

Department of Legislative Services  
Maryland General Assembly  
2019 Session

FISCAL AND POLICY NOTE  
Third Reader

House Bill 753 (Delegate Holmes)

Environment and Transportation

Judicial Proceedings

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**Real Property - Ground Leases - Past Due Ground Rent**

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This bill specifies that, notwithstanding any other provision of law, a ground lease holder may not bring any suit, action, or proceeding against a current or former leasehold tenant to recover ground rent that was due before the date the current leasehold tenant acquired title to the leasehold interest, if the ground lease was not registered with the State Department of Assessments and Taxation (SDAT) in accordance with specified provisions of the Real Property Article.

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**Fiscal Summary**

**State Effect:** The bill is not anticipated to materially impact State finances or operations.

**Local Effect:** The bill is not anticipated to materially impact local government finances or operations.

**Small Business Effect:** Potential meaningful.

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**Analysis**

**Current Law:**

*Required Registration*

Generally, if a ground lease is not registered with SDAT in accordance with specified provisions of the Real Property Article, the ground lease holder may not (1) collect any ground rent payments due under the ground lease; (2) bring a civil action against the leasehold tenant to enforce any rights the ground lease holder may have under the ground

lease; or (3) bring an action against the leasehold tenant under specified provisions of the Real Property Article related to ground leases.

### *Action for Past-due Ground Rent*

In any suit, action, or proceeding by a ground lease holder (or the transferee of the reversion in property subject to a ground lease) to recover past due ground rent, the ground lease holder or the transferee may only recover up to three years' past-due ground rent, calculated from the date a specified notice required before filing an action for possession was sent by the ground lease holder. If authorized under the ground lease, a ground lease holder may be reimbursed for specified late fees, interest, collection costs, and expenses.

Notwithstanding any other provision of law, in any suit, action, or proceeding to recover past-due ground rent, a ground lease holder may only recover up to three years' past-due ground rent if the property is (1) owned or acquired by the Mayor and City Council of Baltimore by any means and (2) distressed property, as defined in the Public Local Laws of Baltimore City. The three-year period is calculated from the date a specified notice required before filing an action for possession was sent by the ground lease holder.

Notwithstanding any other provision of law, a ground lease holder may not bring any suit, action, or proceeding against the current leasehold tenant to recover ground rent that was due from a former leasehold tenant before the date that the current leasehold tenant acquired title to a property subject to a residential ground lease, if the property is (1) owned or acquired by the current leasehold tenant by any means and (2) abandoned property as defined in the Public Local Laws of Baltimore City.

**Background:** Ground leases have been a form of property holding in Maryland since colonial times. 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 leases generally have a 99-year term and are renewable perpetually. 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.

### *2015 Ground Lease Legislation*

Chapter 428 of 2015 substantially reorganized the law related to ground leases applicable to residential property and made multiple additions. It repealed a provision of law that made the establishment of a lien the remedy for nonpayment of a ground rent on residential property and reinstated, with modifications, an action for possession as the remedy, similar to the posture of the law before 2007. It prohibited the holder of a ground lease from

bringing an action against a tenant unless the ground lease is registered, and it prohibited the use of self-help to take possession of residential property. Chapter 428 also added new requirements for notice and service of process on a leasehold tenant, and it allowed for a holder of a security interest in a property subject to a ground lease to apply to redeem the reversion. Finally, in an ejectment action, Chapter 428 specified and placed limits on the expenses for which a ground lease holder may be reimbursed, and it clarified that recovery of a maximum of three years past-due ground rent is calculated from the date a specified notice was sent.

### *Registration of a Ground Lease*

Chapter 290 of 2007 established the registry of ground leases maintained by SDAT. A ground lease holder registers a ground lease with SDAT by submitting a registration on a form that includes specified information. The registration fee is \$10 for the first ground lease and \$5 for each additional ground lease, per ground lease holder.

### *Remaining Ground Leases in Maryland*

As of February 2019, there were 92,140 ground leases registered with SDAT. According to the registry, ground leases are concentrated mostly in Baltimore City (62,027), with other properties located in Anne Arundel (3,788), Baltimore (25,864), Carroll (11), Cecil (1), Charles (1), Harford (174), Howard (59), Montgomery (5), Prince George's (45), and Worcester (165) counties.

**Small Business Effect:** Small businesses that are holders of ground leases may be prohibited from recovering past-due ground rent from a former leasehold tenant, if the ground lease was not registered before the date that the current leasehold tenant acquired title.

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## **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 956 (Senator Washington) - Judicial Proceedings.

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

**Fiscal Note History:** First Reader - March 1, 2019  
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