

**Department of Legislative Services**  
Maryland General Assembly  
2012 Session

**FISCAL AND POLICY NOTE**

House Bill 517  
Judiciary

(Delegate Niemann)

---

**Criminal Procedure - Bail Bonds - Use of Real Property as Security**

---

This bill prohibits a surety from accepting or providing real estate as security for a bail bond in the District Court or a circuit court unless the person offering the real estate as security provides a certification from the owner of the real estate that the real estate has no outstanding citations for building or property code violations.

---

**Fiscal Summary**

**State Effect:** Potential minimal increase in general fund expenditures for the Baltimore City Detention Center if fewer defendants in Baltimore City are able to obtain pretrial release as a result of the bill. Revenues are not affected.

**Local Effect:** Potential minimal increase in local revenues from fees for certification letters if the certification required under the bill is an official certification from the local jurisdiction and the jurisdiction charges for this service. Potential minimal increase in local expenditures for pretrial detentions if fewer defendants are able to obtain post bail as a result of the bill.

**Small Business Effect:** Minimal impact on property bondsmen who have to pay for official certifications that the property they post for clients has no outstanding citations for building or property code violations or clear their currently posted properties of outstanding citations.

---

## **Analysis**

**Current Law:** Bail is intended to ensure the presence of the defendant in court, not as punishment. If there is a concern that the defendant will fail to appear in court, but otherwise does not appear to pose a significant threat to the public, the defendant may be required to post a bail bond rather than be released on recognizance. A bail bond is the written obligation of the defendant, with or without a surety or collateral security, conditioned on the personal appearance of the defendant in court as required and providing for payment of a specified penalty (the amount of the bail) upon default.

Maryland Rule 4-217 notes the types of tangible (real property) and intangible (financial assets) that may serve as collateral security if a defendant is required to pledge security prior to being released on bail.

A corporate surety may accept real property as security for a bail bond. Property bail bondsmen post bail for defendants by pledging real estate as security for the defendant's appearance in court. When real property is pledged to secure a bail bond, the court uses State assessment databases and a formula to calculate the value of the property.

If a surety provides collateral security by pledging real estate, the pledge must be accompanied by a Declaration of Trust and the bond must be secured by a Deed of Trust to the State or its agents. The defendant or the surety must furnish a list of all encumbrances on each parcel of real estate subject to the Deed of Trust. The person who takes the bail bond must be satisfied that the real estate is worth the required amount before accepting the bail bond. The clerk of the court will return the collateral security posted and release the Declaration of Trust on the property once the bail bond has been discharged. If the defendant fails to appear, the commissioner or court will place a lien on the property. After the lien is placed, it is up to the appropriate State's Attorney to decide whether or not to collect on the lien.

**Background:** According to the Judiciary, during calendar 2010, there were 5,556 postings at District Court commissioner stations in which real property was posted with the District Court as collateral security for bail.

**Local Fiscal Effect:** Baltimore County and Montgomery County both indicate that the bill will not impact county revenues. Frederick County advises that an owner who wishes to certify that his/her property is free of outstanding building or property code violations will need to obtain a zoning determination letter, for which the county charges a \$100 fee. To the extent that the certification required under the bill is an official certification letter from the local jurisdiction in which the property is located, local revenues from fees for certification letters will increase.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Baltimore and Montgomery counties, Maryland Insurance Administration, Judiciary (Administrative Office of the Courts), Department of Legislative Services

**Fiscal Note History:** First Reader - February 24, 2012

ncs/kdm

---

Analysis by: Amy A. Devadas

Direct Inquiries to:

(410) 946-5510

(301) 970-5510