

CITY OF BALTIMORE

SHEILA DIXON, Mayor

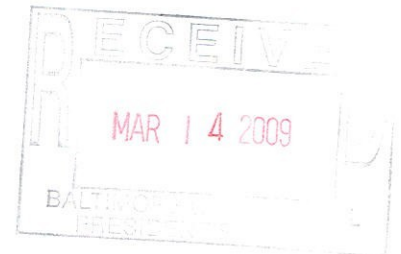


DEPARTMENT OF LAW

GEORGE A. NILSON, City Solicitor
101 City Hall
Baltimore, Maryland 21202

March 13, 2009

The Honorable President and Members
of the Baltimore City Council
Attn: Karen Randle, Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202



Re: City Council Bill 09-0289 – Foreclosure Chattels – Notice of
Dispossession

Dear Madame President and City Council Members:

The Law Department has reviewed City Council Bill 09-0289 for form and legal sufficiency. This bill proposes to amend the Foreclosure Chattels Ordinance, City Code, Art. 13 Sec 8A, to effectively impose a one year moratorium on evictions following foreclosure. (It does not directly affect foreclosures.). It does this by requiring that notice of the scheduled date of an eviction following a foreclosure sale, be mailed to the occupant of the foreclosed property at least 365 days before the first scheduled date of execution of the writ of possession. This means that occupants could stay in a foreclosed property for at least a year after the foreclosure is finalized.

There are legal problems with this bill, involving constitutionality and preemption. With respect to preemption, the year-long notice provision would upset the careful balance of the creditor and borrower's interests erected by state law in Title 14, Chapter 200 of the Maryland Rules and Section 7-105.1, *et. seq.* of the Real Property Article of the Maryland Code. The City's present Foreclosure Chattel Ordinance provides a 14 day notice period, which imposes only a *de minimis* delay, if any, on the eviction process post foreclosure. After the foreclosure sale, the foreclosure purchaser must obtain a writ of possession from Circuit Court in order to evict any occupant of the residence. Once the writ is issued, the foreclosure purchaser must schedule the eviction with the Sheriff's office in order to execute the writ. The current Foreclosure Chattels Ordinance requires that the occupant of the residence be given notice of the date the eviction is scheduled. The requirement that the notice be mailed 14 days prior to the eviction does not significantly alter the timing of the eviction. Thus, the current Ordinance does not add significant delay, only notice to the occupants of the impending eviction date. In contrast, a year delay is not *de minimis*, but rather would substantially impair the rights of the creditor to regain possession. As such, it would be preempted by conflict with state law. *See, e.g. Worton Creek v. Claggett*, 381 Md. 499, 512 (2004)(citations omitted).

Additionally, the exceedingly long time between foreclosure and eviction proposed by Bill 09-0289 is unconstitutional. The law modifies the existing contractual relationship between

lender and borrower to an impermissible extent. Laws that modify obligations in existing contracts violate the Contract Clause of the United States Constitution, which provides that “No State shall . . . pass any Law impairing the Obligation of Contracts,” when the changes are not reasonable and necessary to serve a legitimate public purpose. *See* Const. Art. I, §10; *Board of Trustees of Employees’ Retirement System of City of Baltimore*, 317 Md. 72, 99 (1989)(citing *United States Trust Co. v. New Jersey*, 431 U.S. 1, 17-21 (1977)); *Maryland State Teachers Ass’n, Inc. v. Hughes*, 594 F.Supp. 1353, 1360 (D. Md. 1984). “The legitimate expectations of the contracting parties must be examined to determine whether the impairment complained of is ‘substantial’ as well as to determine its level of severity.” *Maryland State Teachers Ass’n, Inc.*, 594 F.Supp. at 1360. In this instance, a year long notice provision would substantially impair a lender’s expectation of regaining possession of the foreclosed property within a reasonable time should the borrower default on the loan. *See e.g., City of El Paso v. Simmons*, 379 U.S. 497, 509 (1965)(a substantial contractual impairment exists if the government effectively removes one party’s ability to enforce the contract).

There is no apparent governmental purpose sufficient to justify this significant impairment of contract. The bill does not seek to protect homeowners from losing their homes to foreclosure. Nor does it protect tenants when their landlords are foreclosed by extending their leases. It would put both the former homeowner or the former renter into a housing limbo in which they could not be evicted, they would have no duty to pay rent or mortgage, but neither would the new owner of the property have any clear duty to maintain the property in habitable condition or to provide any of the other protections that landlord tenant law provides to tenants.

In contrast, the 14 day notice provision of the current Ordinance does not significantly alter the timing of eviction once the writ of possession is issued. Moreover, the current Ordinance furthers the City’s legitimate interest in fostering housing stability for renters and former home owners in the City by providing advance notice of eviction so that alternative housing plans can be made.

Due to the preemption and constitutional issues with this bill, the Law Department is unable to approve it for form and legal sufficiency.

Very truly yours,



Suzanne Sangree
Chief Solicitor

cc: George Nilson, City Solicitor
Angela C. Gibson, Mayor’s Legislative Liaison
Councilmember Bill Henry, 4th District
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