



Senate Bill 49 – Unhoused Individuals – Rights, Civil Action, and Affirmative Defense

Position: Unfavorable

Maryland REALTORS® strongly supports addressing the housing crisis that impacts many Maryland residents and their communities. However, the REALTORS® oppose the solution offered by SB 49.

As drafted, SB 49 would impact private property and require private citizens to dedicate their property and resources to reduce homelessness. The definition of “Public Place” includes property that is “leased” in part by state or local government. Some state and local governments lease parts of private buildings which will force these private parties to comply with the bill’s requirements. Additionally, the bill defines the following private property as “Public:”

- Courtyards;
- Sidewalks;
- Parking lots;
- Shopping centers.

Under SB 49, unhoused individuals would have rights to occupy some of this private property as long they do not obstruct “normal movement” in a manner that creates a “hazard” to others or hinder the “ordinary course of a private entity.” While it is unclear how a court would interpret this, the legislation is clear that the court “**SHALL LIBERALLY CONSTRUE THE SUBTITLE TO MAXIMIZE THE PROTECTIONS AFFORDED BY IT TO UNHOUSED INDIVIDUALS.**”

That standard makes it unclear how much private courtyards, parking lots, sidewalks can be hindered or obstructed. Does that mean that a homeless encampment can take over a garden apartment’s courtyard or park in a resident’s assigned parking spot?

If the homeless were obstructing the operation of private property, it would be difficult to impose any penalty for that given that the bill also creates affirmative defenses for defendants as long as they were deemed to be engaged in “life sustaining” activity under the bill.

While the Maryland REALTORS® believe SB 49 is the wrong solution to homelessness, it believes this legislation is further evidence of the need for Maryland to explore serious solutions to housing supply and affordability.

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