

**Department of Legislative Services**  
Maryland General Assembly  
2003 Session

**FISCAL AND POLICY NOTE**

Senate Bill 439  
Judicial Proceedings

(Senator Giannetti)

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**Real Property - Ground Rents - Reimbursement for Expenses**

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This bill provides that 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; (4) attorney’s fees, up to \$1,000, unless the court approves a greater amount; and (5) taxes, including interest and penalties paid by the plaintiff or holder. Under the bill, a “ground rent” is a residential lease or sublease in effect on or after July 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.

The bill applies only prospectively and has no effect on a suit, action, or proceeding before the bill’s July 1, 2003 effective date.

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**Fiscal Summary**

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

**Local Effect:** None.

**Small Business Effect:** Minimal.

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## Analysis

**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 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.

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.

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## 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),  
Department of Legislative Services

**Fiscal Note History:** First Reader - March 3, 2003  
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