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## **House Bill 463 – Ground Rents – Remedy for Nonpayment of Ground Rent**

### **Position: Support with Amendments**

The Maryland Association of REALTORS® (MAR) supports HB 463 which would repeal the current ejectment right of ground rent owners and substitute a lien right for owners instead.

MAR believes this legislation directly addresses the most egregious practices that were made public during the last 6 months. While ground rents were subject to the same ejectment rights as other leases, the current system can produce some extremely unfair results.

HB 463 will preserve an appropriate and proportional enforcement mechanism for ground rent owners when tenants are delinquent in rent payments. Similar to a normal foreclosure process, the owner would be able to recover past rent due, and any costs and attorney fees awarded by the court. However, the tenant would be able to retain any of the equity left in the property which may be many times greater than the ground rent owner recovered in court.

MAR would further recommend that the lien of the owner be given priority, but that the foreclosure right would not be available until the amount owed the owner exceeded 20% of the assessed value of the property or \$20,000 or three years time since the date of final judgment. This assures that homeowners are not kicked out of their home over relatively small amounts of money owed.

MAR supports HB 463 with the amendments proposed by the Greater Baltimore Board of REALTORS® (GBBR).



**GBBR Amendments to HB 463**

No. 1 On page 9, line 11, substitute SHALL for MAY.

No. 2 On page 9, line 30, after MAY insert NOT.

No. 3 On page 10, lines 1 and 2, strike and replace with:

(4) A LIEN IMPOSED UNDER THIS SUBTITLE HAS PRIORITY OVER ALL OTHER LIENS, EXCEPT TAX LIENS.

No. 4 On page 10, lines 20-24, strike in their entirety and substitute:

(O) (1) A LIEN CREATED UNDER THIS SUBTITLE MAY BE ENFORCED AND FORECLOSED BY THE PARTY WHO OBTAINED THE LIEN IN THE SAME MANNER, AND SUBJECT TO THE SAME REQUIREMENTS, AS THE FORECLOSURE OF MORTGAGES OR DEEDS OF TRUSTS ON PROPERTY IN THIS STATE CONTAINING NEITHER A POWER OF SALE OR AN ASSENT TO A DECREE, PROVIDED THAT:

(I) THE LIEN AMOUNT IS THE LESSER OF 20% OF THE ASSESSED VALUE OF THE PROPERTY AS DETERMINED BY THE STATE DEPARTMENT OF ASSESSMENT AND TAXATION

(II) THE LIEN AMOUNT EXCEEDS \$20,000; OR

(III) THREE YEARS HAVE PASSED SINCE THE DATE OF FINAL JUDGEMENT.

No. 5 On page 11, line 8, after TITLE, strike the period and add:

AFTER WHICH THE DEPARTMENT SHALL PROCEED IN ACCORDANCE WITH §8-110(G)(7).

No. 6 On page 11, after line 8, insert new subsection Q as follows:

(Q) NOTHING IN THIS SUBTITLE AFFECTS THE RIGHT OF A GROUND RENT OWNER TO MAINTAIN A PERSONAL ACTION AGAINST THE LEASEHOLD TENANT FOR GROUND RENT DUE.



**BALTIMORE COUNTY**  
MARYLAND

JAMES T. SMITH, JR.  
*County Executive*

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*Legislative Liaison Office*

**House Bill 463**

**To:** House Environmental Matters Committee

**From:** James T. Smith, Jr., County Executive

**Staff Contact:** Erin P. Favazza, State Affairs Director

**Title:** Ground Rents – Remedy for Nonpayment of Ground Rent

**Sponsor:** Delegate Rosenberg and the Speaker (By Request – Administration)

**Position:** SUPPORT

Baltimore County **SUPPORTS** House Bill 463 because it is part of an overall legislative package to reform Maryland’s antiquated ground rent system that has unjustly caused families to lose their homes. While Baltimore County does not have definitive data on the number of ground rents in the County, based on anecdotal accounts, many are located in the County.

Additionally, the County supports the other pieces of the Governor’s legislative package to reform ground rents that will provide homeowners with better protection, understanding, and opportunities to buy their own ground rents, as well as provide a more equitable remedy for failure to pay the ground rent. Those pieces of legislation include:

- Prohibit the use of ejectment as a remedy for the nonpayment of ground rent;
- Establish that the sole remedy for the nonpayment of ground rent is the creation of a lien in the amount of the ground rent due;
- Require that in order to create a lien, the ground rent must be at least 6 months in arrears and the ground rent owner must provide written notice to the tenant;
- Repeal the waiting period for a tenant to redeem a ground rent and require that the ground rent owner give the tenant the first opportunity to redeem a ground rent before offering to a third party;

- Create a registry and on-line database for ground rents and properties subject to ground rents with the Maryland State Department of Assessments and Taxation; and
- Decrease, from 20 years to 3 years, the amount of time after which, if no demand or payment of ground rent is made, a ground rent is extinguished.

For these reasons, Baltimore County **SUPPORTS** HB 463 and requests a **FAVORABLE** report.

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**Testimony in Opposition of HB 463 -  
Remedy for Nonpayment of Ground Rent  
On behalf of the Ground Rent Owners Coalition  
House Environmental Matters Committee**

February 22, 2007

We are here today representing the Ground Rent Owners Coalition, composed of investors of all types who own ground rents, including attorneys who are experts in property law. Ground rent owners in Maryland have vested constitutional legal rights because they own the land and are protected just as any other land owner. The Coalition supports reasonable changes and improvements in the enforcement process, but ground rent owners deserve protection also. If owners' fees are established or so-called reforms overburden an already complex enforcement process, the ground rent owner may be deprived of legal rights also. We have submitted to the committee an exhibit showing the enforcement and notice process that exists today, and there is already numerous built-in protections and notice throughout the enforcement process. Thus, the legislative process must carefully balance the interests of all parties, including the owners who for hundreds of years have invested in ground rents in Maryland.

