

HOUSE BILL 968

N1

3lr0620

By: **Delegates Niemann and Frush**

Introduced and read first time: February 7, 2013

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Landlord and Tenant – Commencement of Actions to Repossess**

3 FOR the purpose of specifying a certain time after which a landlord may file a written
4 complaint to repossess for failure to pay rent under certain circumstances;
5 altering the time when a trial may be held in District Court after the filing of a
6 complaint to repossess for failure to pay rent under certain circumstances;
7 altering the process by which a certain summons is served on a tenant in
8 certain actions to repossess; requiring a landlord to mail a copy of a certain
9 summons and effect personal service on a tenant of a certain notice in certain
10 actions to repossess under certain circumstances; requiring a court to postpone
11 a trial in certain actions to repossess under certain circumstances; providing
12 that personal service shall conclusively be presumed to be a sufficient service
13 for certain judgments in certain actions to repossess under certain
14 circumstances; making stylistic changes; and generally relating to
15 commencement of actions to repossess in landlord and tenant law.

16 BY repealing and reenacting, without amendments,
17 Article – Real Property
18 Section 8–401(a)
19 Annotated Code of Maryland
20 (2010 Replacement Volume and 2012 Supplement)

21 BY repealing and reenacting, with amendments,
22 Article – Real Property
23 Section 8–401(b) and (c), 8–402(b), and 8–402.1(a)
24 Annotated Code of Maryland
25 (2010 Replacement Volume and 2012 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1

Article – Real Property

2 8–401.

3 (a) Whenever the tenant or tenants fail to pay the rent when due and
4 payable, it shall be lawful for the landlord to have again and repossess the premises.

5 (b) (1) Whenever any landlord shall desire to repossess any premises to
6 which the landlord is entitled under the provisions of subsection (a) of this section, the
7 landlord or the landlord's duly qualified agent or attorney shall file the landlord's
8 written complaint under oath or affirmation **NO SOONER THAN 3 DAYS AFTER THE**
9 **DAY THE UNPAID RENT IS DUE AND PAYABLE**, in the District Court of the county
10 wherein the property is situated:

11 (i) Describing in general terms the property sought to be
12 repossessed;

13 (ii) Setting forth the name of each tenant to whom the property
14 is rented or any assignee or subtenant;

15 (iii) Stating the amount of rent and any late fees due and
16 unpaid;

17 (iv) Requesting to repossess the premises and, if requested by
18 the landlord, a judgment for the amount of rent due, costs, and any late fees;

19 (v) If applicable, stating that, to the best of the landlord's
20 knowledge, the tenant is deceased, intestate, and without next of kin; and

21 (vi) If the property to be repossessed is an affected property as
22 defined in § 6–801 of the Environment Article, stating that the landlord has registered
23 the affected property as required under § 6–811 of the Environment Article and
24 renewed the registration as required under § 6–812 of the Environment Article and:

25 1. A. If the current tenant moved into the property
26 on or after February 24, 1996, stating the inspection certificate number for the
27 inspection conducted for the current tenancy as required under § 6–815(c) of the
28 Environment Article; or

29 B. On or after February 24, 2006, stating the inspection
30 certificate number for the inspection conducted for the current tenancy as required
31 under § 6–815(c), § 6–817(b), or § 6–819(f) of the Environment Article; or

32 2. Stating that the owner is unable to provide an
33 inspection certificate number because:

1 A. The owner has requested that the tenant allow the
2 owner access to the property to perform the work required under Title 6, Subtitle 8 of
3 the Environment Article;

4 B. The owner has offered to relocate the tenant in order
5 to allow the owner to perform work if the work will disturb the paint on the interior
6 surfaces of the property and to pay the reasonable expenses the tenant would incur
7 directly related to the relocation; and

8 C. The tenant has refused to allow access to the owner or
9 refused to vacate the property in order for the owner to perform the required work.

