

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 1709 (Delegate Oaks, *et al.*)
Environmental Matters

Community Associations - Abatement of Nuisances - Lead

This bill authorizes a community association to bring an action in circuit court for the abatement of specified nuisances.

Fiscal Summary

State Effect: Assuming a minimal number of cases brought under the bill, any additional workload could be handled with the Judiciary's existing budgeted resources.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: Under the bill a "nuisance" is a property that is: (1) a pre-1978 residential property that has exterior peeling, chipping, or flaking paint; (2) an "affected property" that fails to comply with specified provisions under the State's lead paint laws; (3) a residential property that has an outstanding lead violation issued by a local health department; or (4) a residential property that has an outstanding housing code violation for exterior peeling, chipping, or flaking paint issued by a local code enforcement agency. A pre-1978 residential property that has been certified lead-free is not a nuisance under the bill.

A community association may seek injunctive and other equitable relief in circuit court to abate a nuisance after showing that: (1) the bill's notice requirements have been satisfied; and (2) the nuisance has not been abated. The nuisance abatement action may

not be brought until 60 days after the community association sends the notice, containing specified information, to the property owner that a nuisance exists and that legal action may be taken if the nuisance is not abated. The notice must be provided in the same manner as service of process in a civil action *in personum* under the Maryland Rules. The notice is considered adequate and sufficient if it complies with specified criteria.

In filing a suit under the bill, an officer or representative of the community association must certify to the court: (1) what steps have been taken to satisfy the notice requirements; and (2) that each condition to filing the action has been satisfied.

The court may not grant relief under the bill unless the community association files a bond with the court, conditioned to pay the adverse party's costs sustained as a result of the suit, including reasonable attorney's fees, if the court finds that the action was filed in bad faith or without substantial justification.

A political subdivision of the State may not be subject to any action brought under the bill or an action resulting from an action brought under the bill against a private property owner. The bill does not abrogate any equitable or legal right or remedy otherwise available to abate a nuisance.

Current Law: In Baltimore City, Anne Arundel County, Baltimore County, and Prince George's County, a community association may bring an action to abate a nuisance based on a local code violation. The requirements for bringing an action under these provisions are similar to the requirements under this bill.

A community association may also bring an action to abate a nuisance under the State's drug-related nuisance provisions. Under these provisions, the court may issue an injunction or other equitable relief whether or not there is an adequate remedy at law.

Under Maryland Rule 2-121, in an action *in personum*, service of process may be made within the State, or when authorized, outside the State: (1) by delivering to the person to be served a copy of the summons, complaint, and all other papers filed with it; (2) if the person to be served is an individual, by leaving a copy of the summons, complaint, and all other papers filed with it at the individual's place of residence with a resident of suitable age and discretion; or (3) by mailing to the person to be served a copy of the summons, complaint, and all other papers filed with it by certified mail, "restricted delivery – show to whom, date, address of delivery." Service by certified mail under the rule is complete upon delivery. Service outside the State may also be made in the manner prescribed by the court or by the foreign jurisdiction, if reasonably calculated to give actual notice.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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