Although the Coalition has supported other bills, we are here today to voice strong opposition to HB 463. Tampering with the ejectment process by completely removing the current lien in HB 463 is unnecessary and may be unconstitutional. The Ground Rent Owners Coalition will make many constructive suggestions to improve the process, but establishment of the new lien process as set forth in HB 463 will essentially make the ground rent owners current investment unenforceable and potentially of little value.

Accordingly, the Ground Rent Owners Coalition requests an **unfavorable** report on HB 463.

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Testimony of  
Delegate Samuel I. Rosenberg  
Before the  
House Environmental Matters Committee  
in Support of

**House Bill 463 – Ground Rent –  
Remedy for Nonpayment of Ground Rent**

Madam Chair and Members of the Committee:

It is unconscionable for homeowners to be ejected from their properties because they failed to pay their ground rents, some as low as \$24 per year. House Bill 463 would end this unfair practice.

One of the most inequitable arrows in the ground rent holders' quiver is ejectment. Once a homeowner is more than six months behind in paying the ground rent, the holder may eject the homeowner and take back the home. These proceedings are often cursorily done without adequate notice to the homeowner.

HB 463 eliminates this gross inequity of the ground rent system. It repeals the sections of the Real Property Article which authorize ejectment proceedings. In its place, the bill provides for the establishment of a lien as the sole remedy for nonpayment of a ground rent.

Proper notice procedures are also established to ensure that homeowners are treated fairly. Notice would be served by certified mail or personal delivery, as well as by a posting in a conspicuous manner on the property.

The notice must include an explanation of the procedure to file a complaint and request a hearing on the lien. The party seeking to establish the lien has the burden of proof. If the landlord is the prevailing party, an award of costs and reasonable attorney's fees may not exceed \$500.

This bill places ground rent holders and homeowners on more equal footing. Ground rent holders may still institute actions to receive payment for their ground rents. They may no longer eject people from their home.

To ensure that homeowners with ground rents are treated more equitably, I urge this Committee to give House Bill 463 a favorable report.

February 22, 2007

**CONSTITUTIONAL ANALYSIS  
OF HOUSE BILL 463**

**prepared by**

**Professor Byron L. Warnken  
University of Baltimore School of Law**

**prepared for**

**The Ground Rent Owners Coalition**

**SUMMARY OF THE ANALYSIS**

H.B. 463 is an unconstitutional "taking" in violation of the Fifth Amendment Takings Clause and art. III, § 40, of the Maryland Constitution.

H.B. 463 is a "taking" because it eliminates ground rent owners' reversionary interest through the total destruction of the right of re-entry. Without the right of re-entry, there is, in essence, no property interest for the reversionary owner.

The H.B. 463 "taking" is not a taking for a "public purpose." By eliminating the right of re-entry, the State would be "taking" for a private purpose. For each ground rent, the State would expressly take away the reversionary ownership interest from the ground rent owner, and give that property interest to the lessee for the private benefit of that person.

Even if a court held that the "taking" was for a "public purpose," the State would be constitutionally required to pay "just compensation." Because H.B. 463 would have the effect of (1) taking away virtually all economic value of the reversionary ownership interest for those ground rents now unpaid, (2) greatly increasing the number of reversionary ownership interests that would become economically worthless through non-payment of ground rents, and (3) causing the fair market value of all ground rents to greatly decrease, the "just compensation" is estimated to be in excess of \$150 million.

**ANALYSIS**

**CONSTITUTIONALLY, H.B. 463 IS FATALLY FLAWED. IF ENACTED, H.B. 463 WOULD BE AN UNCONSTITUTIONAL "TAKING." IT WOULD ELIMINATE GROUND RENT OWNERS' REVERSIONARY INTEREST BY STATUTORILY DESTROYING THE RIGHT OF RE-ENTRY. THIS TAKING WOULD VIOLATE THE FIFTH AMENDMENT AND ART. III, § 40, OF THE MARYLAND CONSTITUTION BECAUSE THE "TAKING" WOULD NOT BE FOR A "PUBLIC PURPOSE." OF COURSE, IF A COURT HELD THAT THE "TAKING" IS FOR A "PUBLIC PURPOSE," THE STATE WOULD BE CONSTITUTIONALLY REQUIRED TO PAY "JUST COMPENSATION."**



H.B. Bill 463 proposes the following addition to Md. Real Prop. Code Ann. § 8-402.2(B):  
“Notwithstanding any provision of a ground rent lease giving the landlord the right to reenter, the establishment of a lien under this section is the sole remedy for nonpayment of a ground rent.”

The constitutional analysis is a three-question process. First, would elimination of the right of re-entry constitute a “taking” under the federal and state Constitutions? Under the case law, the answer is “yes.” Second, would such a taking qualify as a taking for a “public purpose”? Although the case law can be argued both ways, the case law is stronger on the side of a finding that the taking would not qualify as being accomplished for a public purpose. Third, the “just compensation” issue has a two-part analysis. If the taking is not for a public purpose, the taking itself is unconstitutional. Alternatively, even if the taking is for a public purpose, the State must provide just compensation, which would likely exceed \$150 million.