10 (2) For the purpose of the court's determination under subsection (c) of
11 this section the landlord shall also specify the amount of rent due for each rental
12 period under the lease, the day that the rent is due for each rental period, and any late
13 fees for overdue rent payments.

14 (3) The District Court shall issue its summons[, directed to any
15 constable or sheriff of the county entitled to serve process, and ordering the constable
16 or sheriff to notify] ~~DIRECTING~~ the tenant, assignee, or subtenant [by first-class
17 mail]:

18 (i) To appear before the District Court at the trial to be held on
19 the [fifth] TENTH day after the filing of the complaint; and

20 (ii) To answer the landlord's complaint to show cause why the
21 demand of the landlord should not be granted.

22 (4) (i) The [constable or sheriff shall proceed to serve the summons
23 upon the tenant, assignee, or subtenant or their known or authorized agent as follows:

24 1. If personal service is requested and any of the persons
25 whom the sheriff shall serve is found on the property, the sheriff shall serve any such
26 persons; or] **LANDLORD SHALL SEND A COPY OF THE SUMMONS TO THE TENANT,
27 ASSIGNEE, OR SUBTENANT BY FIRST-CLASS MAIL WITHIN 3 DAYS AFTER THE
28 ISSUANCE OF THE SUMMONS.**

29 **(II) 1. IN ADDITION TO MAILING A COPY OF THE
30 SUMMONS UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, AT LEAST 3 DAYS
31 BEFORE THE SCHEDULED TRIAL, THE LANDLORD SHALL EFFECT PERSONAL
32 SERVICE AS THE MARYLAND RULES PROVIDE ON THE TENANT, ASSIGNEE, OR
33 SUBTENANT WITH NOTICE OF THE TRIAL DATE.**

34 2. If personal service is [requested and none of the
35 persons whom the sheriff is directed to serve shall be found on the property and, in all
36 cases where personal service is not requested, the constable or sheriff] **NOT**

1 POSSIBLE, THE LANDLORD shall affix an attested copy of the summons
2 conspicuously upon the property.

3 **3. THE LANDLORD SHALL FILE AN AFFIDAVIT WITH**
4 **THE COURT BEFORE THE TRIAL INDICATING HOW SERVICE WAS MADE UNDER**
5 **THIS SUBPARAGRAPH.**

6 **4. IF THE LANDLORD IS UNABLE TO EFFECT SERVICE**
7 **UNDER THIS SUBPARAGRAPH, THE COURT SHALL POSTPONE THE TRIAL UNTIL**
8 **SERVICE IS MADE.**

9 **[(ii)] (iii)** The **PERSONAL SERVICE OF THE SUMMONS OR**
10 **THE** affixing of the summons upon the property after due notification to the tenant,
11 assignee, or subtenant by first-class mail shall conclusively be presumed to be a
12 sufficient service to all persons to support the entry of a default judgment for
13 possession of the premises, together with court costs, in favor of the landlord, but it
14 shall not be sufficient service to support a default judgment in favor of the landlord for
15 the amount of rent due.

16 (5) Notwithstanding the provisions of paragraphs (1) through (4) of
17 this subsection, in Wicomico County, in an action to repossess any premises under this
18 section, service of process on a tenant may be directed to any person authorized under
19 the Maryland Rules to serve process.

20 (6) (i) Notwithstanding the provisions of paragraphs (3) through
21 (5) of this subsection, if the landlord certifies to the court in the written complaint
22 required under paragraph (1) of this subsection that, to the best of the landlord's
23 knowledge, the tenant is deceased, intestate, and without next of kin, the District
24 Court shall issue its summons[, directed to any constable or sheriff of the county
25 entitled to serve process, and ordering the constable or sheriff to notify] **DIRECTING**
26 the occupant of the premises or the next of kin of the deceased tenant, if known[, by
27 personal service]:

28 1. To appear before the District Court at the trial to be
29 held on the **[fifth] TENTH** day after the filing of the complaint; and

30 2. To answer the landlord's complaint to show cause why
31 the demand of the landlord should not be granted.

