

SENATE BILL 135

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CF HB 177

By: **Senators Gladden and Frosh**

Introduced and read first time: January 18, 2012

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 28, 2012

CHAPTER _____

1 AN ACT concerning

2 **Ground Leases – Registration – Failure to Register**

3 FOR the purpose of prohibiting a ground lease holder from collecting certain ground
4 rent payments, bringing a certain action, or obtaining a certain lien unless the
5 ground lease is registered with the State Department of Assessments and
6 Taxation and the ground lease holder has mailed a certain bill to certain
7 addresses; altering the required contents of certain notices; repealing a certain
8 deadline for registering a ground lease with the Department; repealing certain
9 provisions of law relating to the extinguishment of the reversionary interest of a
10 ground lease holder for failure to register the ground lease before a certain date;
11 making certain conforming changes; establishing that certain ground lease
12 extinguishment certificates are void and have no effect; requiring the
13 Department, on request of a ground lease holder or leasehold tenant, to cause to
14 be filed in the land records of the county in which a certain ground lease
15 extinguishment certificate was filed, a certain notice that the extinguishment
16 has been invalidated by a certain court decision and that the underlying
17 leasehold interest remains in full force and effect; providing for the construction
18 of this Act; and generally relating to ground leases.

19 BY repealing and reenacting, with amendments,

20 Article – Real Property

21 Section 3–102(a), 8–402.3(d) and (e)(3), 8–704, 8–705, 8–709, 8–710, 8–711, and
22 14–116.1(d)

23 Annotated Code of Maryland

24 (2010 Replacement Volume and 2011 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY repealing and reenacting, without amendments,
2 Article – Real Property
3 Section 8–402.3(c) and (e)(1), and 8–703
4 Annotated Code of Maryland
5 (2010 Replacement Volume and 2011 Supplement)

6 BY repealing
7 Article – Real Property
8 Section 8–707, 8–708, and 14–116.1(c)
9 Annotated Code of Maryland
10 (2010 Replacement Volume and 2011 Supplement)

11 BY adding to
12 Article – Real Property
13 Section 8–707 and 14–116.1(c)
14 Annotated Code of Maryland
15 (2010 Replacement Volume and 2011 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article – Real Property**

19 3–102.

20 (a) (1) Any other instrument affecting property, including any contract for
21 the grant of property, or any subordination agreement establishing priorities between
22 interests in property may be recorded.

23 (2) The following instruments also may be recorded:

24 (i) Any notice of deferred property footage assessment for street
25 construction;

26 (ii) Any boundary survey plat signed and sealed by a
27 professional land surveyor or property line surveyor licensed in the State;

28 (iii) Any assumption agreement by which a person agrees to
29 assume the liability of a debt or other obligation secured by a mortgage or deed of
30 trust;

31 (iv) Any release of personal liability of a borrower or guarantor
32 under a mortgage or under a note or other obligation secured by a deed of trust;

1 (v) A ground rent redemption certificate or a ground rent
2 extinguishment certificate issued under § 8–110 of this article [or a ground lease
3 extinguishment certificate issued under § 8–708 of this article]; or

4 (vi) An affordable housing land trust agreement executed under
5 Title 14, Subtitle 5 of this article with any transfer of property for which an affordable
6 housing land trust has a reversionary interest.

7 (3) The recording of any instrument constitutes constructive notice
8 from the date of recording.

9 8–402.3.

10 (c) (1) Notwithstanding any provision of a ground lease giving the ground
11 lease holder the right to reenter, the establishment of a lien under this section is the
12 remedy for nonpayment of a ground rent.

13 (2) This section does not affect the right of a ground lease holder to
14 bring a civil action against the leasehold tenant seeking a money judgment for the
15 amount of the past due ground rent.

16 (d) (1) Subject to §§ 8–111 and 8–111.1 of this title **AND PARAGRAPH (2)**
17 **OF THIS SUBSECTION**, if a ground rent is unpaid 6 months after its due date, the
18 ground lease holder may obtain a lien under this section in the amount of the ground
19 rent due.

