

Department of Legislative Services
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FISCAL AND POLICY NOTE
Revised

Senate Bill 642

(Senator Muse, *et al.*)

Judicial Proceedings

Environmental Matters

Residential Property - Prohibition on Nonjudicial Evictions

This bill prohibits a party claiming the right to possession from taking possession or threatening to take possession of residential property from a protected resident by (1) locking the resident out of the residential property; (2) engaging in willful diminution of services to the protected resident; or (3) taking any other action that deprives the protected resident of actual possession. Possession may only be taken from a protected resident in accordance with a writ of possession issued by a court and executed by a sheriff or constable. The bill authorizes a party claiming the right of possession of residential property to use nonjudicial self-help to take possession of the property if the part meets specified conditions. The bill grants specified nonexclusive remedies to an aggrieved protected resident for a violation of the bill's provisions. The bill extends this prohibition and subsequent remedies to a landlord/mobile home park owner and a tenant/resident.

The bill takes effect June 1, 2013.

Fiscal Summary

State Effect: Any impact on the District Court due to an increase in the number of landlord-tenant filings can be handled with existing budgeted resources.

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

Small Business Effect: Meaningful.

Analysis

Bill Summary: Uncodified language expresses intent that the bill supersedes the ruling of the Court of Appeals of Maryland in *Nickens v. Mount Vernon Realty Group, et al.*, 429 Md. 53 (2012).

“Party claiming the right to possession” means a person or successor to any person who does not have actual possession of a residential property but has or claims to have a legal right to possession (1) by the terms of a contract or foreclosure sale or (2) under a court order, including a court order extinguishing a right of redemption.

“Protected resident” includes a grantee, tenant, subtenant, or other person in actual possession by, through, or under an owner or former owner of residential property. Protected resident does not include a trespasser or squatter.

“Threaten to take possession” means using words or actions intended to convince a reasonable person that a party claiming the right to possession intends to take imminent possession of residential property in violation of the bill.

The bill defines “willful diminution of services” as intentionally interrupting or causing the interruption of heat, running water, hot water, electricity, or gas by a party claiming the right to possession for the purpose of forcing a protected resident to abandon residential property. The bill alters the definition of willful diminution of services for the purposes of a landlord/mobile home park owner and a tenant/resident.

A party may use nonjudicial self-help to claim possession of a property if the party reasonably believes the protected resident has abandoned or surrendered possession of the property based on a reasonable inquiry into the property’s occupancy status. The party must also provide a specified notice and receive no responsive communication to that notice within 15 days after the later of posting or mailing the notice. The notice must be posted on the front door of the residential property and mailed by first-class mail, addressed to “all occupants,” and contain the statement “Important notice to all occupants: eviction information enclosed; open immediately” in a specified form on the outside of the envelope.

The nonexclusive remedies granted to a protected resident are (1) possession of the property, if no other person then resides in the property; (2) actual damages; and (3) reasonable attorney’s fees and costs. A tenant or park resident may only collect actual damages and reasonable attorney’s fees and costs.

In the case of a tenant or a tenant holding over, the bill may not be construed to prevent a landlord from taking temporary measures, such as changing the locks, to secure an unsecured residential property. However, a landlord must first make good faith attempts

to provide reasonable notice to the tenant that the tenant may promptly be restored to possession of the property.

Current Law:

Landlord-Tenant: When a tenant fails to pay rent, the landlord is entitled to repossession of the premises through filing an action in District Court. No time limit is stated for when a landlord may file a complaint; however, a summons issued after a complaint is filed must direct the tenant to appear on the fifth day after the complaint is filed. If the court finds in favor of the landlord, the court must order that possession of the premises be given to the landlord within four days after trial (judgment for possession). If the judgment is in favor of the landlord and the tenant fails to pay the past due rent and late fees within specified timeframes, the landlord may apply for a “warrant of restitution,” which serves as the eviction order. The sheriff’s offices in Baltimore City and the counties (or constables in Baltimore County) are responsible for evictions.

