

On February 26, 2014 [Maryland's Court of Appeals](#) struck a statute that eliminated a ground rent owner's right of re-entry. [Maryland v. Goldberg](#) is a slam dunk victory for ground rent owners of property consisting of four or less residential units. By this opinion written by Judge Harrell, they have reclaimed the right to eject delinquent tenants, and exercise their full reversionary interest in the real property.

This builds on the [2011 Muskin decision](#), which struck the legislature's effort to invoke mandatory ground rent registration. The failure to register would have caused complete forfeiture, or loss, of the ground rent owner's rights in the real property.



The owners of ground rents challenged the State of Maryland in the [Circuit Court for Anne Arundel County](#), arguing that the most important aspect of a ground rent is the owner's right to reclaim the property if rent is not paid. Just like your apartment, a ground rent owner has traditionally been able to evict a non-paying tenant, and reclaim the entire fee interest in the land. But in 2007, after a wave of bad publicity about evictions, Maryland's legislature passed a law that took away the ground rent owner's right to evict a tenant for failure to pay.

The owners of ground rents argued that that the right to re-enter and evict is a vested property right, and that the legislature violated some basic constitutional precepts by swapping this remedy for a system of liens.

Under Maryland's new statute, a ground rent owner was entitled only to impose a lien for unpaid ground rent. And like any other lien, it could be foreclosed. That meant the ground rent owner would get paid out of the fund created by the foreclosure sale. The Court of Appeals described it this way:

Shortly put, this process replaced ejectment with a lien-and-foreclosure sale. The lien receives priority from the date the ground lease was created. The debt is paid from the proceeds of the sale. If the ground lease is redeemable, the redemption amount is deducted also from the proceeds of the sale. If the ground lease is irredeemable, the foreclosure buyer takes subject to the ground lease.

The legislature had completely eviscerated the ground rent owner's right to take back the property upon the failure to pay rent. The trial court ruled against the State of Maryland, and in favor of the ground rent holders.

And the highest court stood firm, declaring that the right of re-entry and ejectment is a fundamental property right, fully vested and deserving of constitutional protection. This is a good thing for property rights, which have been eroded steadily by legislative action.

Do you own land with four or fewer residential units that is subject to annual or bi-annual ground rent? Are you buying or selling land subject to ground rents? Or are you an owner of a ground rent? The questions that will arise in your transactions go beyond the mere existence of a ground rent. For example, what must be done with liens that have already been filed pursuant to the now invalid law? Can they still be foreclosed? Your upcoming settlements and title claims just got a bit more interesting.

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