April 4, 2022

Chair Hausman and Members of the Committee:

I write today on behalf of the Minnesota Multi Housing Association (MHA). MHA is made up of 1,800 members representing over 300,000 rental housing units in Minnesota. I write today to raise MHA's concerns regarding Article 4 of the Supplemental Housing Omnibus Bill, HF 4376. MHA asks members to respectfully oppose this legislation.

HF 835 language included in HF 4376: These provisions would create an obligation for an owner and operator of rental housing to engage with all levels of government assistance programs.

Government housing assistance programs have significant costs and due diligence requirements and were designed as voluntary programs. This proposal would create an obligation of all landlords to sign contracts with government entities to engage in these programs, follow extensive rules no matter the extent of the program burdens, and further train staff on these program obligations. MHA would recommend helping relieve these burdens in current programs to achieve higher levels of participation from private rental housing providers.

Additionally, sections of the bill would further allow all levels of government to create mandatory assistance programs. We have significant concerns for the broad application which could be implemented in a prospective program. We remain concerned with the language that creates a loophole where local non-government organizations could create a housing subsidy with which landlords would be obligated to comply and their policies unknown.

Evictions in Minnesota are expensive. Operators take eviction actions seriously as they have several effects that are bad for business – they cost significant amounts of money and may create an adversarial relationship with a tenant. Additionally, costs associated with an eviction filing are rarely recovered when a tenant is evicted for nonpayment and must be written off as bad debt. For these reasons, operators are reluctant to file. Instead, operators seek alternative resolutions to evictions, including helping residents find emergency rental assistance, creating a payment plan, or settling with tenants to vacate.

Currently, in many situations, operators wait until their grace period expires, typically on the 6th, and issue a late letter to the residents who have not paid, applying a late fee, and warning of a possible eviction action. This new process would be a significant change as the letter will contain specific writing that highlights an eviction will be filed in 14 days. This will only harden the relationship between resident and operators.

This notice in Minnesota could create an uptick in eviction filings. According to **Eviction Lab, Minnesota's eviction rate is fourth lowest in the United States**. Among large cities, **Minneapolis's rate ranks 201st, St. Paul is 217th and Rochester is 225th**. While concentrated areas of concern remain, Minnesota's eviction rate fell faster and farther than the country over the past decade.

This proposal 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. These eviction records offer insight into whether a building fits the needs of a prospective resident. They are one of many factors considered by most landlords during the application screening process. Failing to properly screen applicants sets them up for failure, hurts other renters, and could be a financial and legal liability for owners and operators.

MHA is further concerned when we take a look at the language in Section 4. Under the proposal, the courts can determine that an eviction action "is no longer a reasonable predictor of future tenant behavior" leaves a lot of room for interpretation. Courts are not operators of rental units and are not equipped to understand what creates a reasonable predictor of future tenant behavior. When looking at expungements in other sections of law there are procedures in place that must be followed to meet the standard of no longer being a reasonable predictor, but this statute provides no such guidance. Similarly, in section 5, a tenant "prevail[ing] on the merits" could include a range of outcomes well short of dismissal in the tenant'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 landlord.

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 interested parties to control the fate of a public record to the detriment of others. This is a concern as Minnesota's eviction numbers rank among the very lowest in the country.

Elimination of this data set could create less public scrutiny of the actions of tenants and landlords alike.

HF 398 language included in HF 4376: A statewide minimum heating code does not recognize the regional differences in our large state, especially north to south. Our building code recognizes two different zones: climate zones 6A & 7. Additionally, the minimum heating code does not recognize how many multifamily rental properties heat their facilities. Most commonly, older facilities use a boiler system which creates constant heat that flows through the building. A boiler system causes those in the center to be warmer while those on the upper-level corners generally remain cooler.

This language is a one size fits all that doesn't match the significantly different climate and heating systems of multi housing properties. Local housing maintenance codes can be applied in circumstances to reflect the local heating requirements and have been done in many municipalities.

The expansion of the ETRA to include appliances is problematic because it does not take into account the nature of our property management business practices, especially as it relates to appliances. For example, when replacing or repairing an air conditioning unit, this is entirely a seasonal activity. Our suppliers understandably have specific inventory available at the beginning of a season. If an air conditioner breaks at the end of the season and the part is no longer available or the cost of repair is better investment in a new unit, then we are faced with the challenge that the seasonal inventory is often sold out. This is even more exacerbated with the significant recent supply-chain challenges. How can we comply with the ETRA in that circumstance? We can financially compensate the resident, supply fans, among other options to mitigate the situation. In the case of a disability related necessity for air conditioning then a reasonable accommodation would have to be made.

HF 399 language included in HF 4376. No one likes an unexpected fee on their phone bill just like no one would appreciate an unexpected fee for their home. Under this assumption, we would propose to the author and Committee that a fee disclosure, rather than a complete prohibition, is a best practice and something MHA could support in the interest of fairness and transparency.

