

been given to the homeowner by registered mail with return receipt requested.

First, in light of the decisions of the Court of Appeals in Barry Properties v. Fick Brothers, 277 Md. 15 (1976) and in Residential Industrial Loan Co. v. Weinberg, 279 Md. 483 (1977), cert. denied, Frederick Contractors, Inc. v. Metropolitan Federal Savings and Loan Ass'n of Bethesda, 434 U.S. 876 (1977), a serious question is raised as to whether the bill's procedure for the creation of a lien on the homeowner's property is consistent with the requirements of procedural due process under the Fourteenth Amendment of the federal constitution and Article 24 of the Maryland Declaration of Rights.

Several issues are presented when analyzing a due process question. First, in order for the requirement of due process to be applicable, there must be "state action". Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974). Secondly, the state action must result in a deprivation of a property interest. Fuentes v. Shevin, 407 U.S. 67 (1972). Finally, if state action deprives a person of a property interest, it must be determined what procedural due process is constitutionally required. Mitchell v. W. T. Grant Co., 416 U.S. 600 (1974).

The decision in Barry Properties suggests that the prejudgment remedy of Senate Bill 473, like the mechanic's lien, involves state action. Barry Properties v. Fick Brothers, *supra*, 277 Md. at 22-23 ("[M]echanic's liens involve state action since they are created, regulated and enforced by the State.") It is arguable that there is no significant difference in the degree or type of state participation in the proceedings of Senate Bill 473 as compared with the statutes permitting prejudgment creditor seizures that the U.S. Supreme Court has voided on due process grounds. See North Georgia Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601 (1975) (garnishment); Mitchell v. W. T. Grant Co., *supra* (sequestration under a vendor's lien); Fuentes v. Shevin, *supra* (replevin); Sniadach v. Family Finance Corp., 395 U.S. 337 (1969) (garnishment). In voiding these statutes, the Supreme Court necessarily found that they sufficiently involved state action so as to require due process protections.

However, it is far from settled that all creditor's remedies involve state action. For example, it has been held that the mere authorization of procedure by legislation did not supply the State action element. Flagg Brothers, Inc. v. Brooks, 436 U.S. 149, 157-166 (1978) (warehouseman's lien). Moreover, it has been said that essentially private actions do not become State action merely because State officials perform ministerial functions, such as recordation. See Parks v. "Mr. Ford", 556 F.2d 132, 141 (3rd Cir. 1977). This issue should be resolved in the next