- A. The essence of the reversionary ownership interest in the ground rent is the right of re-entry. In net effect, without this right, there is no property interest. If H.B. 463 became law and eliminated that property interest, it would constitute a “taking” under the Fifth Amendment and art. III, § 40, of the Maryland Constitution.**

There are about 160,000 ground rents in Baltimore City. A ground rent owner has a reversionary ownership interest in the property, through the right of re-entry, in the event the lessee violates the lease. (There are nine procedural steps/protections, taking more than a year before the right of re-entry may be exercised.)<sup>1</sup> The right of re-entry is the only property interest

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<sup>1</sup> The right of re-entry only becomes available after the ground rent owner has taken nine steps designed to provide the lessee with notice and with opportunity to pay the ground rent and avoid re-entry.

- (1) Notify the purchaser of real property, through the contract of sale, that the property is subject to ground rent, and notify that if the ground rent is not paid timely, the ground rent owner may file suit for possession of the property.
- (2) Wait for the arrearage on the lease payment to become at least six months.
- (3) After the six-month arrearage period, send a certified letter, return receipt requested, to the lessee’s last known address, stating that the ground rent is six months in arrears.
- (4) Also after the six-month arrearage period, send a first class letter to the title agent or attorney listed on the deed or the intake sheet recorded with the deed.
- (5) After another 45-day waiting period, bring an action for possession of the property, which must be personally served on the lessee or, if no lessee is in actual possession of the property, posted on the property.
- (6) Prior to entry of a judgment, provide written notice of the pending entry of judgment to each mortgagee of the property.
- (7) Record the notice of judgment, indexed under the name of the mortgagor, with all identifying information related to mortgagees, mortgagors, and ground rent lease.

of any value, and it is only because of that right of re-entry that the reversionary ownership interest can be enforced. Moreover, it is only because of the right to enforce the reversionary ownership interest that a ground rent owner has a property right that others in the marketplace have an interest in purchasing. If enacted, H.B. 463 would destroy the reversionary ownership interest by completely eviscerating the right of re-entry. H.B. 463 does not merely place a regulation on the reversionary ownership interest. Rather, it completely takes away that interest.

Under H.B. 463, the reversionary owner would no longer have a reversionary interest. Instead, the reversionary owner would have, at best, a dollar value lien, that may not be collectable for 30 years. The reversionary ownership interest will have been taken away and replaced with no property interest at all, i.e., there would merely be a lien for future money. If an individual owns a property interest, but is denied by the Government the right to enforce that property interest, there is no property interest remaining. When the Government takes away a property right that was enforceable in a court of law, the property has lost all value, and there has been, in constitutional terms, a “taking.”

The following analogy is instructive. Assume that an investor purchases an apartment building and rents the apartments. Subsequently, the Maryland General Assembly enacts a law that provides that, even if a lessee fails to satisfy the terms of the lease, the property owner may not re-enter the property against the lessee – ever. Instead, if the lessee fails to satisfy the terms of the lease, the property owner may obtain a judgment against the lessee, which may be collectable at some unknown date in the future. In the interim, if the lessee elects to remain on the property for 30 years, the property owner would merely have the right to collect, but not the right of re-entry. Clearly, that would be a “taking.”

The most recent “takings” case in the Court of Appeals of Maryland (COA) was decided three months ago. In Neifert v. Department of Environment, 395 Md. 486 (2006), the Court restated the standard for determining whether there is a taking, as follows:

[The] Takings Clause of the Fifth Amendment to the United States Constitution does not prohibit regulation of property, but if a regulation goes too far, it will be recognized as a taking. Whether a particular regulation constitutes a taking depends on the particular circumstances of each case. It has been recognized that

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(8) Send a certified letter, return receipt requested, to the mortgagee, at the address stated in the recorded request for notice of judgment.

(9) Wait an additional six month after the execution of the judgment for possession for the ground rent and awarded costs to be paid by the lessee or any other person.

most regulatory takings cases should be resolved by balancing the public and private interests at stake, considering three primary factors: (1) the economic impact of the regulation on the claimant, (2) the extent to which the regulation has interfered with distinct investment-backed expectations, and (3) the character of the government action.

Id. at 517.

Applying Neifert to the impact of H.B. 463, if enacted, demonstrates that H.B. 463 is a “taking” within the meaning of the federal and state Constitutions. As the COA stated, H.B. 463 “goes too far.” As for the first factor, H.B. 463 would have a devastating impact on the reversionary ownership interest. It would have the effect of (1) taking away virtually all of the economic value of the ground rent on properties with unpaid ground rents; (2) greatly increasing the number of ground rents that will become economically worthless through non-payment by decreasing the lessee’s incentive to pay the ground rent; and (3) causing the fair market value of all ground rents to drop significantly.

As for the second factor, H.B. 463 would completely defeat the “distinct investment-backed expectations.” No investor would purchase ground rents if the investor knew that, in the event that the ground rent went unpaid, the only remedy existing -- that of re-entry -- was gone.

In Stevens v. City of Salisbury, 240 Md. 556 (1965), there was a dangerous public intersection. The Government required property owners to remove masonry corner posts and reduce the height of shrubbery and picket fences. Id. at 572. The COA held that this governmental action was “unreasonable, confiscatory in nature, and if enforced, would amount to a taking of private property.” Id. at 568. The Court held that the restrictions were substantial, were a severe interference with the property right, and were tantamount to a deprivation of the property interest. Id. If the Government’s conduct in Stevens was a taking, certainly the complete destruction of the right of re-entry, as the only property right of the reversionary owner’s interest, is a taking.

