

**CAROLYN A. QUATTROCKI**  
*Chief Deputy Attorney General*

**LEONARD J. HOWIE III**  
*Deputy Attorney General*

**CARRIE J. WILLIAMS**  
*Deputy Attorney General*

**ZENITA WICKHAM HURLEY**  
*Chief, Equity, Policy, and Engagement*



**STATE OF MARYLAND  
OFFICE OF THE ATTORNEY GENERAL**

**ANTHONY G. BROWN**  
*Attorney General*

**WILLIAM D. GRUHN**  
*Division Chief*

**PETER V. BERNIS**  
*General Counsel*

**CHRISTIAN E. BARRERA**  
*Chief Operating Officer*

**KIRA WILPONE-WELBORN**  
*Assistant Attorney General*

February 4, 2025

To: The Honorable William C. Smith, Jr.  
Chair, Judicial Proceedings Committee

From: Kira Wilpone-Welborn, Assistant Attorney General  
Consumer Protection Division

Re: Senate Bill 489 – Criminal Law - Fraud - Possession of Residential Real Property  
(OPPOSE)

The Consumer Protection Division of the Office of the Attorney General (the “Division”) opposes Senate Bill 489 sponsored by Senator J.B. Jennings. While couched as a criminal law bill to address squatting, Senate Bill 489 would create an extra-judicial eviction process that could unconstitutionally deprive occupants of their property without the due process protections guaranteed by the 14<sup>th</sup> Amendment. For the following reasons, the Division opposes Senate Bill 489 and requests the Judicial Proceedings Committee issue an unfavorable report.

First, the extra-judicial eviction created by Senate Bill 489 lacks the constitutionally required notice and opportunity to be heard. *See Todman v. Mayor and City Council of Baltimore*, 104 F. 4<sup>th</sup> 479, 488 (2024)(“The essence of due process is the requirement that ‘a person in jeopardy of serious loss [be given] notice of the case against him and opportunity to meet it.’”). Instead, Senate Bill 489 creates a process by which the sheriff, after receiving an affidavit from the owner of real property that an unauthorized occupant remains in the property, goes to the property and demands “evidence of lawful possession.” The unexpected and unexplained appearance of the sheriff demanding “evidence of lawful possession” is neither notice nor opportunity to be heard demanded by the Constitution. Indeed, the process created by the bill could

ensnarl lawful occupants including homeowners whose property was sold at tax sale, and legal tenants with an oral lease agreement or with a written agreement withheld by the landlord.<sup>1</sup>

Second, Senate Bill 489's lack of process could promote unfair, abusive, and deceptive trade practices that would substantially harm Maryland consumers. Lawful occupants of property entangled by a false affidavit from a bad faith owner, or another, could find themselves out of their homes without any of their personal possessions or ability to contest the ejectment.<sup>2</sup> Likewise, the threat of an ejectment under Senate Bill 489 could be weaponized to retaliate against lawful occupants who submit complaints to the owner about conditions or other violations of the Real Property Article.

Finally, Senate Bill 489 obscures this extra-judicial eviction process in the Criminal Article instead of within the Real Property Article. Any process by which occupants (lawful or unlawful) of real property are to be removed should be within the Real Property Article, where other rights and protections are provided.

For these reasons, the Division urges the Judicial Proceedings Committee to issue an unfavorable report.

Cc: The Honorable J.B. Jennings  
Members, Judicial Proceedings Committee

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<sup>1</sup> Senate Bill 489's exemption when a remedy is available under Title 8 of the Real Property Article does little to prevent bad actors from submitting false affidavits to the sheriff seeking an extra-judicial eviction and provides no remedy to the unlawfully ejected lawful residents when such eviction occurs.

<sup>2</sup> Of note, while Senate Bill 489 demands the Sheriff examine "evidence of lawful possession" from the occupant, it demands no proof of ownership from the person submitting the affidavit before the removal of occupants in a property. It takes little imagination to conjure a scenario whereby a non-owner submits a false affidavit to seek the ejectment of lawful occupants in a manner similar to swatting.