

DEMANDS FOR REFORM

PART 3 OF 3 Even as critics call for loosening ground rent's grip on Baltimore, new ones are being created



Dr. Michael Moriarty bought this Federal Hill house last year for \$500,000. Before closing, however, he almost walked away from the deal when he learned the seller had created an annual ground rent of \$120 on the property.

CHRISTOPHER T. ASSAF [SUN PHOTOGRAPHER]

12-12-2006 [1A]

ARTICLE BY JUNE ARNEY AND FRED SCHULTE [SUN REPORTERS]

As they put up houses for sale, some Baltimore entrepreneurs are reviving an old practice to make new profits. ■ Rehabbers and ground rent holders are creating new rents on the land under those houses, saddling buyers with annual fees of as much as \$240. In some cases they tack a new ground rent on top of an existing one, which can increase a homeowner's yearly bill to more than \$300.

Dr. Michael Moriarty nearly walked away from buying a \$500,000 home in Federal Hill last year when he found out that the seller had created a \$120 yearly rent for the land under the house.

"I actually couldn't believe it was legal," said Moriarty, a rheumatologist and a vice president at St. Agnes Hospital. "It was one of those things where you feel like you've been slimed."

A century ago, the creation of new ground rents helped to build Baltimore by making housing affordable for the working class. But today, critics say, it serves only to make ground rent holders money.

"There's no reason in this day and time to create a ground rent," said Shina Parker, president of Integrity Title & Escrow. "It's a trend in the market now, and I think we're going to continue to see it. It's unfortunate."

The ground rent system's tenacious grip on Baltimore illustrates the challenge awaiting those who want to reform it. In recent years, some ground rent holders have increasingly used the system to gain possession of homes or extract substantial fees from their owners, while fending off various

reform proposals in the General Assembly.

Tens of thousands of Baltimore residents pay ground rent, a practice that took hold in the city in the 19th century. But since 2000, some ground rent holders have become unusually aggressive, filing nearly 4,000 lawsuits over unpaid rents, an investigation by *The Sun* found.

Most suits were settled with homeowners making payments that typically dwarfed the original debt. In 521 cases, Circuit Court judges have granted rent holders the right to seize houses. Some people regained ownership by paying off their obligations, though court records don't make clear how often that happens.

The newspaper's findings generally took public officials by surprise.

The articles "stirred my blood, and it is still boiling," said state Sen. Brian E. Frosh, who chairs the Judicial Proceedings Committee. "This is a series of outrages that just shouldn't be happening." Frosh, a Montgomery County Democrat, said yesterday that the system has become a "trap for the unwary" and that reforming it must be a "high priority" when legislators convene in January.

[Please see *GROUND RENT*, 10A]

INSIDE

The evolution of a ground rent. **PG 10A**

IF YOU MISSED IT

Read the first and second parts of *On Shaky Ground* at baltimoresun.com/groundrent

ON SHAKY GROUND // PART 3

Critics issue calls for reform

GROUND RENT [From Page 1A]

Experts in real estate and some public officials suggest several changes to help consumers protect themselves and curtail the extraordinary power of ground rent holders:

- Limit the disproportionate penalties homeowners face. Ground rent holders can take possession of a house for nonpayment of a bill under \$100, sell it and pocket all the proceeds. By contrast, mortgage lenders receive only what they are owed when a home is sold through foreclosure.

"The laws really need to be rewritten," said David Pierce, an attorney with King Title Company. "The idea is to get the ground rent, but you're not really supposed to get their \$200,000 house."

Delinquent homeowners also face substantial charges on top of the overdue ground rent. Ground rent holders can bill up to \$500 before filing suit, \$700 in attorney's fees in connection with a suit and \$300 for a title search, plus other costs, all of which can add up to thousands of dollars.

- Require more aggressive action to find homeowners before they are sued or lose their houses. Some ground rent holders make minimal attempts to contact property owners, eschewing search technology that makes it relatively easy to find a person.
- Create readily accessible records of all ground rents, and a registry of ground rent holders.

In the absence of centralized information, homeowners and even mortgage lenders may lose track of ground rent holders and have no easy way of identifying or locating them.

