Minnesota Multi Housing Association

April 6, 2021

Chair Hausman and Members of the Committee:

The Minnesota Multi Housing Association (MHA) is an industry nonprofit representing 1,800 members and 400,000 housing units in the state. We write today with support and opposition to various sections within Article 6 of HF 1077 DE-1 amendment.

Sections 1, 2 and 6 (HF 566). MHA supports these sections of the legislation as it would provide statutory clarity for tenants and landlords on the process of requesting a reasonable accommodation for a service or support animal in a no-pet or fee-for-pet rental unit. It provides that, where a resident's or prospective resident's disability is not readily apparent, a licensed medical professional must provide documentation stating the need for an accommodation for a service or support animal. Similar bipartisan legislation regarding service animals in grocery stores and other establishments was enacted in 2018.

Failure to Include Eviction and Lease Termination Moratorium Off-Ramp. MHA would like to express our disappointment that there is no eviction moratorium off-ramp contained in this bill. MHA has been advocating for a reasonable, timely, and effective off-ramp of Executive Order 20-79. Throughout the pandemic, MHA has provided legislators with vital information on rents paid in Minnesota. Rent payments have been relatively stable and the state will have an additional $575 million in rental assistance for the remainder of 2021 and into 2022. This sprint we have seen Executive Order restrictions loosen on other industries while the rental market restrictions continue. We believe it is past time Minnesota begins to move the rental market back to normal operations through an eviction and lease termination off-ramp.

Evictions in Minnesota. *According to Eviction Lab, Minnesota's eviction rate is fourth lowest in the United States. Among large cities, Minneapolis 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. We raise our concerns that many of the proposals discussed below could negatively impacts on eviction filings in Minnesota.*

Sections 3, 4, and 16 (HF 265). MHA opposes these sections because we believe they will lead to more disruption and cost increases in rental property management. This language 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.

MHA is further concerned about the language where the courts can determine that an eviction action "is no longer a reasonable predictor of future tenant behavior" as it leaves significant 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 a more objection standard, but this statute provides no such guidance. Similarly, 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.

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 interested parties to control the fate of a public record to the detriment of others. This is a concern as we have data which shows Minnesota's eviction numbers rank among the very lowest in the country. The elimination of this data set could create less public scrutiny of the actions of tenants and landlords alike. We appreciate that Minnesota has reduced evictions further than most other states and concealment of records will no longer provide these invaluable insights into the market.

Sections 5, 12, 13, 17, 18, 19, 20, 21, 22, 23, 24, 25, 30 (HF 1060). MHA opposes these sections as they would greatly expand the timelines and procedures of the current eviction process. In short, this proposal would create a lengthier time for an owner or operator to recover possession of the property and would substantially increase costs of the legal procedures. These sections seek to create a longer duration for court dates and expand drastically the ability to appeal the decision of a judge in these eviction cases. These sections also delimit eviction proceedings to include all disputes between a tenant and a landlord, unnecessarily creating more complex litigation. Creation of a secret proceeding hurts other landlords' ability to conduct a background check as it would keep the ongoing eviction process off the record. As mentioned earlier we have strong concerns for the mandatory expungement in this language.

Some of the processes are to be "strictly" complied with. This is difficult as some of the requirements in these sections are not objectively described. Under these sections it could potentially deprive the court from granting relief to the landlord at the first appearance – even when there is a default. Other sections further delay the ability of a landlord to receive a Writ after filing. These provisions are not ready for consideration and need further analysis. For these reasons, among others, we oppose these sections of the proposal.

Sections 7, 10, 11 (HF 399). MHA opposes these sections. Rather than prohibiting fees, as the language in these section provides, fee disclosure is a best practice and something MHA could support in the interest of fair and transparent markets.

The next section of the bill outlines the 24-hour notice for which there are concerns about how this could function for property managers and how it would introduce inefficiencies.

There would be several challenges to reasonable management practices under this proposal. 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, property managers 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.

Another concern remains; the language in HF 399 does not provide a safe harbor for the manager to access the facility when the resident 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 in 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 this is overly broad and is not consistent with the damages incurred.

Sections 8, 16 (HF 20). MHA opposes these sections. We take seriously eviction actions. They are the last resort for the vast majority of property managers. It is not only the expense associated with the filing but the creation of an adversarial relationship with residents. For these reasons, and others, operators are reluctant to file. As operators we seek alternative resolutions to evictions, including helping residents find emergency rental assistance, creating a payment plan, or settling with tenants to vacate.

Under this proposal some operators may seek to file notices earlier than they would have in the past. A 14-day notice effectively creates a 14-day opportunity to pay rent late without significant penalty. From this we could see notices as early as the 2nd, 3rd or 4th day of the month. The reason why this could become standard operation is to protect property owner rights to file an eviction action in a timely manner. As the date of the court case is pushed further out, additional months

of unpaid rent and court costs will continue to accrue. Operators would have to consider adding this early business process at the start of every month to ensure some reasonable opportunity to recover their property and reduce their sunk costs.

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.

Sections 9, 26, 27, 28, 29 (HF 398). MHA opposes these sections. A statewide minimum heating code does not recognize the regional differences in our large state, especially north to south. Our building code even recognizes two different zones: climate zones 6A & 7. This 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 does not match the significantly different climate and heating systems multifamily housing is located in. Local housing maintenance codes can be applied in circumstances to reflect the local heating requirements.

The expansion of the ETRA to include appliances is problematic because it does not consider 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 quantities of 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 invested in a new unit, then we are faced with the challenge that the seasonal inventory is often sold out.

Section 14 (HF 400). MHA raises concerns with the overly broad application of this section. This section could create confusion with federal fair housing. In circumstances where federal Fair Housing law would require a reasonable accommodation, this proposal could have a differing timeline for compliance, what may be requested of the residents, and could pose challenges for property managers due to conflicts with federal law.

The proposal goes on to allow breaking 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 Fair Housing law. 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 nine months remaining.

For this reason, we ask the committee to consider how this proposal looks to define infirmity. This proposal uses locations to define the individuals who could be considered infirm. This is an unfortunate decision as it focuses on the facility and not the individual's needs. Most importantly, the proposal lacks any duration an individual expects to be infirm to meet the break lease requirement.

Respectfully,

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