

Department of Legislative Services  
Maryland General Assembly  
2023 Session

FISCAL AND POLICY NOTE  
Third Reader

House Bill 92 (Delegate Holmes)

Environment and Transportation

Judicial Proceedings

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Ground Leases - Collection of Rent, Interest, Fees, and Other Expenses -  
Registration Requirements

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This bill establishes that a ground lease or an amendment is not registered until the ground lease/amendment is posted on the online registry (as currently maintained by the State Department of Assessments and Taxation (SDAT)). It also establishes a process for a leasehold tenant of a ground lease to challenge and bring action against a ground lease holder who takes specified collection actions after failing to properly register a ground lease, as required under existing statutory provisions. A ground lease registration or amendment that has been voided by SDAT under the provisions of the bill is prohibited from being considered registered.

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Fiscal Summary

**State Effect:** SDAT and the Judiciary can handle the bill's requirements with existing budgeted resources. Revenues are not affected.

**Local Effect:** The bill does not materially affect local government operations or finances.

**Small Business Effect:** Minimal.

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Analysis

**Bill Summary:**

*Prohibitions on Collections and Initial Review of Potential Violations*

The bill expands prohibitions on collection efforts by a ground lease holder that has not registered a ground lease by prohibiting any *attempt to collect* ground rent payments and

prohibiting the collection of late fees, interest, collections costs, or other expenses related to the ground lease (or an attempt to do so).

The bill authorizes a leasehold tenant, who believes that a ground lease holder has collected or attempted to collect specific expenses related to ground rent in violation of the above provisions, to submit to SDAT an affidavit and any supporting documents evidencing the factual basis for the tenant's beliefs.

Generally, upon receipt of the affidavit and any supporting documentation, SDAT must send notice, as specified, to the ground lease holder indicating that the department has received notice of an alleged violation and that the ground lease registration or amendment may be voided unless the holder submits a counter-affidavit and supporting documents within 45 days. The notice sent to the ground lease holder must (1) be sent by certified mail, return receipt requested, and by first-class mail to the address provided in the ground lease holder's ground lease registration or amendment, or to any other address used by the ground lease holder known to SDAT and (2) include a copy of the affidavit and any supporting documents submitted by the leasehold tenant to SDAT.

Following review of the affidavits and supporting documents (and any timely submitted counter-information), SDAT may make a final decision on whether the ground lease holder violated the restrictions on collection efforts. After making a final decision, SDAT must promptly send notice (using specified methods) of the decision to all persons who submitted affidavits and counter-affidavits. If SDAT reasonably believes that the ground lease holder has violated the prohibition on collection actions, the notice must indicate so and also advise that SDAT may void a registration/amendment in its records unless the ground lease holder files an action in circuit court (under the procedures specified below). A notice that SDAT reasonably believes that the ground lease holder did *not* violate the prohibition must advise that SDAT will take no further action unless the leasehold tenant files an action in circuit court. An individual who files an action must mail a copy of the complaint to SDAT within 45 days after the date of the notice of the decision issued by SDAT. If SDAT does not receive a copy within this timeframe, SDAT must take action in accordance with its final decision.

### *Judicial Action*

The cause of action established under the bill must (1) be filed within 45 days after the date of the notice sent by SDAT; (2) be filed in the circuit court for the county in which the petitioner resides or in the circuit court for the county in which the property subject to the ground lease is located, as appropriate; (3) be heard *de novo* by the circuit court; and (4) include as a party all persons that received a notice from SDAT. SDAT may not be joined as a party.

If the court determines that the ground lease holder has violated the provisions regarding collection actions without proper registration, the court must enter an order requiring SDAT to void the appropriate registration/amendment in its records and the prevailing party must provide a copy of the order to SDAT. SDAT must promptly comply and enter a notation in its records that the relevant registration/amendment is void under a court order.

If the court determines that the ground lease holder is *not* in violation, the court must enter an order that the collection/attempted collection that was the subject of the complaint was not unlawful and the holder must provide a copy of the order to SDAT.

### *Additional Requirements*

SDAT must include notice, as specified, regarding the prohibition on collection efforts on its website and all ground rent forms. SDAT must also develop associated forms in accordance with the bill that meet specified requirements. SDAT may adopt regulations to execute the requirements of the bill. However, SDAT is prohibited from charging a fee to carry out the requirements of the bill.

**Current Law:** Generally, 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 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 semiannual installments. Under a typical ground lease contract, the tenant agrees to pay all fees, taxes, and other costs associated with ownership of the property.

Under the Real Property Article, an irredeemable ground rent is a ground rent created under a ground lease executed before April 9, 1884, that does not contain a provision allowing the leasehold tenant to redeem the ground rent. However, statutory provisions require any ground lease holder of an irredeemable ground rent to take specified actions (*e.g.*, record a renewal notice of intention to preserve irredeemability) in order to preserve this status.

SDAT is required to maintain an online registry of all properties that are subject to ground leases. The registry must (1) identify properties for which a renewal notice to preserve the irredeemability of an irredeemable ground lease has been filed and (2) include a clear notation of the expiration date for each renewal notice. If a ground lease is not registered in accordance with statutory provisions, the ground lease holder may not (1) collect any ground rent payments under the ground lease; (2) bring a civil action against the leasehold tenant to enforce any applicable rights; or (3) bring an action against the leasehold tenant under Subtitle 8 of the Real Property Article.

## Additional Information

**Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** SB 193 (Senators Sydnor and Hayes) - Judicial Proceedings.

**Information Source(s):** Baltimore City; Judiciary (Administrative Office of the Courts); State Department of Assessments and Taxation; Department of Legislative Services

**Fiscal Note History:** First Reader - January 27, 2023  
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Analysis by: Donavan A. Ham

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