
By: **Senators Stone, Garagiola, Giannetti, and Haines**

Introduced and read first time: February 23, 2006

Assigned to: Rules

A BILL ENTITLED

AN ACT concerning

**Real Property - Residential Leases - Surety Bonds in Lieu of Security
Deposits**

FOR the purpose of authorizing a tenant to purchase a surety bond in lieu of paying all or part of a security deposit to a landlord for the purpose of providing certain protection to the landlord; establishing that a landlord may not require a tenant to purchase a surety bond and a landlord is not required to consent to a tenant purchasing a surety bond; providing that a tenant shall receive a refund of a premium or other charges paid in connection with purchasing a surety bond under certain circumstances; providing that the amount of a surety bond, or the aggregate amount of a surety bond and a security deposit, may not exceed a certain amount of money; establishing that a tenant may recover certain penalties plus certain attorney's fees from a landlord under certain circumstances; requiring a surety to advise a tenant in writing of the tenant's rights and responsibilities before the tenant purchases a surety bond; providing that a tenant who purchases a surety bond has certain rights, including inspection of the dwelling unit; establishing the claims for which a surety bond may be paid; providing that a surety bond does not represent certain liquidated damages; requiring a landlord to send a certain notice to a tenant before making a claim against the surety bond; allowing a tenant to pay damages directly to a landlord or require the landlord to use any security deposit before the landlord makes a claim against the tenant's surety bond; providing that a tenant retains certain rights and defenses in a proceeding brought by a surety; establishing certain procedures for a landlord to follow before making a claim against a surety; establishing that on transfer of the premises, the new landlord may not require a certain additional security deposit or surety bond in excess of a certain amount from a tenant; providing that a landlord or a surety forfeits certain rights for failure to comply with this Act; providing that a surety, in an action against a tenant, may be subject to certain damages and certain attorney's fees for asserting a claim without reasonable basis; providing that only admitted carriers licensed by the Maryland Insurance Administration may issue certain surety bonds; and generally relating to a tenant's right to purchase a surety bond in lieu of paying all or part of a security deposit.

BY repealing and reenacting, with amendments,

Article - Real Property
Section 8-203
Annotated Code of Maryland
(2003 Replacement Volume and 2005 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article - Real Property

8-203.

(a) (1) In this section the following words have the meanings indicated.

(2) "Landlord" means a landlord or a prospective landlord.

(3) "Security deposit" means any payment of money, including payment of the last month's rent in advance of the time it is due, given to a landlord by a tenant in order to protect the landlord against nonpayment of rent, damage due to breach of lease, or damage to the leased premises, common areas, major appliances, and furnishings.

(4) "Tenant" means a tenant or a prospective tenant.

(b) (1) A landlord may not impose a security deposit in excess of the equivalent of two months' rent per dwelling unit, regardless of the number of tenants.

(2) If a landlord charges more than the equivalent of two months' rent per dwelling unit as a security deposit, the tenant may recover up to threefold the extra amount charged, plus reasonable attorney's fees.

(3) An action under this section may be brought at any time during the tenancy or within two years after its termination.

(c) The landlord shall give the tenant a receipt for the security deposit as specified in § 8-203.1 of this subtitle. The receipt may be included in a written lease.

(d) (1) (i) The landlord shall maintain all security deposits in federally insured financial institutions, as defined in § 1-101 of the Financial Institutions Article, which do business in the State.

(ii) Security deposit accounts shall be maintained in branches of the financial institutions which are located within the State and the accounts shall be devoted exclusively to security deposits and bear interest.

(iii) A security deposit shall be deposited in an account within 30 days after the landlord receives it.

(iv) The aggregate amount of the accounts shall be sufficient in amount to equal all security deposits for which the landlord is liable.

(2) (i) In lieu of the accounts described in paragraph (1) of this subsection, the landlord may hold the security deposits in insured certificates of deposit at branches of federally insured financial institutions, as defined in § 1-101 of the Financial Institutions Article, located in the State or in securities issued by the federal government or the State of Maryland.

(ii) In the aggregate certificates of deposit or securities shall be sufficient in amount to equal all security deposits for which the landlord is liable.

(3) (i) In the event of sale or transfer of the landlord's interest in the leased premises, including receivership or bankruptcy, the landlord or the landlord's estate, but not the managing agent or court appointed receiver, shall remain liable to the tenant and the transferee for maintenance of the security deposit as required by law, and the withholding and return of the security deposit plus interest as required by law, as to all or any portion of the security deposit that the landlord fails to deliver to the transferee together with an accounting showing the amount and date of the original deposit, the records of the interest rates applicable to the security deposit, if any, and the name and last known address of the tenant from whom, or on whose behalf, the deposit was received.

(ii) A security deposit under this section may not be attached by creditors of the landlord or of the tenant.

