

SENATE BILL 396

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71r0862
CF 71r0867

By: **Senators Gladden, Della, Conway, Jones, McFadden, and Pugh**
Introduced and read first time: February 2, 2007
Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Ground Rents – Remedy for Nonpayment of Ground Rent**

3 FOR the purpose of repealing provisions of law authorizing a landlord under a ground
4 lease to bring an action for ejectment for nonpayment of ground rent; repealing
5 provisions of law entitling the holder of a ground rent to reimbursement for
6 certain expenses incurred in collecting past due ground rent and filing an action
7 for ejectment; providing that the establishment of a lien is the sole remedy for
8 nonpayment of a ground rent; requiring a certain person seeking to impose a
9 lien to give a certain notice in a certain manner; authorizing a person to whom
10 notice is given to file a certain complaint and request a hearing in a certain
11 circuit court; establishing procedures for imposing and releasing a lien;
12 authorizing the court to award costs and reasonable attorney's fees to the
13 prevailing party in a certain action; specifying the form for a statement of lien;
14 providing for the enforcement and foreclosure of a lien; making certain
15 conforming changes; defining certain terms; and generally relating to remedies
16 for nonpayment of ground rent.

17 BY repealing

18 Article – Real Property
19 Section 8–402.2 and 8–402.3
20 Annotated Code of Maryland
21 (2003 Replacement Volume and 2006 Supplement)

22 BY adding to

23 Article – Real Property
24 Section 8–402.2

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2003 Replacement Volume and 2006 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article – Real Property
5 Section 8–111.1 and 14–108.1
6 Annotated Code of Maryland
7 (2003 Replacement Volume and 2006 Supplement)

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

10 **Article – Real Property**

11 [8–402.2.

12 (a) Whenever, in a case that involves a 99–year ground lease renewable
13 forever, at least 6 months ground rent is in arrears and the landlord has the lawful
14 right to reenter for the nonpayment of the rent, the landlord, no less than 45 days
15 after sending to the tenant by certified mail, return receipt requested, at the tenant’s
16 last known address, and also by first class mail to the title agent or attorney listed on
17 the deed to the property or the intake sheet recorded with the deed, a bill for the
18 ground rent due, may bring an action for possession of the property under § 14–108.1
19 of this article; if the tenant cannot be personally served or there is no tenant in actual
20 possession of the property, service by posting notice on the property may be made in
21 accordance with the Maryland Rules. Personal service or posting in accordance with
22 the Maryland Rules shall stand in the place of a demand and reentry.

23 (b) (1) Before entry of a judgment the landlord shall give written notice of
24 the pending entry of judgment to each mortgagee of the lease, or any part of the lease,
25 who before entry of the judgment has recorded in the land records of each county
26 where the property is located a timely request for notice of judgment. A request for
27 notice of judgment shall:

28 (i) Be recorded in a separate docket or book that is indexed
29 under the name of the mortgagor;

30 (ii) Identify the property on which the mortgage is held and
31 refer to the date and recording reference of that mortgage;

32 (iii) State the name and address of the holder of the mortgage;
33 and

- 1 (iv) Identify the ground lease by stating:
- 2 1. The name of the original lessor;
- 3 2. The date the ground lease was recorded; and
- 4 3. The office, docket or book, and page where the ground
- 5 lease is recorded.

6 (2) The landlord shall mail the notice by certified mail return receipt
7 requested to the mortgagee at the address stated in the recorded request for notice of
8 judgment. If the notice is not given, judgment in favor of the landlord does not impair
9 the lien of the mortgagee. Except as otherwise provided in subsection (b) of this
10 section, the property is discharged from the lease and the rights of all persons
11 claiming under the lease are foreclosed unless, within 6 calendar months after
12 execution of the judgment for possession, the tenant or any other person claiming
13 under the lease:

14 (i) Pays the ground rent, arrears, and all costs awarded against
15 that person; and

16 (ii) Commences a proceeding to obtain relief from the judgment.

17 (c) This section does not bar the right of any mortgagee of the lease, or any
18 part of the lease, who is not in possession at any time before expiration of 6 calendar
19 months after execution of the judgment awarding the landlord possession, to pay all
20 costs and damages sustained by the landlord and to perform all the covenants and
21 agreements that are to be performed by the tenant.