In Maryland-National Capital Park & Planning Commission v. Chadwick, 286 Md. 1 (1979), the governmental placed privately owned land in a public “reservation” for a term of up to three years. The COA affirmed that this was an unconstitutional taking because the “reservation” effectively denied the owners of their right to use the land. If placing a “reservation” on property for up to three years is a taking, so is the complete annihilation of the right of re-entry, as it is the only means of enforcing an owner’s reversionary ownership interest. In Howard County v. JJM, Inc., 301 Md. 256 (1984), the COA held that a statute that required

developers to reserve a right-of-way in a subdivision for a new state highway that was part of the State's long term highway plan was also a taking.

In Leet v. Montgomery County, 264 Md. 606 (1972), the COA addressed a trash-removal ordinance that required property owners to remove vehicles abandoned on their property. The Court held that, even though there was no physical invasion by the Government, the ordinance constituted a taking because there was a negative economic impact on the property owner. See id. at 615. Likewise, under H.B. 463, there would be no physical invasion of the property, but the economic taking would be even more unconstitutional than the taking in Leet.

As for the third factor, the character of the government action shows that H.B. 463 constitutes a taking. Although the Government has broad power to regulate, there is no legitimate argument that H.B. 463, if enacted, would be a mere regulation. It is a taking under Supreme Court and Maryland cases that have interpreted the Fifth Amendment Takings Clause and art. III, § 40, of the Maryland Constitution. Because the property interest is eviscerated, and not regulated, it is a taking.

In Congressional School v. Roads Commission, 218 Md. 236 (1958), the COA, addressing the use of zoning as a "back door" for the Government to take without paying "just compensation," stated:

There seems to be general agreement among the authorities which have considered the question that zoning cannot be used as a substitute for eminent domain proceedings so as to defeat the constitutional requirement for the payment of just compensation in the case of a taking of private property for public use by depressing values and so reducing the amount of damages to be paid.

Id. at 241.

Through H.B. 463, the State would effectuate a "taking." As such, the constitutional analysis is triggered. Once the constitutional analysis is triggered, the two remaining questions narrow the issue to (1) whether that taking is unconstitutional and, thus, cannot take place, or (2) whether that taking may take place, but only with the State paying "just compensation."

- B. The "taking" of the reversionary ownership interest violates the Fifth Amendment and art. III, § 40, of the Maryland Constitution because the "taking" would be for a private purpose and not for a public purpose. Through H.B. 463, for each ground rent, the State would directly take away the reversionary ownership interest from the ground rent owner, and give that property interest to the lessee, for that person's private use, by eliminating the right of re-entry.**

Courts extend deference to state and local legislatures regarding what qualifies as a “public purpose” taking. The most recent Supreme Court case is the 5-to-4 decision in Kelo v. City of New London, 545 U.S. 469 (2005), in which the Court held that the taking of private property for development to increase the tax base and revitalize an economically distressed city was a public purpose because the development would increase business, jobs, and the tax base. The Court said that it must look to the purpose of the taking to determine whether it is a public use.

The taking that would be effectuated by H.B. 463 would be a private taking because it would not be for a “public purpose.” Through H.B. 463, for each ground rent, the State would directly take away the reversionary ownership interest from the ground rent owner and give that property interest to the lessee. In other words, through H.B. 463, the State would “take,” from the ground rent owner, the reversionary ownership interest – the right of re-entry – and would “give” that “taken” property interest to a private party, i.e., the lessee.

This taking would be a private taking and not a taking for a public purpose. For each ground rent, the State would take the reversionary ownership interest and give it to a private person lessee for the private use of that person and not for a public purpose. The fact that the Maryland General Assembly would simultaneously “take” 160,000 times does not make each taking any less of a taking and does not make each taking any less of a private taking.

In Van Witsen v. Gutman, 79 Md. 405 (1894), Baltimore City condemned part of a public alley in order to sell it to a private landowner whose property adjoined the alley. As a consequence, other landowners lost easements. Id. at 407-08. The COA held that this taking was to promote a private interest and not for a public interest. Id. at 411-12. In so doing, the City unconstitutionally took the property right of some individuals – their easements – and give that property right to another individual for that individual’s private use. Id.

In Perellis v. Mayor & City Council of Baltimore, 190 Md. 86 (1948), the Epsteins were the owners of property adjacent to an alley. They entered into a contract with the City to obtain a piece of property in the middle of the alley. Id. at 89. In exchange, the Epsteins would give the City a piece of property with which to construct a new alley, and the Epsteins would pay the associated costs. Id. Other property owners adjacent to the alley claimed that closing the alley would substantially impair their access and thereby devalue their properties. Id. at 90. The COA held that the City’s plan to close the alley was invalid because it was not for a public purpose.

Id. at 95. Instead, the taking was “solely for the private use and advantage of the Epsteins.” Id. Like in Van Witsen and Perellis, H.B. 463 is a private use bill, unconstitutionally taking from the reversionary ownership interest and giving it to another.

Regardless of how it is characterized, H.B. 463 constitutes a taking for private – not public – purposes, and it is, therefore, unconstitutional.

