

Department of Legislative Services  
Maryland General Assembly  
2018 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 254 (Chair, Environment and Transportation Committee)(By  
Request - Departmental - Assessments and Taxation)  
Environment and Transportation

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**Real Property - Ground Leases - Unlawful Collections**

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This departmental bill prohibits a ground lease holder from violating specified provisions of Title 8 of the Real Property Article or *any other law* when collecting or attempting to collect specified payments. It authorizes the State Department of Assessments and Taxation (SDAT) to strike from its records *any* ground lease registration submitted by a ground lease holder if SDAT determines that the ground lease holder has collected or attempted to collect payments in violation of any law. The bill establishes various procedures and notice requirements, and it authorizes SDAT to adopt specified regulations. **The bill takes effect July 1, 2018.**

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**Fiscal Summary**

**State Effect:** SDAT can handle the bill's requirements with existing resources. Revenues are not affected.

**Local Effect:** The bill is not anticipated to materially impact local government finances or operations.

**Small Business Effect:** SDAT has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services (DLS) disagrees with this assessment as discussed below.

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**Analysis**

**Bill Summary:** If at any point SDAT strikes a registration, the ground lease must be treated as not registered, effectively prohibiting a ground lease holder from collecting

payments or filing an action for possession for nonpayment of ground rent. SDAT may not charge a fee to carry out its obligations under the bill and may not refund any fee paid for the initial registration of a ground lease stricken under the bill. Generally, any notice must be sent by certified mail, return receipt requested, and by first-class mail.

### *Required Forms*

SDAT is required to design and make available forms that must be used by a leasehold tenant or an agent of a leasehold tenant and a ground lease holder to report or respond to an alleged violation. The forms must require that the affidavits submitted be sworn to under penalty of perjury.

### *Reporting a Violation*

A leasehold tenant or an agent of a leasehold tenant who believes that a ground lease holder has violated any law in collecting or attempting to collect specified payments may submit to SDAT an affidavit and any supporting documents alleging a violation.

### *Required Notice*

If SDAT receives a submission, SDAT must send a notice to the ground lease holder that:

- includes a copy of the affidavit and any supporting documents;
- states that SDAT has received an allegation that the ground lease holder has violated the bill's requirements; and
- advises that any ground lease registration submitted to SDAT by the ground lease holder may be stricken from SDAT's records unless, within 45 days after the date on the notice, the ground lease holder submits a counteraffidavit asserting that the collection or attempted collection did not violate any law.

### *Response*

A ground lease holder may submit a counteraffidavit and supporting documents in response to a notice sent by SDAT.

### *Determination*

If SDAT has not received a counteraffidavit within 45 days, SDAT may strike from its records any ground lease registration submitted by a ground lease holder if SDAT reasonably believes that the ground lease holder has violated any law. If SDAT strikes a ground lease registration, SDAT must promptly notify the ground lease holder and any person who submitted an affidavit.

If SDAT receives a counteraffidavit, SDAT must review all submitted affidavits and supporting documents to determine whether the ground lease holder has violated any law. If SDAT reasonably believes that the ground lease holder has violated any law, SDAT must send to all persons who submitted affidavits a final notice stating that (1) SDAT reasonably believes that the ground lease holder has violated Title 8 of the Real Property Article or any other law and (2) SDAT may strike any ground rent registration submitted by the ground lease holder unless, within 45 days after the date on the final notice, the ground lease holder files an action for judicial determination of whether the ground lease holder has violated any law.

If, after reviewing the affidavits and supporting documents, SDAT reasonably believes that the ground lease holder *did not* violate Title 8 of the Real Property Article or any other law, SDAT must send to all persons who submitted affidavits a final notice stating that (1) SDAT reasonably believes that the ground lease holder has not violated any law and (2) SDAT will take no further action unless, within 45 days after the date on the final notice, *the leasehold tenant* or an agent of a leasehold tenant files an action for judicial determination of whether the ground lease holder has violated any law.

### *Judicial Review*

An action filed following receipt of a final notice from SDAT may be filed in the circuit court for the county in which the person resides or, if the person does not reside in Maryland, in the circuit court for the county in which the property subject to the ground lease is located. The parties must include each person who was sent a final notice, and SDAT may not be joined as a party. Service of process must be made by certified mail, return receipt requested, at the last known address of each party.

A person who files an action must also mail a copy of the complaint to SDAT. If SDAT does not receive a copy of a complaint within a specified time period, SDAT must take action in accordance with its final determination.