20 (2) **THE GROUND LEASE HOLDER MAY NOT OBTAIN A LIEN UNDER**
21 **THIS SECTION UNLESS:**

22 (i) **THE GROUND LEASE IS REGISTERED WITH THE STATE**
23 **DEPARTMENT OF ASSESSMENTS AND TAXATION UNDER SUBTITLE 7 OF THIS**
24 **TITLE; AND**

25 (ii) **THE GROUND LEASE HOLDER HAS MAILED A BILL FOR**
26 **THE PAYMENT DUE TO THE LAST KNOWN ADDRESS OF THE LEASEHOLD TENANT**
27 **AND TO THE ADDRESS OF THE PROPERTY SUBJECT TO THE GROUND LEASE IN**
28 **ACCORDANCE WITH § 14–116.1 OF THIS ARTICLE.**

29 (e) (1) A ground lease holder seeking to create a lien under this section
30 shall give written notice to:

31 (i) The leasehold tenant; and

32 (ii) Each mortgagee or trustee of the property whose lien is on
33 record.

1 (3) A notice under this subsection shall include:

2 (i) The name and address of the party seeking to create the
3 lien;

4 (ii) A statement of intent to create a lien;

5 (iii) An identification of the ground lease;

6 (iv) **A STATEMENT THAT THE GROUND LEASE IS**
7 **REGISTERED WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION;**

8 (v) The amount of ground rent alleged to be due;

9 ~~[(v)]~~ (vi) A description of the property sufficient to identify the
10 property;

11 ~~[(vi)]~~ (vii) A statement that the party to whom notice is given
12 under this subsection has the right to object to the establishment of a lien by filing a
13 complaint in the circuit court and the right to a hearing;

14 ~~[(vii)]~~ (viii) An explanation of the procedure to file a complaint
15 and request a hearing; and

16 ~~[(viii)]~~ (ix) A statement that, unless the past due ground rent is
17 paid or a complaint is filed under subsection (f) of this section within 45 days after the
18 notice is served, a lien will be imposed on the property.

19 8-703.

20 (a) The Department shall maintain an online registry of properties that are
21 subject to ground leases.

22 (b) The Department is not responsible for the completeness or accuracy of
23 the contents of the online registry.

24 8-704.

25 (a) A ground lease holder shall register a ground lease with the Department
26 by submitting:

27 (1) A registration form that the Department requires; and

28 (2) The registration fee for each ground lease as provided under
29 subsection (c) of this section.

1 (b) The registration form shall include:

2 (1) The premise address and tax identification number of the property
3 for which the ground lease was created;

4 (2) The name and address of the ground lease holder;

5 (3) The name and address of the leasehold tenant;

6 (4) The name and address of the person to whom the ground rent
7 payment is sent;

8 (5) The amount and payment dates of the ground rent installments;

9 (6) To the best of the ground lease holder's knowledge, a statement of
10 the range of years in which the ground lease was created; and

11 (7) The liber and folio information for the current ground rent deed of
12 record.

13 (c) The registration fee for a ground lease per ground lease holder is:

14 (1) \$10 for the first ground lease; and

15 (2) **[For] \$5 FOR** each additional ground lease[:

16 (i) \$3 before October 1, 2008;

17 (ii) \$4 on or after October 1, 2008 and before October 1, 2009;

18 and

19 (iii) \$5 on or after October 1, 2009].

20 8-705.

21 (a) The Department shall register a ground lease when the Department
22 receives:

23 (1) A registration form; and

24 (2) The appropriate registration fee for each ground lease.

25 (b) **[(1)]** If for any reason the Department is unable to register a ground
26 lease for which a registration form and appropriate fee has been submitted, the
27 Department shall notify the ground lease holder of that ground lease, within 30 days
28 of processing the registration form, of any information needed by the Department so as
29 to complete the registration.

1 [(2) The ground lease holder shall have up to 30 days to supply the
2 needed information to the Department before any action may be taken under § 8–708
3 of this subtitle.]

4 [8–707.

5 (a) Except as provided in subsection (b) of this section, a ground lease holder
6 shall register a ground lease under this subtitle before September 30, 2010.

7 (b) If a ground lease holder is under a legal disability at the expiration of the
8 registration period under subsection (a) of this section, the ground lease holder has 2
9 years after the removal of the disability to register the ground lease.]