32 (ii) **[1.** The constable or sheriff shall proceed to serve the
33 summons upon the occupant of the premises or the next of kin of the deceased tenant,
34 if known, as follows:

35 A. If any of the persons whom the sheriff is directed to
36 serve are found on the property or at another known address, the sheriff shall serve
37 any such persons; or

1 B. If none of the persons whom the sheriff is directed to
2 serve are found on the property or at another known address, the constable or sheriff]
3 **THE LANDLORD SHALL SEND A COPY OF THE SUMMONS TO THE OCCUPANT OF**
4 **THE PREMISES OR THE NEXT OF KIN OF THE DECEASED TENANT, IF KNOWN, BY**
5 **FIRST CLASS MAIL WITHIN 3 DAYS AFTER THE ISSUANCE OF THE SUMMONS.**

6 **(III) 1. IN ADDITION TO MAILING A COPY OF THE**
7 **SUMMONS UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH, AT LEAST 3 DAYS**
8 **BEFORE THE SCHEDULED TRIAL, THE LANDLORD SHALL EFFECT PERSONAL**
9 **SERVICE AS THE MARYLAND RULES PROVIDE ON THE OCCUPANT OF THE**
10 **PREMISES OR THE NEXT OF KIN OF THE DECEASED TENANT, IF KNOWN, WITH**
11 **NOTICE OF THE TRIAL DATE.**

12 **2. IF PERSONAL SERVICE IS NOT POSSIBLE, THE**
13 **LANDLORD** shall affix an attested copy of the summons conspicuously upon the
14 property.

15 **3. THE LANDLORD SHALL FILE AN AFFIDAVIT WITH**
16 **THE COURT BEFORE THE TRIAL INDICATING HOW SERVICE WAS MADE UNDER**
17 **THIS SUBPARAGRAPH.**

18 **4. IF THE LANDLORD IS UNABLE TO EFFECT SERVICE**
19 **UNDER THIS SUBPARAGRAPH, THE COURT SHALL POSTPONE THE TRIAL UNTIL**
20 **SERVICE IS MADE.**

21 **[2.] (IV) The PERSONAL SERVICE OF THE SUMMONS OR**
22 **THE** affixing of the summons upon the property shall conclusively be presumed to be a
23 sufficient service to all persons to support the entry of a default judgment for
24 possession of the premises, together with court costs, in favor of the landlord, but it
25 shall not be sufficient service to support a default judgment in favor of the landlord for
26 the amount of rent due.

27 (c) (1) If, at the trial [on the fifth day indicated in subsection (b) of this
28 section], the court is satisfied that the interests of justice will be better served by an
29 adjournment to enable either party to procure their necessary witnesses, the court
30 may adjourn the trial for a period not exceeding 1 day, except with the consent of all
31 parties, the trial may be adjourned for a longer period of time.

32 (2) (i) The information required under subsection (b)(1)(vi) of this
33 section may not be an issue of fact in a trial under this section.

34 (ii) If, when the trial occurs, it appears to the satisfaction of the
35 court, that the rent, or any part of the rent and late fees are actually due and unpaid,
36 the court shall determine the amount of rent and late fees due as of the date the

1 complaint was filed, if the trial occurs within the time specified by subsection [(b)(3)]
2 (B) of this section.

3 (iii) 1. If the trial does not occur within the time specified in
4 subsection [(b)(3)(i)] (B) of this section and the tenant has not become current since
5 the filing of the complaint, the court, if the complaint so requests, shall enter a
6 judgment in favor of the landlord for possession of the premises and determine the
7 rent and late fees due as of the trial date.

8 2. The determination of rent and late fees shall include
9 the following:

10 A. Rent claimed in the complaint;

11 B. Rent accruing after the date of the filing of the
12 complaint;

13 C. Late fees accruing in or prior to the month in which
14 the complaint was filed; and

15 D. Credit for payments of rent and late fees made by the
16 tenant after the complaint was filed.

17 (iv) In the case of a residential tenancy, the court may also give
18 judgment in favor of the landlord for the amount of rent and late fees determined to be
19 due together with costs of the suit if the court finds that the residential tenant was
20 personally served with a summons.

