

SENATE BILL 607

N1

71r2822
CF HB 446

By: **Senator Forehand**

Introduced and read first time: February 2, 2007

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property – Wrongful Detainer – Protective Orders**

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 cases
5 in which possession of the property is included in a certain protective order
6 under certain circumstances; and generally relating to the applicability of
7 certain provisions of law that relate to wrongful possession of property.

8 BY repealing and reenacting, with amendments,
9 Article – Real Property
10 Section 8–402.4 and 14–109
11 Annotated Code of Maryland
12 (2003 Replacement Volume and 2006 Supplement)

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

15 **Article – Real Property**

16 8–402.4.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **(B) THIS SECTION DOES NOT APPLY TO CASES IN WHICH POSSESSION OF**
2 **THE PROPERTY IS INCLUDED IN A PROTECTIVE ORDER ISSUED UNDER § 4-506**
3 **OF THE FAMILY LAW ARTICLE.**

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

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

9 (2) On receipt of a complaint under paragraph (1) of this subsection,
10 the court shall summons immediately the person in possession to appear before the
11 court on the day specified in the summons to show cause, if any, why restitution of the
12 possession of the property to the person filing the complaint should not be made.

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

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

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

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

23 (i) Give judgment for restitution of the possession of the
24 property to the complainant; and

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

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

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

30 (ii) The court finds that:

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

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

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

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

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

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

17 (ii) 1. Files sufficient bond with one or more securities
18 conditioned on diligent prosecution of the appeal; or

19 2. Pays to the complainant or into the appellate court:

20 A. The fair rental value of the property for the entire
21 period of possession up to the date of judgment;

22 B. All court costs in the case;

23 C. All losses or damages other than the fair rental value
24 of the property up to the day of judgment that the court determined to be due because
25 of the detention of possession; and

26 D. The fair rental value of the property during the
27 pendency of the appeal.

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

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

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

9 14-109.

10 (a) **THIS SECTION DOES NOT APPLY TO CASES IN WHICH POSSESSION OF**
11 **THE PROPERTY IS INCLUDED IN A PROTECTIVE ORDER ISSUED UNDER § 4-506**
12 **OF THE FAMILY LAW ARTICLE.**

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

25 [(b)] (C) Any person who feels aggrieved by a judgment under the
26 provisions of this section, may appeal on giving notice within ten days after the
27 judgment is given. If the appellant is the grantor, the notice of appeal shall be
28 accompanied by an affidavit, that an appeal is not taken for delay, and by a bond. The
29 bond shall be conditioned that he will prosecute the appeal with effect, and will pay all
30 costs in the case before the District Court and appellate court if judgment is in favor of
31 the grantee, and all loss or damage which the grantee suffers by reason of the
32 grantor's remaining in possession. The bond also shall provide that the grantor may
33 retain possession of the premises until the determination of the appeal.

34 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
35 October 1, 2007.