

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

House Bill 1529 (Delegate Holmes)
Environment and Transportation

Real Property - Redeemable Ground Rents - Required Redemption

This bill requires a redeemable ground rent on a residential property to be redeemed when the property is transferred for arm's length consideration or when the leasehold tenant obtains or refinances a loan secured by a mortgage or deed of trust on the property, whichever occurs earlier. If a collection or enforcement procedure has been instituted to collect a past-due ground rent, the default must be cured before the ground rent is redeemed. The bill does not apply to (1) a transfer by foreclosure sale as specified; (2) a transfer to a lender by deed in lieu of foreclosure; (3) a transfer by a fiduciary as part of the administration of an estate or trust; (4) a transfer to a spouse or former spouse in an action for divorce or annulment; or (5) a loan secured by a home equity line of credit.

Fiscal Summary

State Effect: Special fund revenues for the State Department of Assessments and Taxation (SDAT) increase minimally due to the collection of fees beginning in FY 2017. General fund expenditures increase minimally for the Department of Housing and Community Development (DHCD) and SDAT to coordinate a public awareness campaign in FY 2017, with potential minimal expenditures in the out-years. The Department of Labor, Licensing, and Regulation (DLLR) may be able to implement the bill's required outreach program with existing resources, as discussed below; otherwise, general fund expenditures to do so increase minimally in FY 2017 only.

Local Effect: Based on information provided in 2015, Baltimore City expenditures may increase, potentially significantly, due to the bill's requirement that the ground rent be redeemed when the property is transferred. If the property is transferred to the city as the result of a settlement in lieu of condemnation, Baltimore City may be required to redeem the ground rent, significantly increasing the cost of each transaction.

Small Business Effect: Potential meaningful impact on small businesses that are holders of ground leases and may see an increase in redemptions of ground rents due to the requirements of the bill.

Analysis

Bill Summary: If the ground lease is registered with SDAT, the transferee or borrower must request a *redemption statement* from the ground lease holder at the address of the ground lease holder listed in the online registry. The ground lease holder is required to provide a redemption statement within 60 days of receiving the request. The statement must contain:

- the amount and due dates of the ground rent;
- the amount and due dates of any past-due ground rent;
- the statutory redemption amount;
- if any collection expenses are claimed, the amount and basis of the expenses;
- a statement that redemption is at the sole expense of the transferee or borrower; and
- any other information necessary to expedite settlement of the transfer or loan.

If settlement of the transfer or loan does not occur within 30 days after the ground lease holder delivers the redemption statement, the redemption statement is void unless extended by the ground lease holder.

If the ground lease is not registered with SDAT, the ground lease must be redeemed in accordance with specified procedures.

Outreach and Public Awareness

The bill requires the Commissioner of Financial Regulation within DLLR to develop an outreach program to contact lending institutions that lend money secured by a mortgage or deed of trust on residential property in the State to inform the institutions of the requirements of the bill and obtain the assistance of the institutions to implement consumer friendly procedures for including ground rent redemption in the process of purchasing or refinancing a home.

The bill also requires DHCD and SDAT to coordinate a public awareness campaign about the bill's requirements and the procedures for redeeming a ground rent when purchasing or refinancing a home.

Current Law/Background: Generally, with specified exceptions, any reversion in a ground lease for longer than 15 years may be redeemed at any time, at the option of the leasehold tenant, after 30 days' written notice sent via certified mail, return receipt requested, and by first-class mail to the last known address of the ground lease holder. Payment to the ground lease holder is calculated based on a schedule provided in statute.

Once a leasehold tenant has provided notice to the ground lease holder, a leasehold tenant may apply to SDAT to redeem the ground lease by providing documentation of the ground lease, the notice given to the ground lease holder, and payment of a \$20 fee as well as any expediting fee in the Corporations and Associations Article – which is currently set at \$50. SDAT must then post notice on its website for 90 days that an application has been made to redeem the ground lease. Following the 90-day period, the leasehold tenant seeking to redeem the ground lease must provide SDAT the redemption payment in an amount specified in statute and an affidavit on a form provided by SDAT. A similar process applies in Baltimore City to both redeem a redeemable ground lease and to extinguish an irredeemable ground lease.

State law does not mandate redemption of a ground lease, but it does require notice to be provided to the leasehold tenant about the ability to redeem a ground lease (1) in each billing statement to collect payment under the ground lease; (2) when a holder of a ground lease transfers ownership of the ground lease; and (3) in a contract for the sale of property subject to a ground lease.

