

Testimony-Real Property - Residential Leases - Fee

Uploaded by: Senator Joanne C. Benson

Position: FAV

JOANNE C. BENSON
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Prince George's County

Finance Committee

Joint Committees

Children, Youth, and Families

Ending Homelessness

Fair Practices and State Personnel Oversight

Management of Public Funds

Protocol



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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Testimony of Senator Joanne C. Benson
SB 681: Real Property - Residential Leases - Fee in Lieu of Deposit

Good Afternoon Chair Smith, Vice Chair Waldstreicher and members of The Judicial Proceedings Committee. I am here to present SB681 Real Property - Residential Leases - Fee in Lieu of Deposit.

This bill is for the purpose of helping stabilize the economic impact that occurs with tenants when trying to move into a new property with a new landlord. A security deposit is a sum of money that a new resident gives to their landlord or property management company in addition to their advance rent payments. As we all know, security deposits can be a sizable fee which can prevent potential tenants from renting housing. Today, tenants in Maryland must pay up to two months rent for security deposit, in addition to the first month's rent. At an average Maryland rent of \$1,700/month, renters could need 5,000 due at move-in. Marylanders need a new tool that can help them have access to housing, particularly those without financial means to afford hefty security deposits, those with a new and or difficult financial situation, or persons who need to find new housing quickly.

This bill's purpose is to allow landlords to offer a tenant the option to pay a monthly fee that would waive the security deposit. The tenant would have the option to accept that option or pay the traditional security deposit. Furthermore, if the tenant chooses the fee option, the landlord must purchase insurance against lost rent or damage, and the fee must be within the reasonable cost of the unit's insurance premium. The landlord is the policyholder, and the tenant is still responsible for paying the rent and for damages incurred under the terms of the lease. When the lease has ended, the landlord must provide the tenant evidence of any damage, or outstanding rent. The bill will also include provisions that are unique to the State of Maryland. Including a one-month security deposit limit if a landlord offers the option to a single tenant in the building. This bill would give tenants the ability to be flexible with their funds when in the process of looking for housing while giving the landlord the ability to still be covered if any damages are incurred during the tenant's tenure at the residence. Additionally, tenants will be less likely to be behind on rent payments during their time at the residence due to significant security deposit fees that can cost up to two months rents in addition to the first months rent a tenant must pay. This can set tenants back a total of three months on payments if they are in a difficult financial situation. Reality is that most people

are living paycheck to paycheck and a large security deposit is not helpful to those who are in that situation and looking for housing.

Thus, I respectfully urge the committee to issue a favorable report for SB 681.

LeaseLock - SB 681 - Sponsor Amendments.pdf

Uploaded by: Chris Grimm

Position: FWA

SB 681 – Senator Joanne Benson - Real Property - Residential Leases - Fee in Lieu of Deposit

Proposed Sponsor Amendments

Amendment 1

***Rationale:** Clarifying language that the one-month security deposit cap only applies to situations where a landlord is offering the fee option, and the tenant chooses the security deposit.*

Page 3, Line 23 strike everything after subtitle and replace with: **IF A LANDLORD OFFERS THE TENANT THE OPTION OF PAYING A FEE IN LIEU OF A SECURITY DEPOSIT OR A SECURITY DEPOSIT, AND A TENANT CHOOSES TO PAY A SECURITY DEPOSIT; THE SECURITY DEPOSIT MAY NOT BE GREATER THAN ONE MONTH’S RENT.**

Amendment 2

***Rationale:** Conforming with the current security deposit law, which states a landlord has 45 days to return a security deposit, and the tenant has 45 days to dispute.*

Page 5, Line 25 strike “30” and replace with: **45**

Amendment 3

***Rationale:** Conforms to the security deposit statute, which caps penalties a landlord must pay for violating the section at three times rent, instead of a minimum of two times rent.*

Page 7, Line 26, strike everything after damages and replace with: **IN THE AMOUNT OF NO MORE THAN THREE TIMES THE MONTHLY RENT AND REASONABLE ATTORNEY’S FEES AND COSTS.**

