

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 1361
Judiciary

(Delegate Dumais)

Real Property - Wrongful Detainer

This bill specifies that an action for wrongful detainer may not be brought against a person when (1) possession has been granted under a court order; or (2) if the person claiming possession is the landlord attempting to recover the real property.

Fiscal Summary

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

Local Effect: The bill does not directly affect local finances or operations.

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 are no exceptions for instances where property has been granted under a court order.

Background: This bill is in response to various State court decisions affecting the laws of wrongful detainer. In *Empire Properties, L.L.C. v. Hardy*, a 2005 Court of Appeals decision, the Court of Appeals held that Empire, the purchaser of a residential property at a foreclosure sale, could not evict a mortgage debtor refusing to relinquish possession. The court held that the purchaser's only recourse was to file a motion under Rule 14-102(a) requesting the court to enter a judgment awarding possession of the

property. In examining the legislative history of the wrongful detainer statute as enacted by Chapter 649 of 1999, the court noted that the statute makes it clear that the wrongful detainer statute primarily concerns landlord-tenant actions.

In *Empire*, the court found that there is no evidence that Empire was acting as a landlord or that the Hardys, those whom Empire sought to evict, existed as tenants on the property. Thus, there was no landlord-tenant relationship that could have been subject to a wrongful detainer action. The court further noted that Maryland Rule 14-102 speaks directly to the proper procedure an aggrieved purchaser at a foreclosure sale can take in the circuit court when the person in actual possession fails or refuses to deliver possession.

The bill further addresses instances where a court awards the use of real property by a protective order to a person without ownership interest in the property. In an unreported Court of Special Appeals decision in *Gonzales v. Lothrop* (No. 1786, September Term, 2005) and a subsequent decision in the Montgomery County Circuit Court, *Lothrop v. Gonzales* (No. 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. 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 real property subject to a court order from the provisions prohibiting wrongful possession of property.

Additional Information

Prior Introductions: A similar bill was introduced as HB 446 of 2007 and was heard in the House Judiciary Committee, but no further action was taken. Likewise, its cross file, SB 607, was heard by the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: None.

Information Source(s): Carroll, Harford and Montgomery counties; Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Department of Legislative Services

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mlm/kdm

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