June 14, 2018

The Honorable Danny Marshall, Chairman,

Virginia Housing Commission

Pocahontas Building, 8th Floor

900 East Main Street

Richmond, Virginia 23219

Chairman Marshall:

On behalf of the Virginia Apartment and Management Association (VAMA) and the Apartment and Office Building Association (AOBA) of Metropolitan Washington, I write to provide feedback and insight with regard to the issue of evictions prior to the Commission’s June 19 Evictions Sub Work Group meeting.

As you know, our organizations represent housing providers, accounting for a collective portfolio of some 356,000 apartment units across the Commonwealth of Virginia. Our member companies shared in the alarm and concern with recently unveiled data depicting Virginia among the highest in prevalence of evictions nationally. We sincerely appreciate the Commission taking up this important issue and look forward to contributing to discussions with regard to strategies for reducing evictions in Virginia.

On a positive note, a deeper delve into the data released by Princeton University reveals that evictions are not as prevalent as the recent New York Times story would imply. However, a closer analysis unveils other disturbing trends that require attention and action. The New York Times story does not accurately reflect evictions data as it fails to distinguish between the act of filing an unlawful detainer and following through with an eviction. The Princeton University data also fails to distinguish between nonpayment of rent evictions and those filed for other lease violations such as criminal activity; an issue with which the Virginia Housing Commission has grappled several times over the last ten years, pursuing legislative approaches for expediting such evictions for the protection of other tenants, surrounding communities and local law enforcement (most recently “criminal blight” legislation passed earlier this year in the form of H.B. 594 and S.B. 451).

The City of Richmond provides a helpful example to better understand the Princeton University research data. According to the study, the City of Richmond ranks second among localities nationwide in the prevalence of evictions. But again, the study fails to distinguish between evictions executed and unlawful detainers filed. According to the CoStar Group, there are a total of 78,205 rental housing units in the City. Per the New York Times story, 17, 981 unlawful detainer motions were filed in 2017 seeking a writ of possession. This is where the Princeton University research data leaves off.

Additional data provided by the Civil Process Division in the Sherriff’s office shows that of those 17,981 unlawful detainer motions filed, only 9,381 resulted in a writ of possession transmitted to the Sherriff for execution. Of those, another 6,440 were cancelled by the rental manager prior to the execution of the eviction. This commonly occurs when a tenant comes up with the rent payment or another arrangement is reached between the tenant and the housing provider. That leaves only 2,941 writs of possession that were actually carried through to execution, resulting in an eviction rate of approximately 3.7%.

This additional level of data provides some much needed perspective. However, it should not be construed to reflect that Virginia does not have a problem with evictions. While perhaps intuitive, it is particularly concerning that the prevalence of evictions is concentrated in lower rent units and areas of higher poverty. This means that evictions are disproportionately affecting the most vulnerable Virginians, effectively contributing to and perpetuating the cycle of poverty. The industry welcomes reasonable measures to reduce evictions (be they legislative, procedural or otherwise) not just for altruistic reasons, but because evictions negatively impact housing providers as well.

The eviction process is both costly and time consuming. Housing providers pursuing evictions see not only legal expenses associated with such a course of action, but also a loss of the revenue stream associated with a particular asset for the duration of the eviction process. There is no economic incentive for housing providers to file for eviction except as a last resort when a lease has been breached, most often for nonpayment of rent, or for jeopardizing the safety or disturbing the quiet enjoyment of others at the apartment community. It is unfortunately, however, a necessary part of doing business as housing providers must fulfill financial obligations, including but not limited to maintenance, capital improvements, mortgage payments, utilities, insurance premiums, payroll and taxes, regardless of whether a resident fails to pay rent or fulfill other responsibilities under a lease.

The timeline for executing an eviction effectively results in a 45 to 60-day loss of revenue associated with a unit. That is equivalent to approximately 15% of the calendar year’s revenue that is permanently lost for a particular apartment unit. Though a housing provider may receive a judgment for rent and other expenses owed in connection with an eviction, it is often very difficult to collect on such debts and many housing providers choose not to pursue collections, but simply take possession of the unit. The average timeline for seeing an unlawful detainer motion for a writ of possession through to execution is depicted below:

* 1st of the month: Rent is due
* 5th of the month: Last day to pay rent without a late fee penalty (this 5-day grace period is typical for most property management companies, though some companies use shorter or longer grace periods)
* 6th of the month: “Material Noncompliance for Failure to Pay Rent” is filed (commonly referred to as pay or quit notice, the resident granted an additional 5 days beyond the date of notice to pay the rent and late fee)
* 12th of the month: Unlawful Detainer is filed (rent, late fee, court costs, and/or attorney’s fees included in the total amount owed by the resident)
* 2nd – 11th of the following month: Initial court date for Unlawful Detainer filed in prior month. Statute stipulates that unlawful detainer motions should take priority on the docket and should occur within 21 days after the filing date. This is not, however, a hard and fast rule. The 21-day timeline is stretched in this example to account for weekends, court holidays, etc.
* Assuming possession is granted, the writ is then filed. If immediate possession is granted, the writ can be filed on the same day. However, it may not be executed for 10 days to accommodate the tenant’s 10-day appeal period. If 10-day possession is granted, the plaintiff must wait 10 days to file the writ. Depending on the locality, the Sheriff serves the writ, which may take up to two weeks. The eviction itself is generally executed within a week after the writ is posted.
* Numerous opportunities exist within this timeline to pay the rent and late fee and halt the eviction process. This most often occurs right before the first court date or just prior to the execution of the eviction. As such, extending the timeline for the pay or quit notice only stretches the process out further and accumulates costs layered onto the tenant during that extended timeframe.

Given the significant duration of the timeline for executing an eviction and the associated revenue loss, efforts to reduce evictions will benefit not only the tenants, but the housing providers as well.

As established above, housing providers have a built-in financial disincentive to pursue an eviction. The fundamental problem is not greedy or punitive landlords nor is it lazy or ill-meaning tenants/consumers. Rather it is the growing gap between the buying power of lower wages and the fair costs of housing, established like any other service, by the laws of supply and demand. Nationwide, rent burden homes are up 29%, while income growth has actually declined by 9% during the same period. That is to say that evictions are a symptom of larger societal issues related to a shortage of affordable housing supply and the failure of incomes to grow consistent with the market. As such, an effective long-term approach to reducing evictions must focus on the root causes of affordable housing supply and slow wage growth, particularly among lower income brackets.

It is additionally noteworthy that without action, the projected supply and demand curve will continue to exacerbate affordability issues going forward. As of the most recent census, roughly 1 million Virginia residents make their homes in approximately 520,200 apartments across the Commonwealth. Research shows that the demand for apartments is on the rise. To accommodate demand, Virginia will need to add 135,000 new apartment homes by 2030. This increased demand is fueled by population growth (an estimated 16.32% increase in the number of households by 2030) and a higher propensity to rent. If we don’t take corrective action now, our current housing affordability crisis will only worsen.

It is for these reasons that we welcome the opportunity to work with the Housing Commission to identify short- and long-term strategies to reduce evictions in Virginia.

Sincerely,

Brian Gordon, Vice President, Government Affairs