

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 1342 (Delegate Weir)
Environmental Matters

Real Property - Storage of Personal Property After Eviction

This bill requires a purchaser who has executed a judgment awarding possession of residential property or a landlord who has executed a warrant of restitution of a residential property to (1) store any personal property remaining on the property at the time of the execution for at least 30 days; and (2) prepare an inventory that includes specified information. The purchaser or landlord must store the personal property securely on the property or in a public warehouse or storage facility and is liable for any damage or loss to the property during this period. The bill grants a lien on personal property left on the premises for the reasonable costs of moving, transporting, and storing the personal property.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures in FY 2013 and subsequent years due to an increased workload of constables in Baltimore County. No impact on revenues.

Local Effect: Expenditures may increase due to an increased workload for a sheriff or county official associated with the execution of the warrant of restitution and the indexation of additional liens in the circuit courts. No impact on revenues. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The inventory prepared by the purchaser or landlord must include:

- a listing of all items of personal property located on the residential property and a description of the condition of each item;
- the name and badge number of the deputy sheriff or other law enforcement officer present to execute the judgment;
- the location at which the personal property is being stored;
- the date on which the personal property was stored;
- the name, telephone number, and signature of the person authorized to release the personal property; and
- instructions on how to retrieve the personal property.

The bill requires that the inventory be signed and dated in the presence of the deputy sheriff or other law enforcement officer present to execute the judgment. The bill also requires the purchaser or landlord to send a copy of the inventory by first-class mail to the former occupant or tenant of the residential property. The deputy sheriff or other law enforcement officer present must retain a copy of the inventory for the deputy's or officer's records.

The bill authorizes a former occupant or tenant to retrieve stored personal property if (1) the former occupant or tenant gives notice in writing to the purchaser or landlord that the occupant or tenant wishes to retrieve the property; and (2) the former occupant or tenant pays the reasonable costs of moving, transporting, and storing the personal property incurred by the purchaser. The purchaser or landlord must allow the former occupant or tenant to retrieve the stored property within 10 days of receiving the notice. The purchaser or landlord must also allow the former occupant or tenant one-time access at no cost to retrieve items of personal or sentimental value. The purchaser or landlord may supervise the one-time access.

Current Law:

Foreclosure Procedure

After the filing of a foreclosure action, and at the same time the mortgagor or grantor is served with all required documents, the person authorized to sell the residential property must send written notice to all occupants of the property. The notice must inform the occupants that a foreclosure sale of the property may occur at any time after 45 days from the date of the notice. The notice must also provide information regarding the rights of a bona fide tenant.

A tenant is “bona fide” only if the mortgagor or grantor or the child, spouse, or parent of the mortgagor or grantor is not the tenant; the lease or tenancy was an arms-length transaction; and the lease or tenancy requires rent payments that are not substantially less than fair market rental rates, unless the rent is reduced or subsidized due to a federal, State, or local subsidy.

A bona fide tenant who entered into a lease before the transfer of legal title has the right to occupy the premises until the end of the remaining lease term or 90 days after the notice to vacate is sent, whichever is longer. A bona fide tenant without a lease or with a lease terminable at will has the right to stay for at least 90 days after the notice to vacate is sent. However, a successor in interest may terminate a lease effective on the date of the sale of the residential property to a purchaser who will occupy the property as his or her primary residence.

Written notice must also be sent to all occupants no earlier than 30 days and no later than 10 days prior to the date of the foreclosure sale, and a final notice must be sent after the entry of a judgment awarding possession of the property and before any attempt to execute the writ of possession. The person giving each notice must file an affidavit of compliance in the foreclosure proceeding after each notice is sent. If the foreclosure sale is postponed, no additional notice is required to be sent to the occupants of the property.

In addition, the Maryland Rules require that a motion for possession following a foreclosure sale be served on a tenant who was not a party to the foreclosure action by (1) personal delivery to the person or a resident of suitable age and discretion at the dwelling house or usual place of abode of the person; or (2) if at least two good faith efforts at personal delivery on different days were unsuccessful, by mailing by first-class and certified mail and posting in a conspicuous place on the property.

Landlord-tenant Evictions

In the event of an eviction, a court orders a sheriff or county official to command a tenant to deliver possession of the premises to a landlord. The party executing the warrant may remove all property from the premises and place it on the public right-of-way while the sheriff or county official supervises. Neither a landlord nor the person executing the eviction warrant is required to retain possession of the tenant’s personal property, unless the leased dwelling is located in Baltimore City.

Baltimore City Code dictates that a landlord must dispose of any abandoned eviction chattels by transporting them to a licensed landfill or solid waste facility, donating them to charity, or some other legal means. Under no circumstances may a landlord place eviction chattels, abandoned or otherwise, on a public right-of-way. “Eviction chattel” is defined as any property removed from a leased dwelling under a warrant of restitution.

State Expenditures: Minimal increase in general fund expenditures in fiscal 2013 and subsequent years due to an increased workload for constables in Baltimore County. The Judiciary advises that, in Baltimore County, constables are used exclusively to execute warrants of restitution. The bill is silent as to whether constables may perform the bill's requirements. In fiscal 2011, the District Court for Baltimore County processed 67,819 warrants of restitution and performed 5,459 evictions. It currently takes approximately 20 minutes to execute a warrant of restitution. The bill's requirements may require constables in Baltimore County to expend more time executing a warrant of restitution. If so, general fund expenditures increase to the extent that additional constables are necessary.

Local Expenditures: Expenditures may increase due to an increased workload for a sheriff or county official associated with the execution of the warrant of restitution and the indexation of additional liens in the circuit courts. Charles County, for example, advises that the Charles County Sheriff's Office performed 3,266 evictions last year. It estimates that performing an eviction under the bill will take more time and will require two additional law enforcement officers and two promotions to the rank of corporal. Therefore, Charles County anticipates that expenditures increase by \$311,900 in fiscal 2013 and subsequent years.

Small Business Effect: Currently, landlords of property, some of which are small businesses, have no duty to retain possession of the tenant's personal property after an eviction. Landlords may experience additional expenses under this bill because a landlord will likely be required to pay for any costs associated with moving, storing, or disposing the tenant's personal property if the tenant does not reclaim the property.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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