Amendment 4

***Rationale:** Corrects a drafting error that did not include a provision to limit the fee to a reasonable cost of obtaining insurance.*

Page 5, Line 19 add: **(II) A LANDLORD MAY NOT CHARGE A FEE THAT IS MORE THAN THE REASONABLE COST OF OBTAINING AND ADMINISTERING SUCH INSURANCE.**

LeaseLock SB 681 - Security Deposit Option – Favor

Uploaded by: Chris Grimm

Position: FWA

SB 681 – Senator Benson - Security Deposit Option – Bill Summary

Bill Hearing – Tuesday, February 22 - JPR

- Security deposits can be a significant barrier to rental housing.
- Today, tenants must pay up to two months' rent for a security deposit, in addition to the first month's rent. At an average Maryland rent of \$1,700/month, renters could need \$5,000 due at move-in.
- Although refundable, a tenant does not have access to the security deposit during the tenancy, and it is subject to deductions for any damage to the unit. The tenant is still responsible for paying the landlord for legitimate charges that surpass the security deposit.
- The Attorney General concluded that current law does not afford landlords and tenants the flexibility to pursue an alternative that decreases tenants' move-in costs and provides landlords with improved coverage.
- Under SB 681, the landlord may offer a tenant the option to pay a monthly fee that would waive the security deposit. The tenant would have the option to accept that option or pay the traditional security deposit.
- If the tenant chooses the fee option, the landlord must purchase insurance against lost rent or damage, and the fee must be within the reasonable cost of the unit's insurance premium.
- The landlord is the policyholder, and the tenant is still responsible for paying the rent and for damages incurred under the terms of the lease. When the lease has ended, the landlord must provide the tenant evidence of any damage, or outstanding rent. If the tenant does not pay, the landlord may submit a claim to its insurer. The tenant has no role in the claims process.
- Since last session, LeaseLock (<https://leasekick.com/zero-deposit/>) worked extensively with tenant rights advocates and the Attorney General to strengthen the bill and ensure tenants receive proper disclosures when offered these options, and maintain the same rights and protections they would have under a landlord attempting to withhold all or part of a security deposit.
- The bill also includes provisions unique to Maryland, including a one-month security deposit limit if a landlord offers the option to a single tenant in the building.
- Likewise, LeaseLock has worked with the Multi-Housing Association and AOBA. Landlords would like to explore this option as tenants in 45 states have decided to choose the security alternative 92% of the time.
- We believe this option could be a new tool to help Marylanders access housing, especially those without financial means to afford sizable security deposits, those with a new (and/or difficult) financial situation, or persons who need to find new housing quickly.

If you have any questions, please contact Josh White at 443-994-5620 or josh@pwrjmaryland.com

MMHA - 2022 - SB 681 - Favorable with Amendments.p

Uploaded by: Grason Wiggins

Position: FWA



Senate Bill 681

Committee: Judicial Proceedings
Date: February 22, 2022
Position: Favorable with Amendment

This testimony is offered on behalf of the Maryland Multi-Housing Association (MMHA). MMHA is a professional trade association established in 1996, whose members consist of owners and managers of more than 210,000 rental housing homes in over 958 apartment communities. Our members house over 538,000 residents of the State of Maryland. MMHA also represents over 250 associate member companies who supply goods and services to the multi-housing industry.

Senate Bill 681 (“SB 681”) establishes processes and procedures for utilizing a fee in lieu of a security deposit. The bill exposes housing providers to unlimited liability, requires complete forfeiture of unpaid sums for something as minor as a typo, and establishes timelines and limitations that conflict with other areas of landlord/tenant law. As such, MMHA respectfully offers the following amendments to SB 681:

1. On page 3, strike lines 22-27.

- a. This provision limits housing providers to one month of rent for a security deposit when current state law allows for 2 months of rent for a security deposit. Further, the provision defines the recurring fee outside of rent, when it should be allowed to be included within the rent.

2. On page 4, strike lines 10-13.

- a. Lines 10-13 provide a continuous option to avoid the previous agreement to the tenant, but the same option is not extended to the housing provider.

