# **HOUSE BILL 1361**

m N1 = 9lr2505 = 446/07 - JUD

By: Delegate Dumais

Introduced and read first time: February 19, 2009 Assigned to: Rules and Executive Nominations

#### A BILL ENTITLED

1 AN ACT concerning

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### Real Property - Wrongful Detainer

3 FOR the purpose of transferring certain provisions of law regarding wrongful detainer 4 of real property; establishing that certain provisions of law relating to persons 5 who hold possession of property without the right of possession do not apply to 6 cases in which possession of the property has been granted under a court order; 7 establishing that certain provisions of law relating to persons who hold 8 possession of property without the right of possession do not apply to cases in which the parties had a certain landlord-tenant relationship under certain 9 circumstances; requiring a certain warrant to be issued and executed by the 10 11 sheriff if a court rules in favor of a person claiming possession in a certain action; clarifying that certain provisions of law relating to wrongful detainer 12 apply to real property; and generally relating to the applicability of certain 13 14 provisions of law relating to wrongful possession of property.

- 15 BY repealing and reenacting, with amendments,
- 16 Article Real Property
- 17 Section 8–402.4
- 18 Annotated Code of Maryland
- 19 (2003 Replacement Volume and 2008 Supplement)
- 20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF 21 MARYLAND, That the Laws of Maryland read as follows:

## 22 Article - Real Property

- 23 [8–402.4.] **14–130.**
- 24 (a) In this [subtitle] **SECTION**, "wrongful detainer" means to hold possession 25 of [a] **REAL** property without the right of possession.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.



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## 1 (B) THERE IS NO CAUSE OF ACTION UNDER THIS SECTION:

- 2 (1) When possession of the property has been granted 3 under a court order; or
  - (2) If the person claiming possession is the landlord of the person holding possession and seeks to recover the property, subject to that relationship.
- 7 [(b)] (C) A person may not hold possession of property unless the person is entitled to possession of the property under the law.
- 9 [(c)] (D) (1) If a person [other than a tenant holding over] violates 10 subsection [(b)] (C) of this section, a person claiming possession may make complaint 11 in writing to the District Court of the county in which the property is located.
  - (2) On receipt of a complaint under paragraph (1) of this subsection, the court shall summons immediately the person in possession to appear before the court on the day specified in the summons to show cause, if any, why restitution of the possession of the property to the person filing the complaint should not be made.
- 16 (3) If, for any reason, the person in actual possession cannot be found, 17 the person authorized to serve process by the Maryland Rules shall affix an attested 18 copy of the summons conspicuously on the property.
- 19 (4) If notice of the summons is sent to the person in possession by first class mail, the affixing of the summons in accordance with paragraph (3) of this subsection shall constitute sufficient service to support restitution of possession.
- [(d)] (E) A counterclaim or cross-claim may not be filed in an action brought under this section.
- [(e)] (F) (1) If the court determines that the complainant is legally entitled to possession, the court shall:
- 26 (i) Give judgment for restitution of the possession of the 27 property to the complainant; and
- 28 (ii) Issue its warrant to the sheriff or constable commanding the sheriff or constable to deliver possession to the complainant.
- 30 (2) The court may also give judgment in favor of the complainant for 31 damages due to the wrongful detainer and for court costs and attorney fees if:
- 32 (i) The complainant claimed damages in the complaint; and
- 33 (ii) The court finds that:

1 2	1. The person in actual possession was personally served with the summons; or
3 4	2. There was service of process or submission to the jurisdiction of the court as would support a judgment in contract or tort.
5 6 7 8 9	(3) A person in actual possession who is not personally served with a summons is not subject to the personal jurisdiction of the District Court if the person appears in response to the summons and prior to the time that evidence is taken by the court and asserts that the appearance is only for the purpose of defending an in rem action.
10 11 12	[(f)] (G) (1) Not later than 10 days from the entry of the judgment of the District Court, either party may appeal to the circuit court for the county in which the property is located.
l3 l4	(2) The person in actual possession of the property may retain possession until the determination of the appeal if the person:
15 16	(i) Files with the court an affidavit that the appeal is not taken for delay; and
L7 L8	(ii) 1. Files sufficient bond with one or more securities conditioned on diligent prosecution of the appeal; or
19	2. Pays to the complainant or into the appellate court:
20 21	A. The fair rental value of the property for the entire period of possession up to the date of judgment;
22	B. All court costs in the case;
23 24 25	C. All losses or damages other than the fair rental value of the property up to the day of judgment that the court determined to be due because of the detention of possession; and
26 27	D. The fair rental value of the property during the pendency of the appeal.
28 29 30	(3) On application of either party, the court shall set a hearing date for the appeal that is not less than 5 days or more than 15 days after the application for appeal.

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(4)

the parties' counsels not less than 5 days before the hearing.

Notice of the order for a hearing shall be served on the parties or

- [(g)] (H) If the judgment of the circuit court shall be in favor of the landlord] **PERSON CLAIMING POSSESSION**, a warrant shall be issued by the court to the sheriff, who shall proceed immediately to execute the warrant.
- SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect 5 October 1, 2009.