The House Landlord
Tenant Omnibus Proposal
H.F 917, DE3

MHA opposes HF 917 as amended. Collectively, these changes will negatively shift the housing market in Minnesota and change the ability to finance and operate rental properties.

Article 1:

Mandatory Section 8:

Participation in Public Assistance Programs. This proposal makes it a discriminatory practice to decline to rent to an individual who participates in, or falls under the requirements of, a public assistance program. This proposal defines "public assistance programs" too broadly. It mandates any federal, state, or local housing assistance program be accepted otherwise it is a discriminatory practice.

This language would require participation in the federal government's Section 8 Housing Choice Voucher Program. It should be noted Minnesota has a first-in-line requirement which offers no discretion to the housing provider who must accept the first application that meets their criteria. This is why the proposal mandates participation. Section 8 is designed as a voluntary program. Section 8 provides a rent subsidy to housing providers on behalf of renters to live in private rental properties. Local Public Housing Authorities administer the program and work to recruit housing providers to the Section 8 program. Several years ago, housing providers were concerned with the administration of the Minneapolis Section 8 program. After some participants raised their concerns, the local public housing authority reformed the program through incentives, internal process changes, increased staffing, and improved communication. These reforms and incentives to housing providers led the private housing market to increase their participation in the program. If this was not an optional program, local housing authorities would no longer be incentivized to produce a high-quality product.

In subdivision b, there is an exception for this requirement if the commissioner or court make certain findings. We are concerned how this would operate through the courts and how it would function practically. There are questions over definitions, timing, and capacity of the commissioner of human rights or the courts to make a financial adjudication. Furthermore, whether these adjudications can be processed prior to a rejection by the housing provider of a participant in a public assistance program.

In Minnesota, there have been instances where local housing authorities have reduced the payment or completely skipped payments to housing providers as permitted under the terms of the Section 8 program. This is allowed under the Housing Assistance Payments Contract (HAP Contract).

We believe these provisions should be removed. Instead, an incentive program should be created to help local administrators incentivize participation in this voluntary federal program.

The HAP Contract. Participation in the Section 8 program is more than just receiving a rent subsidy from the government; it requires agreement to the terms of the HAP Contract, which cannot be altered, compliance with the contract requirements, and having the contract supersede your lease terms.

Some quotes from the HAP contract:

"The owner is responsible for screening the family's behavior or suitability for tenancy. The PHA is not responsible for such screening. The PHA has no liability or responsibility to the owner or other persons for the family's behavior or the family's conduct in tenancy."

"The PHA may terminate the HAP contract if the PHA determines, in accordance with HUD requirements, that available program funding is not sufficient to support continued assistance for families in the program."

"The tenant is not responsible for paying the portion of rent to owner covered by the PHA housing assistance payment under the HAP contract between the owner and the PHA. A PHA failure to pay the housing assistance payment to the owner is not a violation of the lease. The owner may not terminate the tenancy for nonpayment of the PHA housing assistance payment."

"The amount of the PHA housing assistance payment is subject to change during the HAP contract term in accordance with HUD requirements."

"The PHA shall not pay any other claim by the owner against the family."

Prohibited Fees:

We appreciate the approach the author to took address the concerns of the proponents through revisions to the prohibited fees proposal. A clear disclosure of the fees charged is a reasonable practice and creates a compliance standard that is clear and provides renters the information on total monthly costs.

Inspections

Property management is already short staffed and many housing providers have changed practices since the pandemic to adopt no contact move-in, move-out, and walkthroughs. These requirements are time-consuming and could be difficult to accommodate within different business practices or employee virtual work. The best resident protection is an active resident. Most property managers recommend to those moving into the apartment that they should record and take pictures of the unit when moving in and moving out. Videos and photos provide the resident with clear documentation of the quality of the property if there is a dispute about the condition of the unit at a later time.

We appreciate the addition of language to provide flexibility in (b) where a housing provider and resident can acknowledge photos or video of the rental unit as to the condition of the unit. We believe this language needs additional clarification as to who is required to provide video or photos and who agrees.

Our overall concern remains whether this requirement is necessary.

Management Entry

We appreciate the author adopting clearer language on this section and removing the unnecessary window of work. This language is better aligned with best practices of the industry and provides the necessary flexibility for sudden changes in plans with the agreement of the housing provider and resident.