"Nobody knows how many are out there," said Paul Anderson, chief legal review officer for the state Department of Assessments and Taxation.

- Improve oversight. No one in the city or state regulates ground rent holders the way Realtors and others in the real estate industry are overseen. Nor does any government office help consumers navigate the often confusing system. Homeowners say they don't know where to turn. Consumers have made 13 complaints, six of them concerning fees, to the Attorney General's office since 2002.

Garrett Power, a professor at the University of Maryland School of Law who has closely studied the ground rent system, says lawmakers can't abolish existing ground rents without compensating their owners because that would be unconstitutional.

But he said the General Assembly can compel ground rent holders to record their rents, giving homeowners and buyers more information to protect themselves. If the rents aren't recorded "within a period of years, maybe three years, then they would be extinguished," Power said.

City officials, told of the newspaper's findings, said they want legislative action, though they haven't spelled out details.

"We've heard horror stories," said David Tillman, a spokesman for the Baltimore Department of Housing and Community Development. "We're very much looking forward to working with elected officials this legislative session to get several bills introduced that would attempt to protect existing and new homeowners."

Baltimore's Circuit Court also has authority in the ground rent system. The general master for the civil docket reviews "ejectment" lawsuits filed by ground rent holders. Susan M. Marzetta, the general master, and her staff look to see if ground rent lawyers have taken sufficient steps to locate and properly notify homeowners.

Although a Circuit Court judge must approve the final step of taking a property, in most cases there's no hearing unless the property owner contests the action.

Ground rent holders say there's no need for major changes, as consumers have recourse to the courts and can avoid problems by keeping up with their obligations.

"What I'd like to see is the parties [who own homes] be more responsible," said Lawrence Polakoff, whose family holds ground rents. "There's no reason for more laws or regulations."

Not getting through

But many people are ignorant of the law and the penalties for failure to pay ground rent, *The Sun* found. The state doesn't require formal disclosures in the process leading up to buying a home, nor is the ground rent holder required to inform consumers that they have the ability to buy out the ground rent and end their annual obligation.

Some property owners don't even know when ground rent holders are moving against them.

Bernard Mills, for example, didn't realize he was about to lose a 7,000-square-foot house in the historic Bolton Hill neighborhood over a ground rent debt of \$300.

He never received notice of the lawsuit seeking to collect the past-due ground rent at 1810 Eutaw Place, and never knew he had lost the suit for failing to respond, according to court records. Notification letters went to a Virginia address that he and his former partners no longer used.

As a last step, the city sheriff's office posted notice of the court action on a

EVOLUTION OF A GROUND RENT

Maryland law allows creation of new ground rents, at higher rates, after existing ones are extinguished during transfer of ownership. In this example, the new rate is \$240, which experts say is typical in Baltimore this year. Here are the documents showing the unfolding process:

Purchase of ground rent

Oct. 21, 2003

Soft Rental Assets, LLC pays \$1,315 to an estate to obtain the ground rent, set at \$90 a year, on a home in the 3800 block of Old Frederick Road.

and particularly described as follows:

For the term of ninety-nine years and for the annual rent of

\$90.00 payable in semi-annual installments on the 26th days of January and July of each and every year. Ward 20, Section 18, Block 2252, Lot 004 of Baltimore City known as 3806 Old Frederick Road.

BEING THE SAME lot of ground which by Lease dated July 26, 1956 and recorded

Filing of ejectment suit

April 30, 2004

Soft Rental Assets sues an investor who owns the home, seeking three years worth of back ground rent and other fees. Because the firm has also acquired the rights to collect unpaid city property taxes, the homeowner's bill comes to \$11,797.65, the suit states.

SOFT RENTAL ASSETS, LLC,
825 NORTH CHARLES STREET
BALTIMORE, MARYLAND 21201
Plaintiff

vs.

DALE O. BREWTON
3806 OLD FREDERICK ROAD
BALTIMORE, MARYLAND 21229
Defendant

* IN THE

* CIRCUIT COURT

* FOR

* BALTIMORE CITY

* CASE NO.:

FILED

APR 30 2004

CIRCUIT COURT FOR
BALTIMORE CITY

24C04-003550

Issuance of writ of possession

April 7, 2005

After the homeowner does not pay, Soft Rental Assets wins a court order awarding possession. The law allows the homeowner six months to pay the judgment and get back the house. The owner said he was unable to do so, and he lost his rental property.