3. On page 5, strike lines 1-12 and insert:

- a. “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. The notice to be furnished by the tenant to the landlord shall be mailed at least 15 days prior to the date of moving. 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. 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.”
 - i. This language mirrors the security deposit law.

4. On page 5, strike line 23 down through page 6, line 9.

- a. On page 5, lines 23 through establish an arbitrary time cap on when claims may be submitted.
- b. On page 5, line 27 through line 9 on page 6, the insurer should provide notice and insurer contact information to the tenant.



5. On page 7, strike lines 1-2.

- a. There are cases where physical damages exceed the sums due under the lease.

6. On page 7, strike lines 9-27.

- a. On page 7, lines 9-10, tenants can already challenge that sums are incorrect in court.
- b. On page 7, lines 11-18, a typo in the notice would result in voided claims against the tenant and insurer.
- c. On page 7, lines 21-23, any noncompliance, no matter how small, with the statute results in complete forfeiture of all unpaid sums.
- d. On page 7, lines 24-27, housing providers are exposed to unlimited liability in any court proceeding for any material violation of the section.

In its current posture, SB 381 exposes housing providers to unlimited liability, requires complete forfeiture of unpaid sums in response to a minor compliance issue or typo, and creates provisions that conflict with other areas of landlord/tenant law. For the aforementioned reasons, MMHA respectfully requests adoption of the amendments.

2022-02-22 SB 681 (Oppose).pdf

Uploaded by: Hannibal Kemerer

Position: UNF

BRIAN E. FROSH
Attorney General

ELIZABETH F. HARRIS
Chief Deputy Attorney General

CAROLYN QUATTROCKI
Deputy Attorney General



WILLIAM D. GRUHN
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Consumer Protection Division

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February 22, 2022

To: The Honorable William C. Smith Jr.
Chair, Judicial Proceedings Committee

From: Hannibal G. Williams II Kemerer
Chief Counsel, Legislative Affairs

Re: Senate Bill 681 – Real Property – Residential Leases – Fee in Lieu of Deposit (OPPOSE)

The Consumer Protection Division of the Office of the Attorney General (the “Division”) **opposes** Senate Bill 681 sponsored by Senator Joanne C. Benson. Senate Bill 681 purports to provide consumers a reasonable alternative to paying a security deposit or obtaining a surety bond at the time they enter a residential lease with a landlord by allowing landlords and tenants to agree to a “fee in lieu of a security deposit,” which the landlord would use to purchase insurance coverage. However, the landlord would be permitted to charge a fee in any amount, payable at any interval, that is wholly nonrefundable. Senate Bill 681 would make it easier for landlords to engage in unfair, abusive, or deceptive practices by either misleading or failing to advise prospective tenants of the consequences of choosing to pay a “fee in lieu of security deposit” and fails to provide any meaningful benefit to tenants.

Maryland's Security Deposit Law

Maryland's Security Deposit Law defines “security deposit” to mean “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.” Md. Code Ann., Real Prop. §8-203(a)(3). Maryland's Security Deposit law affords consumers who lease residential properties in Maryland important protections from unscrupulous landlords. For example, a landlord may not require a tenant to pay a security deposit that exceeds the equivalent of two months' rent per dwelling unit, regardless of the number of tenants. Md. Code Ann., Real Prop. §8-203(b). A landlord must maintain security deposits in an account devoted exclusively to security deposits that bears interest. Md. Code Ann., Real Prop. §8-203(d). A landlord may only withhold a security deposit for unpaid rent, damages due to breach of lease,

or for damages caused by the tenant beyond “ordinary wear and tear to the leased premises, common areas, major appliances, and furnishings owned by the landlord” and must provide a tenant a written list of the damages claimed together with a statement of the costs actually incurred. Md. Code Ann., §8-203(f)(1). A 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. Md. Code Ann., Real Prop. §8-203(f)(2).