If a court determines that a ground lease holder has violated Title 8 of the Real Property Article, or any other law, the court must enter an order requiring SDAT to strike from its records *any or all* ground lease registrations submitted by the ground lease holder. If a court determines that a ground lease holder has not violated any law, the court must enter an order finding that the collection or attempted collection was not unlawful.

The prevailing party must provide a copy of the court order to SDAT. If the leasehold tenant prevails, SDAT must promptly strike the registration of the ground lease or leases, and note that the ground lease registration was stricken in accordance with a court order. If the ground lease holder prevails, SDAT is prohibited from striking the ground lease registration.

**Current Law/Background:** Ground leases have been a form of property holding in Maryland since colonial times. A ground lease creates a leasehold estate in the grantee that is personal – not real – property. The grantor retains a reversion in the ground lease property and fee simple title to the land. Ground leases generally have a 99-year term and are renewable perpetually. Ground rent is paid to the grantor (the ground lease holder) for the use of the property for the term of the lease in annual or semiannual installments. Under a typical ground lease contract, the tenant agrees to pay all fees, taxes, and other costs associated with ownership of the property.

### *2015 Ground Lease Legislation*

Chapter 428 of 2015 substantially reorganized the law related to ground leases applicable to residential property and made multiple additions. It repealed a provision of law that made the establishment of a lien the remedy for nonpayment of a ground rent on residential property and reinstated, with modifications, an action for possession as the remedy, similar to the posture of the law before 2007. It prohibited the holder of a ground lease from bringing an action against a tenant unless the ground lease is registered, and it prohibited the use of self-help to take possession of residential property. Chapter 428 also added new requirements for notice and service of process on a leasehold tenant, and it allowed for a holder of a security interest in a property subject to a ground lease to apply to redeem the reversion. Finally, in an ejectment action, Chapter 428 specified and placed limits on the expenses for which a ground lease holder may be reimbursed, and it clarified that recovery of a maximum of three years past-due ground rent is calculated from the date a specified notice was sent.

### *Registration of a Ground Lease*

Chapter 290 of 2007 established the registry of ground leases maintained by SDAT. If a ground lease is not registered, the ground lease holder may not collect any ground rent payments due under the ground lease or bring specified legal actions against the leasehold tenant. A ground lease holder registers a ground lease with SDAT by submitting a registration on a form that includes specified information. The registration fee is \$10 for the first ground lease and \$5 for each additional ground lease, per ground lease holder.

### *Redemption of a Ground Lease*

Generally, with specified exceptions, any reversion in a ground lease for longer than 15 years may be redeemed at any time, at the option of the leasehold tenant, after 30 days' written notice sent via certified mail, return receipt requested, and by first-class mail to the last known address of the ground lease holder. Payment to the ground lease holder is calculated based on a schedule provided in statute.

State law does not mandate redemption of a ground lease, but it does require notice to be provided to the leasehold tenant about the ability to redeem a ground lease (1) in each billing statement to collect payment under the ground lease; (2) when a holder of a ground lease transfers ownership of the ground lease; and (3) in a contract for the sale of property subject to a ground lease.

### *Failure to Pay Rent*

Generally, when a leasehold tenant under a ground lease fails to pay rent, the ground lease holder may bring an action for possession of the property. Ground lease holders are required to send specified notices of default at least 60 days and again at least 30 days before filing an action for possession.

### *Remaining Ground Leases in Maryland*

As of January 2018, there were 91,409 ground leases registered with SDAT. According to the registry maintained by SDAT, ground leases are concentrated mostly in Baltimore City (61,669), with other properties located in Anne Arundel (3,701), Baltimore (25,581), Carroll (11), Cecil (1), Charles (1), Harford (173), Howard (59), Montgomery (5), Prince George's (44), and Worcester (164) counties.

**Small Business Effect:** DLS advises that the bill may have a meaningful impact on small businesses that are holders of ground leases who may have their registrations stricken from SDAT's records. To the extent their ground lease registrations are stricken, these holders of ground leases would be unable to collect ground rents or file an action for possession for nonpayment of ground rent.

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## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts); State Department of Assessments and Taxation; Baltimore City; Anne Arundel, Baltimore, Carroll, Charles, Montgomery, and Prince George's counties; Department of Legislative Services

**Fiscal Note History:** First Reader - February 2, 2018  
md/kdm

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# ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL:     **Real Property – Ground Leases – Unlawful Collections**

BILL NUMBER:     **HB254**

PREPARED BY:     **Corbett Webb**, Legislative Officer, (410) 767-1142

## PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

**OR**

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

## PART B. ECONOMIC IMPACT ANALYSIS