

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE
Revised

House Bill 458

(Delegate Tarrant and the Speaker, *et al.*)
(By Request – Administration)

Environmental Matters

Judicial Proceedings

Ground Rents - Property Owned by Baltimore City - Reimbursement for
Expenses - Notices

This Administration bill places a lower absolute limit on the amounts that a landlord or ground rent holder may recover in a suit, action, or proceeding to recover back (past-due) rent for property owned or acquired by Baltimore City. The bill also specifies a single place to send documents regarding ground rents on properties owned or acquired by the city.

The bill takes effect July 1, 2007.

Fiscal Summary

State Effect: The bill would not directly affect State finances or operations.

Local Effect: Baltimore City could experience minimal savings related to ground rents charged on properties owned or acquired by the city.

Small Business Effect: A small business impact statement was not provided by the Administration in time for inclusion in this fiscal note. A revised fiscal note will be issued when the Administration's assessment becomes available.

Analysis

Bill Summary: The bill restricts the amount that a landlord or ground rent holder may recover in a suit, action, or proceeding to recover back (past-due) rent to only three years of past-due rent if the property is • owned or acquired by Baltimore City; and

- abandoned property or distressed property. The bill specifically exempts abandoned property or distressed property owned or acquired by the city from provisions governing the payment of specified expenses incurred by a ground rent holder in collecting back (past due) rent and/or bringing an ejectment action.

A landlord may request in writing that Baltimore City acquire the reversionary interest under the ground rent for the market value established at the time that the city acquired the leasehold interest in the property.

Any bill, notice, or other document regarding property subject to a ground rent that is owned or acquired by the city must be sent to the Director, Baltimore City Department of Finance.

Current Law: When a tenant fails to pay rent, the ground rent holder may bring an action for the past-due rent or for possession of the premises (an ejectment action). In either case, the ground rent holder is limited to three years' past-due rent. Because the tenant has a leasehold estate, a tenant whose property is seized in an ejectment action receives no other compensation. The ground rent holder is then free to release the property under the ground rent or sell the property in fee simple.

For property subject to a ground rent, a landlord may bring an action for possession of the property 45 days after sending a bill for the ground rent by certified mail return receipt requested, to the tenant's last known address when • at least six months ground rent is in arrears; and • the landlord has the right to reenter for nonpayment of the rent. If the tenant cannot be personally served or there is no tenant in actual possession of the property, service may be made by posting notice as prescribed under the Maryland Rules.

Before entry of a judgment, the landlord must also give written notice of the pending entry to each mortgagee of the lease, or any part of the lease, who has recorded a timely request for a notice of judgment in the land records.

Generally, property subject to a judgment is discharged from its ground lease, and the rights of all persons claiming under the lease are foreclosed unless, within six months after the judgment's execution, the tenant or other person claiming under the lease • pays the ground rent, arrears, and all costs awarded against that person; and • commences a proceeding to obtain relief from the judgment. A mortgagee who is not in possession at any time within six months after the judgment awarding possession to the landlord may pay all of the landlord's costs and damages and may perform all the covenants and agreements to be performed by the tenant.

A holder of a ground rent that is at least six months past due is also entitled to reimbursement for actual expenses of up to \$500 to collect the past-due amount and

comply with notice requirements, including title abstract and examination fees, judgment report fees, photocopying and postage fees, and attorney's fees.

Upon filing an ejectment action, the ground rent holder is entitled to reimbursement for reasonable expenses incurred in the preparation and filing of the action, including filing fees and court costs, costs related to process service or other notice, additional title abstract and examination fees up to \$300, attorney's fees up to \$700, and taxes paid.

In order to be eligible for reimbursement, the holder must give notice to the tenant of the amount of the past due ground rent. The notice must be sent by first class mail to the tenant's last known address as shown in the records of the State Department of Assessments and Taxation (SDAT) and must state that the holder will take action to repossess the property if the past due ground rent is not paid within 30 days.

