

Department of Legislative Services  
2010 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 605

(Delegate Dumais)

Environmental Matters

Judicial Proceedings

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Real Property - Wrongful Detainer

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This bill clarifies that certain provisions of law governing an action for wrongful detainer do not apply if (1) the person in actual possession has been granted possession under a court order; (2) a remedy is available under existing landlord-tenant laws; or (3) any other exclusive means to recover possession is provided by statute or rule. To further clarify the application of the wrongful detainer statute, the bill transfers the statute from Title 8 of the Real Property Article (Landlord and Tenant) to Title 14 (Miscellaneous Rules).

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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.

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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*, 386 Md. 628 (2005) 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 Maryland 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 was no evidence that Empire was acting as a landlord or that the Hardys, 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 an 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 that 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 that 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 for 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 an 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.

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### **Additional Information**

**Prior Introductions:** Similar bills were introduced in the 2007 and 2009 sessions. HB 446 and SB 607 of 2007 received hearings in the House Environmental Matters Committee and Senate Judicial Proceedings Committee, respectively, but no further action was taken on either bill. HB 1361 of 2009 received a hearing in the House Judiciary Committee, but no further action was taken.

**Cross File:** SB 443 (Senator Raskin) - Judicial Proceedings.

**Information Source(s):** Judiciary (Administrative Office of the Courts,; Baltimore County, Baltimore City, Department of Legislative Services

**Fiscal Note History:** First Reader - March 3, 2010  
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