



## **Senate Bill 0489**

### **Criminal Law - Fraud - Possession of Residential Real Property**

Hearing in the Senate Judicial Proceedings Committee

Hearing on February 6, 2025

### **Position: Unfavorable**

*Maryland Legal Aid submits its written and oral testimony on SB0489 at the request of Committee member Senator Charles Sydnor.*

Maryland Legal Aid (MLA) is a non-profit law firm that provides free legal services to the State's low-income and vulnerable residents. Our offices serve residents in each of Maryland's 24 jurisdictions and handle a range of civil legal matters, the most prominent of which is housing. MLA represents both low-income homeowners and renters. Our Tenant Right to Counsel Project represented tenants in over 4,600 cases in 2024. Maryland Legal Aid asks that this Committee report **unfavorably** on SB 489.

SB 489 intends to deter "squatting" by creating a new criminal penalties and extrajudicial removal procedures. Importantly, legislators need to know that Maryland law already provides an eviction process for so-called squatters – the Wrongful Detainer action under Real Property § 14-132. MLA strongly opposes this bill because it would criminalize bona fide tenants as well as people and families who may have been fraudulently induced into moving into a property under an unauthorized lease agreement. Moreover, the bill would victimize these community members through sudden eviction without due process. Because SB 489 affords no notice to the occupants nor any meaningful opportunity to be heard, it would likely be unconstitutional as a matter of law and as applied. More importantly, the bill does not holistically address the "squatter" problem that is impacting property owners and renters alike.

### **SB 489 would irreparably harm our clients**

In July 2022, our client moved into a rental home in Pikesville, Maryland, signing a lease with the owner and thereafter paying rent for several months. That fall, a woman whom our client had never met appeared at the property, insisting that she was the owner of the property and threatening to call the police if our client did not leave. When the Baltimore County police did arrive, our client showed her copy of the lease to the officers, who then took no action other than escorting the stranger off the premises. Next, that person filed a Wrongful Detainer action against our client, again claiming that she

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was the owner and that our client had no lawful right of possession. In other words, the case alleged that our client was a squatter. In a trial proceeding, the plaintiff was unable to demonstrate that she held title to the property. In fact, during the pendency of the Wrongful Detainer case, the property was sold to a couple. It became apparent that the only reason to subject our client to allegations of squatting was to sell the property unencumbered by our client's bona fide lease.

In that case, because of the trial procedures involved in the Wrongful Detainer case, our client vindicated her rights and protected herself from a ploy in which, we suspect, the landlord used an unknown person to claim ownership and the right to police-assisted removal of all occupants. Under SB 489, our client may not have had any process or protection.

### **SB 489 ignores the fact that “squatters” may be victims of fraud**

This bill takes aim at so-called squatters by prohibiting any person from possessing or claiming a right to possess residential real property that the person does not lawfully possess or own. This prohibition requires the element of intent to defraud another. A person who does so is subject both to criminal penalties in subsection (a), at pages 1-2, and to immediate extrajudicial eviction without notice under subsection (c)(2)-(3), at page 2.

Absent from SB 489 is any recognition that the person possessing or claiming a right to possess the property may have signed a lease agreement and paid rent and a security deposit to a person who held themselves out to be the property owner or an agent of the owner. This erstwhile renter has no idea that they may lack a right of possession. They may have no copy of the signed lease, no contact information to trace the identity or location of the person who had held themselves out as owner or agent. Because it is common throughout Maryland rental markets for ownership identity to be hidden behind corporate names or obscured by delays in title transfers, and for property agents to act without a license or documentation of any agency authority, this erstwhile renter may not trust or believe any new face who shows up at the doorstep claiming to be the actual owner, realtor, property manager, etc.

Despite this context, SB 489 treats the erstwhile renter as a criminal unless and until she proves in a criminal court that she lacked the intent to defraud another. Predictably, she may face grave difficulty in proving lack of intent, particularly if she failed to immediately vacate the property after someone, whom she had never met and had no reason to believe, notified her that her lease agreement had not been authorized by the actual owner.

In a recent case at MLA, our client and her three family members had moved into rooms in what appeared to be an owner-occupied property rented out by a couple she knew as the Wallaces. Though

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there was no written lease, our clients paid \$400 monthly to the Wallaces for over a year. Then, in November 2024, the Wallaces disappeared without notice. In short order, our clients were summoned to court in a Wrongful Detainer action by a Limited Liability Company, which claimed ownership and further claimed that it had no relationship with either the Wallaces or our clients. In the court case, it became evident that our client had been defrauded by two people who were not the owners, had no authority to lease out the property, and had likely taken possession of the property unlawfully. The district court awarded possession to the Limited Liability Company, and the sheriff carried out the eviction in freezing conditions on January 15. Our client's terrible situation would have been even more traumatizing under SB 489.

