

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 610 (Delegate Weir, *et al.*)
Environmental Matters

Real Property - Landlord Defenses in Nuisance Actions

This bill establishes a complete defense to any nuisance action brought under State or local law against a landlord if the tenant's actions are the basis for the nuisance action and (1) the landlord has provided notice that the landlord desires to repossess the leased premises because of a specified breach of lease; (2) the landlord has filed a complaint to the District Court to repossess the leased premise due to the breach; or (3) the District Court has ordered or denied restitution of the possession of the premises.

Fiscal Summary

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

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

Small Business Effect: Minimal.

Analysis

Current Law/Background:

Breach of Lease: If an unexpired lease authorizes the landlord to repossess the premises prior to the expiration of the stated term of the lease in the event the tenant breaches the lease, the landlord may file an action for repossession (an eviction action) in the District Court if the tenant breaches the lease and the tenant or person in actual possession of the premises refuses to comply with the landlord's request. The landlord is required to give 14 days' notice to file an action for repossession if the tenant or another person on the

premises with the tenant's permission breaches the lease by behaving in a manner that constitutes a clear and imminent danger of doing serious harm to himself or herself, the landlord, the landlord's property or representatives, other tenants, or any other persons on the premises. Otherwise, the landlord must give the tenant 30 days' notice.

Nuisance: The concept of a "nuisance" originates under common law and is something that causes offense, annoyance, trouble, or injury. A private nuisance obstructs the rights of a specific individual or group, while a public nuisance is an act or omission that obstructs, damages, or inconveniences the rights of the community.

Several types of nuisances are specifically addressed in State law, including:

- the presence of mosquitoes, pests, and noxious weeds (Agriculture Article);
- dwellings, buildings, vehicles, vessels, aircraft, or any other place(s) used by individuals to administer illegally controlled substances or where controlled dangerous substances or controlled substances or controlled paraphernalia are manufactured, distributed, dispensed, stored, or concealed illegally (Criminal Law Article);
- nuisances that affect public health, including those involving plumbing, drainage, water supplies, and disposal of any waste material (Environment Article);
- all nuisances affecting the sanitary interests of the people of the State, including an inadequately protected swimming pool, a foul pigpen, a dead animal, a contaminated water supply, a rodent harborage, and an excessive accumulation of trash or garbage (Health-General Article);
- the presence of nonnative aquatic organisms (Natural Resources Article);
- property that is used for the administration, manufacture, distribution, or storage of a controlled dangerous substance or paraphernalia (Real Property Article); and
- property used for prostitution (Real Property Article).

Each department charged with abating the above nuisances is authorized to enter onto private property to determine its existence.

Additionally, each county board of health is authorized to adopt and enforce rules and regulations on any nuisance or cause of disease in the county. If a county health officer investigates and finds a nuisance, the health officer is required to serve a written notice to

the person who is causing the nuisance, ordering the person to abate the nuisance within a specified period of time.

Generally, in a drug-related or prostitution 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 drug-related 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 an owner fails to comply with a prostitution nuisance abatement order, the court may issue a contempt order.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Charles, Frederick, and Montgomery counties; Town of Bladensburg; cities of Frostburg and Rockville; Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Department of Legislative Services

Fiscal Note History: First Reader - February 29, 2012
ncs/kdm

Analysis by: Michael F. Bender

Direct Inquiries to:
(410) 946-5510
(301) 970-5510