Penalty. We are concerned that "substantially" remains stricken in this section. We are concerned that the $500 penalty and being considered a violation of 504B.161, the Covenants of Habitability, are overly broad and punitive. We believe the Covenants of Habitability language should be removed and the penalty reduced to $250.

Article 2:

Minimum Heat

The legislation calls for a minimum of 68 degrees measured 36 inches from the floor and any wall. Many local ordinances in Minnesota have adopted a heating code which is responsive to the climate for their area. Having a minimum temperature set across Minnesota may be desirable for some, but many local municipalities have already addressed this issue and may affect other municipal goals.

For example, many cities have local initiatives that could be affected by a statewide minimum temperature code. Cities who may be considering adopting an ordinance, such as energy benchmarking, could see one of their energy efficiency options removed from consideration.

Further, heating multifamily rental usually involves boilers and radiators which mean that to heat corners of the buildings you must increase heat in the entire building. Some areas of the building can have temperatures that could fall below 68 degrees in the evening while those on the middle floors are complaining it is too hot. This language simply does not recognize the way heating systems function in many multi-family rental units in Minnesota. We would recommend language that recognizes the heating system should be *capable* of 68 degrees.

We appreciate the inclusion of flexibility for when a utility company instructs heat to be reduced. We recommend changing the "and" on line 6.22 to an "or." However, we remain concerned that common operation of boiler heating systems is an obstacle to this proposal which cannot be remedied.

Expansion of Emergency Tenant Remedy Actions

The bill expands ETRA to a condemnation order, a serious infestation, a nonfunctioning refrigerator, nonfunctioning air conditioner, nonfunctioning elevator, and serious and negative impact on health and safety.

The addition of many of these items is problematic. For example, there are a limited number of repair businesses who specialize in elevator repairs. If a disabled resident lives on a floor that is inaccessible, an accommodation may already be obligated under federal law. Similarly, repairs on a refrigerator, air

conditioner, or an elevator could take hours, possibly days depending on the availability of parts and technicians. Requiring an immediate remedy to the violations may not be viable and could leave housing providers in a no-win situation. Remedying a serious infestation could take days or weeks, requiring resident participation and compliance in order to complete the pest control treatment process.

This new expansion of emergencies does not have any exemptions for scheduled interruptions such as upgrading or doing preventative maintenance on an air conditioner. As soon as the air conditioning unit does not work an ETRA notice could be sent to the property manager and filed 24 hours later if it is not functioning.

Article 3:

Early Renewal

The requirement to delay the timing when a housing provider could require lease renewal could have unintended consequences. While MHA has not taken an official position on the policy, we would raise the following concern: A property in high demand could potentially be leased up by others for the next year even before a current resident has an opportunity to renew their lease.

We are further concerned that the language is substantially different than the language in HF 2279, specifically as it relates to the timelines.

Infirmity

Federal Timeline. The proposal could create confusion with federal fair housing. In circumstances where a reasonable accommodation would be required, this proposal could have a differing timeline for compliance and could pose challenges for property managers due to conflict with federal law.

Infirmity. Infirmity is generally understood to require a long-term stay at a facility. This proposal does not have any such requirement and some period of care covered by the bill could be for as little as a week. MHA would recommend the proposal adopt language where it is clear the individual is expected to be infirmed for at least 90 days.

Inability to Find Housing. The proposal requires a tenant to submit their information and have a PENDING application with a listed facility. We are concerned at the end of the two-months' notice period that the application may not have been accepted or a space is unavailable. This could result in destabilization of housing for the individual.

Article 4:

Court Proceedings (SF 1298, as introduced)

The proposal includes sections of SF 1298, except for the timeline changes that were in the original proposal. We have concerns around some of the language including the changes to expedited eviction

filings. We have highlighted these concerns in conversations with the proponents of the bill, Legal Aid. We continue to work through these language concerns with them.

We are additionally concerned about the 'Pay to Defend' language. This would no longer allow the court to have a resident pay rent that is past due even if it is not in dispute. We believe that if the resident does not dispute that they owe rent, the courts should be able to hold those funds in escrow while the case is being heard. Funds held in escrow by the court do not benefit the housing provider until the court releases those funds.