10 **8–707.**

11 **IF A GROUND LEASE IS NOT REGISTERED IN ACCORDANCE WITH THIS**
12 **SUBTITLE, THE GROUND LEASE HOLDER MAY NOT:**

13 **(1) COLLECT ANY GROUND RENT PAYMENTS DUE UNDER THE**
14 **GROUND LEASE;**

15 **(2) BRING A CIVIL ACTION AGAINST THE LEASEHOLD TENANT**
16 **SEEKING A MONEY JUDGMENT FOR THE AMOUNT OF ANY GROUND RENT DUE TO**
17 **ENFORCE ANY RIGHTS THE GROUND LEASE HOLDER MAY HAVE UNDER THE**
18 **GROUND LEASE; OR**

19 **(3) OBTAIN A LIEN UNDER § 8–402.3 OF THIS TITLE.**

20 [8–708.

21 (a) If a ground lease holder does not satisfy the requirements of § 8–707 of
22 this subtitle, the reversionary interest of the ground lease holder under the ground
23 lease is extinguished and ground rent is no longer payable to the ground lease holder.

24 (b) If a ground lease is extinguished under this section, on application of a
25 leasehold tenant, the Department shall issue to the leasehold tenant a ground lease
26 extinguishment certificate.

27 (c) The extinguishment of the ground lease is effective to conclusively vest a
28 fee simple title in the leasehold tenant, free and clear of any and all right, title, or
29 interest of the ground lease holder, any lien of a creditor of the ground lease holder,
30 and any person claiming by, through, or under the ground lease holder when the
31 leasehold tenant records the certificate in the land records of the county in which the
32 property is located.

1 (d) To the extent that the extinguishment of a ground lease under this
2 section creates income for the leasehold tenant, that income may not be considered in
3 the calculation of income for the purposes of determining eligibility for any State or
4 local program.

5 (e) If the legal disability of a ground lease holder is removed after a ground
6 lease is extinguished under this section:

7 (1) If the ground lease extinguishment certificate has been recorded,
8 the ground lease holder:

9 (i) Is entitled to receive from the former leasehold tenant the
10 redemption value of the ground lease; and

11 (ii) Has no claim on the property that had been subject to the
12 ground lease; and

13 (2) If the ground lease extinguishment certificate has not been
14 recorded, the ground lease holder:

15 (i) May reinstate the ground lease by registering the ground
16 lease with the Department within 2 years after the removal of the legal disability; and

17 (ii) Is not entitled to ground rent for the period of the legal
18 disability.

19 (f) If a ground lease is extinguished under this section and a ground lease
20 extinguishment certificate has not been recorded, a buyer of the property for which the
21 ground lease has been extinguished:

22 (1) May apply to the Department for a ground lease extinguishment
23 certificate and file the certificate in the land records of the county in which the
24 property is located; and

25 (2) Once the ground lease extinguishment certificate has been filed,
26 may not be required to pay any security or any amount into an escrow account for the
27 extinguished ground lease.]

28 **[8-709.] 8-708.**

29 The Department shall work with the State Archives to coordinate the
30 recordation, indexing, and linking of ground leases registered under this subtitle.

31 **[8-710.] 8-709.**

32 (A) The Department shall credit all fees collected under this subtitle to the
33 fund established under § 1-203.3 of the Corporations and Associations Article.

1 **(B)** Fees received shall be held in a ground lease registry account in that fund
2 and shall help defray the costs of the registry created under this subtitle.

3 ~~[8-711.]~~ **8-710.**

4 The Department shall adopt regulations to carry out this subtitle.

5 ~~14-116.1.~~

6 **[(c)** No later than 60 days before a yearly or half-yearly installment payment
7 of a ground rent is due, a ground lease holder shall mail to the last known address of
8 the leasehold tenant a bill for the payment due.]

9 **(C) A GROUND LEASE HOLDER MAY NOT COLLECT A YEARLY OR**
10 **HALF-YEARLY INSTALLMENT PAYMENT OF A GROUND RENT DUE UNDER THE**
11 **GROUND LEASE UNLESS:**

12 **(1) THE GROUND LEASE IS REGISTERED WITH THE STATE**
13 **DEPARTMENT OF ASSESSMENTS AND TAXATION UNDER TITLE 8, SUBTITLE 7**
14 **OF THIS ARTICLE; AND**

15 **(2) AT LEAST 60 DAYS BEFORE THE PAYMENT IS DUE, THE**
16 **GROUND LEASE HOLDER MAILES A BILL TO THE LAST KNOWN ADDRESS OF THE**
17 **LEASEHOLD TENANT AND TO THE ADDRESS OF THE PROPERTY SUBJECT TO THE**
18 **GROUND LEASE.**

19 **(d)** The bill shall include a notice in boldface type, at least as large as 14
20 point, in substantially the following form:

21 “NOTICE REQUIRED BY MARYLAND LAW

22 REGARDING YOUR GROUND RENT

23 This property (address) is subject to a ground lease. The annual payment on the
24 ground lease (“ground rent”) is \$(dollar amount), payable in yearly or half-yearly
25 installments on (date or dates).

