will take into consideration individuals renting in Howard County. Should you have any questions, please feel free to contact me.

*Kind regards,*

*Pat Dudley, LCPC-S, NCC  
Psychotherapist  
New Vision Counseling, LLC  
7360 Grace Drive  
Columbia, MD 21044  
410-200-9825  
[patd.newvision@gmail.com](mailto:patd.newvision@gmail.com)  
[www.newvision-counseling.net](http://www.newvision-counseling.net)*