22 (d) Except as otherwise provided by law, a landlord may not receive
23 reimbursement for any additional costs or expenses related to collection of the back
24 rent unless the notice requirements of this section and § 8-402.3 of this subtitle are
25 met.]

26 [8-402.3.

27 (a) In this section, "ground rent" means a residential lease or sublease in
28 effect on or after October 1, 2003, that has an initial term of 99 years renewable
29 forever and creates a leasehold estate subject to the payment of semiannual
30 installments of an annual lease amount.

1 (b) (1) A holder of a ground rent that is at least 6 months in arrears is
2 entitled to reimbursement for actual expenses not exceeding \$500 incurred in the
3 collection of that past due ground rent and in complying with the notice requirements
4 under § 8–402.2(a) of this subtitle, including:

5 (i) Title abstract and examination fees;

6 (ii) Judgment report fees;

7 (iii) Photocopying and postage fees; and

8 (iv) Attorney’s fees.

9 (2) Upon filing an action for ejectment, the plaintiff or holder of a
10 ground rent is entitled to reimbursement for reasonable expenses incurred in the
11 preparation and filing of the ejectment action, including:

12 (i) Filing fees and court costs;

13 (ii) Expenses incurred in the service of process or otherwise
14 providing notice;

15 (iii) Title abstract and examination fees not included under
16 paragraph (1) of this subsection, not exceeding \$300;

17 (iv) Reasonable attorney’s fees not exceeding \$700; and

18 (v) Taxes, including interest and penalties, that have been paid
19 by the plaintiff or holder of a ground rent.

20 (c) Except as provided in subsection (b) of this section or in § 8–402.2(c) of
21 this subtitle, the plaintiff or holder of a ground rent is not entitled to reimbursement
22 for any other expenses incurred in the collection of a ground rent.

23 (d) (1) The holder of a ground rent may not be reimbursed for expenses
24 under subsection (b) of this section unless the holder sends the tenant as identified in
25 the records of the State Department of Assessments and Taxation written notice at
26 least 30 days before taking any action in accordance with § 8–402.2(a) of this subtitle
27 and § 14–108.1 of this article.

28 (2) The notice shall be in 14 point, bold font, and contain the following:

29 (i) The amount of the past due ground rent;

1 (ii) A statement that unless the past due ground rent is paid
2 within 30 days, further action will be taken in accordance with § 8-402.2(a) of this
3 subtitle and § 14-108.1 of this article and the tenant will be liable for the expenses
4 and fees incurred in connection with the collection of the past due ground rent as
5 provided in this section.

6 (3) The holder of the ground rent shall:

7 (i) Mail the notice by first class mail to the tenant's last known
8 address as shown in the records of the State Department of Assessments and
9 Taxation; and

10 (ii) Obtain a certificate of mailing from the United States Postal
11 Service.]

12 **8-402.2.**

13 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
14 MEANINGS INDICATED.

15 (2) "GROUND LEASE" MEANS A RESIDENTIAL LEASE OR
16 SUBLEASE IN EFFECT ON OR AFTER FEBRUARY 5, 2007, THAT HAS AN INITIAL
17 TERM OF 99 YEARS RENEWABLE FOREVER AND IS SUBJECT TO THE PAYMENT OF
18 AN ANNUAL GROUND RENT.

19 (3) "GROUND RENT" MEANS A RENT ISSUING OUT OF, OR
20 COLLECTIBLE IN CONNECTION WITH, THE REVERSION IN FEE SIMPLE RESERVED
21 IN A GROUND LEASE.

22 (4) "LANDLORD" MEANS THE HOLDER OF THE REVERSIONARY
23 INTEREST UNDER A GROUND LEASE.

24 (5) "TENANT" MEANS THE HOLDER OF THE LEASEHOLD
25 INTEREST UNDER A GROUND LEASE.

26 (B) NOTWITHSTANDING ANY PROVISION OF A GROUND LEASE GIVING
27 THE LANDLORD THE RIGHT TO REENTER, THE ESTABLISHMENT OF A LIEN
28 UNDER THIS SECTION IS THE SOLE REMEDY FOR NONPAYMENT OF A GROUND
29 RENT.

