**Bill No:** **HB 1372— Real Property - Residential Leases - Repair of Dangerous Defects and Failure to Pay Rent**

**Committee:** **Environment & Transportation**

**Date:** **3/3/2020**

**Position:** **Oppose**

The Apartment and Office Building Association of Metropolitan Washington (AOBA) opposes HB 1372. AOBA's members own or manage more than 23 million square feet of commercial office space and 133,000 apartment rental units in Montgomery and Prince George's counties.

HB 1372 makes numerous changes to law related to the repair of serious defects in residential units and failure to pay actions. It establishes that, by offering a unit for rent, the housing provider is deemed to warrant that the unit is fit for human habitation and holds the obligation to repair and eliminate conditions and defects as specified. This bill also expands the remedies available to a tenant if a housing provider fails to repair or correct the condition by authorizing a tenant to bring an action for money damages for breach of the warranty of habitability. The bill also (1) establishes a method for calculating damages; (2) authorizes a court to award a tenant reasonable attorney's fees and costs under specified circumstances; (3) alters procedures in a failure to pay rent action; and (4) establishes that a related public local law or ordinance may supersede State law only if it provides more protection or relief to a tenant.

Background:

In 2000, in Williams v. Housing Authority for Baltimore City, the Maryland Court of Appeals recognized that under Baltimore City law, there is an implied warranty of habitability in all city leases. Further, the Court held that damages in breach of warranty actions are limited to the difference between the amount of rent paid or owed and the reasonable rental value of the dwelling in its deteriorated condition from the time that the landlord acquired actual knowledge of the breach of the warranty. The Court also stated that a breach of warranty action "provides a remedy not dissimilar to that available in a rent escrow action" because the warranty action is "tied to the property and the lease." According to the Court, the only difference between a breach of warranty and a rent

escrow case is that a rent escrow case focuses on the current situation of the property and a breach of warranty case looks back for a small period to establish the warranty claim. Thus, the Court indicated that claims for both could be brought in one action.

Position:

AOBA opposes HB 1372 because it does more than merely codify the decision of Williams. Since 1975, the doctrine of "clean hands" has been a part of the delicate balance of landlord-tenant interests in rent escrow cases, however this bill deletes that provision (page 5 lines 3-12). The "clean hands" doctrine is that a housing provider accused of failing to properly maintain the property has a defense to that claim when the tenant has previously breached their obligation to pay rent by habitually paying so late that the landlord has filed 3 eviction writs in a 12-month period. By striking this provision, housing providers face the threat of constant litigation from residents who fail to meet their obligations in a timely manner.

This bill unilaterally holds the housing provider responsible for repairs of the dangerous conditions (page 2 line 31) in a unit. AOBA members know from experience that there are occasions where the obligation to repair the defect or condition should fall to the unit occupant as they are the party that caused the damage. AOBA agrees that housing providers are responsible for providing habitable and safe housing, however there are instances where the tenant should be obligated to repair damage they caused. Additionally, the Williams opinion does not hold that repair is the unilateral obligation of a housing provider. AOBA also believes the bill should strike language referring to "periodic rent" (page 4 line 32 and page 5 line 14) because, as written, the bill does not allow for previous rent balances that may be due to the housing provider.

To further conform this legislation to the finding in Williams, AOBA requests striking "or should have known" on page 6 line 11 and lines 20-23 on page 6.

**For these reasons AOBA urges an unfavorable report on HB 1372.**

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