21 (v) In the case of a nonresidential tenancy, if the court finds
22 that there was such service of process or submission to the jurisdiction of the court as
23 would support a judgment in contract or tort, the court may also give judgment in
24 favor of the landlord for:

25 1. The amount of rent and late fees determined to be
26 due;

27 2. Costs of the suit; and

28 3. Reasonable attorney's fees, if the lease agreement
29 authorizes the landlord to recover attorney's fees.

30 (vi) A nonresidential tenant who was not personally served with
31 a summons shall not be subject to personal jurisdiction of the court if that tenant
32 asserts that the appearance is for the purpose of defending an in rem action prior to
33 the time that evidence is taken by the court.

1 (3) The court, when entering the judgment, shall also order that
2 possession of the premises be given to the landlord, or the landlord's agent or attorney,
3 within 4 days after the trial.

4 (4) The court may, upon presentation of a certificate signed by a
5 physician certifying that surrender of the premises within this 4-day period would
6 endanger the health or life of the tenant or any other occupant of the premises, extend
7 the time for surrender of the premises as justice may require but not more than 15
8 days after the trial.

9 (5) However, if the tenant, or someone for the tenant, at the trial, or
10 adjournment of the trial, tenders to the landlord the rent and late fees determined by
11 the court to be due and unpaid, together with the costs of the suit, the complaint
12 against the tenant shall be entered as being satisfied.

13 8-402.

14 (b) (1) (i) Where any tenancy is for any definite term or at will, and
15 the landlord shall desire to repossess the property after the expiration of the term for
16 which it was leased [and], **THE LANDLORD** shall give notice in writing one month
17 before the expiration of the term or determination of the will to the tenant or to the
18 person actually in possession of the property to remove from the property at the end of
19 the term[, and if].

20 **(II) IF** the tenant or person in actual possession [shall refuse]
21 **REFUSES** to comply **WITH THE NOTICE PROVIDED UNDER SUBPARAGRAPH (I) OF**
22 **THIS PARAGRAPH**, the landlord may make complaint in writing to the District Court
23 of the county where the property is located.

24 **[(ii) (III) [1.]** The court shall issue a summons [directed to
25 any constable or sheriff of the county entitled to serve process, ordering the constable
26 or sheriff to notify] **DIRECTING** the tenant, assignee, or subtenant to appear on a day
27 stated in the summons before the court to show cause why restitution should not be
28 made to the landlord.

29 **(IV) THE LANDLORD SHALL SEND A COPY OF THE SUMMONS**
30 **TO THE TENANT, ASSIGNEE, OR SUBTENANT BY FIRST-CLASS MAIL WITHIN 3**
31 **DAYS AFTER THE ISSUANCE OF THE SUMMONS.**

32 **(V) 1. IN ADDITION TO MAILING A COPY OF THE**
33 **SUMMONS UNDER SUBPARAGRAPH (IV) OF THIS PARAGRAPH, AT LEAST 3 DAYS**
34 **BEFORE THE SCHEDULED TRIAL, THE LANDLORD SHALL EFFECT PERSONAL**
35 **SERVICE AS THE MARYLAND RULES PROVIDE ON THE TENANT, ASSIGNEE, OR**
36 **SUBTENANT WITH NOTICE OF THE TRIAL DATE.**

1 2. [The constable or sheriff shall serve the summons on
2 the tenant, assignee, or subtenant on the property, or on the known or authorized
3 agent of the tenant, assignee, or subtenant.

4 3. If, for any reason those persons cannot be found, the
5 constable or sheriff] **IF PERSONAL SERVICE IS NOT POSSIBLE, THE LANDLORD**
6 shall affix an attested copy of the summons conspicuously on the property.