1 **(C) SUBJECT TO §§ 8-111 AND 8-111.1 OF THIS ARTICLE, IF A GROUND**
2 **RENT IS AT LEAST 6 MONTHS IN ARREARS, THE LANDLORD MAY OBTAIN A LIEN**
3 **UNDER THIS SECTION IN THE AMOUNT OF THE GROUND RENT DUE.**

4 **(D) (1) A LANDLORD SEEKING TO CREATE A LIEN UNDER THIS**
5 **SECTION SHALL GIVE WRITTEN NOTICE TO THE TENANT AGAINST WHOSE**
6 **PROPERTY THE LIEN IS INTENDED TO BE IMPOSED.**

7 **(2) NOTICE UNDER THIS SUBSECTION SHALL BE SERVED BY:**

8 **(I) 1. CERTIFIED MAIL, RETURN RECEIPT REQUESTED,**
9 **ADDRESSED TO THE TENANT OR THE TENANT'S SUCCESSOR IN INTEREST AT THE**
10 **INDIVIDUAL'S CURRENT ADDRESS; OR**

11 **2. PERSONAL DELIVERY TO THE TENANT OR THE**
12 **TENANT'S SUCCESSOR IN INTEREST; AND**

13 **(II) POSTING NOTICE IN A CONSPICUOUS MANNER ON THE**
14 **PROPERTY.**

15 **(E) A NOTICE UNDER SUBSECTION (D) OF THIS SECTION SHALL**
16 **INCLUDE:**

17 **(1) THE NAME AND ADDRESS OF THE PARTY SEEKING TO CREATE**
18 **THE LIEN;**

19 **(2) A STATEMENT OF INTENT TO CREATE A LIEN;**

20 **(3) AN IDENTIFICATION OF THE GROUND LEASE;**

21 **(4) THE AMOUNT OF GROUND RENT ALLEGED TO BE DUE;**

22 **(5) A DESCRIPTION OF THE PROPERTY AGAINST WHICH THE LIEN**
23 **IS INTENDED TO BE IMPOSED SUFFICIENT TO IDENTIFY THE PROPERTY;**

24 **(6) A STATEMENT THAT THE PARTY AGAINST WHOSE PROPERTY**
25 **THE LIEN IS INTENDED TO BE IMPOSED HAS THE RIGHT TO OBJECT TO THE**

1 ESTABLISHMENT OF A LIEN BY FILING A COMPLAINT IN THE CIRCUIT COURT
2 AND THE RIGHT TO A HEARING;

3 (7) AN EXPLANATION OF THE PROCEDURE TO FILE A COMPLAINT
4 AND REQUEST A HEARING; AND

5 (8) A STATEMENT THAT, UNLESS THE PAST DUE GROUND RENT IS
6 PAID OR A COMPLAINT IS FILED UNDER SUBSECTION (F) OF THIS SECTION
7 WITHIN 45 DAYS AFTER THE NOTICE IS SERVED, A LIEN WILL BE IMPOSED ON
8 THE PROPERTY.

9 (F) (1) A PARTY TO WHOM NOTICE IS GIVEN UNDER SUBSECTION (D)
10 OF THIS SECTION MAY, WITHIN 45 DAYS AFTER THE NOTICE IS SERVED ON THE
11 PARTY, FILE A COMPLAINT IN THE CIRCUIT COURT FOR THE COUNTY IN WHICH
12 THE PROPERTY IS LOCATED TO DETERMINE WHETHER A LIEN SHOULD BE
13 ESTABLISHED.

14 (2) A COMPLAINT FILED UNDER THIS SUBSECTION SHALL
15 INCLUDE:

16 (I) THE NAME OF THE COMPLAINANT AND THE NAME OF
17 THE PARTY SEEKING TO ESTABLISH THE LIEN;

18 (II) A COPY OF THE NOTICE SERVED UNDER SUBSECTION
19 (D) OF THIS SECTION; AND

20 (III) AN AFFIDAVIT CONTAINING A STATEMENT OF FACTS
21 THAT WOULD PRECLUDE ESTABLISHMENT OF THE LIEN FOR THE AMOUNT OF
22 GROUND RENT ALLEGED IN THE NOTICE.

23 (3) A PARTY FILING A COMPLAINT UNDER THIS SUBSECTION MAY
24 REQUEST A HEARING AT WHICH ANY PARTY MAY APPEAR TO PRESENT
25 EVIDENCE.

26 (G) IF A COMPLAINT IS FILED, THE PARTY SEEKING TO ESTABLISH THE
27 LIEN HAS THE BURDEN OF PROOF.