26 The next ground rent payment is due (day, month, year) in the amount of \$(dollar
27 amount).

28 The payment of the ground rent should be sent to:

29 (name of ground lease holder)

30 (address)

31 (phone number)

1 NOTE REGARDING YOUR RIGHTS AND RESPONSIBILITIES UNDER
2 MARYLAND LAW:

3 **THE GROUND LEASE HOLDER IS REQUIRED TO REGISTER THE GROUND LEASE**
4 **WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION AND IS**
5 **PROHIBITED FROM COLLECTING GROUND RENT PAYMENTS UNLESS THE**
6 **GROUND LEASE IS REGISTERED. [As] IF THE GROUND LEASE IS REGISTERED, AS**
7 the owner of this property, you are obligated to pay the ground rent to the ground
8 lease holder. **TO DETERMINE WHETHER THE GROUND LEASE IS REGISTERED, YOU**
9 **MAY CHECK THE WEB SITE OF THE STATE DEPARTMENT OF ASSESSMENTS AND**
10 **TAXATION.** It is also your responsibility to notify the ground lease holder if you
11 change your address or transfer ownership of the property.

12 If you fail to pay the ground rent on time, you are still responsible for paying the
13 ground rent. In addition, the ground lease holder may take action to collect the past
14 due ground rent which may result ultimately in your loss of the property. Please note
15 that under Maryland law, a ground lease holder may demand not more than 3 years of
16 past due ground rent. If you fail to pay the ground rent on time, you should contact a
17 lawyer for advice.

18 As the owner of this property, you are entitled to redeem, or purchase, the ground
19 lease from the ground lease holder and obtain absolute ownership of the property. The
20 redemption amount is fixed by law but may also be negotiated with the ground lease
21 holder for a different amount. For information on redeeming the ground lease, contact
22 the ground lease holder. If the identity of the ground lease holder is unknown, the
23 State Department of Assessments and Taxation provides a process to redeem the
24 ground lease that may result in your obtaining absolute ownership of the property. If
25 you would like to obtain absolute ownership of this property, you should contact a
26 lawyer for advice.”.

27 SECTION 2. AND BE IT FURTHER ENACTED, That any ground lease
28 extinguishment certificate issued by the State Department of Assessments and
29 Taxation under former § 8–708 of the Real Property Article is void and has no effect.

30 SECTION 3. AND BE IT FURTHER ENACTED, That, if a ground lease
31 extinguishment certificate issued under § 8–708 of the Real Property Article, as it
32 existed immediately before the effective date of this Act, was filed in the land records,
33 on request of the ground lease holder or the leasehold tenant, the State Department of
34 Assessments and Taxation shall cause to be filed in the land records of the appropriate
35 county a notice that states “The Certificate of Ground Lease Extinguishment, recorded
36 (insert the appropriate month, day, and year) has been invalidated by the Maryland
37 Court of Appeals pursuant to its holding in Muskin v. State Department of
38 Assessments and Taxation, 422 Md. 544 (2011) and the underlying leasehold interest
39 remains in full force and effect unless otherwise redeemed under applicable Maryland
40 law.”

1 SECTION 4. AND BE IT FURTHER ENACTED, That this Act may not be
 2 construed to prohibit a ground lease holder who registers a ground lease under §
 3 8-704 of the Real Property Article, as enacted by Section 1 of this Act, after the
 4 effective date of this Act from collecting ground rent payments or taking any other
 5 action to enforce any rights under the ground lease, subject to § 8-111.1 of the Real
 6 Property Article, after the ground lease is registered.

7 SECTION ~~3~~ 5. AND BE IT FURTHER ENACTED, That this Act shall take
 8 effect July 1, 2012.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.