

**GROUND RENTS ON LIFE SUPPORT?
MARYLAND LEGISLATURE REVAMPS GROUND LEASES LAWS
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The Maryland General Assembly recently enacted a new set of laws that significantly change much of the current law relating to the enforcement, collection and maintenance of residential ground rents in Maryland. The laws are codified at Md. Code Ann. (2007 Supp.), Real Property Article §§ 8-110.1-111.2, 8-402.2-402.3, 8-701-711, 14-116.1-116.2, and 14-129.

Background.

Ground rent is a relatively unusual interest in real property, unique to Maryland and certain other former U.S. colonies, wherein the ownership of the land is legally separated from that of the home or building constructed thereon. Owners of homes subject to ground rent are deemed to “lease” the underlying land indefinitely, pursuant to a written “ground lease” (typically 99-years in duration, but renewable in perpetuity), and are obligated pay a semi-annual or annual rental payment to the ground lease holder. Typically these rental payments are no more than \$30 or \$40 a year. Although in most respects the owner of a home subject to ground rent is treated just like a fee simple owner, under the prior law, the failure of the leasehold tenant to make a single required rental payment could result in very onerous consequences - including near-immediate dispossession from the property.

In response to public criticism (and a series of articles published in the Baltimore Sun), the Maryland legislature in 2007 passed the above-referenced package of comprehensive reforms that holders of ground rents should be aware of:

Changes from the Old Law:

Abolishment of Ejectment Right for Residential Leases. One aspect of the ground rent that made it a desirable investment was that the holder was afforded the quick (and very powerful) remedy of “ejectment” from the property in the event that the leasehold tenant failed to make payments as required under the ground lease. The new law has completely done away with the right of ejectment with regard to residential properties. Under the new law, in order to dispossess the ground lease tenant from the property, the holder must first obtain a lien based on the amount of ground rent outstanding, and then foreclose upon the lien utilizing the same procedures as would be available to a lienholder under a mortgage or deed of trust without a power of sale or assent to decree provision. The statute sets forth very specific criteria and procedures for obtaining the lien, including a right of the ground rent lessee to dispute the basis for the lien by separate complaint, as well as stringent notice requirements, thus making this process much more cumbersome than an ejectment action. This change in the law will significantly delay the ground rent holder’s efforts to recoup possession, and thus will diminish the leverage a ground rent holder has over the tenant to cause ground rents to be paid on time.

Failure to Register May Cause Loss of Ground Rent. The new law also requires that ground rent holders of residential properties register their interests with the State Department of Assessments and Taxation for the purpose of creating a comprehensive state-wide ground rent registry. The registry is intended to provide a degree of clarity as to ownership, addresses of payments, etc. for the benefit of the leasehold tenants. The holder must pay a fee of \$10 for the first such ground rent registered, and between \$3 and \$5 (depending on the timing of the registration) for each subsequent interest registered. Most importantly, any ground rents that are not registered by September 30, 2010 will be deemed to be extinguished as a matter of law and the leasehold tenant will be deemed to hold fee simple title to the property.

60-day Notice Required before Payment is Late. Under the new law, ground rent bills must now be sent at least sixty (60) days prior to their due date before the installment is due, regardless of the terms of the ground lease instrument. No payment shall be deemed late unless payment is not made by the later of (i) the due date and (ii) the date that is sixty (60) days following delivery of written notice by the ground rent holder. Thus, the ground rent holder's failure to timely bill will result in the ground rent holder being delayed in its ability to enforce its remedies (including collection of late fees and interest).

Inclusion of Statutory Notice in Ground Rent Bills. Ground rent holders must now include certain mandatory language in all ground rent bills (in specified font size and type) apprising leasehold tenants of, among other things, their statutory right to redeem the ground rent, and the consequences of their failure to pay the ground rent on time.

3-year Limit on Back Due Ground Rent. Under the new law, ground rent holders may not recover more than three (3) years of past due ground rent in any action for payment of rent. Accordingly, it is important that ground rent holders not sit on their rights in pursuing unpaid ground rent.

No New Ground Rents to Be Created. Effective as of January 22, 2007, no new residential ground rents can be created in Maryland.

Conclusion

The above referenced changes in the law of ground rents create significant new obligations for the ground lease holder in order to preserve and enforce his or her existing ground rents. The failure to adhere to these new requirements can result in greatly diminished economic value to the holders existing ground rents, and in some cases even the loss of the ground rent. The above provides just a glance at these new limits and requirements, and thus it is highly advisable for ground lease holders to enlist the assistance of knowledgeable legal counsel to ensure compliance with and understanding of these changes.

If you have any questions regarding compliance with this new law or need assistance with any of your real estate needs, please contact Jordan Frame (410-895-1202, or jframe@rosenbergmartin.com) or any attorney in our real estate group:

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