

SENATE BILL 443

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0lr2262
CF HB 605

By: **Senator Raskin**

Introduced and read first time: February 1, 2010

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 16, 2010

CHAPTER _____

1 AN ACT concerning

2 **Real Property – Wrongful Detainer**

3 FOR the purpose of transferring and clarifying the application of certain provisions of
4 law regarding wrongful detainer of real property; ~~clarifying the application of~~
5 ~~certain other provisions of law relating to an action for possession; providing~~
6 that certain provisions of law relating to an action for possession do not apply to
7 an action for wrongful detainer; making certain technical and conforming
8 changes; and generally relating to the applicability of certain provisions of law
9 relating to wrongful possession of property.

10 BY repealing and reenacting, with amendments,
11 Article – Real Property
12 Section 8–402.4 and 14–108.1
13 Annotated Code of Maryland
14 (2003 Replacement Volume and 2009 Supplement)

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

17 **Article – Real Property**

18 14–108.1.

19 (a) ~~(1) THIS SECTION APPLIES TO PROPERTY;~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 ~~(I) LEASED FOR BUSINESS, COMMERCIAL,~~
 2 ~~MANUFACTURING, MERCANTILE, OR INDUSTRIAL PURPOSES, OR ANY OTHER~~
 3 ~~PURPOSE THAT IS NOT PRIMARILY RESIDENTIAL;~~

4 ~~(II) IMPROVED OR TO BE IMPROVED BY ANY APARTMENT,~~
 5 ~~CONDOMINIUM, COOPERATIVE, OR OTHER BUILDING FOR MULTIFAMILY USE OF~~
 6 ~~GREATER THAN FOUR DWELLING UNITS; OR~~

7 ~~(III) LEASED FOR DWELLING UNITS OR MOBILE HOMES THAT~~
 8 ~~ARE ERECTED OR PLACED IN A MOBILE HOME DEVELOPMENT OR MOBILE HOME~~
 9 ~~PARK.~~

10 ~~(2) This section does not apply to:~~

11 ~~[(1)] (I) A grantee action under § 14-109 of this subtitle;~~

12 ~~[(2)] (II) A landlord-tenant action that is within the exclusive~~
 13 ~~original jurisdiction of the District Court; or~~

14 ~~[(3)] (III) An action for nonpayment of ground rent under a ground~~
 15 ~~lease on residential property that is or was used, intended to be used, or authorized to~~
 16 ~~be used for four or fewer dwelling units.~~

17 (a) This section does not apply to:

18 (1) A grantee action under § 14-109 of this subtitle;

19 (2) A landlord-tenant action that is within the exclusive original
 20 jurisdiction of the District Court; [or]

21 (3) An action for nonpayment of ground rent under a ground lease on
 22 residential property that is or was used, intended to be used, or authorized to be used
 23 for four or fewer dwelling units; OR

24 (4) AN ACTION FOR WRONGFUL DETAINER UNDER § 14-130 OF
 25 THIS ARTICLE.

26 (b) (1) A person who is not in possession of property and claims title and
 27 right to possession ~~UNDER A GROUND LEASE~~ may bring an action for possession
 28 against the person in possession of the property.

29 (2) Encumbrance of property by a mortgage or deed of trust to secure a
 30 debt does not prevent an action under this section by the owner of the property.

31 (c) When personal jurisdiction is not obtained over the defendant, the
 32 plaintiff may obtain a default judgment under the Maryland Rules only on proof of

1 title and right to possession. The judgment shall be in rem for possession of the
2 property. Entry and enforcement of the judgment does not bar further pursuit, in the
3 same or another action, of the plaintiff's claim for mesne profits and damages.

4 ~~[8-402.4.] 14-130.~~

5 (a) In this ~~[subtitle]~~ SECTION, "wrongful detainer" means to hold possession
6 of ~~[a]~~ REAL property without the right of possession.

7 (B) THIS SECTION DOES NOT APPLY IF:

8 (1) THE PERSON IN ACTUAL POSSESSION OF THE PROPERTY HAS
9 BEEN GRANTED POSSESSION UNDER A COURT ORDER;

10 (2) A REMEDY IS AVAILABLE UNDER TITLE 8 OF THIS ARTICLE;
11 OR

12 (3) ANY OTHER EXCLUSIVE MEANS TO RECOVER POSSESSION IS
13 PROVIDED BY STATUTE OR RULE.

14 ~~[(b)] (C)~~ A person may not hold possession of property unless the person is
15 entitled to possession of the property under the law.

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

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

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

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

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

31 ~~[(e)] (F)~~ (1) If the court determines that the complainant is legally
32 entitled to possession, the court shall:

1 (i) Give judgment for restitution of the possession of the
2 property to the complainant; and

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

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

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

8 (ii) The court finds that:

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

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

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

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

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

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

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

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

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

30 B. All court costs in the case;

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

4 D. The fair rental value of the property during the
5 pendency of the appeal.

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

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

11 ~~[(g)]~~ (H) If the judgment of the circuit court shall be in favor of the
12 ~~[landlord]~~ PERSON CLAIMING POSSESSION, a warrant shall be issued by the court to
13 the sheriff, who shall proceed immediately to execute the warrant.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2010.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.