CIRCUIT COURT FOR BALTIMORE CITY

Frank M. Conaway, Clerk

Courthouse East

111 North Calvert Street - Room 462

Baltimore, MD 21202

410-333-3722 TTY for Deaf: (410)-333-4389

SHERIFFS FEE
ENCLOSED

WRIT OF POSSESSION

Case Number: 24-C-04-003550/ EJ/

Plaintiff/Judgment Creditor:
Soft Rentals Assets LLC

Sale of home and creation of ground rent

Feb. 28, 2006

The firm sells the home to a new owner for \$52,900. As part of the transaction, Soft Rental Assets creates a \$240 annual ground rent, which the firm holds in a 99-year lease that is renewable forever.

See Ground Rent Ejectment Proceeding Case No. 24-C-04-003550.

TOGETHER with all improvements, thereon made, lanes, alleys, ways, waters, easements, emoluments and advantages to the said ground belonging or in anywise appertaining.

TO be held by the said lessee, **C.R. Cotton and GEE, Inc.**, its executors, administrators and assigns, for the term of ninety-nine years, beginning on the day of the date of these presents, it the said

lessee, its executors, administrators or assigns, yielding and paying unto the said lessor, **Soft Rental**

Assets, LLC., its heirs or assigns, the rent or yearly sum of **Two Hundred Forty Dollars (\$240.00)**,

and that in even and equal half-yearly installments, accounting from the **28th days of February and**

Source: Baltimore City Circuit Court

[SUN NEWS GRAPHIC]

bulletin board tucked away at the downtown Baltimore courthouse. Mills, a Washington car dealer who had bought the property as an investment and didn't live in it, wasn't likely to see that.

Mills died of a heart attack in December 2002 without finding out what had happened.

The events involving the property came to light after Mills' estate sold the property to a new owner, 1810 Eutaw Place LLC, without realizing someone else had already staked a claim. That was Carolyn Class of Lutherville, who had purchased the ground rent lease on the house in 1998.

1810 Eutaw Place LLC sued Class, seeking to invalidate her claim to the house. To support its case, the firm argued that Class' lawyers asked the sheriff's office not to post the official "writ of possession" on the house, where someone might have seen it.

Class' lawyers asserted she had taken appropriate notification steps. Class settled with 1810 Eutaw Place, whose title company paid her \$65,000 to end her claim to the building.

"We spend a lot of time and money buying off people like Mrs. Class," said the attorney for 1810 Eutaw Place LLC, Thomas C. Valkenet, explaining that he and other lawyers have filed similar cases to get back property after an ejectment.

Reached at her home, Class declined to comment.

Another notification issue involves whether relatives of deceased homeowners who have been sued over unpaid ground rent have to be informed.

In one lawsuit filed last year, ground rent holder Fringe Benefit Investments LLC submitted a death certificate to the court to prove that Solomon S. Lesane died in 2000 and therefore couldn't be found. On Oct. 18, 2006, the court ruled in favor of the ground rent holder by default.

Yet the death certificate listed the home address of Lesane's daughter, Rosetta Neely, who said she wasn't notified and didn't learn about the

lawsuit until reporters for *The Sun* informed her.

That lawsuit was one of at least nine filed by entities represented by attorney Heidi Kenny that included a death certificate or other evidence that someone had died.

Kenny said in a mid-September interview that a mistake might have been made in Neely's case. But she also conceded that her law firm doesn't always notify relatives to give them a chance to pay off the debt.

Judge Evelyn Omega Cannon, judge in charge of the civil docket of Baltimore City Circuit Court, said in October she would "look into what we're doing" in cases in which she and other judges are told that the

owners have died.

On Nov. 27, Circuit Court Judge Martin P. Welch overturned the judgment against Lesane. He said it was a "mistake" to rule against someone who had died. The case remains open.

Aggressive tactics

Ground rents helped underwrite Baltimore's explosive growth in the 19th and early 20th centuries. They subtracted land from the cost of buying new rowhouses by having homeowners pay investors small annual rents for the ground beneath the bricks. The 99-year, renewable leases kept the system going into the 21st century, long after their original

purpose had ended.