- C. If a Court held that the “taking” of the reversionary ownership interest is a taking for a “public purpose,” the State would be constitutionally required to pay “just compensation” to the owners of the reversionary interest. Because H.B. 463 would have the effect of (1) taking away virtually all economic value of the reversionary ownership interest for those ground rents now unpaid, (2) greatly increasing the number of reversionary ownership interests that would become economically worthless through non-payment of ground rents, and (3) causing the fair market value of all ground rents to greatly decrease, the State would be constitutionally required to pay “just compensation” of at least \$150 million.**

The arithmetic is staggering. If there is a taking, and if that taking is for a public purpose, the taking is constitutional only if the State pays “just compensation.” H.B. 463 would create three “just compensation” scenarios.

First, H.B. 463 would eliminate virtually all economic value in the reversionary ownership interest for those ground rents that are now unpaid. Second, H.B. 463 would greatly increase the number of reversionary ownership interests that would lose their economic value when they become unpaid ground rents. Third, H.B. 463 would cause the fair market value of all ground rents to greatly decrease. It is estimated that H.B. 463, even if otherwise constitutional, would constitutionally require the State to pay “just compensation” of at least \$150 million.

If H.B. 463 is enacted, it would take away the reversionary ownership interest of the right of re-entry. With the State taking away the right of re-entry from the reversionary owner, there would probably be a great escalation in unpaid ground rents in Baltimore City. For all unpaid ground rents, the value of the reversionary ownership interest in those properties would be completely gone. Assume that, because of the possibility of re-entry having been statutorily eliminated, the percentage of ground rents that go unpaid rises to 6% of all ground rents. That means that H.B. 463 would have completely taken away about 10,000 reversionary ownership interests. The total value of that taking would be about \$20 million.

Ground rents are readily bought and sold as investment properties. If H.B. 463 is enacted, it may be that no one would be interested in purchasing ground rents, and they would

lose all fair market value. Under H.B. 463, if the ground rent were to go unpaid for 30 years, there would be no right of re-entry, and the newly created lien, invented as a substitute, may be of no value for 30 years. As such, the ground rent may have no value for 30 years. However, let's assume that willing buyers and willing sellers would still be willing to buy and sell ground rents, but at only half of what they are buying and selling them for prior to this legislation. If so, for the remaining 150,000 ground rents, the total value of the taking would be in excess of \$150 million.

In Mayor & City Council of Baltimore v. United Five & Ten Cent Stores, 250 Md. 361, 369-70 (1968), the COA held that "fair market value" means the value prior to the taking, compared with the value as a consequence of the taking. The Court emphasized that "just compensation" must account for all diminution in value in any way occasioned by the taking and even by the announcement of the taking. The last two months have produced a perception of an impending governmental "taking." This has already influenced the "just compensation" that the State would be required to pay if H.B. 463 is enacted. In Brinsfield v. Mayor & City Council of Baltimore, 236 Md. 66 (1964), the COA held that rent on a property being condemned is part of the "just compensation" calculation.

In the context of a ground rent "taking," in Mayor & City Council of Baltimore v. Latrobe, 101 Md. 621 (1905), the COA stated:

We cannot close our eyes to the fact . . . that ground rents, especially in Baltimore City, are constantly being sold and have market values (resembling somewhat those of bonds and stocks), depending upon the manner in which they are secured and the length of time they are to continue. As under our system, the taxes are paid by the owner of the leasehold interest, when well secured they are in demand and frequently realize prices far beyond what they could have been capitalized at when the leases were originally made. "The reversionary ownership interest, when his interest is condemned, is undoubtedly entitled to what his interest is worth in the market and prima facie the leasehold is charged with that value.

Id. at 629.

In Heritage Realty v. Mayor & City Council of Baltimore, 252 Md. 1 (1969), the COA stated: "If the owner of the reversion determines to dispose of it, he can seek a buyer in the market place, and the value of the reversion will be the price at which a buyer, willing but not obligated to buy, is ready to pay, and a seller, willing but not obligated to sell, is prepared to accept."

The courts are capable of determining the “just compensation” for the reversionary ownership interest, and it will be at least \$150 million.

**CONCLUSION**

For the foregoing reasons, it is respectfully suggested that H.B. 463 is unconstitutional and should not be enacted.

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February 22, 2007



GROUND RENT OWNERS COALITION  
TESTIMONY IN OPPOSITION TO HB 463

GROUND RENTS - REMEDY FOR NONPAYMENT OF GROUND RENT

Offered Before The House Environmental Matters Committee

February 22, 2007

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The GRO Coalition is a collection of real estate investors, attorneys, and other individuals from across Maryland who own ground rents.

The GRO Coalition's mission is to adequately strike a balance between protecting consumer rights and protecting existing property interests of its member real estate investors and professionals.

The GRO Coalition extends its open hand to the legislature in modernizing the existing procedure for the collection of ground rents. Of the eight administration bills, the GRO Coalition supports, with amendments, most, but not all.

The GRO Coalition supports efforts to make ground rent redemption a natural part of every capital real estate transaction so that, by natural means, ground rents will become extinct, within a short period of time.

Meanwhile, however, Tenants have an existing obligation to pay ground rent. Tenants may be given several notices to pay their obligations, but the nature of the ground rent property interest is such that failure to pay does result in consequences.

The GRO Coalition welcomes the opportunity to work with the legislature in crafting appropriate solutions which balance the existing property rights of ground rent owners with reasonable additional protections for Tenants.

A ground rent is the fee simple interest in real estate which is the entire right to own the real estate but without the right of possession. Ground rents are created by lease and the Tenant has only the obligation to pay rent to the Landlord. The Tenant has the right to do anything it wants with the property (buy, sell, mortgage, build, demolish, etc).

