

SB 901 Fav.pdf

Uploaded by: Christopher West

Position: FAV

CHRIS WEST
Legislative District 42
Baltimore and Carroll Counties

Judicial Proceedings Committee



Annapolis Office
James Senate Office Building
11 Bladen Street, Room 322
Annapolis, Maryland 21401
410-841-3648 · 301-858-3648
800-492-7122 Ext. 3648
Chris.West@senate.state.md.us

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

March 7th, 2024

The Maryland State Senate Judicial Proceedings Committee
The Honorable William C. Smith, Jr.
2 East Miller Senate Building
Annapolis, Maryland 21401

Re: Senate Bill 901: *Ground Leases – Application for Redemption – Procedures*

Dear Chairman Smith and members of the Committee,

Ground rents were a 19th Century way of making it easier for a person to buy residential property. The person could pay a lower price for the home but would have to pay a semi-annual ground rent for an indefinite period of time, thus providing the original owner with cash up front as well as semi-annual income for the sale of the property. Today, we finance home purchases through bank loans secured by mortgages and deeds of trust, a far better system than ground rents. But lots of ground rents still are in existence, mostly on row houses in Baltimore City.

In recent years, the General Assembly has enacted legislation which has transformed the State's system of ground rents. As a result, Subtitle 7 of Title 8 of the Real Property Article requires all ground lease holders to register their ground leases with the State Department of Assessments and Taxation, and Section 8-707 specifically provides that if a ground lease is not registered, the holder of the ground lease may not collect any ground rent payments or bring an action against the leasehold tenant to enforce any rights the ground lease holder may have under the ground lease.

Notwithstanding these recent reforms, there are still a lot of outstanding unregistered ground rents, and in many of these cases, the current leasehold tenant (the occupant of the residence) has no idea who is the current holder of the ground lease.

Subtitle 8 of Title 8 of the Real Property Article mostly deals with the redemptions of ground rents. Over the years, the General Assembly has passed various measures to make it easier for leasehold tenants under the ground rent system to pay off (or redeem) their ground rents and thus get out from under the semi-annual payment obligation. These measures are codified in Title 8.

Generally speaking, the redemption system works well. For remaining unregistered ground rents,

however, the system is flawed. Senate Bill 901 would make it possible for purchasers of real property subject to an unregistered ground rent, to redeem it. Because there is no way to know who holds the ground rent if it is unregistered, the only way for the leasehold tenant to redeem the ground rent is through an interaction with the State Department of Assessments and Taxation. But under current law, in order to avail himself of the SDAT redemption process, the leasehold tenant must state under oath that the leasehold tenant sent a notice to the ground rent holder. If the leasehold tenant doesn't know who owns the ground rent, such a notice is not possible.

There is another problem with the current statute. It requires the leasehold tenant to affirm that the ground rent hasn't been paid in three years and further requires the leasehold tenant to deposit three years worth of unpaid rent with SDAT. So this sets up a mandatory three year delay in redemptions. A further problem is that under the ground rent registration system, a holder of an *unregistered* ground rent is not allowed to collect rent! So the three years worth of rent deposited with SDAT cannot be paid to the unregistered holder of the ground rent.

So how does SB 901 fix these problems. It eliminates the required notice by the leasehold tenant to the holder of an unregistered ground rent and eliminates the required payment of three years back rent to SDAT by the leasehold tenant.

I appreciate the Committee's consideration of Senate Bill 901 and will be happy to answer any questions the Committee may have.

MLTA SB 901 Written Testimony--Support.pdf

Uploaded by: Mark Glazer

Position: FAV



1783 Forest Drive, Suite 305, Annapolis, MD 21401 | (443) 620-4408 ph. | (443) 458-9437 fax

To: Members of the Judicial Proceedings Committee
From: MLTA Legislative Committee
Date: March 6, 2024 [Hearing date: March 7, 2024]
Subject: **SB 901** – Ground Leases – Application for Redemption - Procedures
Position: **Favorable**

The Maryland Land Title Association (MLTA) asks that you return a **favorable recommendation for 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. Finally, it is extremely difficult for our members to help consumers redeem ground rents under the current statutory scheme when the ground rent is unregistered.

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.

For these reasons, the Maryland Land Title Association **supports Senate Bill 901 and asks for a favorable report.** Thank you for your consideration.

SB 901 [Support 2024].pdf

Uploaded by: William O'Connell

Position: FWA

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.