No one complained much when savings & loans, banks, other institutions and individuals owned ground rents as investments that provided a safe, if modest, return of about 6 percent. Typically, bills went out twice a year, and those that couldn't be collected were written off.

But practices changed in the past several years, *The Sun* found, analyzing court records and interviewing homeowners, ground rent holders and a variety of experts. Old laws did not keep pace with the aggressive tactics of some ground rent holders. They bought up large numbers of ground rents as real estate values surged in the city, and filed thousands of "ejectment" lawsuits.

Mortgage lenders say they're affected, too, because ground rent holders have first claim on a property. "That means that the home can be foreclosed on and the mortgage company would have to resort to a title insurance claim" to protect its investment, said Rich Leffler, a consultant with Wachovia Mortgage Corp. in Pikesville.

Ground rent owners and Realtors — some of whom own ground rents — dispute the need for reform. In their view, consumers receive ample legal protection, provided they pay their bills.

"I think the system works very well," said R. Marc Goldberg, a lawyer who speaks for a coalition of ground rent owners, including some of the most frequent filers of ejectment suits.

"At the least expensive point in the procedure," before fees mount and suits are filed, "everyone gets a chance," he said. "If they don't take advantage of it, they don't take advantage of it. It wouldn't be fair if the ground rent owners didn't get reimbursed for the expenses involved."

"Anytime someone's got a problem," Goldberg said, that person can "take it to a judge."

The Greater Baltimore Board of Realtors sided with ground rent holders in opposing some state reform bills in recent years. Today, they say, consumers have sufficient protection.

Arming prospective home buyers with information spelling out their ground rent rights and responsibilities probably won't help, said Carolyn Cook, the Board of Realtors' deputy executive vice president. "My sense is that people are so inundated with paper now that they can't comprehend what they've got," she said. "So I don't know if throwing on more paper will help."

The General Assembly's most significant recent action on ground rent took place in 2003, when legislators approved some changes.

One set the current ceiling on attorney fees that can be charged for ejectments. Another created a mechanism for homeowners to redeem ground rents — buy them out — when they haven't heard from ground rent holders in three years.

A third change, supported by ground rent holders, requires them to warn property owners that they will owe collection fees if an overdue bill isn't paid within 30 days. Before filing suit, ground rent holders also must send another notice of their intent to take legal action.

Ground rent holders and Realtors pointed to these changes in persuading legislators not to approve other reforms proposed since 2003. Yet critics of the system say fundamental flaws remain. Fees are still too high, they say, and fewer than 200 people have taken advantage of the little-known state mechanism for redeeming ground rent whose owners haven't communicated in years.

More important, according to one legislative critic, is ground rent holders' power to seize and sell homes over relatively small debts.

"Some of the things that have happened with ground rent have been so [Please see GROUND RENT, 11A]



Twana Adams nearly lost her West Lafayette Avenue house because, with fees, her ground rent bill of \$300 grew to \$1,645. Adams paid it and kept her property. She urges homeowners to learn more about ground rent and its risks.

ELIZABETH MALBY [SUN PHOTOGRAPHER]



As auctioneer Jack Billig (center) talks with ground rent holder Irvin Caplan, Tuyet T. Nguyen turns her back on the house her family had just lost in an auction triggered by ground rent debt. Nguyen and her son, Phong P.T. Mai, the property owner, said they didn't know there was a problem until the auction was set.

DOUG KAPUSTIN [SUN PHOTOGRAPHER, 2005]

GROUND RENT [From Page 10A]

egregious that justice cries out for change," said Del. Clarence Davis, a Baltimore Democrat, who is retiring this year after a long career in the Assembly. "What we want to do is make it more difficult for someone to take people's homes because of ground rent."

Davis and Senate Majority Leader Nathaniel J. McFadden sponsored bills this year to shore up what many see as a major weakness in the system. Ground rent holders, they said, need to take more effective action to notify homeowners at risk of losing their houses.

They introduced the legislation in the aftermath of news reports about a family that lost a Washington Village home to a ground rent holder.