A landlord of a property in which a tenant is “holding over” (the retention of possession of leased premises past the expressed lease term) or has breached the lease may also file a complaint with the District Court for repossession, although the commencement of the process is somewhat different than in cases where a tenant has failed to pay rent. For example, before filing a complaint in either case, the landlord must provide written notice to the tenant of the landlord’s intent to repossess (1) one month before the expiration of the term of the lease or (2) after 30 days notice of a violation of the lease (or 14 days notice if the violation demonstrates a clear and imminent danger of serious harm).

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.

Purchaser at a Foreclosure Sale-Tenant: Generally, any purchaser at a foreclosure sale of a mortgage or a deed of trust inherits a mortgagor or grantor’s rights and remedies against a tenant. Likewise, the tenants maintain the same rights and remedies against the purchaser as they would have had against the mortgagor or grantor on the date the mortgage or deed was recorded.

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 a specified written notice to all occupants of the property. The notice must provide information regarding the rights of a tenant who meets specified requirements, identified in statute as a “bona fide tenant.”

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.

If a purchaser of a property at a foreclosure, judicial, or tax sale is entitled to possession and the person in actual possession fails or refuses to deliver possession, Maryland Rules authorize a purchaser or a successor in interest who claims the right of immediate possession to file a motion for judgment awarding possession of the property. The motion must state the legal and factual basis for the purchaser’s claim of entitlement to possession. The motion must have additional specified information if the claim of entitlement to possession arises from a foreclosure sale of a residential property.

Mobile Home Park Owner-Resident: A park owner may only evict a resident for nonpayment of rent and specified violations. The park owner must deliver to the resident by certified mail, regular mail, or personal delivery a written notice of the violation at least 30 days before the date the resident is required to vacate the premises. The notice must be specifically addressed to the resident in question and must provide a specific reason for the eviction.

To repossess any premises due to the failure to pay rent, a tenant holding over, or a breach of the rental agreement, the mobile home park owner must file a written complaint with the District Court and commence a similar process as that available to a landlord.

Background: As noted above, the bill is intended to supersede a recent ruling of the Court of Appeals of Maryland. *Nickens v. Mount Vernon Realty Group, et al.*, 429 Md. 53 (2012). In *Nickens*, the court ruled that a foreclosure purchaser has the ability to exercise the common law remedy of peaceable self-help, meaning the right to lawfully enter and repossess the property. In making its ruling, the court held that this remedy was not superseded by Baltimore City’s code relating to eviction by a foreclosure purchaser of properties in Baltimore City.

Montgomery County's Code prohibits a landlord from evicting, either actually or constructively, a tenant from a dwelling unit occupied by the tenant without following the judicial process authorized in State law to obtain possession.

In Baltimore City, the foreclosure purchaser must provide a specified notice whenever a judgment is entered in favor of a foreclosure purchaser for possession of the residential property purchased and the court has issued a writ of possession. If the purchaser provides a copy of this notice, certificate of mailing, and signed affidavit within the correct time period, there is a rebuttable presumption that the occupant was notified. All personal property found in or about the property is presumed to be abandoned, and the purchaser or the purchaser's agent is not liable for any loss or damage to the abandoned property.

Small Business Effect: The bill has a significant operational and fiscal impact on the affected types of owners of residential property, some of which are small businesses. Under the bill, the affected owner must evict a tenant through the judicial process, unless the owner uses nonjudicial self-help and provides the required 15 day notice. The added expense and time associated with the judicial eviction process has a meaningful detrimental impact on these affected owners.

Additional Information

Prior Introductions: None.

Cross File: HB 1308 (Delegate Healey, *et al.*) - Environmental Matters.

Information Source(s): Anne Arundel, Baltimore, Charles, Frederick, and Montgomery counties; State Department of Assessments and Taxation; Office of the Attorney General (Consumer Protection Division); Department of Housing and Community Development; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Legislative Services

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