MHA also has numerous concerns about how the 24-hour notice of entry requirement would function for property managers and how it would introduce inefficiencies. As an example, an appliance delivery company reschedules the delivery window on the morning of delivery, bringing the desired new appliance to the resident. But under this bill, we would have to postpone the delivery and provide another 24-hour notice to comply. This situation does not serve the best interests of the resident. Additionally, an individual who works nights might not be appreciative of the window available for entry and could prefer an earlier or later time. This does not provide entry outside of the hours listed in the proposal.

Concerningly, the language in HF 399 does not provide a safe harbor for the landlord to access the unit when the tenant agrees to access without a 24-hour notice. This situation is specifically created with the removal of the word 'substantially' from the statute. We find this troubling because it provides no flexibility for real world implementation. As an example, the property management entity could be penalized if they enter the apartment 7 minutes too early. A violation as defined in this proposal is any entry prior to the 24-hour duration that is not already exempted in 504B.211 subdivision 4.

The penalty outlined in the legislation provides for one and a half months rent. This does not seem to be consistent with the damages to the resident in the situation outlined earlier of arriving 7 minutes early. It also states a violation of the 24-hour rule violates the Covenants of Habitability – which itself comes with significant additional penalties. We believe the penalties are overly broad and not consistent with the damages incurred.

HF 2860 language included in HF 4376. The proposal in front of the committee today would not allow for an eviction action for nonpayment of rent to move forward if an application for any federal, state, local, or other nonprofit rental assistance program is pending. We are continuing to evaluate the amendments impact on the bill.

Some local jurisdictions have adopted several different timelines for a notice period prior to filing an eviction. These ordinances add a layer of complexity as they reflect a patchwork of policies in the state. As an example, the City of Brooklyn Center recently adopted a 30-day notice requirement that must be provided prior to filing an eviction. This standard would provide someone until the 29th day to make a rental assistance application for Emergency Assistance through Hennepin County. At that point, Hennepin County would process the application. Applications have been known to take 30 days or more to process. At the end of the duration, if the application is rejected, housing providers would be on the hook for unpaid rent potentially for more than 60 days. The impact of this policy could be devastating especially for smaller operators with few units to offset these costs.

Housing providers in Minnesota know the best business practice is to avoid evictions and keep tenants stably in their homes. Rental owners and operators regularly work with local and county programs for emergency rental assistance for residents and understand the value these programs can provide for both the resident and housing provider. Let's not forget Minnesota has a strong deterrent to evictions through the state's $300 filing fee and a requirement in most courts that housing providers hire attorneys to represent them.

HF 400 language included in HF 4376. This proposal also includes the infirmity bill. This proposal is one that could create confusion and conflict with federal fair housing law. In circumstances where federal law would require a reasonable accommodation, this proposal could have a differing timeline for compliance, what may be requested of residents, and could pose compliance challenges for property managers.

The proposal allows a resident to break a lease without any prior conversation with the property manager. If a 60-day notice is sent due to not having an accessible unit, including their documentation for need and acceptance to another location, but the current property manager is able to provide an accommodation, it is not clear if the resident is obligated to stay. Some aspects of this bill look to add facilities to those potentially not covered by the Fair Housing Act. For example, the infirmity protection could be extended for an inpatient chemical treatment program or housing for those deemed a health threat, something that may be for a duration significantly shorter than the lease term remaining, potentially a week, to break a lease with 9 months remaining.

For this reason, we ask the committee to consider how this HF 400 and this proposal defines infirmity. The proposal uses locations to define the individuals who could be considered infirmed. This focuses on the facility rather than the individual's needs.

Most importantly, it lacks any duration an individual expects to be infirmed to meet the break lease requirement. There are several areas of law that already exist that can help guide how to remedy this issue. Those considered completely disabled under the ADA are expected to be infirmed and need significant assistance for the remainder of their life. A special exemption also exists for a member of the military who can break their lease if their active-duty service is expected to be 90 days or longer. A requirement for a 90-day expectation of stay would alleviate many of MHA's concerns with this proposal. This proposal as it is written is far broader than any other states "infirmity" statute.

Rent Control Remains Unaddressed. MHA is deeply concerned about the implementation of the most restrictive Rent Control policy in the country in our own backyard. We are disappointed in the committee's decision to not give a hearing to discuss the determinantal effect rent control adopted in St. Paul has been felt in other parts of Minnesota. A bill, HF 2308, was introduced in March of 2021 and never heard by the committee. St. Paul's rent control policy remains deeply concerning with a 3% rent cap that does not include an inflationary adjustment. This proposal has many new added regulatory costs being added to housing providers. With such restrictive rent caps in St. Paul could jeopardize housing stability if Article 4 is adopted into law.

The written testimony outlines many of the concerns we have, and why we oppose the bill. In some situations, we have provided a different option to help solve the issues the author looks to solve. Overall, the legislation simply does not account for how a rental business operates. We appreciate the opportunity to submit our concerns today.

Respectfully,

Kyle D. Berndt
Director of Public Policy
Minnesota Multi Housing Association