

When the Earth Shakes! What's a Landlord to Do??

By: Hana Rose Kondratyuk

A rare earthquake, originating near Mineral, Virginia¹ and registering at 5.8 on the Richter scale, hit the East Coast of the United States on August 23, 2011. Buildings trembled, hundreds ran outdoors to escape swaying buildings, and telephone lines were clogged as worried family members attempted to reach relatives. Once the dust had settled, property owners between Virginia and Maine quickly assessed buildings in search of possible damage, raising the question, not often considered in this part of the country: "What is my responsibility to my tenants after an earthquake?"

Maryland common law provides that a landlord has a duty to exercise ordinary care and diligence to maintain the property under a landlord's control in a reasonably safe condition and to protect against known or reasonably foreseeable risks.² The property under a landlord's control is referred to as "common area," and may include halls, stairways, the roof, walls, foundation, and other portions of the property used in common by all tenants. The allocation of maintenance responsibility between the landlord and tenant in a standard commercial lease is consistent with the common law; that is, while the tenant may be responsible for maintaining the interior of the leased premises, the landlord is typically responsible for the structural components of the building, including the roof, exterior walls, and foundation, as well as the other common areas.

Under the common law, the landlord may be liable for injuries that occur in common areas within the landlord's control where it is shown that the landlord knew, or had reason to know, that a dangerous condition existed.³ Likewise, if a Landlord fails to properly maintain those areas of the building for which it is responsible under the lease, it can be liable to the tenant for property damage or personal injury caused by its failure to perform its contractual obligations.

If an earthquake of any significant magnitude occurs, such as the one we recently experienced, it is foreseeable that the structural soundness of a building and the common areas within a building might be at risk. Therefore, in order to protect against reasonably foreseeable harm, and to comply with its likely maintenance obligations under the lease, a landlord should take reasonable steps to determine structural soundness and to confirm that the property can be safely occupied. While in some cases a cursory building inspection by the property owner may be sufficient, in other cases the services of a structural engineer or other professional may be required in order to assess potential damage.

If the building does in fact suffer damage, the casualty clause of the lease would be applicable. Generally, commercial leases require a landlord to restore or rebuild its property following a casualty, with certain limitations. For example, the landlord's obligation to rebuild

¹ See <http://earthquake.usgs.gov/earthquakes/recenteqsww/Quakes/se082311a.php>.

² Langley Park Apartments v. Lund, 234 Md. 402, 407, 199 A.2d 620, 623 (1964); *see also* Rhaney v. Univ. Of Maryland E. Shore, 388 Md. 585, 880 A.2d 357 (2005).

³ Shields v. Wagman, 350 Md. 666, 675, 714 A.2d 881, 885 (1998); *See also* Hemmings v. Pelham Wood Ltd. Liab. Ltd. P'ship, 375 Md. 522, 826 A.2d 443 (2003).

or restore damaged property may be limited to the extent that the landlord receives insurance proceeds for the restoration, and it may not be required if the damage is extensive, or if the property owner's lender does not allow the insurance proceeds to be utilized. Note, however, that because the risk of an earthquake causing property damage in Maryland has been viewed as remote, earthquake coverage may not be included in the landlord's insurance policy.

Fortunately, Maryland is not the epicenter of dangerous seismic events and structures will likely endure minimal damage, if any, from an earthquake. Furthermore, the one we recently experienced, we are told, is not likely to re-occur in our lifetimes. But the recent jolt to the East Coast, if nothing else, serves as a good reminder to property owners to periodically review their obligations under their leases, and take a closer look at the fine print.

If you have any questions regarding your landlord's insurance policy and the recent earthquake, please contact a member of the real estate group:

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