The Landlord does not get to choose any transferee from the Tenant. The Landlord does not choose the Tenant or transferee based on creditworthiness. The only interest the Landlord has is in the real estate which the Landlord owns.

Investors purchase ground rents in order to obtain the right to collect the ground rent every six months. In order to get paid, the Landlord has to bill for the ground rent and follow certain procedures. If the ground rent is not paid, the Landlord has only one remedy which is to seek to recover the possession of the property. The procedure seeking possession is a long one. It takes approximately 2-1/2 years for a Landlord to gain the perfected right to possession of the property.

A ground rent has its value in the likelihood that the Landlord will be paid. Tenants, who pay their bills, pay their ground rent. Some Tenants do not pay their bills and do not pay their ground rent. However, the Landlord's only remedy is the right to regain possession of the property.

Landlords buy ground rents with the intent to receive ground rent payments. Tenants who don't pay their bills may not pay their taxes, take care of the property, abandon the property, etc. If the property loses value, becomes vacant, vandalized, boarded, in a bad neighborhood, unpaid tax, etc., the Landlord's remedy no longer is viable. Thus, the Landlord may decide not to seek a remedy at all. However, if the property is in reasonable condition (in a neighborhood that is good, reasonable, or at least not too bad) the Landlord may decide to try to collect its ground rent by utilizing the only remedy available, which is a possessory action. **Once the Tenant pays the ground rent, the Landlord has no claim against the property.**

Taking the Landlord's fee simple, complete ownership of the property, save possession, and turning it into a lien serves only one purpose - to destroy the value of the ground rent. Tenants are no longer likely to pay ground rents unless they are good people who naturally pay their bills. However, there are many Tenants who will not pay ground rent voluntarily.

The Landlord will have no remedy but to try to establish a lien against the property. The Landlord has no right to enforce its lien since the Landlord's lien, according to this bill, will be the very last in line, subject to all other unpaid bills and judgments against the Tenant.

In short, House Bill 463 is fatally flawed and should be reported unfavorably from this committee.

The existing ground rent enforcement procedure is properly based on the only right that the Landlord has: the right to recover possession upon default in payment of the rent. Even the existing procedure is filled with protections for the Tenant, designed to give notice of the Tenant's obligation to pay the rent and an opportunity to pay the rent at the earliest possible time, thereby avoiding fees and expenses of collection.

Attached to the GRO Coalition written statement is a chart which, in very general terms, shows the existing procedure. What is not totally spelled out in the chart is that from the time the ground rent payment came due -- to the time when all steps having been followed, all Court procedures having been complied with, all hearings having been held, all additional redemption periods having passed, -- the entire procedure takes more than two and one half years.

At each and every step in this procedure, the object is to give the Tenant and other interested parties notice of the proceeding and notice of their right to pay the ground rent and expenses and retain possession of the property.

**The Landlord gives the Tenant opportunity after opportunity to pay the ground rent and prevent there ever being any issue as to possession of the property.**

**For Example:**

On January 1 the first ground rent is due. The Landlord sends a bill.

On July 1 the ground rent wasn't paid, the Landlord sends another bill with a notice of default;

The notice warns of 30 days within which the Tenant can pay ground rent which is past due and have collection proceedings terminated;

Only if the ground rent is not paid within 30 days will the Landlord further to try to collect;

The Landlord then forwards collection efforts to an attorney who investigates to find out where and whom notice should be given to the Tenant so that the Tenant can pay and terminate the proceeding;

Attorney sends notice to the Tenant at all locations likely to give actual notice;

Additionally the attorney sends notice to the title company or title attorney which prepared the Tenant's deed in its purchase of the property with the hope that it will lead to actual notice to the Tenant;

Only if no payment or contact from the Tenant within an additional 45 day period could suit be filed;

Only then can the attorney file suit to recover possession;

Service must be issued to the Tenant which takes about 60 days;

Any additional service must be obtained pursuant to Order of Court which could take another 60 or more days;

If no answer filed by the Tenant, default must be requested. The Court gives another 30 day notice;

If the default stands after the additional Court notice, possession can be requested which takes another 60 days;

Even if possession is granted there is a 30 day appeal period;

Only if no appeal is filed possession can be requested;

The sheriff receives the request for possession from the Court after 30 to 60 days;

The sheriff schedules execution on possession which takes 60 to 90 more days;

During which time the sheriff goes to the property, determines if it is occupied, makes contact with the occupant, warning him/her to take action and posts the writ on the property.

Even after execution, the Tenant has an additional six months to redeem;

Now that the Landlord has spent more than 2-1/2 years in getting possession of this property, what is it the Landlord probably got?

- (a) Probably a vacant property in need of considerable repair;
- (b) An outstanding bill for several years back real estate taxes, other city liens and water bills with huge interest and penalty charges and tax sale expenses;
- (c) Responsibility to insure the property and the cost to insure;
- (d) No perfected right to do anything other than maintain the status quo for six more months during which time the Tenant can still redeem;

For 2-1/2 years, there has been notice after notice, service of process and further notice given to the Tenant and any other interested party that has been identified with rights to protect in the property. Now that the possession is about to change hands, is there an additional "Equity" value in the property that should be protected? If so, only the Court can make that determination.

GRO Coalition could propose an additional level of judicial inquiry at the end stage of the action for possession.

