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Judicial Proceedings Committee

Vice Chair, Baltimore County
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January 28, 2020

The Honorable William C. Smith, Jr.
Senate Judicial Proceedings Committee
2 East Miller Senate Building
11 Bladen Street
Annapolis, Maryland 21401

Re: Senate Bill 170 – Real Property – Ground Leases – Past Due Ground Rent

Dear Chairman Smith and Members of the Committee,

The greater Baltimore area is home to a legal practice that is found virtually nowhere else in the United States. This practice is known as the “ground rent” system. It is a holdover of a practice that existed in Baltimore in colonial times. It works like this: The owner of a lot files a legal document in the Land Records impressing that lot with an annual ground rent, generally in the amount of around \$100 a year. Any purchaser of the lot in future years will owe the annual ground rent to the then-current holder of the ground lease. The duty to pay ground rent will last forever, or at least until the current “leasehold tenant” of the property pays the current holder of the ground lease the sum of money needed to extinguish the ground rent. A Maryland statute grants to each leasehold tenant subject to a ground rent created after 1884 the right to extinguish the ground rent through a payment computable under the statutory language. If a leasehold tenant should fail to pay the required ground rent, the holder of the ground lease can foreclose on the lot and effectively dispossess the tenant.

In colonial times, \$100 a year was a lot of money; today, it is not so much. Because it is so little and because the ownership of the ground leases can get muddled as generations pass and paperwork is misplaced, it is not uncommon for leasehold tenants to get confused about how much they owe and to whom to money should be paid.

In 2007, the Maryland General Assembly passed Chapter 290, requiring the State Department of Assessments and Taxation to create and maintain an online registry of properties subject to ground leases. For a small fee, the holders of ground leases can register their properties. This registry contains critical information about the addresses of properties subject to ground leases, the amount of the required payments, the ground rent due dates, the names of the current ground lease owners and the addresses to which payments should be sent.

The reason for Senate Bill 170 is that the 2007 statute did not require the owners of ground leases to register their ground leases. Due to confused record-keeping, some ground lease owners have not registered their ground leases. In the meantime, some of those properties have been sold to new leasehold tenants.

So the possibility exists today that a person will buy a piece of property subject to a ground rent, and the prior leasehold tenant of the property will not have paid the ground rent for many years because the ground rent wasn't registered and the prior tenant didn't know where to send the annual ground rent checks. So the new leasehold tenant buys the property in good faith. Subsequently, the current owner of the ground lease gets his act together, realizes that 20 years of ground rent is due, registers the ground rent and then demands that the new leasehold tenant or the old tenant pay 20 years of back ground rent plus other fees and threatens to foreclose on the property if the money isn't paid.

Senate Bill 170 seeks to protect the leasehold tenants in these situations. It states that in the event a ground lease was not registered before a new leasehold tenant acquired title to the property, a ground lease holder may not bring a suit or other proceeding against the current leasehold tenant or a former leasehold tenant to recover ground rent that was due and owing *before* the current leasehold tenant acquired title to the property. Under Senate Bill 170, therefore, if the ground lease was not registered before the property was transferred, the ground lease holder may collect rent due *after* the transfer of the property but may not try to collect rent that became due during the three, five, ten, twenty or fifty years *before* the transfer of the property. The enactment of Senate Bill 170 will thus protect a leasehold tenant from being hit with a huge unexpected bill for unpaid ground rent, with the foreclosure of the property in the offing if the bill isn't paid.