

# HOUSE BILL 610

N1

2lr2056

---

By: **Delegates Weir, Norman, and Wilson**

Introduced and read first time: February 6, 2012

Assigned to: Environmental Matters

---

## A BILL ENTITLED

1 AN ACT concerning

2 **Real Property – Landlord Defenses in Nuisance Actions**

3 FOR the purpose of establishing a complete defense to any nuisance action brought  
4 under State or local law against a landlord if the tenant's actions are the basis  
5 for the action and certain actions have been taken by the landlord or the  
6 District Court in a suit to repossess the premises based on a breach of the lease;  
7 and generally relating to landlord defenses in nuisance actions.

8 BY repealing and reenacting, with amendments,  
9 Article – Real Property  
10 Section 8–402.1  
11 Annotated Code of Maryland  
12 (2010 Replacement Volume and 2011 Supplement)

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

15 **Article – Real Property**

16 8–402.1.

17 (a) (1) (i) Where an unexpired lease for a stated term provides that  
18 the landlord may repossess the premises prior to the expiration of the stated term if  
19 the tenant breaches the lease, the landlord may make complaint in writing to the  
20 District Court of the county where the premises is located if:

21 1. The tenant breaches the lease;

22 2. A. The landlord has given the tenant 30 days'  
23 written notice that the tenant is in violation of the lease and the landlord desires to  
24 repossess the leased premises; or

---

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1                   B.     The breach of the lease involves behavior by a tenant  
2 or a person who is on the property with the tenant's consent, which demonstrates a  
3 clear and imminent danger of the tenant or person doing serious harm to themselves,  
4 other tenants, the landlord, the landlord's property or representatives, or any other  
5 person on the property and the landlord has given the tenant or person in possession  
6 14 days' written notice that the tenant or person in possession is in violation of the  
7 lease and the landlord desires to repossess the leased premises; and

8                   3.     The tenant or person in actual possession of the  
9 premises refuses to comply.

10                   (ii)    The court shall summons immediately the tenant or person  
11 in possession to appear before the court on a day stated in the summons to show cause,  
12 if any, why restitution of the possession of the leased premises should not be made to  
13 the landlord.

14                   (2)    (i)     If, for any reason, the tenant or person in actual possession  
15 cannot be found, the constable or sheriff shall affix an attested copy of the summons  
16 conspicuously on the property.

17                   (ii)    After notice is sent to the tenant or person in possession by  
18 first-class mail, the affixing of the summons on the property shall be conclusively  
19 presumed to be a sufficient service to support restitution.

20                   (3)    If either of the parties fails to appear before the court on the day  
21 stated in the summons, the court may continue the case for not less than six nor more  
22 than 10 days and notify the parties of the continuance.

23                   (b)    (1)     If the court determines that the tenant breached the terms of the  
24 lease and that the breach was substantial and warrants an eviction, the court shall  
25 give judgment for the restitution of the possession of the premises and issue its  
26 warrant to the sheriff or a constable commanding the tenant to deliver possession to  
27 the landlord in as full and ample manner as the landlord was possessed of the same at  
28 the time when the lease was entered into. The court shall give judgment for costs  
29 against the tenant or person in possession.

30                   (2)    Either party may appeal to the circuit court for the county, within  
31 ten days from entry of the judgment. If the tenant (i) files with the District Court an  
32 affidavit that the appeal is not taken for delay; (ii) files sufficient bond with one or  
33 more securities conditioned upon diligent prosecution of the appeal; (iii) pays all rent  
34 in arrears, all court costs in the case; and (iv) pays all losses or damages which the  
35 landlord may suffer by reason of the tenant's holding over, the tenant or person in  
36 possession of the premises may retain possession until the determination of the  
37 appeal. Upon application of either party, the court shall set a day for the hearing of  
38 the appeal not less than five nor more than 15 days after the application, and notice of  
39 the order for a hearing shall be served on the other party or that party's counsel at

1 least five days before the hearing. If the judgment of the District Court is in favor of  
2 the landlord, a warrant shall be issued by the court which hears the appeal to the  
3 sheriff, who shall execute the warrant.

4 (c) (1) Acceptance of any payment after notice but before eviction shall  
5 not operate as a waiver of any notice of breach of lease or any judgment for possession  
6 unless the parties specifically otherwise agree in writing.

7 (2) Any payment accepted shall be first applied to the rent or the  
8 equivalent of rent apportioned to the date that the landlord actually recovers  
9 possession of the premises, then to court costs, including court awarded damages and  
10 legal fees and then to any loss of rent caused by the breach of lease.

11 (3) Any payment which is accepted in excess of the rent referred to in  
12 paragraph (2) of this subsection shall not bear interest but will be returned to the  
13 tenant in the same manner as security deposits as defined under § 8-203 of this title  
14 but shall not be subject to the penalties of that section.

15 (D) IT IS A COMPLETE DEFENSE TO ANY NUISANCE ACTION BROUGHT  
16 UNDER STATE OR LOCAL LAW AGAINST A LANDLORD IF:

17 (1) THE TENANT'S ACTIONS ARE THE BASIS FOR THE NUISANCE  
18 ACTION; AND

19 (2) (I) THE LANDLORD HAS PROVIDED NOTICE THAT THE  
20 LANDLORD DESIRES TO REPOSSESS THE LEASED PREMISES AS REQUIRED  
21 UNDER SUBSECTION (A) OF THIS SECTION;

22 (II) THE LANDLORD HAS FILED A COMPLAINT TO THE  
23 DISTRICT COURT TO REPOSSESS THE LEASED PREMISES UNDER SUBSECTION  
24 (A) OF THIS SECTION; OR

25 (III) THE DISTRICT COURT HAS ORDERED OR DENIED  
26 RESTITUTION OF THE POSSESSION OF THE PREMISES.

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
28 October 1, 2012.