At that time the Court could inquire as to the status of occupancy of the property (owner-occupied, rental-tenant occupied, or vacant); are real estate taxes paid and mortgages outstanding on the property; and who, if anyone other than the actual parties involved in the litigation, should have the opportunity to appear and claim an interest to be protected in the "Equity". The Court would conduct the inquiry, make further determination as to who and what "Equity" needs to be protected. If the Court determines that there is "Equity" requiring protection and that there are those with proper claims to that "Equity", the Court could then order a sale proceeding to take place in the nature of a foreclosure sale. After that sale, the money can be distributed according to the priorities set by the Court.

In no way does the procedure allow "Equity" deserving of protection to be stripped from a Tenant. However, House Bill 463 cannot provide this level of balance to the rights of the Landlord, the Tenant and any other parties who should receive judicial protection in the property.

Because there are so many stakeholders in this process, any solution still requires a thorough examination which may not be available during the current legislative session. All of the stakeholders will need time to evaluate different proposals and to reach consensus. The task force procedure is still the best way to obtain a proper result.



CDI CONSULTING  
SERVICES, LLC

**BILL NUMBER: HB 463**

**TITLE: Ground Rents - Remedy for Nonpayment of Ground Rent**

**DATE: February 22, 2007**

**BY: Chris DiPietro**

**FOR: Bank of America**

**POSITION: Favorable with Amendment**

Chairwoman McIntosh and Members of the Committee:

Bank of America supports the goals of HB463 by providing new remedies for the non-payment of ground rents.

Bank of America proposes a friendly amendment that seeks to preserve the interest of all interested parties at the beginning of the remedy process when a ground rent becomes delinquent (6 months in arrears). We seek that all mortgagees of record on a property be notified at the same time the tenant is notified of the delinquency. Notice to all mortgagees of record at the beginning of the process provides an opportunity to cure any delinquent ground rents in a timely manner without accruing exorbitant fees and other charges associated with the owner of the ground rent's lawful claim to payment. It also provides an opportunity for the homeowner to be made aware of various options available to satisfy the ground rent including escrow or purchase of the ground rent.

Bank of America supports the efforts of the bill's sponsor and of the administration to address this very important issue.

We respectfully request a favorable report on HB463 with the proposed friendly amendment (see attached).

AMENDMENTS TO HOUSE BILL 463  
(First Reading File Bill)  
By Bank of America

AMENDMENT NO. 1:

On page 6, in line 5, after the word "TO" and insert ": (I)"

AMENDMENT NO. 2:

On page 6, in line 5 after the word "TENANT" insert "OF THE PROPERTY; AND"

AMENDMENT NO. 3:

On page 6, in line 5 strike through the words "**AGAINST WHOSE**"

AMENDMENT NO. 4:

On page 6, in line 6 strike through the words: "**PROPERTY THE LIEN IS INTENDED TO BE IMPOSED**" and insert "(II) Each MORTGAGEE OF THE PROPERTY WHOSE LIEN IS ON RECORD"

AMENDMENT NO. 5:

On page 6, in line 7 after the word "NOTICE" insert "**TO THE TENANT**"

AMENDMETN NO. 6:

On page 6, in line 14 after the period insert "(3) NOTICE TO ANY MORTGAGEE UNDER THIS SUBSECTION SHALL BE SENT BY CERTIFIED AND FIRST CLASS MAIL TO THE MOST CURRENT ADDRESS FOR NOTICES AS SET FORTH IN THE LAND RECORDS OR, IF NO SUCH ADDRESS IS CONTAINED IN THE LAND RECORD, TO THE MORTGAGEE'S CURRENT ADDRESS."

*Explanation: This is a friendly amendment that seeks to preserve the interests of all interested parties. Notice to all mortgagees of record provides an opportunity to cure any delinquent ground rents in a timely manner without accruing exorbitant fees and other charges associated with the owner of the ground rent's lawful claim to payment. It also provides an opportunity for the homeowner to be made aware of various options available to satisfy the ground rent including escrow or purchase of the ground rent.*

# Legal Aid Bureau, Incorporated

## Baltimore City Office

Charles H. Dorsey, Jr. Building  
500 E. Lexington Street  
Baltimore, Maryland 21202  
(410) 951-7777  
(410) 951-7818 FAX

Warren S. Oliveri, Jr., President  
Wilhelm H. Joseph, Jr., Executive Director  
Joseph Rohr, Chief Attorney  
Cornelia Bright Gordon, Chief Attorney

February 28, 2007

The Honorable Maggie McIntosh  
Chairman, House Environmental Matters Committee  
House Office Building, Room 2 East  
Annapolis, MD 21401

**Re: Support for House Bill 463 - Remedy for Nonpayment of Ground  
Support Generally for House Bills 452, 580, 489**

Dear Madam Chairman and Members of the environmental Matters Committee:

We are heartened by the worthy attention both houses of the General Assembly are giving to this very important issue, and we appreciate the opportunity to comment in support of House Bill 463 and the related bills generally. These bills address the heartbreaking loss of homes, particularly by low income home owners, that results from ground rent ejections. The Legal Aid Bureau, Inc. ("Legal Aid") is a private, non-profit organization that provides free legal services to indigent Maryland residents. In our 13 offices around the state, we help individuals and families with a wide array of civil legal issues including consumer, housing, public benefits, and family law matters. One of our primary missions is the preservation of low income home ownership. **Low income, unsophisticated and otherwise vulnerable home owners are the most affected by the gross inequities of the current ground rent system, and it is imperative that they have a voice in addressing needed reforms.**

The history, circumstances and abuse of Maryland's ground rent system have been well covered in the press and need not be reiterated here. The core legal right at the heart of the matter is the right to take residential property for the failure to pay astonishingly small amounts of rent, resulting in huge windfalls in today's market for ground rent owners. It is the sheer disproportion of the ground rent owners' remedy that shocks the conscience. We therefore **support HB 463** for the following reasons:

- the elimination of ejection as the remedy for nonpayment;
- the provision of a judicial process to consider the leaseholder's objections without assuming the burden of proof;
- the limitation of attorney's fees; and
- the recordation of the ground rent liens consistent with other liens.



