

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1620

(Delegate Stern, *et al.*)

Environmental Matters

Judicial Proceedings

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

This bill authorizes a tenant, in lieu of paying all or part of a security deposit to a landlord, to purchase a surety bond to protect the landlord against nonpayment of rent, damage due to breach of lease, or damage that exceeds ordinary wear and tear to the leased premises, common areas, major appliances, and furnishings.

The bill takes effect July 1, 2006.

Fiscal Summary

State Effect: Assuming that the Consumer Protection Division receives fewer than 50 complaints per year stemming from this bill, any additional workload could be handled with existing resources.

Local Effect: None.

Small Business Effect: Minimal, as discussed below.

Analysis

Bill Summary: A landlord may not require a tenant to purchase a surety bond, nor is the landlord required to consent to a tenant's purchase of a surety bond.

A surety must refund to a tenant any premium or other charge paid by the tenant in connection with a surety bond if, after the tenant purchases it, the landlord refuses to accept the surety bond or the prospective tenant does not enter into a lease. The amount

of the surety bond may not exceed two months' rent per dwelling unit. If a tenant both purchases a surety bond and provides a security deposit, the aggregate amount may not exceed two months' rent per dwelling unit. A tenant may recover up to three times the extra amount charged, plus reasonable attorney's fees, if: (1) a landlord consents to a surety bond but requires the bond to be an amount equaling more than two months' rent; or (2) a landlord consents to both a surety bond and a security deposit but requires the aggregate amount to equal more than two months' rent.

Before a tenant purchases a surety bond under the bill, the surety must disclose specified information about the bond and the tenant's rights and responsibilities in writing.

A tenant who purchases a surety bond under the bill has the right to have the unit inspected by the landlord in the tenant's presence to make a list of damages that exist at the commencement of the tenancy, if the tenant requests an inspection by certified mail within 15 days of occupancy. A tenant who purchases a surety bond has the same right to be present at the inspection of the premises on surrender as a tenant who pays a security deposit. The surety or landlord must deliver to the tenant a copy of any agreements or documents signed by the tenant at the time of purchase. A tenant must be advised in writing of the tenant's rights under the bill prior to purchasing a surety bond.

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 in excess of ordinary wear and tear to the leased premises, common areas, major appliances, or furnishings owned by the landlord. 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. A surety may not make a payment for a purpose other than these to the landlord.

A tenant has the right to pay damages directly to the landlord or require the landlord to use the tenant's security deposit before making a claim against the surety bond. If a tenant pays damages directly or requires the landlord to use the security deposit and the payment fully satisfies the claim, the landlord forfeits the right to make a claim under the surety bond for any covered damages. The tenant may dispute the landlord's claim to the surety by following specified procedures.

In a proceeding brought by the surety against the tenant, the tenant retains all rights and defenses otherwise available in a proceeding between a tenant and a landlord and damages may only be awarded to the surety to the extent the tenant would have been liable to the landlord.

If a landlord's interest in the leased premises is sold or otherwise transferred, the new landlord must accept the surety bond and may not require: (1) an additional security deposit during the current lease; or (2) a surety bond or security deposit at lease renewal that, in addition to an existing bond or deposit, is an aggregate amount that exceeds two months' rent per dwelling unit. If the aggregate amount of a surety bond and security deposit equals more than two months' rent, the tenant may recover up to three times the extra amount charged, plus reasonable attorney's fees.

If a landlord fails to comply with the bill's requirements, the landlord forfeits the right to make any claim against the surety bond. If a surety fails to comply with the bill's requirements, the surety forfeits the right to make any claim against a tenant under the surety bond.

If a surety, in an action against a tenant, asserts a claim under the surety bond without having a reasonable basis to do so, the court may grant the tenant damages of up to three times the amount claimed, plus reasonable attorney's fees.

A surety bond issued under the bill may only be issued by an admitted carrier licensed by the Maryland Insurance Administration.

Current Law: A landlord may impose, as a security deposit, up to the equivalent of two months' rent per dwelling unit. The landlord must give a receipt for the security deposit and may include the receipt in the written lease. Security deposits must be kept in interest-bearing accounts in branches of federally-insured financial institutions doing business in the State, and the accounts must be devoted exclusively to security deposits. In lieu of these accounts, a landlord may hold the security deposits in insured certificates of deposit at branches of federally-insured financial institutions doing business in the State or in securities issued by the federal government or the State.

Generally, within 45 days after the end of the tenancy, the landlord must return the security deposit to the tenant, plus 3% simple interest per annum, less any damages rightfully withheld. The security deposit, or any portion thereof, may be withheld for unpaid rent, damage due to breach of lease, or damage beyond ordinary wear and tear to the leased premises, common areas, major appliances, and furnishings.

The tenant has the right to be present when the landlord inspects the premises to determine whether any damage exists if the tenant notifies the landlord by certified mail of the tenant's intention to move, the moving date, and the tenant's new address. The notice must be mailed at least 15 days prior to moving. Upon receipt of the notice, the landlord must notify the tenant by certified mail of the time and date of the inspection.

The inspection must occur within five days before or after the designated moving date. The tenant must be notified in writing of these rights when the security deposit is paid.

If part of the security deposit is withheld, the landlord must give the tenant an itemized list of the damages and their costs.

Small Business Effect: Small business landlords would no longer bear the costs associated with administering security deposits to the extent their tenants elect to use surety bonds under the bill.

Additional Information

Prior Introductions: Similar bills, SB 649 and HB 686, were introduced during the 2003 session. SB 649 was heard in the Senate Judicial Proceeding Committee but no further action was taken. HB 686 received an unfavorable report from the House Environmental Matters Committee.

Cross File: SB 974 (Senator Stone, *et al.*) – Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), Maryland Insurance Administration, Office of the Attorney General (Consumer Protection Division), Department of Legislative Services

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