Ground Leases, Generally

As of March 17, 2016, there were 88,585 ground leases registered with SDAT. According to the registry maintained by SDAT, ground leases are concentrated mostly in Baltimore City (60,081), with some properties located in Anne Arundel (3,549), Baltimore (24,532), Carroll (10), Cecil (1), Charles (1), Harford (171), Howard (58), Montgomery (3), Prince George's (36), and Worcester (143) counties.

History of Ground Leases in Maryland

Ground leases have been a form of property holding in Maryland since colonial times. A ground lease creates a leasehold estate in the grantee that is personal – not real – property. The grantor retains a reversion in the ground lease property and fee simple title to the land. Ground leases generally have a 99-year term and are renewable perpetually. Ground rent is paid to the grantor (the ground lease holder) for the use of the property for the term of the lease in annual or semi-annual installments. Under a typical ground lease contract, the tenant agrees to pay all fees, taxes, and other costs associated with ownership of the property.

2015 Ground Lease Legislation

Chapter 428 of 2015 substantially reorganized the law related to ground leases applicable to residential property and made multiple additions. It repealed a provision of law that made the establishment of a lien the remedy for nonpayment of a ground rent on residential property and reinstated, with modifications, an action for possession as the remedy, similar to the posture of the law before 2007. It prohibited the holder of a ground lease from bringing an action against a tenant unless the ground lease is registered, and it prohibited the use of self-help to take possession of residential property. Chapter 428 also added new requirements for notice and service of process on a leasehold tenant, and it allowed for a holder of a security interest in a property subject to a ground lease to apply to redeem the reversion. Finally, in an ejectment action, Chapter 428 specified and placed limits on the expenses for which a ground lease holder may be reimbursed, and it clarified that recovery of a maximum of three years past-due ground rent is calculated from the date a specified notice was sent.

State Revenues: Special fund revenues for SDAT increase minimally due to the collection of “ground rent redemption” and “ground rent extinguishment” fees (\$20), and the corresponding expedited processing fee (\$50). SDAT advises that it anticipates collecting \$10,500 in fiscal 2017 and approximately \$21,000 annually thereafter. However, the Department of Legislative Services (DLS) notes that, because the number of ground rent redemption or extinguishment filings that will occur under the bill is unknown, any related fee collection cannot be reliably estimated at this time. Even so, special fund revenues are expected to increase minimally beginning in fiscal 2017 due to an increase in fee revenues.

State Expenditures: General fund expenditures increase, by a minimal amount, for DHCD and SDAT to coordinate a public awareness campaign. DHCD advises that it recommends implementing a targeted mailing campaign for those jurisdictions where ground rents exist. Based on past experience, DHCD could produce and distribute approximately 180,000 informational brochures per year, at a cost of approximately \$65,000 annually beginning in fiscal 2017. However, DLS notes that costs of the campaign are to be shared with SDAT and the bill does not require multiple mailings. Further, even if mailings are repeated in the out-years, as ground leases are extinguished under the bill’s requirements, the total number of mailers necessary decreases. SDAT may also be able to assist in more precisely targeting any campaign, further reducing costs. As a result, DLS advises that general fund expenditures for DHCD and SDAT increase minimally in fiscal 2017 (by \$65,000 or less), with minimal ongoing expenditures in the out-years to coordinate and execute such a public awareness campaign.

DLLR advises that, in order to fulfill the bill’s outreach program requirement, it needs to hire one half-time contractual administrator to coordinate the notice program and make presentations to relevant lenders. However, DLS notes that the bill only requires the

Commissioner of Financial Regulation to develop an outreach program to *contact* lending institutions to inform them of the bill’s requirements and ultimately obtain their assistance in implementing specified procedures. Thus, direct interaction and presentations are not necessarily required, and the contact requirement could be handled, for example, by email notification. Although DLLR estimates that 2,295 potential lending institutions licensed to operate in the State must be contacted, the development of the “consumer friendly procedures” required under the bill can likely occur with the cooperation of a select few lending institutions – targeted to those that participate in the most transactions in Baltimore City, where the majority of ground leases are located. As a result, DLS advises that DLLR may be able to implement the bill’s requirements with existing resources. Should additional personnel or resources be required to coordinate a more robust outreach program and coordinate with lending institutions to develop specified procedures, general fund expenditures increase minimally in fiscal 2017 only.

Additional Information

Prior Introductions: HB 637 of 2015, a similar bill, received a hearing in the House Environment and Transportation Committee, but no further action was taken.

Cross File: None.

Information Source(s): Baltimore City; Baltimore, Charles, Howard, Prince George’s, Talbot, and Worcester counties; Judiciary (Administrative Office of the Courts); Department of Housing and Community Development; Department of Labor, Licensing, and Regulation; State Department of Assessments and Taxation; Department of Legislative Services

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