Such actions rarely come to the public's attention. Occasionally, neighbors witness an ejectment play out on the street as workers protected by armed sheriff's deputies change locks on a house and flush out the occupants and their possessions. The seizure of the house belonging to Phong P.T. Mai briefly opened a window into the world of ground rents.

The family contended that they

didn't learn they had lost the property for failure to pay ground rent until the building was scheduled for auction. The ground rent holder disputed their contention, and the court agreed that the holder had made sufficient effort to find them, including posting notice of legal action on the house. The house was sold at auction for \$98,000 in June 2005. Later, Mai's family received a confidential settlement.

In response, the Baltimore City Council passed a resolution asking the General Assembly to abolish all ground rents, calling them "draconian" and "ripe for abuse."

The bills sponsored by Davis and McFadden, also a city Democrat, would have required ground rent holders to use readily available technology such as a "skip-trace" service that taps databases to track down people. Baltimore City uses this tool before condemning a property. Other branches of government, businesses and law firms use it, too.

William N. Burgee, director of property acquisition and relocation with the city Department of Housing and Community Development, told legislators that he and his staff

tested the technique by using an online "people finder" to see if Mai could be found that way.

"We located him within four minutes," Burgee said.

McFadden drove home the point: "With a minimum effort, you can now sit at your desk and locate your high school classmates, your first love, your old Uncle Charlie. Why wouldn't you do the same thing to find a defendant before you can take away his house?"

But the GRO Coalition, the group Goldberg is associated with, dismissed the need for changes in the law as "costly, inefficient and unnecessary."

"The landlord should be allowed to rely on the mailing address provided in the public records of the Department of Assessment and Taxation and not be required to expend additional funds attempting to locate the tenant through a national skip-trace database that may or may not yield any usable information as to the tenant's whereabouts," the group's statement said.

The coalition, represented by one of Annapolis' most prominent lobbying firms, Rifkin, Livingston, Levitan and Silver LLC, said the skip-trace requirement would only add to the cost of ejectments — a cost typically passed on to the homeowner.

Both bills died in committee. City officials said they may try again when the legislature convenes next month.

"Skip-trace?" said Kurt Sommer, special assistant for policy and legislation in the Department of Housing and Community Development. "I don't know what happened and why it went down. It seemed like a very common sense, due diligence thing. We're looking at remedies to that."

Making money

Title company executives and others in the real estate industry said they began to notice new ground rents crop up in the past year. There's no way to even estimate their number, as the law doesn't require ground rents to be recorded in an accessible way.

Those creating the new ground rents acknowledge their purpose: to make money.

"You would have thought it would have been eliminated by now," said Tom Atkins, who owns Tomcat Enterprises and has generated a few new ground rents. "I'm not selling my houses any cheaper by having a ground rent on it. I don't think that's been done for decades. I do it because I'm able to do it."

The person who created the new ground rent on Michael Moriarty's Federal Hill home defended the practice.

"Most of the renovators and rehabbers in Federal Hill, Canton and Locust Point pretty much are putting on a new ground rent," said Chris Reda, a local Realtor. "Most people are doing \$240."

"It's an additional income, and for me it gives me an emotional attachment," Reda added. "You put a lot of time and effort into these houses, and so you hold onto a piece."

No one knows how many new — or old — ground rents exist. But word of new ones is getting around,



Tom Atkins, owner of Tomcat Enterprises, acknowledges that he has created new ground rents on some of his properties "because I'm able to do it."

ELIZABETH MALBY [SUN PHOTOGRAPHER]

and this year state Sen. George W. Della Jr. proposed to ban them.

His bill died in committee, opposed by Realtors and advocates for affordable housing who said they might prove useful one day.

"To the extent that land values are skyrocketing across the state of Maryland," said Cook of the Board of Realtors, "it's very conceivable that the using of a ground rent as an affordability mechanism may come back."

But Sommer, the city official, disagrees. He says ground rent only complicates Baltimore's mammoth efforts to gain control of thousands of decrepit or abandoned properties and rebuild neighborhoods.

"The city is built out," Sommer said. "This is not an affordable housing tool. It is really a hindrance to effective redevelopment and attracting new homeowners to Baltimore."

Della, a Baltimore Democrat, also takes issue with Cook.

