

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 399

(Senator Raskin, *et al.*)

Judicial Proceedings

Judiciary

Real Property - Abatement of Nuisance - Prostitution

This bill classifies real property used for prostitution as a nuisance subject to an abatement action under the statute authorizing abatement of a nuisance when the property is used for drug offenses. If the property owner fails to comply with an order to abate a prostitution-related nuisance, the court may issue a contempt order; however, the availability of other relief is limited, as specified.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing budgeted resources.

Local Effect: Enforcement can be handled with existing resources.

Small Business Effect: None.

Analysis

Current Law: Under the State's drug-related nuisance abatement provisions, a "nuisance" is a property that is used (1) by persons who assemble for the specific purpose of illegally administering a controlled dangerous substance; (2) for the illegal manufacture or distribution of a controlled dangerous substance or controlled paraphernalia; or (3) for the storage or concealment of a controlled dangerous substance in sufficient quantity to indicate an intent to manufacture, distribute, or dispense a controlled dangerous substance or controlled paraphernalia.

A drug-related nuisance action may be brought by a community association, the local State's Attorney, the local county attorney or solicitor, or a municipal corporation within which a nuisance is located. An action to abate a drug-related nuisance may not be

brought against a commercial property until 30 days after the owner of record and any tenant receive notice of the nuisance. Fifteen days prior notice must be provided to commercial property owners and tenants in Baltimore City.

Generally, in a drug-related nuisance abatement case, the court may issue an injunction or order other equitable relief whether or not there is an adequate remedy at law. The court may order appropriate relief without proof that the defendant knew about the nuisance. A court may also award costs and reasonable attorney's fees to a community association that is a prevailing plaintiff.

In addition to or as part of an injunction or other remedy, the court may order (1) a tenant who knew or should have known of the existence of the nuisance to vacate the property within 72 hours; or (2) an owner or operator to submit a plan of correction for court approval to ensure that the property will not again be used for a nuisance if the owner or operator is a party to the action and knew or should have known about the nuisance.

If an owner fails to comply with a nuisance abatement order, in addition to issuing a contempt order or ordering any other relief, the court may order the property to be (1) sold at the owner's expense, in accordance with the Maryland Rules governing judicial sales; or (2) demolished if the property is unfit for human habitation and the cost of rehabilitation significantly exceeds the estimated market value after rehabilitation. If a tenant fails to comply with an abatement order and the owner or operator and tenant are parties to the action, the court may grant restitution of the premises to the owner or operator.

If an owner-occupant fails to comply with an abatement order, the court may also order that the owner-occupied unit be vacated within 72 hours and remain unoccupied for up to one year or until the property is sold in an arm's length transaction.

Background: Chapter 505 of 1991 established the Drug Nuisance Abatement statute. The statute was enacted to allow a community association, State's Attorney, or city or county attorney or solicitor to bring an action to abate a nuisance when residential property is being used for certain illegal drug activities. Chapter 700 of 1994 amended the abatement statute to include commercial properties. Chapter 501 of 2005 expanded the relief the District Court may order and authorized the release of specified information to potential plaintiffs in a drug-related nuisance abatement action. Chapter 658 of 2009 shortened the advance notification requirement for drug-related nuisances on commercial property.

Additional Information

Prior Introductions: SB 339 of 2009 passed the Senate, as amended, and received a hearing in the House Judiciary Committee, but no further action was taken.

Cross File: HB 1285 (Delegate Kramer, *et al.*) - Judiciary.

Information Source(s): Kent, Montgomery, Washington, and Worcester Counties; City of Rockville; Office of the Attorney General, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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