### **SB 489 will spur non-judicial evictions of bona fide tenants**

Beyond criminal punishment, SB 489 exposes occupants, lessees, and erstwhile renters to immediate extrajudicial eviction without notice or a court order. The bill includes an exception for lessees, whereby the extrajudicial eviction procedure does not apply if there is "a remedy available under Title 8 of the Real Property Article," i.e., the eviction procedures against tenants for Failure to Pay Rent, Tenant Holding Over, or Breach of Lease. However, SB 489 does not provide any notice or hearing procedures through which a person facing immediate eviction could demonstrate that the exception applies.

In substitution of due process in court, SB 489 allows property owners to submit their allegations to the local sheriff in an affidavit. On receipt of the affidavit, the sheriff *shall* then evict any occupant. Their only opportunity to be heard in this procedure arises when the sheriff has already come onto the property to carry out the eviction. At that late juncture, the occupant may "produce evidence of lawful possession" to stop the eviction. SB 489 does not prescribe any additional procedure such as involving the court for purposes of examining evidence or producing witness testimony. Thus, if a lessee is subjected to this process and cannot show their lease at the moment of eviction because they do not have a copy of the executed agreement, or because they are not home, SB 489 does not entitle them to any additional process before the sheriff completes the eviction. If the lessee does produce a lease agreement for the sheriff, but the owner contests the validity of the agreement, SB 489 neither requires the sheriff to halt the eviction nor provides additional evidentiary procedures in court. The abbreviated eviction process invites violations of individuals' constitutional right to due process.

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## **SB 489 is trojan-horse legislation of the national conservative movement**

SB 489 copies [model legislation](#) of the conservative policy network American Legislative Exchange Council (ALEC).<sup>1</sup> Extolled by Newt Gingrich as “the most effective organization” in spreading conservative policy to state lawmakers,<sup>2</sup> ALEC has pushed its “Stop Squatters Act” throughout the country and has found success in five Republican-controlled legislatures: Alabama, Florida, Georgia, Louisiana, and West Virginia.<sup>3</sup>

Recycling talking points about “squatter” social movements from decades past, ALEC is exploiting a generic fear of “squatting” to weaken existing summary ejectment procedures and tenant protections at a time of rising public interest in expanding those protections. SB 489 is part of a trojan-horse strategy that leverages serious, though relatively rare, property disputes to introduce a statutory end-run around the court system. The National Housing Law Project’s analysis of “squatter” bills succinctly describes this end-run:

Merely being accused of squatting can result in a law enforcement officer appearing at one’s door and demanding proof of lawful occupancy. Some of these confrontations are bound to end in improper evictions and displacements when tenants do not present satisfactory proof, or when police disregard perfectly sufficient documents. Other cases may end in violence or other bad outcomes independent of housing concerns. And the mere prospect of such police encounters empowers abusive landlords to intimidate tenants apprehensive about law enforcement interaction.<sup>4</sup>

## **What the policymakers ought to do instead**

Instead of passing SB 489 or similar bills, the General Assembly and local policymakers should consider policies that focus on the root causes of the so-called squatter problem:

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<sup>1</sup> ALEC, “Stop Squatters Act,” <https://alec.org/model-policy/stop-squatters-act>.

<sup>2</sup> Nick Penzenstadler et al., “What is ALEC? ‘The most effective organization’ for conservatives, says Newt Gingrich,” *USA Today* (April 3, 2019), <https://www.usatoday.com/story/news/investigations/2019/04/03/alec-american-legislative-exchange-council-model-bills-republican-conservative-devos-gingrich/3162357002>.

<sup>3</sup> National Housing Law Project, “NHLP Releases Guidance Memo Regarding Anti-Squatting Legislation,” Oct. 22, 2024, <https://www.nhlp.org/nhlp-publications/nhlp-releases-guidance-memo-regarding-anti-squatting-legislation>

<sup>4</sup> *Id.*

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- Require licensing for all rental property operators and managers and create a central, readily accessible look-up tool so that renters in the marketplace know who they are dealing with and whether that person is authorized to act on behalf of the actual owner of a property.
  - Require written leases for all tenancies. State law and several local codes require only owners of five or more units to use written leases.
  - Create registries within local housing agencies by which renters can register their tenancy information, which the agency can then cross-reference with existing rental licensing information such as owner and operator identity information.
  - Establish a victim assistance fund specific to the relocation needs of residents who face eviction due to leasing scams.

**Maryland Legal Aid urges the Committee to issue a UNFAVORABLE report on Senate Bill 489.**

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