7 **3. THE LANDLORD SHALL FILE AN AFFIDAVIT WITH**
8 **THE COURT BEFORE THE TRIAL INDICATING HOW SERVICE WAS MADE UNDER**
9 **THIS SUBPARAGRAPH.**

10 4. **IF THE LANDLORD IS UNABLE TO EFFECT SERVICE**
11 **UNDER THIS SUBPARAGRAPH, THE COURT SHALL POSTPONE THE TRIAL UNTIL**
12 **SERVICE IS MADE.**

13 [4.] (VI) [After notice to the tenant, assignee, or subtenant by
14 first-class mail,] **PERSONAL SERVICE OR** the affixing of the summons on the
15 property shall be conclusively presumed to be a sufficient service to support
16 restitution.

17 [(iii)] (VII) Upon the failure of either of the parties to appear
18 before the court on the day stated in the summons, the court may continue the case to
19 a day not less than six nor more than ten days after the day first stated and notify the
20 parties of the continuance.

21 (2) (i) If upon hearing the parties, or in case the tenant or person
22 in possession shall neglect to appear after the summons and continuance the court
23 shall find that the landlord had been in possession of the leased property, that the said
24 tenancy is fully ended and expired, that due notice to quit as aforesaid had been given
25 to the tenant or person in possession and that the tenant or person in possession had
26 refused so to do, the court shall thereupon give judgment for the restitution of the
27 possession of said premises and shall forthwith issue its warrant to the sheriff or a
28 constable in the respective counties commanding the tenant or person in possession
29 forthwith to deliver to the landlord possession thereof in as full and ample manner as
30 the landlord was possessed of the same at the time when the tenancy was made, and
31 shall give judgment for costs against the tenant or person in possession so holding
32 over.

33 (ii) Either party shall have the right to appeal therefrom to the
34 circuit court for the county within ten days from the judgment.

35 (iii) If the tenant appeals and files with the District Court an
36 affidavit that the appeal is not taken for delay, and also a good and sufficient bond
37 with one or more securities conditioned that the tenant will prosecute the appeal with
38 effect and well and truly pay all rent in arrears and all costs in the case before the

1 District Court and in the appellate court and all loss or damage which the landlord
2 may suffer by reason of the tenant's holding over, including the value of the premises
3 during the time the tenant shall so hold over, then the tenant or person in possession
4 of said premises may retain possession thereof until the determination of said appeal.

5 (iv) The appellate court shall, upon application of either party,
6 set a day for the hearing of the appeal, not less than five nor more than 15 days after
7 the application, and notice for the order for a hearing shall be served on the opposite
8 party or that party's counsel at least 5 days before the hearing.

9 (v) If the judgment of the District Court shall be in favor of the
10 landlord, a warrant shall be issued by the appellate court to the sheriff, who shall
11 proceed forthwith to execute the warrant.

12 (3) (i) The provisions of this subsection shall apply to all cases of
13 tenancies at the expiration of a stated term, tenancies from year to year, tenancies of
14 the month and by the week. In case of tenancies from year to year (including tobacco
15 farm tenancies), notice in writing shall be given three months before the expiration of
16 the current year of the tenancy, except that in case of all other farm tenancies, the
17 notice shall be given six months before the expiration of the current year of the
18 tenancy; and in monthly or weekly tenancies, a notice in writing of one month or one
19 week, as the case may be, shall be so given.

20 (ii) This paragraph (3), so far as it relates to notices, does not
21 apply in Baltimore City.

22 (iii) In Montgomery County, except in the case of single family
23 dwellings, the notice by the landlord shall be two months in the case of residential
24 tenancies with a term of at least month to month but less than from year to year.