Alternatively, a tenant can purchase a surety bond 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. As with a traditional security deposit under section 8-203, the amount of the surety bond purchased and any security deposit paid may not exceed the equivalent of two month’s rent per dwelling unit. Md. Code Ann., Real Prop. §8-203(i). Importantly, it is the tenant who purchases the bond rather than the landlord and the tenant must be advised in writing of all the tenant’s rights and obligations prior to the purchase of the security bond. Md. Code Ann., Real Prop., §8-203(i)(5). Before making a claim against the surety bond, a landlord must provide written notice to the tenant that includes a list of damages to be claimed and costs actually incurred; a tenant has the right to pay any damages directly and has the right to dispute a landlord's claim. Md. Code Ann., Real Prop. §8-203(i)(7), (8), and (9).

Senate Bill 681 Would Harm Consumers

Senate Bill 681 does not include many of the protections afforded by the provisions in the Real Property Article related to security deposits and surety bonds. While the proposed “fee in lieu of security deposit” may appear to benefit and open housing opportunities for low-income households, in fact, Senate Bill 681 would likely harm consumers in several ways.

First, Senate Bill 681 could result in higher out-of-pocket costs paid by consumers over their lease term. Unlike the provisions related to the payment of a security deposit or purchase of a surety bond, Senate Bill 681 does not cap the total amount a landlord would be permitted to charge as a “fee in lieu of security deposit.” Thus, the total fees paid over the course of a multiple year lease could easily exceed the equivalent of two months’ rent. Additionally, unlike a security deposit, which must be returned to a tenant with interest minus any authorized damages within 45 days of the end of a tenancy, Senate Bill 681 permits a landlord to deem a “fee in lieu of security deposit” wholly nonrefundable.

Second, Senate Bill 681 does not require a landlord who has purchased insurance to disclose to consumers the landlord’s actual costs to obtain the insurance or require that the fee charged to consumers be the actual cost of the insurance. Further, the bill does not require a landlord to first apply the portion of the fee charged which is over and above the costs to obtain the insurance towards any claimed losses as a result of nonpayment of rent, damage due to breach of lease, or damage to the leased premises before making a claim on the insurance. As a result, Senate Bill 681 would permit landlords to charge tenants fees that exceed their costs to obtain insurance and unfairly profit from a tenant’s election to pay the “fee in lieu of security deposit” instead of the lump-sum security deposit.

Third, because consumers would not be parties to the insurance contract, consumers would not be able to make claims or appropriately challenge an insurer's decision to pay or deny a landlord's claim. Moreover, if an insurer sought subrogation against a tenant for a claim paid to a landlord or transfers a paid claim to a third-party as permitted in Senate Bill 681, a tenant may not have sufficient information to defend the claim or understand a demand for payment of the claim. As a result, the tenant would pay both a monthly fee and the claim at the conclusion of a tenancy, and the "fee in lieu of security deposit" would ultimately provide no material benefit to the consumer.

As such, a "fee in lieu of security deposit" is not a reasonable alternative to a security deposit that is limited in amount, is refundable, and provides consumers protections under section 8-203 of the Real Property Article. Likewise, a "fee in lieu of security deposit" is not a reasonable alternative to a surety bond which allows a consumer to avoid an upfront security deposit payment by paying a small monthly fee, and provides consumers protections as a party to the insurance contract and the financial cap protections under section 8-203 of the Real Property Article.

For these reasons, the Division urges an unfavorable report on Senate Bill 681.

cc: The Honorable Joanne C. Benson
Members, Judicial Proceedings Committee

MCRC 2022 Security Deposits -Fee in Lieu SB 681 (1

Uploaded by: Marceline White

Position: UNF



Maryland Consumer Rights Coalition

Testimony to the Senate Judicial Proceedings Committee
SB 681: Real Property-Security Deposits-Fee in Lieu
Position: Unfavorable

February 22, 2022

The Honorable Will Smith, Chair
Senate Judicial Proceedings Committee
2 East, Miller Senate Office Building
Annapolis, MD 21401
Cc: Members, Senate Judicial Proceedings Committee

Honorable Chair Smith and Members of the Committee:

MCRC is a statewide coalition of individuals and organizations that advances economic inclusion and financial justice through research, consumer education, direct service, and advocacy. Our 8,500 supporters include consumer advocates, practitioners, and low-income and working families throughout Maryland.

