

Department of Legislative Services  
Maryland General Assembly  
2006 Session

FISCAL AND POLICY NOTE

House Bill 972

(Delegate Weir, *et al.*)

Judiciary

---

Real Property - Landlord Liability for Tortious Injury - Requirements

---

This bill provides that a “landlord” is not liable to a “tenant,” occupant, or third party for tortious injury occurring in or on rented residential property that is not under the sole control of the landlord unless the landlord: (1) knew or had reason to know of the condition that caused the tortious injury; and (2) had a reasonable opportunity to correct the condition. The bill does not: (1) apply to matters or activities regulated under the State’s lead paint laws; (2) alter or otherwise diminish the rights and remedies afforded tenants and landlords under the State’s rent escrow provisions; or (3) prohibit a tenant from reporting code violations existing in or on rental property. State or local housing, livability, or other codes, or code violations may not affect the applicability or operation of the bill, except as provided under: (1) matters or activities regulated under the State’s lead paint laws; or (2) the rights and remedies afforded tenants and landlords under the State’s rent escrow provisions.

---

Fiscal Summary

**State Effect:** The bill would not directly affect governmental operations or finances.

**Local Effect:** None.

**Small Business Effect:** Potential meaningful.

---

Analysis

**Current Law:** In *Brooks v. Lewin Realty III, Inc.*, 378 Md. 70 (2003), the Court of Appeals adopted a new rule for a landlord’s tort liability when a statute has been violated.

Under *Brooks*, a *prima facie* case for liability has been established when: (1) there is a violation of a statute designed to protect a class of persons that includes the plaintiff; and (2) the violation proximately causes the plaintiff's injury. *Id.* at 79 and 85. The *Brooks* court was interpreting liability for a violation of a provision of Baltimore City's code governing lead paint mitigation.

In *Polakoff v. Turner*, 385 Md. 467 (2005), the court reaffirmed its holding in *Brooks* and held that the *Brooks* holding applies to cases in which the facts predate that holding. *Brooks* and *Polakoff* impose a continuing duty on the landlord to monitor compliance with a statutory requirement. In *Polakoff*, the court stated that "[l]iability will depend on the reasonableness of the landlord's efforts to remain in compliance with the statute; therefore, it is incumbent upon the landlord to take such reasonable steps as may be necessary." *Id.* at 480-81. The *Polakoff* court stated that *Brooks* recognized Maryland's common law rule that a violation of a statute or ordinance is evidence of negligence. *Id.* at 478.

At common law and in the absence of a statute, a landlord ordinarily has no duty to keep rental premises in repair, or to inspect the rental premises either at the inception of the lease or during the lease term.

By statute, a landlord generally must repair and eliminate conditions and defects that constitute, or if not promptly corrected will constitute, a fire hazard or a serious and substantial threat to the life, health, or safety of the occupants. A tenant must notify a landlord of the existence of the condition or defect, and the landlord has a reasonable time to make repairs. There is a rebuttable presumption that a period exceeding 30 days is unreasonable. If a landlord refuses to make repairs, the tenant may bring a rent escrow action in court and pay the rent to the court under specified criteria.

In a rent escrow action, the court may make appropriate findings and make any order or orders that justice requires, including an order terminating the lease, dismissing the action, abating the rent, or requiring the landlord to make repairs. Money placed in a rent escrow account is distributed according to the rent escrow statute. There are additional, but similar, rent escrow requirements applicable to the State's lead paint abatement laws.

**Background:** In *Richwind Joint Venture 4 v. Brunson*, 355 Md. 661 (1994), the Court of Appeals held that a landlord is not liable for a defective condition on the property unless the landlord knows or has reason to know of the condition and had a reasonable opportunity to correct it. To the extent that *Brooks* is inconsistent with the *Richwind* holding, *Brooks* overruled *Richwind*.

## **Additional Information**

**Prior Introductions:** A similar bill, HB 1403 of 2005, received an unfavorable report from the Environmental Matters Committee.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - March 10, 2006  
ncs/jr

---

Analysis by: T. Ryan Wilson

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510