

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 1404

(Delegate Haynes, *et al.*)

Environmental Matters

Real Property - Abatement of Nuisance Actions

This bill expands the relief the District Court may order in an action to abate a drug-related nuisance and authorizes the release of specified information to potential plaintiffs in a drug-related nuisance abatement action.

Fiscal Summary

State Effect: Any change in State activities would not materially affect State finances.

Local Effect: Any change in local government activities would not materially affect local government finances.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The bill authorizes the court, in a drug-related nuisance abatement case, to order an owner or owner-occupant who knew or reasonably should have known of the nuisance to abate the nuisance. If an owner or owner-occupant fails to comply with an order to abate the nuisance, the court may order: (1) all occupants of the property to vacate the property within 72 hours for a period of up to one year; (2) that the property remain unoccupied; or (3) the owner to maintain the unoccupied property in a clean, sanitary, and secure condition in accordance with local laws.

If the subject property is commercial property, the court may order an owner or tenant who knew or reasonably should have known of the nuisance to: (1) vacate the property

within 72 hours for a period of up to one year; (2) keep the property unoccupied; or (3) maintain the unoccupied property in a clean, sanitary, and secure condition in accordance with local laws.

The court may appoint an agent to abate the nuisance if an owner or owner-occupant is unavailable or order the sale of the property under the Maryland Rules.

Except for a sealed affidavit, a law enforcement officer or employee of the State's Attorney's Office may disclose the contents of a search warrant issued under the drug-related nuisance abatement provisions and papers filed with the warrant to: (1) a community association or its legal counsel; (2) an owner, tenant, or operator of the searched property or their agents; or (3) any other person if the disclosure is necessary to accomplish the purpose of the drug-related nuisance abatement provisions.

Current Law: Under the State's drug-related nuisance provisions, a "nuisance" is a property that is used: (1) by persons who assemble for the specific purpose of illegally administering a controlled dangerous substance; (2) for the illegal manufacture of a controlled dangerous substance or controlled paraphernalia; or (3) for the storage or concealment of a controlled dangerous substance indicating an intent to manufacture, distribute, or dispense a controlled dangerous substance or controlled paraphernalia.

Generally, in a drug-related nuisance abatement case, the court may issue an injunction or order other equitable relief whether or not there is an adequate remedy at law. The court may grant restitution of the premises to the owner if: (1) the owner and tenant are parties to the action; and (2) a tenant has failed to obey an order issued in the action. The defendant's knowledge of the nuisance need not be proven for this relief.

In addition to any other equitable relief, the court may order a tenant who knew or should have known of the existence of the nuisance to vacate the property within 72 hours and grant possession of the property to the owner, notwithstanding any other provision of law.

In addition to or as part of an injunction, restraining order, or other relief order, the court may order an owner to submit a plan for court approval to ensure that the property will not again be used for a nuisance if the owner: (1) is a party; and (2) knew or should have known about the nuisance. If an owner fails to comply with a nuisance abatement order, a court may order the property to be demolished if the cost of rehabilitation significantly exceeds the market value after rehabilitation.

For a commercial property, a plaintiff may not bring an abatement action until 45 days after the tenant and owner of record receive notice that a nuisance exists. The notice

must specify the date and time that the nuisance was discovered and the location on the property where the nuisance is allegedly occurring. It must be hand delivered or sent by certified mail.

A drug-related nuisance action may be brought by a community association, the local State's Attorney, the local county attorney or solicitor, or a municipal corporation within whose boundaries the nuisance is located. In addition to other relief, a court may award costs and reasonable attorney's fees to a community association that is a prevailing plaintiff.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), State's Attorneys Association, Montgomery County, Baltimore City, Department of Legislative Services

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mll/jr

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