1 **(H) THE CLERK OF THE CIRCUIT COURT SHALL DOCKET THE**
2 **PROCEEDINGS UNDER THIS SECTION, AND ALL PROCESS SHALL ISSUE OUT OF**
3 **AND ALL PLEADINGS SHALL BE FILED IN A SINGLE ACTION.**

4 **(I) BEFORE ANY HEARING HELD UNDER SUBSECTION (F) OF THIS**
5 **SECTION, THE PARTY SEEKING TO ESTABLISH A LIEN MAY SUPPLEMENT, BY**
6 **MEANS OF AN AFFIDAVIT, ANY INFORMATION CONTAINED IN THE NOTICE GIVEN**
7 **UNDER SUBSECTION (D) OF THIS SECTION.**

8 **(J) IF A COMPLAINT IS FILED UNDER SUBSECTION (F) OF THIS SECTION,**
9 **THE COURT SHALL REVIEW ANY PLEADINGS FILED, INCLUDING ANY**
10 **SUPPLEMENTARY AFFIDAVIT FILED UNDER SUBSECTION (I) OF THIS SECTION,**
11 **AND SHALL CONDUCT A HEARING IF REQUESTED UNDER SUBSECTION (F)(3) OF**
12 **THIS SECTION.**

13 **(K) (1) IF THE COURT DETERMINES THAT A LIEN SHOULD BE**
14 **ESTABLISHED, IT SHALL ENTER AN ORDER FINDING THE AMOUNT OF GROUND**
15 **RENT DUE AND IMPOSING A LIEN.**

16 **(2) IF THE COURT DETERMINES THAT A LIEN SHOULD NOT BE**
17 **ESTABLISHED, IT SHALL ENTER AN ORDER DENYING A LIEN.**

18 **(3) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH,**
19 **THE COURT MAY AWARD COSTS AND REASONABLE ATTORNEY'S FEES TO THE**
20 **PREVAILING PARTY IN AN ACTION UNDER THIS SECTION.**

21 **(II) IF THE LANDLORD IS THE PREVAILING PARTY, AN**
22 **AWARD OF COSTS AND REASONABLE ATTORNEY'S FEES MAY NOT EXCEED \$500.**

23 **(4) (I) THE AMOUNT OF THE LIEN SHALL BE FOR THE GROUND**
24 **RENT FOUND BY THE COURT TO BE DUE AND ANY COSTS AND ATTORNEY'S FEES**
25 **AWARDED BY THE COURT.**

26 **(II) THE AMOUNT OF THE LIEN SHALL INCREASE ANNUALLY**
27 **BY THE AMOUNT OF GROUND RENT DUE PLUS SIMPLE INTEREST AT THE RATE**
28 **PRESCRIBED BY LAW ACCRUING FROM THE DATE OF ENTRY OF THE JUDGMENT.**

1 **(5) AN ORDER IMPOSING A LIEN SHALL STATE THAT THE OWNER**
2 **OF THE PROPERTY AGAINST WHICH THE LIEN IS IMPOSED MAY FILE A BOND IN A**
3 **SPECIFIED AMOUNT TO HAVE THE LIEN AGAINST THE PROPERTY RELEASED.**

4 **(L) (1) IF THE COURT ORDERS A LIEN TO BE IMPOSED UNDER**
5 **SUBSECTION (K) OF THIS SECTION, OR IF THE OWNER OF THE PROPERTY**
6 **AGAINST WHICH A LIEN IS INTENDED TO BE IMPOSED FAILS TO PAY THE PAST**
7 **DUE GROUND RENT OR FILE A COMPLAINT UNDER SUBSECTION (F) OF THIS**
8 **SECTION, THE PARTY SEEKING TO CREATE THE LIEN MAY FILE A STATEMENT OF**
9 **LIEN IN THE LAND RECORDS OF THE COUNTY IN WHICH THE PROPERTY IS**
10 **LOCATED.**

