
To: Judicial Proceedings Committee (Senate)

From: Legislative Committee of the Real Property Section

Date: March 6, 2024 [Hearing Date March 7, 2024]

Subject: **SB 901 – Ground Leases – Application for Redemption – Procedures**

Position: **Support**

The Real Property Section of the Maryland State Bar Association (MSBA) **supports Senate Bill 901 – Ground Leases – Application for Redemption – Procedures.**

This bill, if enacted, would make it possible for purchasers of real property subject to an unregistered ground rent to redeem it through the statutory redemption process administered by the State Department of Assessments and Taxation (SDAT). The redemption of ground rents through SDAT has existed for many years and has never been challenged. For registered ground rents, the current statutory scheme works well. But typically, if the ground rent is registered, it is easier to simply contact the ground rent holder and arrange to redeem it directly with the ground rent holder. When the ground rent is registered, the only time one would need to use the statutory process and involve SDAT would be when the registered ground rent holder is unresponsive to the leaseholder’s request to redeem.

For *unregistered* ground rents, however, the system is broken. This legislation is designed to fix it. Because there is no way to know who holds the ground rent if it is unregistered, the only way for the leaseholder to redeem the ground rent is through SDAT. But under current law the leaseholder must state under oath that they sent a notice to the ground rent holder and that they have not paid ground rent in three years. In addition, to depositing the redemption price, the leaseholder must deposit three years’ worth of back ground rent.

Most ground rents are for property located in Baltimore City, but they exist in other jurisdictions around the State as well. Over the last several years there have been many legislative efforts to deal with what is often referred to as the “pesky ground rent.” The legislative changes have included: prohibiting a ground rent holder from collecting ground rent if the ground is unregistered; prohibiting the ground rent holder from seeking to collect back ground rent from a purchaser if the ground rent is not registered at the time of purchase; and, prohibiting a ground rent holder from claiming the ground rent is registered unless the registration is posted for the property on the SDAT’s publicly available website.

But the redemption process has not kept up with the changes. The result is that one who purchases a residential leasehold subject to an unregistered ground rent cannot redeem it. This is because there is no one to contact to redeem it and there is no one to send the notice required by SDAT. In addition, the leaseholder is required to state that they have not paid ground rent for three years. This means they would need to wait three years before making the application. But often people sell the leasehold before three years, and thus, the process must begin again.

And under current law, the leaseholder of an unregistered ground rent is required to deposit three years' worth of back ground rent. Why would the Code require three years' worth of ground rent in the redemption process when the ground rent holder cannot collect it given the ground rent is not registered *and* cannot collect it from a purchaser?

And why would the redemption process require giving notice when there is no one to give notice to? It is a "catch 22". The very reason SDAT needs to be involved in the redemption process is that there is no other way to redeem the ground rent. But SDAT requires that notice be given to such unlocatable person or entity. And why would a purchase need to wait three years to redeem the ground rent?

This is a real problem that needs to be addressed. Increasingly, institutional lenders are being told that Fannie Mae will not accept a leasehold property unless: "The term of the leasehold estate runs for at least five years beyond the maturity date of the loan, unless fee simple with vest at an earlier date in the borrower." Fannie Mae will not, however, accept the automatic renewal in perpetuity provision in our residential ground rent leases so if the remaining original 99-year term is many times less than 35 years (5 years past the 30 year maturity term). As a result, Fannie Mae will not accept the loan. And as time passes, the number of such leaseholds will continue to grow unless we fix the problem now.

SB 901 was intended to be a cross file with HB 1225 Ground Leases – Application for Redemption – Procedures, but there were two changes to HB 1225. In the first, on page 2, lines 7 and 8, the additional language "by certified mail, return receipt requested, and" was stricken and "with a certificate of mailing" was added between "by first-class mail" and "to the last known address" Thus, the line on SB 901 should read:

7 to the ground lease holder[. ~~Notice shall be given by certified mail, return receipt~~
8 ~~requested, and~~] by first-class mail WITH A CERTIFICATE OF MAILING to the last known address of the ground lease holder . . .

The second change is on page 3, line 16, where the second "PAYMENT OF" was not included as it appears to be redundant. Thus, line on SB 901 should read:

16 (ii) Payment of a \$20 fee, ~~PAYMENT OF THE REDEMPTION AMOUNT~~, . . .

For these reasons, the Real Property Section of the MSBA **supports Senate Bill 901 and asks for a favorable report**. Thank you for your consideration.