

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 321

(Senator Conway, *et al.*)

Judicial Proceedings

Environmental Matters

Real Property - Ground Rents - Reimbursement for Costs and Expenses

This bill provides that a holder of a “ground rent” is entitled to reimbursement for collecting past due ground rent under specified circumstances.

Fiscal Summary

State Effect: The bill would not directly affect governmental operations or finances.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: Under the bill, a “ground rent” is a residential lease or sublease in effect on or after October 1, 2003 that has an initial term of 99 years renewable forever and creates a leasehold estate subject to the payment of an annual lease amount. A holder of a ground rent that is at least six months in arrears is entitled to reimbursement for expenses, up to \$500, incurred in collecting the past due ground rent and in complying with the required notice provision for ejectment actions, including: (1) title abstract and examination fees; (2) judgment report fees; (3) photocopying and postage fees; and (4) attorney’s fees.

Upon filing a complaint for ejectment, the holder is entitled to reasonable preparation and filing expenses incurred, including: (1) filing fees and court costs; (2) expenses incurred for service of process; (3) additional fees for a title abstract and examination, up to \$300;

(4) attorney's fees, up to \$700; and (5) taxes, including interest and penalties paid by the plaintiff or holder.

In order to be eligible for reimbursement under the bill, the holder must give notice to the tenant of the amount of the past due ground rent. The notice must be sent by first class mail to the tenant's last known address and must state that the holder will take action to repossess the property if the past due ground rent is not paid within 30 days.

The bill increases, from 30 to 45 days, the period for giving notice to a tenant by certified mail before bringing an ejectment action. The bill requires that notice also be given by first class mail to the title agent or attorney listed on the deed to the property or the intake sheet recorded with the deed.

Current Law: For property subject to a ground lease, a landlord may bring an action for possession of the property 30 days after sending a bill for the ground rent by certified mail return receipt requested, to the tenant's last known address when: (1) at least six months ground rent is in arrears; and (2) the landlord has the right to reenter for nonpayment of the rent. If the tenant cannot be personally served or there is no tenant in actual possession of the property, service may be made by posting notice as prescribed under the Maryland Rules.

Before entry of a judgment, the landlord must give written notice of the pending entry to each mortgagee of the ground lease who has recorded in the land records a timely request for notice of a judgment. The landlord must mail the notice by certified mail return receipt requested to the mortgagee. If the notice is not given, a judgment in favor of the landlord does not impair the lien of the mortgagee.

Generally, property subject to a judgment is discharged from its ground lease, and the rights of all persons claiming under the lease are foreclosed unless, within six months after the judgment's execution, the tenant or other person claiming under the lease: (1) pays the ground rent, arrears, and all costs awarded against that person; and (2) commences a proceeding to obtain relief from the judgment. A mortgagee who is not in possession at any time within six months after the judgment awarding possession to the landlord may pay all the landlord's costs and damages and may perform all the covenants and agreements to be performed by the tenant.

In a suit for back rent on a ground lease, a landlord may demand or recover up to three years back rent. A person who is not in possession of property and who claims title and right to possession may bring an action against the person in possession of the property. The owner of the property is not prevented from bringing an action for possession by a

mortgage or deed of trust to secure a debt. If personal jurisdiction cannot be obtained over the defendant, the plaintiff may obtain a default judgment.

No provision: (1) specifically authorizes a landlord of property subject to a ground rent to claim costs in addition to the back due ground rent; or (2) limits the amount a landlord may claim as costs, including attorney's fees, in addition to the back rent. Similarly, no provision authorizes or limits costs recoverable in an action for possession.

Background: Generally, attorney's fees are not recoverable as damages in a civil action absent a requirement in statute, in a contractual agreement, or under the Maryland Rules. Under the Maryland Rules, a court must find that the conduct of a party in maintaining or defending a proceeding was in bad faith or without substantial justification before the court may require the offending party, the attorney advising the conduct, or both to pay the adverse party's costs, including reasonable attorney's fees.

Additional Information

Prior Introductions: Three similar bills were introduced during the 2002 session. SB 225 received an unfavorable report from the Senate Judicial Proceedings Committee. HB 975 passed third reading in the House. It was referred to, and heard in, the Judicial Proceedings Committee in the Senate, where no further action was taken. HB 176 received an unfavorable report from the House Economic Matters Committee.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division), Judiciary (Administrative Office of the Courts), Department of Legislative Services

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