(4) Any successor in interest is liable to the tenant for failure to return the security deposit, together with interest, as provided in this section.

(e) (1) Within 45 days after the end of the tenancy, the landlord shall return the security deposit to the tenant together with simple interest which has accrued in the amount of 3 percent per annum, less any damages rightfully withheld.

(2) Interest shall accrue at six-month intervals from the day the tenant gives the landlord the security deposit. Interest is not compounded.

(3) Interest shall be payable only on security deposits of \$50 or more.

(4) If the landlord, without a reasonable basis, fails to return any part of the security deposit, plus accrued interest, within 45 days after the termination of the tenancy, the tenant has an action of up to threefold of the withheld amount, plus reasonable attorney's fees.

(f) (1) (i) The security deposit, or any portion thereof, may be withheld for unpaid rent, damage due to breach of lease or for damage by the tenant or the tenant's family, agents, employees, guests or invitees in excess of ordinary wear and tear to the leased premises, common areas, major appliances, and furnishings owned by the landlord.

(ii) The tenant has the right to be present when the landlord or the landlord's agent inspects the premises in order to determine if any damage was done to the premises, if the tenant notifies the landlord by certified mail of the tenant's intention to move, the date of moving, and the tenant's new address.

(iii) The notice to be furnished by the tenant to the landlord shall be mailed at least 15 days prior to the date of moving.

(iv) Upon receipt of the notice, the landlord shall notify the tenant by certified mail of the time and date when the premises are to be inspected.

(v) The date of inspection shall occur within five days before or five days after the date of moving as designated in the tenant's notice.

(vi) The tenant shall be advised of the tenant's rights under this subsection in writing at the time of the tenant's payment of the security deposit.

(vii) Failure by the landlord to comply with this requirement forfeits the right of the landlord to withhold any part of the security deposit for damages.

(2) The security deposit is not liquidated damages and may not be forfeited to the landlord for breach of the rental agreement, except in the amount that the landlord is actually damaged by the breach.

(3) In calculating damages for lost future rents any amount of rents received by the landlord for the premises during the remainder if any, of the tenant's term, shall reduce the damages by a like amount.

(g) (1) If any portion of the security deposit is withheld, the landlord shall present by first-class mail directed to the last known address of the tenant, within 45 days after the termination of the tenancy, a written list of the damages claimed under subsection (f)(1) of this section together with a statement of the cost actually incurred.

(2) If the landlord fails to comply with this requirement, the landlord forfeits the right to withhold any part of the security deposit for damages.

(h) (1) The provisions of subsections (e)(1) and (4) and (g)(1) and (2) of this section are inapplicable to a tenant who has been evicted or ejected for breach of a condition or covenant of a lease prior to the termination of the tenancy or who has abandoned the premises prior to the termination of the tenancy.

(2) (i) A tenant specified in paragraph (1) of this subsection may demand return of the security deposit by giving written notice by first-class mail to the landlord within 45 days of being evicted or ejected or of abandoning the premises.

(ii) The notice shall specify the tenant's new address.

(iii) The landlord, within 45 days of receipt of such notice, shall present, by first-class mail to the tenant, a written list of the damages claimed under subsection (f)(1) of this section together with a statement of the costs actually incurred and shall return to the tenant the security deposit together with simple interest which has accrued in the amount of 3 percent per annum, less any damages rightfully withheld.

(3) (i) If a landlord fails to send the list of damages required by paragraph (2) of this subsection, the right to withhold any part of the security deposit for damages is forfeited.

(ii) If a landlord fails to return the security deposit as required by paragraph (2) of this subsection, the tenant has an action of up to threefold of the withheld amount, plus reasonable attorney's fees.

(4) Except to the extent specified, this subsection may not be interpreted to alter the landlord's duties under subsections (e) and (g) of this section.

(I) (1) UNDER THIS SUBSECTION, A LANDLORD:

(I) MAY NOT REQUIRE THE TENANT TO PURCHASE A SURETY BOND; AND

(II) IS NOT REQUIRED TO CONSENT TO THE TENANT'S PURCHASE OF A SURETY BOND.

(2) (I) INSTEAD OF PAYING ALL OR PART OF A SECURITY DEPOSIT TO A LANDLORD UNDER THIS SECTION, A TENANT MAY PURCHASE A SURETY BOND TO PROTECT THE LANDLORD AGAINST:

1. NONPAYMENT OF RENT;

2. DAMAGE DUE TO BREACH OF LEASE; OR

3. DAMAGE TO THE LEASED PREMISES, COMMON AREAS, MAJOR APPLIANCES, OR FURNISHINGS OWNED BY THE LANDLORD.

(II) A SURETY SHALL REFUND TO A TENANT ANY PREMIUM OR OTHER CHARGE PAID BY THE TENANT IN CONNECTION WITH A SURETY BOND IF, AFTER THE TENANT PURCHASES A SURETY BOND, THE LANDLORD REFUSES TO ACCEPT THE SURETY BOND.

