

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader - Revised

House Bill 1173 (Delegate Rosenberg)

Environment and Transportation and
Economic Matters

Real Property - Rent-to-Own Agreements and Contracts - Requirements

This bill requires any landlord who offers a dwelling unit for rent under a rent-to-own agreement on or after October 1, 2017, to use a written lease and to post a performance bond or provide a cash deposit or letter of credit in the amount of \$10,000 with the Office of the Attorney General (OAG), Consumer Protection Division (CPD). The bill also prohibits a landlord from entering into or offering to enter into a rent-to-own agreement with a tenant unless (1) an attorney provides a specified certification and (2) copies of a rent-to-own contract evidencing the agreement and the certification are submitted to CPD at least 30 days before the contract is delivered to the prospective tenant. The bill also establishes that a violation of specified provisions is an unfair or deceptive trade practice within the meaning of the Maryland Consumer Protection Act (MCPA) and is subject to the enforcement and penalty provisions of the MCPA.

The bill applies prospectively and may not have any effect on any rent-to-own agreement entered into before the bill's October 1, 2017 effective date.

Fiscal Summary

State Effect: Special fund expenditures increase potentially significantly for OAG to implement the bill's requirements, as discussed below. Imposition of existing penalty provisions is not expected to materially affect State finances.

Local Effect: Imposition of existing penalty provisions is not anticipated to materially impact local government finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: A “rent-to-own agreement” means a lease agreement that includes a lease option agreement.

A “rent-to-own contract” means any written document evidencing a rent-to-own agreement, including a written lease agreement, a separate written lease option agreement, and any notices or disclosures required under State law.

Required Certification

A landlord may not enter into or offer to enter into a rent-to-own agreement with a tenant unless (1) an attorney admitted to practice law in Maryland certifies that the rent-to-own contract evidencing the agreement complies with State law and (2) copies of the contract and attorney certification are submitted to CPD at least 30 days before the contract is delivered to the prospective tenant. A landlord also must provide a copy of the attorney certification to a prospective tenant with the rent-to-own contract. If a landlord does not comply with these requirements, and the rent-to-own contract is otherwise enforceable, the lease, the lease option agreement, or both may be voided at the option of the tenant.

Performance Bond, Cash Deposit, or Letter of Credit

Performance Bond: If a landlord posts a performance bond, the bond must:

- be in a form acceptable to CPD;
- be issued by a surety licensed to do business in the State;
- provide that the landlord and surety are held and firmly bound to tenants who suffer any damages or loss in connection with a rent-to-own agreement offered by the landlord; and
- authorize a tenant, or CPD acting on the tenant’s behalf, to file a claim with the surety for specified damages or loss suffered by the tenant and, if the claim is not paid, to bring a court action based on the bond and recover against the surety any damages or loss suffered, as well as the costs of the legal action.

In addition, the landlord must provide CPD with a copy of the bond, maintain accurate records of any premium payments made on the bond or claims or payments made from the bond, and provide copies of the records annually to CPD for the duration of the bond.

Letter of Credit or Cash Deposit: If a landlord provides CPD with a letter of credit or a cash deposit:

- the letter of credit must be issued by a State- or federally chartered bank, if applicable;
- a tenant, or CPD acting on a tenant's behalf, may file a claim against the letter of credit or cash deposit for any loss suffered by the tenant in connection with a rent-to-own agreement offered by the landlord;
- CPD must resolve all claims made by tenants or CPD against the letter of credit or cash deposit; and
- CPD must hold the letter of credit or cash deposit for five years from the last claim that is made or, if no claims are made, five years from the division's receipt of the letter of credit or cash deposit.

Current Law:

Lease Option Agreement

A "lease option agreement" means any clause in a lease agreement or separate document that confers on the tenant some power, either qualified or unqualified, to purchase the landlord's interest in the property. A lease option agreement to purchase improved residential property must contain the statement, in capital letters, "THIS IS NOT A CONTRACT TO BUY." The lease option agreement must also contain a clear statement of its purpose and effect with respect to the ultimate purchase of the property that is the subject of the lease option. If a lease option agreement does not comply with these requirements and is otherwise enforceable, the lease, the lease option agreement, or both may be voided at the option of the party that did not draft the lease option agreement.