We are here in opposition to SB 681. Although the bill addresses an important issue -unaffordable security deposits which act as an impediment to tenants- the solution proposed raises a number of concerns and may weaken the already insufficient protections available to tenants under Maryland law.

The average monthly rent is \$1300 in Maryland and many landlords charge the equivalent of 1-2 months rent as a security deposit. This is obviously a challenge for low-income and moderate income tenants, particularly those who may be considered riskier because of poor credit.

SB 681 would allow tenants to pay a monthly fee instead of a security deposit upfront. According to LeaseLock, their clients pay an average of \$29 per month. However, unlike a security deposit, the money paid monthly to these companies is not refundable. While clients may save on upfront costs, they will not get these funds back. Moreover, the tenants are still fully liable for any claims against the landlord.

While the proponents of the legislation reached out to advocates to try to resolve concerns, there remain too many outstanding concerns and issues to enact this legislation. Some of the concerns include:



- the insurer can pursue collection activities against the tenant for outstanding amounts which the insurer owes to the landlord. These debt collection practices, as documented in our report [No Exit](#) may deepen poverty and widen the racial wealth gap; this may lead to wage garnishments or property garnishments
- using these products rather than a traditional security deposit, tenants may lose consumer protections available to them under current law
- jurisdiction and oversight of the law is unclear and unresolved since the tenant must rely on court judgment to dispute the claims which are rife with problems with most tenants unrepresented by an attorney and correspondingly courts finding in favor of the creditors/landlords the majority of the time
- the majority of these products are new start-up for-profit firms raising funds from investors. As such, it is unclear what would happen to tenants with these fee-in-lieu agreements should a firm go belly-up. Start-ups such as WeWork demonstrate the cascade effect of these corporate start-up. Tenants may be left in a legal limbo should these companies fail.

The goal of reducing the cost of security deposits as a way to assist tenants is laudable. However, there are number of proposals that would expand protections for consumers including:

- create installment plans for security deposits;
- create a third-party government security deposit holder as they've done in the UK¹;

SB 681 increases costs for consumers with non-refundable funds while benefiting landlords rather than the tenants, creates uncertainty in terms of jurisdiction, and may weaken legal protections while including no provisions should these start-up corporations fail.

For all of these reasons, we oppose SB 681 and urge an unfavorable report.

Best,

Marceline White
Executive Director

¹ <https://shelterforce.org/2021/10/07/what-happens-when-landlords-dont-control-security-deposits/>

SB 681 PJC Testimony UNFAV.pdf

Uploaded by: Matt Hill

Position: UNF



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SB 681 - Real Property – Residential Leases – Fee in Lieu of Deposit

Hearing before the Judicial Proceedings Committee, Feb. 22, 2022

Position: OPPOSE (UNFAV)

Public Justice Center (PJC) is a non-profit advocacy organization and civil legal services provider that provides advice and representation to over 700 tenants throughout Maryland each year. Numerous tenants contact the Public Justice Center each year over disputes with their respective landlords regarding the return of a security deposit. Public Justice Center recognizes that a landlord's upfront security deposit requirement is a significant barrier for tenants seeking to leave unhealthy or unsustainable housing, and we want to thank the sponsor of the legislation for seeking to address this significant issue that limits mobility and fair housing choice. We also thank Chris Grimm and Lease Lock, the proponents, for a productive dialogue since a similar bill was introduced last year. SB 681 includes many more consumer protections than last year's iteration.

Nonetheless, we are concerned that unlike prior drafts we had seen, the current bill contains no language requiring landlords to charge tenants only the actual cost of the insurance product to the landlord. Without such a limitation, the periodic fee that landlords charge tenants as a security deposit alternative will become yet another one of the numerous fees that landlords charge for virtually everything. Unless the periodic fee is tethered to the amount paid by the landlord for insurance to Lease Lock, it becomes yet another profit center for landlords at the expense of the tenant/consumer.