(3) (I) THE AMOUNT OF A SURETY BOND PURCHASED INSTEAD OF A SECURITY DEPOSIT MAY NOT EXCEED TWO MONTHS' RENT PER DWELLING UNIT.

(II) IF A TENANT PURCHASES A SURETY BOND AND PROVIDES A SECURITY DEPOSIT IN ACCORDANCE WITH THIS SECTION, THE AGGREGATE AMOUNT OF BOTH THE SURETY BOND AND SECURITY DEPOSIT MAY NOT EXCEED TWO MONTHS' RENT PER DWELLING UNIT.

(III) 1. IF A LANDLORD CONSENTS TO A SURETY BOND BUT REQUIRES THE SURETY BOND TO BE IN AN AMOUNT IN EXCESS OF TWO MONTHS' RENT, THE TENANT MAY RECOVER UP TO THREE TIMES THE EXTRA AMOUNT CHARGED FOR THE SURETY BOND, PLUS REASONABLE ATTORNEY'S FEES.

2. IF A LANDLORD CONSENTS TO BOTH A SURETY BOND AND A SECURITY DEPOSIT BUT REQUIRES THE SURETY BOND AND THE SECURITY

DEPOSIT TO BE IN AN AGGREGATE AMOUNT IN EXCESS OF TWO MONTHS' RENT, THE TENANT MAY RECOVER UP TO THREE TIMES THE EXTRA AMOUNT CHARGED FOR THE SURETY BOND, PLUS REASONABLE ATTORNEY'S FEES.

(4) BEFORE A TENANT PURCHASES A SURETY BOND INSTEAD OF PAYING ALL OR PART OF A SECURITY DEPOSIT, A SURETY SHALL DISCLOSE IN WRITING TO THE TENANT THAT:

(I) PAYMENT FOR A SURETY BOND IS NONREFUNDABLE;

(II) EVEN AFTER A TENANT PURCHASES A SURETY BOND, THE TENANT IS RESPONSIBLE FOR PAYMENT OF:

1. ALL UNPAID RENT;

2. DAMAGE DUE TO BREACH OF LEASE; AND

3. DAMAGE BY THE TENANT OR THE TENANT'S FAMILY, AGENTS, EMPLOYEES, GUESTS, OR INVITEES IN EXCESS OF ORDINARY WEAR AND TEAR TO THE LEASED PREMISES, COMMON AREAS, MAJOR APPLIANCES, OR FURNISHINGS OWNED BY THE LANDLORD;

(III) A TENANT HAS THE RIGHT TO RECEIVE A COPY OF THE SURETY BOND SIGNED BY THE SURETY AT THE TIME OF THE PURCHASE OF THE SURETY BOND; AND

(IV) IF THE SURETY FAILS TO COMPLY WITH THE REQUIREMENTS OF THIS PARAGRAPH, THE SURETY FORFEITS THE RIGHT TO MAKE ANY CLAIM AGAINST THE TENANT UNDER THE SURETY BOND.

(5) (I) A TENANT WHO PURCHASES A SURETY BOND IN ACCORDANCE WITH THIS SUBSECTION HAS THE RIGHT TO HAVE THE DWELLING UNIT INSPECTED BY THE LANDLORD IN THE TENANT'S PRESENCE FOR THE PURPOSE OF MAKING A WRITTEN LIST OF THE DAMAGES THAT EXIST AT THE COMMENCEMENT OF THE TENANCY, IF THE TENANT REQUESTS AN INSPECTION BY CERTIFIED MAIL WITHIN 15 DAYS OF THE TENANT'S OCCUPANCY.

(II) A TENANT WHO PROVIDES A SURETY BOND UNDER THIS SUBSECTION SHALL HAVE ALL THE RIGHTS PROVIDED UNDER SUBSECTION (F)(1)(II) THROUGH (V) OF THIS SECTION.

(III) A TENANT HAS THE RIGHT TO RECEIVE A COPY OF THE SURETY BOND SIGNED BY THE SURETY AT THE TIME OF THE TENANT'S PURCHASE OF THE SURETY BOND.

(IV) A TENANT SHALL BE ADVISED IN WRITING OF THE TENANT'S RIGHTS UNDER THIS PARAGRAPH PRIOR TO THE PURCHASE OF A SURETY BOND.

(6) (I) A SURETY BOND MAY BE USED TO PAY CLAIMS BY A LANDLORD FOR:

1. UNPAID RENT;
2. DAMAGE DUE TO BREACH OF LEASE; OR
3. DAMAGE BY THE TENANT OR THE TENANT'S FAMILY, AGENTS, EMPLOYEES, GUESTS, OR INVITEES IN EXCESS OF ORDINARY WEAR AND TEAR TO THE LEASED PREMISES, COMMON AREAS, MAJOR APPLIANCES, OR FURNISHINGS OWNED BY THE LANDLORD.

