

---

By: **Delegate Dumais**

Introduced and read first time: January 29, 2004

Assigned to: Environmental Matters

---

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property - Wrongful Detainer - Married Individuals**

3 FOR the purpose of establishing that certain provisions of law relating to persons who  
4 hold possession of property without the right of possession do not apply to  
5 parties who are married to each other; and generally relating to the applicability  
6 of certain provisions of law that relate to wrongful possession of property.

7 BY repealing and reenacting, with amendments,  
8 Article - Real Property  
9 Section 8-402.4 and 14-109  
10 Annotated Code of Maryland  
11 (2003 Replacement Volume and 2003 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
13 MARYLAND, That the Laws of Maryland read as follows:

14 **Article - Real Property**

15 8-402.4.

16 (a) In this subtitle, "wrongful detainer" means to hold possession of a property  
17 without the right of possession.

18 (B) THIS SECTION DOES NOT APPLY TO CASES IN WHICH THE PERSON  
19 CLAIMING POSSESSION AND THE PERSON HOLDING POSSESSION OF PROPERTY ARE  
20 MARRIED TO EACH OTHER.

21 [(b)] (C) A person may not hold possession of property unless the person is  
22 entitled to possession of the property under the law.

23 [(c)] (D) (1) If a person other than a tenant holding over violates subsection  
24 [(b)] (C) of this section, a person claiming possession may make complaint in writing  
25 to the District Court of the county in which the property is located.

26 (2) On receipt of a complaint under paragraph (1) of this subsection, the  
27 court shall summons immediately the person in possession to appear before the court

1 on the day specified in the summons to show cause, if any, why restitution of the  
2 possession of the property to the person filing the complaint should not be made.

3 (3) If, for any reason, the person in actual possession cannot be found,  
4 the person authorized to serve process by the Maryland Rules shall affix an attested  
5 copy of the summons conspicuously on the property.

6 (4) If notice of the summons is sent to the person in possession by first  
7 class mail, the affixing of the summons in accordance with paragraph (3) of this  
8 subsection shall constitute sufficient service to support restitution of possession.

9 [(d)] (E) A counterclaim or cross-claim may not be filed in an action brought  
10 under this section.

11 [(e)] (F) (1) If the court determines that the complainant is legally entitled  
12 to possession, the court shall:

13 (i) Give judgment for restitution of the possession of the property  
14 to the complainant; and

15 (ii) Issue its warrant to the sheriff or constable commanding the  
16 sheriff or constable to deliver possession to the complainant.

17 (2) The court may also give judgment in favor of the complainant for  
18 damages due to the wrongful detainer and for court costs and attorney fees if:

19 (i) The complainant claimed damages in the complaint; and

20 (ii) The court finds that:

21 1. The person in actual possession was personally served  
22 with the summons; or

23 2. There was service of process or submission to the  
24 jurisdiction of the court as would support a judgment in contract or tort.

25 (3) A person in actual possession who is not personally served with a  
26 summons is not subject to the personal jurisdiction of the District Court if the person  
27 appears in response to the summons and prior to the time that evidence is taken by  
28 the court and asserts that the appearance is only for the purpose of defending an in  
29 rem action.

30 [(f)] (G) (1) Not later than 10 days from the entry of the judgment of the  
31 District Court, either party may appeal to the circuit court for the county in which the  
32 property is located.

33 (2) The person in actual possession of the property may retain possession  
34 until the determination of the appeal if the person:

35 (i) Files with the court an affidavit that the appeal is not taken for  
36 delay; and

- 1 (ii) 1. Files sufficient bond with one or more securities  
2 conditioned on diligent prosecution of the appeal; or
- 3 2. Pays to the complainant or into the appellate court:
- 4 A. The fair rental value of the property for the entire period  
5 of possession up to the date of judgment;
- 6 B. All court costs in the case;
- 7 C. All losses or damages other than the fair rental value of  
8 the property up to the day of judgment that the court determined to be due because of  
9 the detention of possession; and
- 10 D. The fair rental value of the property during the pendency  
11 of the appeal.

12 (3) On application of either party, the court shall set a hearing date for  
13 the appeal that is not less than 5 days or more than 15 days after the application for  
14 appeal.

15 (4) Notice of the order for a hearing shall be served on the parties or the  
16 parties' counsels not less than 5 days before the hearing.

17 [(g)] (H) If the judgment of the circuit court shall be in favor of the landlord, a  
18 warrant shall be issued by the court to the sheriff, who shall proceed immediately to  
19 execute the warrant.

20 14-109.

21 (a) THIS SECTION DOES NOT APPLY TO CASES IN WHICH THE GRANTOR AND  
22 GRANTEE ARE MARRIED TO EACH OTHER.

23 (B) The District Court has jurisdiction in any case in which it appears that the  
24 grantor has remained in possession of the property, in violation of a written  
25 agreement to deliver possession at a time stated in the agreement, after delivery of a  
26 deed for the property. If the grantor fails or refuses to surrender the premises in  
27 accordance with the agreement, the grantee may complain in writing to the District  
28 Court in the county where the premises are located. The court immediately shall  
29 issue a summons to the grantor commanding him to appear on the day named to show  
30 cause why possession of the premises in dispute should not be granted to the grantee.  
31 Notwithstanding any contrary provision of law or local law, if the court finds that the  
32 facts set forth in the complaint are true, it shall give judgment for immediate  
33 possession, and the court shall issue its warrant to the sheriff commanding him to  
34 deliver possession of the premises to the grantee.

35 [(b)] (C) Any person who feels aggrieved by a judgment under the provisions  
36 of this section, may appeal on giving notice within ten days after the judgment is  
37 given. If the appellant is the grantor, the notice of appeal shall be accompanied by an  
38 affidavit, that an appeal is not taken for delay, and by a bond. The bond shall be

1 conditioned that he will prosecute the appeal with effect, and will pay all costs in the  
2 case before the District Court and appellate court if judgment is in favor of the  
3 grantee, and all loss or damage which the grantee suffers by reason of the grantor's  
4 remaining in possession. The bond also shall provide that the grantor may retain  
5 possession of the premises until the determination of the appeal.

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
7 October 1, 2004.