

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

Senate Bill 503

(Senator Rosapepe)

Judicial Proceedings

Foreclosure Purchaser and Tenant - Evictions - Tenant's Right to Reclaim
Personal Property

This bill establishes rights of a tenant and duties of a foreclosure purchaser upon eviction of the tenant through the judicial process.

Fiscal Summary

State Effect: The District Court has sole jurisdiction over landlord-tenant disputes. The Judiciary does not expect the bill to have a significant fiscal or operational impact on its caseload.

Local Effect: Expenditures may increase due to an increased workload for a sheriff or county official associated with the execution of the warrant of restitution. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: Whenever a motion for possession in a foreclosure case is granted in favor of the purchaser for possession of leased premises, the sheriff or county official directed to carry out the eviction of the tenant must notify the purchaser and tenant, in the manner specified, of the scheduled date on which the warrant of restitution will be executed. The tenant has the right to reclaim any personal property left in the premises within three full days after the date that the warrant was executed.

The sheriff or county official must post on the door of the premises a notice stating specified information about the execution of the warrant of restitution, the tenant's right to reclaim personal property within three days of the warrant's execution, and instructions on how the tenant may exercise that right.

During the period when the tenant may reclaim personal property, the purchaser may (1) leave the tenant's property in the premises after changing the locks and securing the premises; (2) move the tenant's property to a secure storage under the purchaser's control within a reasonable distance of the premises; or (3) move the tenant's property to a public warehouse.

The purchaser must allow the tenant to make reasonable arrangements to obtain and move the property during the reclamation period. The purchaser may not charge a fee or place conditions on the tenant's right to reclaim the property.

If the property is moved to a public warehouse, the tenant must pay the moving and storage fees to the warehouseman in order to obtain the property. If the tenant does not reclaim the property within the reclamation period, the property is considered abandoned. The purchaser or warehouseman may then dispose of the property at a public disposal facility and must pay any disposal fees. The property may not be disposed of in a public right-of-way or on public property.

The purchaser or warehouseman is not obligated to inventory or take any steps to preserve the tenant's personal property beyond providing secure physical storage during the reclamation period.

Current Law:

Foreclosure Procedure

After the filing of a foreclosure action, and at the same time the mortgagor or grantor is served with all required documents, the person authorized to sell the residential property must send written notice to all occupants of the property. The notice must inform the occupants that a foreclosure sale of the property may occur at any time after 45 days from the date of the notice. The notice must also provide information regarding the rights of a bona fide tenant.

A tenant is "bona fide" only if the mortgagor or grantor or the child, spouse, or parent of the mortgagor or grantor is not the tenant; the lease or tenancy was an arms-length transaction; and the lease or tenancy requires rent payments that are not substantially less than fair market rental rates, unless the rent is reduced or subsidized due to a federal, State, or local subsidy.

A bona fide tenant who entered into a lease before the transfer of legal title has the right to occupy the premises until the end of the remaining lease term or 90 days after the notice to vacate is sent, whichever is longer. A bona fide tenant without a lease or with a lease terminable at will has the right to stay for at least 90 days after the notice to vacate is sent. However, a successor in interest may terminate a lease effective on the date of the sale of the residential property to a purchaser who will occupy the property as his or her primary residence.

Written notice must also be sent to all occupants no earlier than 30 days and no later than 10 days prior to the date of the foreclosure sale, and a final notice must be sent after the entry of a judgment awarding possession of the property and before any attempt to execute the writ of possession. The person giving each notice must file an affidavit of compliance in the foreclosure proceeding after each notice is sent. If the foreclosure sale is postponed, no additional notice is required to be sent to the occupants of the property.

In addition, the Maryland Rules require that a motion for possession following a foreclosure sale be served on a tenant who was not a party to the foreclosure action by (1) personal delivery to the person or a resident of suitable age and discretion at the dwelling house or usual place of abode of the person; or (2) if at least two good faith efforts at personal delivery on different days were unsuccessful, by mailing by first-class and certified mail and posting in a conspicuous place on the property.

Landlord-Tenant Evictions

In the event of an eviction, a court orders a sheriff or county official to command a tenant to deliver possession of the premises to a landlord. The party executing the warrant may remove all property from the premises and place it on the public right-of-way while the sheriff or county official supervises. Neither a landlord nor the person executing the eviction warrant is required to retain possession of the tenant's personal property, unless the leased dwelling is located in Baltimore City.

Baltimore City Code dictates that a landlord must dispose of any abandoned eviction chattels by transporting them to a licensed landfill or solid waste facility, donating them to charity, or some other legal means. Under no circumstances may a landlord place eviction chattels, abandoned or otherwise, on a public right-of-way. "Eviction chattel" is defined as any property removed from a leased dwelling under a warrant of restitution.

Local Expenditures: The impact on local governments depends on county actions during the three-day reclamation period as well as the volume of evictions. Two counties, Carroll and St. Mary's, indicated they may need additional deputies if law enforcement is required to ensure the orderly collection of personal property during the

reclamation period. Four counties, Montgomery, Queen Anne's, Harford, and Cecil, indicated no fiscal impact because the bill is silent as to law enforcement's requirement to perform additional duties past the initial posting of notice on the premises. Montgomery County notes that evictions of foreclosed property are a relatively small amount of its workload. It is possible that some of these evictions may require follow-up visits to ensure an orderly collection of personal property; however, the number is difficult to quantify and may be handled within existing resources for some counties. Revenues are not affected.

Additional Information

Prior Introductions: None; however, SB 597 and HB 1481 of 2006 contained similar provisions related to landlord-tenant evictions, as opposed to foreclosure purchaser-tenant evictions. SB 597 was heard by the Senate Judicial Proceedings Committee and referred to interim study by the committee. HB 1481 received an unfavorable report from the House Environmental Matters Committee.

Cross File: None.

Information Source(s): Baltimore, Carroll, Cecil, Harford, Montgomery, Queen Anne's, and St. Mary's counties; Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Department of Legislative Services

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