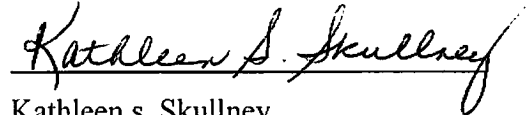
Consistency with other liens is an important feature of HB 463 and we note that Page 10, Lines 20-24 of the bill appears to retain a mortgage foreclosure process. We respectfully request that the Committee consider clarifying that ground rent liens are included in the judicial enforcement process that applies to other judgment liens.

We further support generally House Bills 452, 580, and 489 in addressing other problematic components of the current ground rent system as follows:

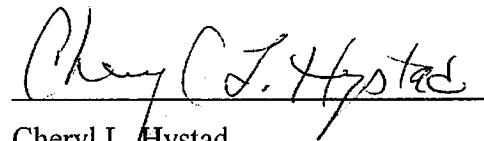
- uniformity for redemption periods of residential ground rents;
- the inclusion of ground rent notification in the residential property settlement process;
- a user friendly source for identifying ground rents;
- a shortened limitations period; and
- greater limitations on perpetual ground rents.

For these reasons, we strongly urge you to favorably report **HB 463**, and to report favorably House Bills 452, 580, and 489.

Very Truly Yours,



Kathleen s. Skullney  
Staff Attorney  
Housing/Consumer Law Unit  
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Cheryl L. Hystad  
Director of Advocacy  
chystad@mdlaborg  
410.951.7813

# ENVIRONMENTAL MATTERS COMMITTEE

(PLEASE PRINT CLEARLY)

Date 2/22/07

PRO (for)  
FWA (fav. with amend.)  
OPP (against)

Name		Address	Phone	Representing	PRO	FWA	OPP
1	Chris DiPietro		443-286-6419	BANK OF AMERICA		✓	
2	<del>Sandy Rosenberg</del>	Judiciary	3297	Judiciary	✓		
3	Gary R. Alexander	Alexander - Cleaver	411-974 9000	GRD Coalition			X
4	<del>Byron Warnken</del>			U of Baltimore School of Law			X
5	Lorenzo Bellamy	Alexander, Cleaver	410-974 9000	GRD Coalition			X
6	<del>Carol Cook</del> Bill Caselli } Panel	6852 MAR	410 537 7000 410 511 6000	Rec 17025		✓	
7	Lee Hudson (written only)	681 State Circle 21401	410-268-7122	Lutheran office	✓		
8	Bill Ritcher Jim Cosgrove		410-268-0842	MZTA		✓	
9	Attorney General Douglas Gansler	<del>88 state circle</del>		OAG			
10	Paul Graziano Bill Burgee	88 state circle	410 269 0207	Balto City Housing	✓		

Panel

Panel

Panel

# ENVIRONMENTAL MATTERS COMMITTEE

Date 2/22/07

(PLEASE PRINT CLEARLY)

PRO (for)  
FWA (fav. with amend.)  
OPP (against)

#	Name	Address	Phone	Representing	PRO	FWA	OPP
1	Joseph Bryce	State House	410-974-3336	Governor's office	✓		
2							
3							
4	Kathleen Murphy	166 Duke of Gloucester Annapolis	410-269- 5977	<sup>Asst</sup> <del>Pres</del> Maryland Bankers Association		✓	
5	Bob Eiten	//	//	Maryland Bankers Assoc.		✓	
6	Katherine K Howard Amy Macht	11 E. Fayette St Baltimore, Md 21202	410-539- 2370	Regional Manager, Inc			✓
	Charles Muskin	1906 Martins Cove Ct Annapolis, MD 21403	410.349.9579	self			✓
8							
9							
10							

Amend

# Environmental Matters Committee VOTING RECORD 2007

H.B. 463 H.J.R. \_\_\_\_\_ S.B. \_\_\_\_\_ S.I.R. \_\_\_\_\_ DATE: 3/14/07

MOTION: FAVORABLE  AMENDED  WITHDRAWN:   
NO MOTION \_\_\_\_\_ RE-REFER TO \_\_\_\_\_

	YEAS	NAYS	ABSTAIN/ EXCUSED	ABSENT
Maggie McIntosh, Chairman				
James F. Malone, Jr., Vice Chairman				
Rudolph L. Cane				
Elizabeth Bobo				
Anne Healey				
Paul S. Stull				
Anthony J. O'Donnell				
Doyle L. Niemann				
Joseph C. Boteler, III				
Tanya Thornton Shewell			EX	
Stephen W. Lafferty				
Pamela G. Beidle				
Saqib Ali				
Dana M. Stein				
Cheryl D. Gienn				
Tom Hucker				
Richard A. Sossi				
Michael H. Weir, Jr.			EV	
Barry Glassman			EV	
Jane Lawton				
Marvin Holmes				
Virginia Claggett				
Barbara Frush				
12 Affirmative Votes Needed To Pass				
TOTAL	19		3	

*Beverly A. Buchheister*  
COMMITTEE REPORTER