

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Housing and Community Development



**Bill 23-0338, “the Eviction Record Sealing Authority Amendment Act of
2019”**

Testimony of
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Director

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Before the
Committee on Housing and Neighborhood Revitalization
Council of the District of Columbia
The Honorable Anita Bonds, Chairperson

Virtual Hearing via Zoom

12:00 PM

Good afternoon, Chairperson Bonds and members of the Committee on Housing and Neighborhood Revitalization. I am Polly Donaldson, Director of the Department of Housing and Community Development (DHCD). I am pleased to appear before you to testify on behalf of Mayor Bowser on B23-338, the “Eviction Record Sealing Authority Amendment Act of 2020.”

It is DHCD’s mission to produce and preserve affordable housing for low- and moderate-income residents and revitalize underserved neighborhoods in the District of Columbia. The Rental Accommodations Division (RAD) of the Housing Regulation Administration (HRA), housed within DHCD, administers the Rental Housing Act of 1985 (DC Law 6-10) as amended which is codified at DC Official Code § 42-3501.01 and what follows.

It is through its role in administering the Rental Housing Act, and the recordation of notices to vacate, that DHCD is directly involved in the eviction process and would play a role in administering this legislation. DHCD also supports affordable housing through financing the production and rehabilitation of affordable housing, and in this role we are concerned with both the well-being of tenants and the ability for projects to sustain their expenses and continue to offer affordable housing for their entire useful life. Beyond this, we provide grants to Community Based Organizations from our federal Community Development



Block Grant (CDBG) funds to provide tenants with housing counseling and addressing eviction and its aftermath are central to this work. Finally and most recently, DHCD has used CDBG and other federal resources to stand up two new COVID-19 related emergency rental assistance programs, complement the long-standing Emergency Rental Assistance Program (ERAP), which is supported with local funds, to provide tenants housing stability and stop the threat of evictions.

Thus, along with our formal role in the eviction process, which would be expanded by this bill, DHCD has significant mission and program interests in reducing evictions so tenants, property owners, and all of us in the District of Columbia reap the benefits of increased housing stability.

The bill before us would amend the Rental Housing Act of 1985 to require that a housing provider serve a written notice-to-vacate on a tenant and the Rent Administrator 30 days prior to filing any eviction case with the court. Currently, notices to vacate for nonpayment of rent do not need to be served on the Rent Administrator. Historically, many tenants unwittingly waived their right to notice when executing their lease agreements. To make this new service requirement effective, the legislation would prohibit a housing provider from filing a Superior Court complaint to recover possession of a rental unit for the nonpayment of rent unless the housing provider has provided the tenant and the Rent Administrator with the required notice.



One of the biggest impacts of an eviction claim, whether it results in a formal eviction or not, is that it can put the tenant at a disadvantage in renting another home and affect other opportunities such as lending and employment, even many, many years after the claim. This bill requires the Court to seal eviction records after three years as a matter of course and it also authorizes the Court to seal the records of certain evictions before three years after a successful motion by a defendant. Finally, the bill would add discrimination in housing based on a person having a sealed eviction record to the Human Rights Act of 1977.

I am testifying in support of this legislation though we do have important considerations we strongly encourage you to address.

First, as a technical point, we ask that the legislation specify that the time period after which eviction records are to be sealed is three calendar years, to comply with the statute of limitations for real property.

Second, in addition to contributing to the public record on evictions, DHCD believes that the data the agency receives as a result of all notices to vacate being filed with the Rent Administrator will be invaluable to our efforts to understand and shape the impact of antieviction and other policies. The bill does not, however, reference the notices to vacate recorded with the Rental Administrator in any of the record sealing or fair housing provisions of the bill. If it is the Council's intention to not allow these records to be used for tenant screening and



discriminatory purposes, we recommend that the bill explicitly state that after three calendar years, the District can no longer release or publish notices to vacate and data from the notices can no longer be released publicly except to the defendant or for research and policy purposes with any personally identifiable information removed.

The third consideration is that this bill will greatly increase the volume of notices to vacate processed by RAD and will also greatly increase the requests for file retrieval. Last year, from March 1, 2019 to March 1, 2020 the HRA processed 2,117 notices to vacate. These did not include any for nonpayment of rent, which are currently not required to be filed with the Rent Administrator. Nonpayment of rent, however, is the major cause of eviction cases. A recent report from Georgetown¹ cites an average of 32,000 eviction cases filed in court on average in recent years in the District. Thus, we might anticipate up to a fifteen-fold increase in the volume of notices-to-vacate registered with RAD. As you are aware, the Office of the Tenant Advocate (OTA) is in the process of developing an on-line database to handle some of RAD's paper tasks related to the Rental Housing Act, but that system is not expected to be transferred to DHCD until over a year from now. Currently the staff must manually log submissions, even while primarily

¹ McCabe, BJ and E. Rosen (2020). Eviction in Washington, DC: Racial and Geographic Disparities in Housing Instability. Retrieved 10/23/20202 from <https://georgetown.app.box.com/s/8cq4p8ap4nq5xm75b5mct0nz5002z3ap>



working off-site. Moreover, when OTA delivers the system to DHCD, as part of the process, and as a result of legislation passed as part of the Fiscal Year 2020 Budget Support Act of 2019, every housing provider in the city will be required to reregister within a matter of months. Therefore, the Department will not be able to absorb these costs and there will be a significant fiscal impact from this increased workload for some years to come, especially if there is an uptick in eviction actions in the wake of COVID-19.

The fourth concern I will highlight today is that while the court is directed in the new Section (a-1) (5) to dismiss a case where the housing provider “[d]id not provide *the tenant* with notice as required by this legislation” (emphasis added), the legislation requires notice be served to both the tenant and the Rent Administrator. As discussed above, serving the Rent Administrator provides an opportunity for public information about evictions and will assist with policy response such as eviction prevention. To assure that housing providers fulfill all the purposes of the legislation, we suggest the language in this paragraph be modified to read “[d]id not provide notice as required by this legislation.” In this way it will be clear that both notices are required.

In addition to the considerations I have raised thus far, The District of Columbia Office of Human Rights (OHR) notes that with respect to amendment of Section 221 under the Human Rights Act, Council may wish to insert “sealed



eviction record” to the list of protected traits in subsection (a)(5) as well as subsection (b). Additionally, OHR cautions that specifying non-disclosure of a sealed eviction record under subsection (g)(2) could be read to exclude a prohibition on disclosures of other protected traits. In other words, as written, it may be argued that the statute only prohibits disclosure of a sealed eviction record, and that an applicant could be required to disclose their race, religion or gender.

With these concerns addressed, we believe the Eviction Record Sealing Authority Amendment Act of 2019 will contribute to housing stability and a well-functioning rental market in the District of Columbia.

Thank you, Chairperson Bonds and the members of the committee for the opportunity to testify today. This concludes my testimony and I would now be happy to answer any questions you may have.