"The people interested in affordable housing are not seeing what's happening," he said. "They don't realize that people are being taken advantage of."

Twana Adams says homeowners need more help.

An unpaid ground rent bill on a house she owns on West Lafayette Avenue spiraled from \$300 into a debt of \$1,645. She paid, and kept the property.

The lessons gleaned from the experience would benefit other homeowners, she says.

"I think they should know what happens if you don't pay the ground rent — what kind of costs you can incur when you don't pay," said Adams, 44, a chemistry teacher. "I was really ignorant about the process. I couldn't figure out what my rights were. It was only when I started doing research that I figured it out."

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Sun staff researchers Paul McCardell and Doris Johnson contributed to this article.

WHAT IS GROUND RENT?

In much of Baltimore, and in parts of a few counties in Maryland, homeowners lease the land beneath their houses from a person, charity or business.

The amount of rent depends on when the lease was executed. Leases are written for terms of 99 years, renewable forever, though homeowners can buy out most of them under terms specified in state law.

Ground rent can be traced to 1632, when King Charles I of England gave the second Lord Baltimore all the land in what is now Maryland. Cecilius Calvert charged rent to colonists who wanted to build on his land.

After the American Revolution, Maryland's legislature empowered any landholder to demand rent, and starting in the late 19th century developers created ground rents to make rowhouses more affordable for working people. New ground rents are still being created.

PROTECT YOURSELF

How do I determine if I owe ground rent?

Look at the deed to your house. It will list a ground lease or say "fee simple," which means there is no ground rent. If you have a mortgage, the lender most likely is paying the ground rent from escrow. But call to check.

How do I avoid getting caught up in an ejectment lawsuit?

There are two sure ways — pay your ground rent on time, or redeem it.

How do I locate my ground-rent holder?

If you have a mortgage, the lender should have that information. Otherwise, if your rent owner is a corporation and you can't find it through phone listings, the name and address of the firm's registered agent can be found on the Maryland Department of Assessments and Taxation Web site, at http://sdaticert3.resiusa.org/ucc-character/CharterSearch_f.asp. It's also possible the ground rent deed was transferred. To locate the new owner, go to <http://ww2.mdlandrec.net>. You'll need to get a password, though it's free and takes only seconds. From the home page, choose your locality from the pull-down menu, then go to "search land record indices."

I owe ground rent but haven't received a bill in quite a while, and I'm not sure it has been paid. What do I do?

Contact the rent owner right away. The mortgage company might have lost track of who owns the ground rent and stopped sending payments, or the rent owner might have sent bills to an outdated address. You can also consider redeeming — paying off — the ground rent. (Find instructions on how to do this at www.balTIMOREsun.com/groundrent.) If you haven't received a bill or any other communication from the rent owner in three years or more, you may apply to the Department of Assessments and Taxation to do the redemption. For information and forms: www.dat.state.md.us/sdatweb/ground_rent.html.

HOW THIS SERIES WAS REPORTED

To pry open the secretive ground rent business, *The Sun* obtained computer data from the Baltimore City Circuit Court and identified nearly 4,000 lawsuits filed by ground rent holders against homeowners since 2000.

Reporters Fred Schulte and June Arney analyzed this information and pulled hundreds of case files to determine key patterns: who was filing the suits for overdue ground rent, the outcomes of the suits and where the homeowners lived. Many were losing houses as a result of these suits, and Schulte and Arney accompanied city sheriff's deputies on six occasions to observe new owners taking possession.

Elizabeth Malby and other Sun photographers captured images of these scenes, important figures in the story and events at the courthouse.

Cartographer Christine Fellenz used geographic information software to plot locations, by neighborhood, of homes targeted in ejectment suits.

To learn more about people involved in the ground rent business, the reporters searched state tax and assessment and incorporation records. During nine months of research, *The Sun* conducted dozens of interviews with ground rent holders, homeowners, real estate professionals, legal experts, government officials and judges.



SCHULTE



ARNEY



MALBY



FELLEENZ



The owners of this Bolton Hill house lost it over a ground rent lawsuit they didn't know about, but eventually obtained clear title to the property.

ELIZABETH MALBY [SUN PHOTOGRAPHER]