Baltimore City is not exempt from these provisions.

Background: While ground rents are recognized in other states, Maryland's system is unique. In Maryland, a ground rent creates a leasehold estate in the grantee. The leasehold estate is personal – not real – property. The grantor retains a reversion in the ground rent property and the fee simple title to the land. Ground rents generally have a 99-year term and renew perpetually. Ground rent is paid to the grantor (the ground rent holder) for the use of the property for the term of the lease in annual or semi-annual installments. Under a typical ground rent contract, the tenant agreed to pay all fees, taxes, and other costs associated with ownership of the property.

Ground rents have been a form of property holding in Maryland since colonial times, with some of the earliest known leases dating to 1750. The purpose of these ground rents was to produce income for their grantors. Most ground rents in colonial times required the tenant to erect improvements on the property. Maryland's unique system of ground rents can be traced to wording in its colonial charter from Charles I that prohibited certain feudal tenures, specifically those that would reserve a rent in a grantor who has transferred fee simple title. The 99-year lease was devised to reserve a ground rent without violating Maryland's colonial charter.

Prior to 1884, a ground rent could be redeemable or irredeemable by the terms of the lease. A redeemable ground rent would state the terms under which the tenant could redeem the lease and take fee simple ownership of the property. Generally, a tenant cannot take fee simple ownership of an irredeemable ground rent. When the General Assembly prohibited the creation of irredeemable ground rents beginning April 9, 1884, the General Assembly also established a method of calculating the redemption value.

Chapter 464 of 2003 established an alternative method for redeeming a ground rent if the tenant is unable to locate the ground rent holder, which had become a problem with some of the older ground rents. Under this method, the tenant must submit specified documentation and pay associated fees to SDAT.

In the 20th Century, developers used ground rents as part of their overall business strategy. Properties subject to ground rent could reduce the purchase price to a homebuyer, who might then be better able to afford a mortgage. In the earlier part of the century, a developer would sell houses in a development and retain the ground rent as a steady long-term income source. Later in the century, developers began securitizing and selling the ground rents to finance further developments. Many of these ground rents were held by institutional investors who saw them as long-term, low-risk investments.

Recent newspaper accounts noted a sharp increase in the number of ejectment actions filed in the Circuit Court for Baltimore City during the last five years.

According to estimates from Baltimore City and SDAT, properties subject to ground rents are concentrated mostly in Baltimore City (74,085), with some properties located in Anne Arundel (5,000), Baltimore (35,705), Harford (1,500), Howard (200), Talbot (10), and Worcester (250) counties. SDAT advises that new ground rents have recently been created.

Baltimore City has identified 234,943 separate properties in the city, of which 214,604 have been transferred since 1982. City records indicate that 74,085 of the properties transferred have a ground rent. Of the properties transferred with a ground rent, 67,861 were residential properties with one to four dwelling units.

Local Fiscal Effect: Baltimore City advises that bills, notices, and other documents regarding property subject to a ground rent have been sent to various departments within city government, including the Office of the Mayor. The bill would ensure these documents are received by the proper officials; in turn this would ensure that ground rent is paid in a timely manner. The city further advises that it pays approximately \$36,275 annually in ground rent on 722 properties in a database maintained by its housing department. The city has expressed concern that it may be liable for ground rent on an additional 1,800 properties for which it has not received a bill. Baltimore City could experience savings to the extent the bill • lowers expenses paid by the city relating to a ground rent action; and • keeps actions from being brought in the first place. Any such savings cannot be accurately estimated but are assumed to be minimal.

Additional Information

Prior Introductions: None.

Cross File: SB 755 (Senator Gladden) – Judicial Proceedings, although it is not designated as an Administration bill.

Information Source(s): State Department of Assessments and Taxation, Baltimore City, Department of Legislative Services

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Analysis by: T. Ryan Wilson

Direct Inquiries to:
(410) 946-5510
(301) 970-5510