

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 968 (Delegates Niemann and Frush)
Environmental Matters

Landlord and Tenant - Commencement of Actions to Repossess

This bill alters the commencement of the process by which a landlord may repossess premises when a tenant (1) fails to pay rent; (2) is holding over; or (3) breaches the lease, by repealing the requirement that a constable or sheriff serve the District Court's summons and instead requiring the landlord to deliver the summons to a tenant. The bill adds new personal service and posting duties on the landlord.

Fiscal Summary

State Effect: General fund revenues decrease significantly in FY 2014 and subsequent years due to the loss of fees for services performed by Baltimore County constables. General fund expenditures are likely not affected as any printing costs incurred by the District Court can be absorbed when current materials run out; however, the bill may have a significant operational impact on the District Court.

Local Effect: Significant decrease in local revenues due to the loss of fees for services performed by sheriffs in each jurisdiction besides Baltimore County. Increase in local expenditures due to increased labor costs to send a copy of the summons.

Small Business Effect: Meaningful.

Analysis

Bill Summary: The bill requires a landlord to wait at least three days after the day a tenant's unpaid rent is due and payable before filing a complaint in District Court to repossess the premises.

Instead of service by a constable or sheriff, the landlord is required to mail a copy of the summons to the tenant, assignee, or subtenant by first-class mail within three days after the issuance of the summons. In addition to mailing the copy, at least three days before the scheduled trial, the landlord must effect personal service as the Maryland Rules require on the tenant, assignee, or subtenant with notice of the trial date (which is to be held on the tenth day after the filing of the complaint). If personal service is not possible, the bill requires the landlord to affix an attested copy of the summons conspicuously upon the property. The bill also requires the landlord to file an affidavit with the court before the trial indicating how service was made. If the landlord was unable to effect service as required by the bill, the court must postpone the trial until service is made.

In a case of failure to pay rent, and when the tenant is deceased, intestate, and without next of kin, the bill requires the District Court to issue its summons directing the occupant of the premises or the next of kin, if known, to appear at the trial to be held on the tenth day after the filing of the complaint. The bill requires the landlord to follow the same procedures of serving summons on the occupant or next of kin, if known, as the bill imposes on serving summons to a living tenant.

Current Law: 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 a leased premise past the expressed lease term) or has broken a specified 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).

Generally, service of process may be made within this State or, when authorized by the law of this State, outside of this State (1) by delivering to the person to be served a copy of the summons, complaint, and all other papers filed with it; (2) if the person to be

served is an individual, by leaving a copy of the summons, complaint, and all other papers filed with it at the individual's dwelling house or usual place of abode with a resident of suitable age and discretion; or (3) by mailing to the person to be served a copy of the summons, complaint, and all other papers filed with it by certified mail.

Service of process may be made by a sheriff (or constable in Baltimore County) or, except as otherwise provided, by a competent person age 18 or older, including an attorney of record, but not by a party to the action. All process requiring execution other than delivery, mailing, or publication, must be executed by the sheriff of the county where execution takes place, unless the court orders otherwise.

County sheriffs are entitled to collect fees for service of process and other actions during court proceedings involving the sheriff's office. These fees include a \$5 charge for each summons mailed to a tenant and a \$40 charge for personal service of paper not including an execution or attachment. If the sheriff is unable to serve a paper, 50% of the fee must be refunded to the party requesting the service.

Background: Although statistics regarding the number of times personal service is unavailable, the District Court does advise that there were 616,628 landlord-tenant cases filed in the State in fiscal 2012. Of these 176,213, cases were dismissed.

State Fiscal Effect: General fund revenues decrease significantly in fiscal 2014 and subsequent years due to the loss of fees for services performed by constables located in Baltimore County. Constables are State employees, and any fee collected for a service performed by the constables goes to the State. In fiscal 2012, 157,750 landlord-tenant cases were filed in Baltimore County. The fee to file a summary ejectment includes a \$5 service fee for each tenant or record, plus an additional \$40 if personal service is requested. Currently, unless the tenant cannot be found, personal service is required for landlord-tenant cases involving a tenant who breaches a lease or holds over. The Judiciary was unable to provide information relating to the number of times personal service was requested or required; therefore, any decrease in general fund revenues is not quantifiable. However, *for illustrative purposes only*, at a minimum, general fund revenues decrease by \$788,570 due to the \$5 service fee for each landlord-tenant case in Baltimore County.

Additionally, by repealing the requirement that a sheriff or constable perform service of process and placing the burden on the landlord, the bill also has a significant operational impact on the District Court. The possibility that a landlord is unable to adequately perform the task of mailing the copy of the summons to the tenant may result in additional dismissals.

The bill may also have an operational impact on Prince George's County District Court, which has a web-based e-filing system for the filing of late rent cases. The system may need to be reprogrammed to change the system to comply with the bill because it currently electronically directs the approved cases involving a failure to pay to the sheriff's office.

Local Fiscal Effect: Significant decrease in local revenues due to the loss of fees for services performed by sheriffs in each jurisdiction besides Baltimore County. In every jurisdiction besides Baltimore County, sheriffs perform service of process for landlord-tenant cases. Any fee collected from performing this service is retained by the jurisdiction. Montgomery County advises that it receives a \$5 service fee for each defendant in a landlord-tenant case. The county had 48,793 landlord-tenant cases in fiscal 2012. It further estimates that, if these cases had an average of 1.5 defendants, the loss in revenue to the county would at least approximate \$366,000. There is also a \$40 charge for personal service of process that is not factored into this estimate.

Local expenditures may also increase due to increased labor costs to send a copy of the summons. Baltimore City notes that the Housing Authority of Baltimore City (HABC) is the largest landlord in the State and files an average of 2,000 affected filings a month. HABC estimates a significant recurring increase in labor costs to send a copy of the summons to the tenant or person in possession of rental property within three days after the issuance of the summons. Currently, HABC takes a significantly longer period of time than three days to process required documents. HABC estimates it may cost up to \$72,000 annually to meet this deadline.

Small Business Effect: The bill may have a meaningful impact on landlords, some of which are small businesses. Landlords who file a landlord-tenant action will no longer have to pay the service of process fees to the District Court. However, because the Maryland Rules prohibit a party to the action from performing service of process, it will be necessary for the landlord to hire a private party to perform the act. To the extent that these private parties charge more than the District Court, the bill may have a meaningful detrimental effect on a landlord who may be unable to pass these administrative costs on to tenants.

Conversely, the bill has a meaningful beneficial impact on small businesses that perform service of process. Revenues increase to the extent landlords patronize these businesses as landlords are no longer able to use the sheriff's or constable's office to perform personal service of process.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Allegany, Baltimore, and Montgomery counties; Baltimore City; Office of the Attorney General, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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Analysis by: Michael F. Bender

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