(II) A SURETY BOND DOES NOT REPRESENT LIQUIDATED DAMAGES AND MAY NOT BE USED AS PAYMENT TO A LANDLORD FOR BREACH OF THE RENTAL AGREEMENT, EXCEPT IN THE AMOUNT THAT THE LANDLORD IS ACTUALLY DAMAGED BY THE BREACH.

(III) EXCEPT AS PROVIDED IN SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH, A SURETY MAY NOT MAKE ANY OTHER PAYMENT TO A LANDLORD.

(7) AT LEAST 10 DAYS BEFORE A LANDLORD MAKES A CLAIM AGAINST A SURETY BOND SUBJECT TO THIS SUBSECTION, THE LANDLORD SHALL SEND TO THE TENANT BY FIRST-CLASS MAIL DIRECTED TO THE LAST KNOWN ADDRESS OF THE TENANT, A WRITTEN LIST OF THE DAMAGES TO BE CLAIMED AND A STATEMENT OF THE COSTS ACTUALLY INCURRED BY THE LANDLORD.

(8) (I) A TENANT SHALL RETAIN THE OPTION TO PAY ANY DAMAGES DIRECTLY TO THE LANDLORD OR REQUIRE THE LANDLORD TO USE THE TENANT'S SECURITY DEPOSIT, IF ANY, BEFORE THE LANDLORD MAKES A CLAIM AGAINST THE SURETY BOND.

(II) IF A TENANT PAYS ANY DAMAGES DIRECTLY TO THE LANDLORD OR REQUIRES THE LANDLORD TO USE THE TENANT'S SECURITY DEPOSIT UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH AND THE PAYMENT FULLY SATISFIES THE CLAIM, THE LANDLORD SHALL FORFEIT THE RIGHT TO MAKE A CLAIM UNDER THE SURETY BOND.

(9) IN ANY PROCEEDING BROUGHT BY THE SURETY AGAINST THE TENANT ON A SURETY BOND UNDER THIS SUBSECTION:

(I) THE TENANT SHALL RETAIN ALL RIGHTS AND DEFENSES OTHERWISE AVAILABLE IN A PROCEEDING BETWEEN A TENANT AND A LANDLORD UNDER THIS SECTION; AND

(II) DAMAGES MAY ONLY BE AWARDED TO THE SURETY TO THE EXTENT THAT THE TENANT WOULD HAVE BEEN LIABLE TO THE LANDLORD UNDER THIS SECTION.

(10) (I) IF A LANDLORD'S INTEREST IN THE LEASED PREMISES IS SOLD OR TRANSFERRED, THE NEW LANDLORD MAY NOT REQUIRE:

1. DURING THE CURRENT LEASE TERM, AN ADDITIONAL SECURITY DEPOSIT FROM THE TENANT; OR

2. AT ANY LEASE RENEWAL, A SURETY BOND AND A SECURITY DEPOSIT FROM THE TENANT THAT, IN THE AGGREGATE AMOUNT, IS IN EXCESS OF TWO MONTHS' RENT PER DWELLING UNIT.

(II) IF THE AGGREGATE AMOUNT DESCRIBED IN SUBPARAGRAPH (I)2 OF THIS PARAGRAPH IS IN EXCESS OF TWO MONTHS' RENT, THE TENANT MAY RECOVER UP TO THREE TIMES THE EXTRA AMOUNT CHARGED, PLUS REASONABLE ATTORNEY'S FEES.

(11) (I) IF A LANDLORD FAILS TO COMPLY WITH THE REQUIREMENTS OF THIS SUBSECTION, THE LANDLORD FORFEITS THE RIGHT TO MAKE ANY CLAIM AGAINST THE SURETY BOND.

(II) IF A SURETY FAILS TO COMPLY WITH THE REQUIREMENTS OF THIS SUBSECTION, THE SURETY FORFEITS THE RIGHT TO MAKE ANY CLAIM AGAINST A TENANT UNDER THE SURETY BOND.

(12) IF A SURETY, IN AN ACTION AGAINST THE TENANT, ASSERTS A CLAIM UNDER THE SURETY BOND WITHOUT HAVING A REASONABLE BASIS TO ASSERT THE CLAIM, THE COURT MAY GRANT THE TENANT DAMAGES OF UP TO THREE TIMES THE AMOUNT CLAIMED PLUS REASONABLE ATTORNEY'S FEES.

(13) A SURETY BOND ISSUED UNDER THIS SUBSECTION MAY ONLY BE ISSUED BY AN ADMITTED CARRIER LICENSED BY THE MARYLAND INSURANCE ADMINISTRATION.

[(i)] (J) No provision of this section may be waived in any lease.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2006.