Written Residential Lease Requirement

Any landlord who rents five or more dwellings in the State may not rent a residential dwelling unit without using a written lease. If a landlord fails to use a written lease, the term of the tenancy is presumed to be one year from the date the tenant occupies the property, unless the tenant elects to move out earlier and gives one month's written notice.

A landlord who rents units using a written lease must provide, after receiving a written request from any prospective tenant, a copy of the proposed lease form in writing, completed in every material detail, except for the date, the name and address of the tenant, the designation of the premises, and the rental rate without requiring execution of the lease or any prior deposit. The lease must include (1) a statement that the premises will be delivered in a livable condition, with reasonable safety, if that is the agreement, or if both parties agree otherwise, a statement of the agreement concerning the condition of the premises; (2) the landlord's and the tenant's specific obligations for heat, gas, electricity, water, and repair of the premises; and (3) a receipt for the security deposit, as specified.

A landlord may not use a lease or form of lease containing any provision that:

- has the tenant authorize any person to confess judgment on a claim arising out of the lease;
- has the tenant agree to waive any right or remedy provided by applicable law;
- imposes a penalty for the late payment of rent in excess of 5% of the rental amount due for the rental period, or for a weekly lease, \$3 per week or \$12 per month, as specified;
- has the tenant waive the right to a jury trial;
- has the tenant agree to a period for the landlord's notice to quit that is shorter than the period required by applicable law;
- authorizes the landlord to take possession of the leased premises or the tenant's personal property unless the lease has been terminated by action of the parties or by operation of law and the personal property has been abandoned by the tenant;
- is against public policy and void; or
- permits a landlord to commence an eviction proceeding or issue a notice to quit as retaliation against a tenant for planning, organizing, or joining a tenant's organization with the purpose of negotiating collectively with the landlord.

In addition, certain automatic renewal provisions must be distinctly set apart from other lease provisions and provide a space for written acknowledgment of the tenant's agreement.

Maryland Consumer Protection Act

An unfair or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

CPD is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$1,000 for the first violation and up to \$5,000 for each subsequent violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is

guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Background: On June 22, 2016, OAG announced a settlement with Homes Direct, Inc., a Georgia-based real estate and property management company. According to OAG, the rental practices of Homes Direct failed to comply with numerous provisions of Maryland law, including the use of residential leases that contained illegal fees, illegal security deposit provisions, and other abusive terms.

Under the settlement agreement, among other things, Homes Direct is prohibited from entering, or assisting or facilitating others to enter, into any contract with a Maryland consumer that involves a residential dwelling unit in the State unless (1) each contract is reviewed by an attorney licensed in the State and the attorney certifies that the contract is in compliance with State law and (2) a copy of the contract, together with the compliance certification, is provided to CPD at least 30 days before the contract is provided to a consumer. The settlement agreement also requires Homes Direct to provide CPD with a cash deposit or to post a letter of credit or a performance bond before offering, selling, or providing, or assisting with offering, selling, or providing, any real estate-related services in the State.

State Expenditures: OAG indicates that, in order to implement the bill's requirements, it needs to hire one half-time assistant Attorney General and one half-time administrator, at a total cost of \$105,065 in fiscal 2018 with expenditures exceeding \$150,000 by fiscal 2022. However, OAG did not provide any information as to how it developed this estimate. Regardless, the Department of Legislative Services advises that the bill likely results in a significant increase in expenditures from the Consumer Protection Recoveries special fund for OAG.

Small Business Effect: The bill's requirements to have a licensed attorney review and certify a lease and to post a performance bond or provide a cash deposit or letter of credit in the amount of \$10,000 with CPD may increase the cost of operations for small business landlords or cause some small business landlords to refrain from offering rent-to-own agreements.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); *The Baltimore Sun*; Department of Legislative Services

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