11 **(2) THE PARTY SEEKING TO CREATE THE LIEN MAY FILE THE**
12 **LIEN STATEMENT IN THE COUNTY LAND RECORDS:**

13 **(I) IF A COMPLAINT WAS FILED UNDER SUBSECTION (F) OF**
14 **THIS SECTION, AFTER THE DATE OF ENTRY OF A FINAL NONAPPEALABLE**
15 **JUDGMENT IMPOSING A LIEN, UNLESS BEFORE THE JUDGMENT BECOMES**
16 **FINAL, THE OWNER OF THE PROPERTY AGAINST WHICH THE LIEN IS IMPOSED**
17 **PAYS THE AMOUNT OF THE GROUND RENT FOUND BY THE COURT TO BE DUE**
18 **AND ANY COSTS AND ATTORNEY'S FEES AWARDED BY THE COURT; OR**

19 **(II) IF A COMPLAINT WAS NOT FILED UNDER SUBSECTION**
20 **(F) OF THIS SECTION OR THE PAST DUE GROUND RENT WAS NOT PAID, 45 DAYS**
21 **AFTER THE OWNER WAS SERVED UNDER SUBSECTION (D)(2)(I) OF THIS**
22 **SECTION.**

23 **(3) UNLESS THE PARTY SEEKING TO CREATE THE LIEN AND THE**
24 **OWNER OF THE PROPERTY AGREE OTHERWISE, IF THE PARTY SEEKING TO**
25 **CREATE THE LIEN FAILS TO FILE THE LIEN STATEMENT WITHIN THE**
26 **APPLICABLE TIME PERIOD DESCRIBED IN PARAGRAPH (2) OF THIS SUBSECTION,**
27 **THE PARTY SEEKING TO CREATE THE LIEN:**

28 **(I) MAY NOT FILE THE LIEN STATEMENT IN THE COUNTY**
29 **LAND RECORDS; AND**

30 **(II) MAY FILE FOR A NEW LIEN BY COMPLYING WITH THE**
31 **REQUIREMENTS OF THIS SECTION.**

1 THE SALE THE GREATER OF THE AMOUNT OF THE LIEN OR THE REDEMPTION
 2 AMOUNT CALCULATED UNDER § 8-110(B)(2)(I) OF THIS TITLE AND THE
 3 PURCHASER SHALL TAKE TITLE TO THE PROPERTY FREE AND CLEAR OF THE
 4 GROUND LEASE.

5 (P) IF THE LIENHOLDER CANNOT BE LOCATED, THE LIEN MAY BE
 6 SATISFIED AND THE GROUND RENT REDEEMED IN ACCORDANCE WITH §
 7 8-110(G) OF THIS TITLE BY PAYING THE GREATER OF THE AMOUNT OF THE LIEN
 8 OR THE AMOUNT SET FORTH IN § 8-110(G)(4) OF THIS TITLE.

9 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
 10 read as follows:

11 Article - Real Property

12 8-111.1.

13 (a) This section applies to all residential leases or subleases in effect on or
 14 after October 1, 1999, which have an initial term of 99 years and which create a
 15 leasehold estate, or subleasehold estate, subject to the payment of an annual ground
 16 rent.

17 (b) In any suit, action, or proceeding by a landlord, or the transferee of the
 18 reversion in leased property, to recover back rent, the landlord, or the transferee of the
 19 reversion in leased property is entitled to demand or recover not more than 3 years
 20 back rent.

21 (c) In addition to rent payable under subsection (b) of this section, a landlord
 22 may not receive reimbursement for any additional costs or expenses related to
 23 collection of the back rent [unless the notice requirements of §§ 8-402.2 and 8-402.3 of
 24 this title are met].

25 14-108.1.

26 (a) This section does not apply to:

27 (1) A grantee action under § 14-109 of this subtitle; [or]

28 (2) A landlord-tenant action that is within the exclusive original
 29 jurisdiction of the District Court; **OR**

1 **(3) AN ACTION FOR NONPAYMENT OF GROUND RENT.**

2 (b) (1) A person who is not in possession of property and claims title and
3 right to possession may bring an action for possession against the person in possession
4 of the property.

5 (2) Encumbrance of property by a mortgage or deed of trust to secure a
6 debt does not prevent an action under this section by the owner of the property.

7 (c) When personal jurisdiction is not obtained over the defendant, the
8 plaintiff may obtain a default judgment under the Maryland Rules only on proof of
9 title and right to possession. The judgment shall be in rem for possession of the
10 property. Entry and enforcement of the judgment does not bar further pursuit, in the
11 same or another action, of the plaintiff's claim for mesne profits and damages.

12 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 July 1, 2007.