14-day Notice

More Adversarial Relations. Evictions are expensive and disruptive, and it is in the best interest of all parties to avoid them. Most housing providers include a grace period and informational notice encouraging residents to pay rent and honor the lease. A 14-day delay limits a property manager's ability to offer informal resolutions to residents.

If an eviction action is necessary, a 14-day notice means a potential multi-month delay in re-renting the unit. As a result, to preserve stability and limit potential loss, if this proposal is adopted, a property manager would be compelled to send the required hard notice immediately following initial nonpayment. Once a notice is sent, a property manager adhering to fair housing practices, would file the eviction action at the end of the notice period if the nonpayment situation had not been resolved.

Resident Has Right to Redeem Possession. Flexibility is not only in the property manager's interest because of the financial and intangible costs of an eviction, it is also because the resident can redeem possession at any point prior to entry of judgment. If a resident redeems by becoming current on rent owed and paying court costs, the disruption of the eviction filing and cost of legal representation was for no purpose. A 14-day notice could lead to heightened tensions, hardened relationships, and potentially a higher rate of eviction filings.

Makes Minnesota an Outlier. Only five states (MA, ME, RI, TN, VT) require a 14-day or more advance notice for nonpayment. All five states have higher eviction rates than Minnesota.

In the Midwest there are NO other states with a 14-day notice period:

State	CO	IA	IL	KS	MN	MI	ND	NE	OH	SD	WI
Notice (days)	3	3	5	3	0	7	3	7	3	3	5

Minnesota has one of the lowest eviction rates in the country. According to Eviction Lab, our eviction rate has consistently been lower, and fallen faster and farther than the national rate from 2007 to 2016.

A targeted approach in areas with higher rates of eviction makes more sense than upending a process that provides better outcomes for renters than most other states.

Continuing Emergency Assistance Reforms. The vast majority of eviction actions are filed due to nonpayment of rent. Accessing county emergency assistance funds is an integral part of housing security.

The current situation in Hennepin County provides a lengthy determination for qualification of emergency assistance, which can be problematic when an emergency is confronted.

Communication Requirements. We are concerned with language in the proposal that notice must be provided, "by all forms of written communication" (Line 17.23). We are primarily concerned with the requirement to use **all** forms of written communications as residents who could potentially receive a text message, an email, a resident portal message, and a written message under a door could view these communications as intimidating or harassing. We believe this language needs to be revised to ensure these communications are not misinterpreted. Further, we are concerned that this language could discourage the use of multiple methods for regular communication used by a housing provider.

Article 5:

Expungement Proposal Inclusion:

Destabilizing Impact on Rental Properties. A rental agreement is a private agreement between two parties. Currently, evictions are the only type of civil court record that can be expunged, and expungement is only possible in narrow circumstances. For all other unpaid debts or breaches arising from a private agreement, including those which would impact the ability to rent or purchase a home, expungement is not possible.

This bill would allow most records to be expunged immediately after the court reaches a conclusion or the case is settled. After three years, 100% of eviction records would be expunged regardless of the circumstances which gave rise to the eviction action.

Eviction records offer insight into whether a prospective resident fits a particular property. They are one of many factors considered by most housing providers during the application screening process. Failing to properly screen applicants sets them up for failure and can impact housing stability for others.

Vague and Arbitrary Standards. Existing law provides a standard for discretionary and mandatory eviction expungement.

The condition that an eviction record "is no longer a reasonable predictor of future tenant behavior" could mean something different in every court. Similarly, a resident "prevail[ing] on the merits" could include a range of outcomes well short of dismissal in the resident's favor. For instance, it could include a court ordering a nominal decrease in rent owed but still issuing a Writ of Recovery to the housing provider.

Finally, allowing expungement by agreement of parties to the action without considering whether concealment is in the public interest is an extraordinary step that allows - potentially for financial compensation - two parties to control the fate of a public record to the detriment of others.

Nonpublic Record. We are concerned that the creation of a nonpublic record until final judgment is not in the public interest. This information is important to understand what is happening in the rental housing

market, it helps identify households in need of immediate rental assistance, and it provides information on operators who may be abusing eviction filings.

Effective Date

The voluminous nature of this bill requires a significantly delayed effective date so housing providers can understand the law, develop training programs for their staff, and implement business processes in compliance with the law. We strongly encourage an enactment date of August 1, 2024.