

HB 446

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 446

(Delegate Dumais)

Judiciary

Real Property - Wrongful Detainer - Protective Orders

This bill provides that an ejectment action may not be brought against a person who (1) holds possession of a property without the right of possession (wrongful detainer); or (2) refuses to surrender property after delivery of a deed, in violation of a written agreement to deliver possession at a specified time, if the property is included in a protective order issued pursuant to an allegation of domestic violence.

Fiscal Summary

State Effect: None. The bill's changes could be handled with existing resources.

Local Effect: None. The bill's changes could be handled with existing resources.

Small Business Effect: None.

Analysis

Current Law: Maryland law contains procedures to eject (1) a person who holds possession of a property without the right of possession (wrongful detainer); or (2) a grantor who refuses to surrender property after delivery of a deed, in violation of a written agreement to deliver possession at a specified time. There is no exception for protective orders in either statute.

Background: This bill is in response to an unreported Court of Special Appeals decision in the case *Gonzales v. Lothrop* (No. 1786, September Term, 2005) and a subsequent decision in the Montgomery County circuit court, *Lothrop v. Gonzales* (Case # 6746-D, September 13, 2006).

The parties were unmarried, but lived together from 1986 until 2005 and had a child. At the time of these cases, Mr. Gonzales had sole title to the house where the parties lived. Upon allegations of domestic abuse, the Montgomery County circuit court issued a temporary protective order which ordered Mr. Gonzales to leave his house and awarded temporary use and possession of the house to Ms. Lothrop. A final protective order was issued in September 2005 which awarded Ms. Lothrop possession and use of the house until January 2006. The circuit court decision was appealed to the Court of Special Appeals, which upheld the circuit court decision. The Court of Special Appeals did not specifically review Mr. Gonzales' contention that Ms. Lothrop was not entitled to possession of the property, but indicated that his contention appeared to be without merit, as State law clearly provides that a protective order may award the possession and use of the home to a person eligible for relief, even if that person is not on the lease or deed to the home.

Subsequently, Mr. Gonzales initiated an action for wrongful detainer against Ms. Lothrop, which was heard by the District Court of Maryland in Montgomery County. The District Court then awarded possession of the home to Mr. Gonzales. Ms. Lothrop appealed that decision to the circuit court for Montgomery County, which reversed the District Court decision. The circuit court found that actions against wrongful detainer are limited to the unlawful possession of property. Because Ms. Lothrop was in possession of the house pursuant to a properly issued protective order, the provisions regarding wrongful detainer were not applicable to her.

In reversing the District Court decision, the circuit court noted that substantial issues exist involving the taking of property without compensation and the practicality of awarding the use of real property by a protective order to a person without ownership interest in the property. The circuit court urged the General Assembly to resolve this issue, since reasonable minds could disagree about the correct outcomes. This bill is intended to explicitly exempt the real property subject to a protective order from the provisions prohibiting wrongful possession of property.

Additional Information

Prior Introductions: None, although HB 404 of 2004 addressed wrongful detainer actions involving married individuals. It received an unfavorable report from the House Judiciary Committee.

Cross File: SB 607 (Senator Forehand) – Judicial Proceedings.

Information Source(s): Carroll County, Montgomery County, Prince George's County, Harford County, Queen Anne's County, St. Mary's County, Judiciary (Administrative Office of the Courts), Office of the Attorney General (Consumer Protection), Department of Legislative Services

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