We are also concerned by reports in other jurisdictions that some companies with this model are charging variable monthly fees instead of fixed monthly fees. The fee paid by the tenant should be fixed for as long as the tenant resides at the property. Otherwise, unsuspecting tenants may be hit with an increased fee simply because their credit score went down.

Finally, we understand that there are attempts by the landlord industry to remove the prohibition on landlords labeling these periodic charges as "rent" in the current bill. The security deposit alternative fee is not "rent" and should not be deemed rent. Treating the fee as "rent" would allow landlords to begin a summary ejectment eviction process for non-

The Public Justice Center is a 501(c)(3) charitable organization and as such does not endorse or oppose any political party or candidate for elected office.

payment – flying in the face of Court of Appeals precedent limiting the definition of “rent” to the fixed, periodic fee for use and occupancy only. *See Lockett v. Blue Ocean Bristol, LLC*, 446 Md. 397 (2016).

We also understand the landlord industry wants to weaken the one enforcement mechanism for tenants in the bill. We oppose that weakening.

Finally, we are generally concerned that we do not yet understand the full implications of this financial product and how it will affect renters in the marketplace. We suggest further study on this matter including whether this will lead to an increase in third-party debt collection.

Public Justice Center asks that the Committee **issue a report of UNFAVORABLE on SB 681**. If you have any questions, please contact: Matt Hill, hillm@publicjustice.org, 410-625-9409, ext. 229.

sb681.pdf

Uploaded by: Sara Elalamy

Position: UNF

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Joseph M. Getty
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 681
Real Property – Residential Leases – Fee in Lieu of Deposit
DATE: February 16, 2022
(2/22)
POSITION: Oppose, as drafted

The Maryland Judiciary opposes Senate Bill 681, as drafted. Senate Bill 681 adds Real Property Article § 8-203.2 which authorizes a landlord to offer a fee in lieu of a security deposit. A landlord may not require a tenant to pay a fee in lieu of a security deposit and may not consider a prospective tenant's choice to pay a fee in lieu of a security deposit in determining whether to approve a tenant's application for tenancy.

The Judiciary takes no position on the policy aims of the legislation but has two specific concerns in the bill's drafting. This bill creates a burdensome statutory process to incorporate insurance policies of landlords for nonpayment by tenants, while creating the possibility of inconsistent interpretations of the statute by courts around the State. Also, at Real Property § 8-203.2(t)(2), the bill includes a mandatory provision that courts award tenants' damages of not less than 2 months' rent and reasonable attorney's fees for violations of the section by a landlord or insurer. The Judiciary traditionally opposes mandatory provisions that take away judicial discretion in crafting judgments.

cc. Hon. Joanne Benson
Judicial Council
Legislative Committee
Kelley O'Connor

SB 681_realtors_unf.pdf

Uploaded by: William Castelli

Position: UNF



Senate Bill 681 – Real Property – Residential Leases – Fee in Lieu of Deposit

Position: Unfavorable

Although the Maryland REALTORS® support fee in lieu options for landlords and tenants, the REALTORS® are concerned that the bill creates confusion regarding the amount of rent that can be held in a security deposit.

Under current law, a security deposit can be no more than two months rent. SB 681 provides that when a landlord offers the fee in lieu but the tenant does not choose it, the landlord would be limited to up to one month rent as a security deposit. If a landlord is going to offer a choice between a security deposit and a fee in lieu option, the security deposit rules shouldn't change.

While a fee in lieu option may be a good choice for some landlords and tenants, security deposits also provide some benefit to tenants and shouldn't be disincentivized. Unlike a fee in lieu insurance product, a security deposit may be completely recoverable if there is no damage or unpaid rent. A security deposit will likely cover the cost of damages and would not impact a tenant who already fronted the money. Under a fee in lieu insurance alternative, a tenant will need to come up with the money to fund the unpaid sums to reimburse the insurer.

For these reasons, the Maryland REALTORS® recommends an unfavorable report.

**For more information contact bill.castelli@mdrealtor.org,
susan.mitchell@mdrealtor.org, theresa.kuhns@mdrealtor.org;
lisa.may@mdrealtor.org**