25 (4) When the tenant shall give notice by parol to the landlord or to the
26 landlord's agent or representatives, at least one month before the expiration of the
27 lease or tenancy in all cases except in cases of tenancies from year to year, and at least
28 three months' notice in all cases of tenancy from year to year (except in all cases of
29 farm tenancy, the notice shall be six months), of the intention of the tenant to remove
30 at the end of that year and to surrender possession of the property at that time, and
31 the landlord, the landlord's agent, or representative shall prove the notice from the
32 tenant by competent testimony, it shall not be necessary for the landlord, the
33 landlord's agent or representative to provide a written notice to the tenant, but the
34 proof of such notice from the tenant as aforesaid shall entitle the landlord to recover
35 possession of the property hereunder. This paragraph shall not apply in Baltimore
36 City.

37 (5) Acceptance of any payment after notice but before eviction shall
38 not operate as a waiver of any notice to quit, notice of intent to vacate or any judgment
39 for possession unless the parties specifically otherwise agree in writing. Any payment
40 accepted shall be first applied to the rent or the equivalent of rent apportioned to the

1 date that the landlord actually recovers possession of the premises, then to court costs,
2 including court awarded damages and legal fees and then to any loss of rent caused by
3 the holdover. Any payment which is accepted in excess of the foregoing shall not bear
4 interest but will be returned to the tenant in the same manner as security deposits as
5 defined under § 8–203 of this title but shall not be subject to the penalties of that
6 section.

7 8–402.1.

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

12 1. The tenant breaches the lease;

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

16 B. The breach of the lease involves behavior by a tenant
17 or a person who is on the property with the tenant's consent, which demonstrates a
18 clear and imminent danger of the tenant or person doing serious harm to themselves,
19 other tenants, the landlord, the landlord's property or representatives, or any other
20 person on the property and the landlord has given the tenant or person in possession
21 14 days' written notice that the tenant or person in possession is in violation of the
22 lease and the landlord desires to repossess the leased premises; and

23 3. The tenant or person in actual possession of the
24 premises refuses to comply.

25 (ii) The court shall **ISSUE A summons DIRECTING** immediately
26 the tenant or person in possession to appear before the court on a day stated in the
27 summons to show cause, if any, why restitution of the possession of the leased
28 premises should not be made to the landlord.

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

32 **(III) THE LANDLORD SHALL SEND A COPY OF THE SUMMONS**
33 **TO THE TENANT OR PERSON IN POSSESSION BY FIRST-CLASS MAIL WITHIN 3**
34 **DAYS AFTER THE ISSUANCE OF THE SUMMONS.**

35 **(IV) 1. IN ADDITION TO MAILING A COPY OF THE**
36 **SUMMONS UNDER SUBPARAGRAPH (III) OF THIS PARAGRAPH, AT LEAST 3 DAYS**

1 BEFORE THE SCHEDULED TRIAL, THE LANDLORD SHALL EFFECT PERSONAL
2 SERVICE AS THE MARYLAND RULES PROVIDE ON THE TENANT OR PERSON IN
3 POSSESSION WITH NOTICE OF THE TRIAL DATE.

4 2. IF PERSONAL SERVICE IS NOT POSSIBLE, THE
5 LANDLORD SHALL AFFIX AN ATTESTED COPY OF THE SUMMONS
6 CONSPICUOUSLY ON THE PROPERTY.

7 3. THE LANDLORD SHALL FILE AN AFFIDAVIT WITH
8 THE COURT BEFORE THE TRIAL INDICATING HOW SERVICE WAS MADE UNDER
9 THIS SUBPARAGRAPH.

10 4. IF THE LANDLORD IS UNABLE TO EFFECT SERVICE
11 UNDER THIS SUBPARAGRAPH, THE COURT SHALL POSTPONE THE TRIAL UNTIL
12 SERVICE IS MADE.

13 [(ii)] (v) [After notice is sent to the tenant or person in
14 possession by first-class mail,] PERSONAL SERVICE OR the affixing of the summons
15 on the property shall be conclusively presumed to be a sufficient service to support
16 restitution.

17 [(3)] (2) If either of the parties fails to appear before the court on the
18 day stated in the summons, the court may continue the case for not less than six nor
19 more than 10 days and notify the parties of the continuance.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2013.