

# **“BUSINESS IS BUSINESS”: GROUND RENTS AND EJECTMENTS IN BALTIMORE**

*Edward A. Corma\**

## TABLE OF CONTENTS

INTRODUCTION.....	222
I. HISTORY.....	224
A. <i>Origins in Colonial Maryland</i> .....	224
B. <i>The City of Homes</i> .....	225
C. <i>Ground Rents in the Twentieth Century</i> .....	226
II. THE EJECTMENT CRISIS.....	227
A. <i>Historical Weaknesses</i> .....	228
B. <i>A Twenty-First Century Problem</i> .....	230
1. Posner’s Example .....	231
2. House Prices Rise, Followed by Ejectments .....	232
C. <i>The Crisis Intensifies</i> .....	233
1. Added Fees .....	233
2. Lack of Notice .....	235
3. Judicial Indifference.....	236
4. Convenient Bureaucratic Incompetence .....	236
III. THE RUSH TO REFORM—EMERGENCY LEGISLATION .....	237
A. <i>Prior Legislative Reforms</i> .....	238
1. Statutory Modifications of 1884 .....	238
2. 2003 Reforms .....	239
3. Emergency Legislation of 2007.....	239
IV. CONSTITUTIONAL CHALLENGES.....	241
A. Muskin .....	241
1. Circuit Court.....	241
2. Maryland Court of Appeals.....	242
a. <i>Majority Opinion</i> .....	242
b. <i>Dissent</i> .....	243
c. <i>Analysis</i> .....	243
3. Zombie Rents .....	244
B. Goldberg.....	245

---

\* J.D. Candidate, May 2018. Thanks to all the great people on the *Law Review*, past and present, who helped with the writing and editing of this Note.

1. Majority Opinion .....	245
2. Dissent.....	245
3. Analysis.....	246
V. AFTER <i>MUSKIN</i> AND <i>GOLDBERG</i> .....	247
A. <i>Current Issues for Baltimore Homeowners</i> .....	248
B. <i>Lessons and Recommendations</i> .....	250
1. Property Rights Are Not Easily Abolished .....	250
2. Courts Must Use Equitable Powers .....	250
3. Reform Legislation Must Be Carefully Crafted.....	252
4. The Community Must Explore Independent Solutions.....	253
CONCLUSION.....	254

## INTRODUCTION

Property law is full of old, poorly understood doctrines that fascinate some and give others headaches. Some forms of property ownership trace back to feudalism and are still in force to this day.<sup>1</sup> One example is the ground rent, little known outside of Maryland and concentrated principally in Baltimore City.<sup>2</sup>

A ground rent is a type of lease in which the lessor retains ownership of the land and the lessee may build and occupy a house on that land.<sup>3</sup> The leases are typically for a term of ninety-nine years, automatically renewable forever.<sup>4</sup> A homeowner subject to a Maryland ground rent is technically the owner of personal property but possesses the practical rights and duties of an owner of real property.<sup>5</sup>

The lessee pays a specified amount of rent to the landowner each year. In the event of default, the landowner may initiate an ejectment action which, if successful, gives the landowner full ownership of the

---

1. The very early history of ground rents in Maryland can be traced to the *Quia Emptores* passed in England in 1290. See LEWIS MAYER, GROUND RENTS IN MARYLAND 9–13 (1883); Frank A. Kaufman, *The Maryland Ground Rent—Mysterious but Beneficial*, 5 MD. L. REV. 1, 2–4 (1940).

2. Fred Schulte & June Arney, *On Shaky Ground*, BALT. SUN, Dec. 10, 2006, at 1A [hereinafter *On Shaky Ground*].

3. See H.H. Walker Lewis, *The Taxation of Maryland Ground Rents*, 3 MD. L. REV. 314, 314 (1939); 11 MD. LAW ENCYCLOPEDIA § 1, Westlaw (database updated Sept. 2017).

4. See 11 MD. LAW ENCYCLOPEDIA, *supra* note 3, § 1. This arrangement does not violate the law against perpetuities. *Id.*; see also *Brown v. Reeder*, 71 A. 417, 420 (Md. 1908); *Banks v. Haskie*, 45 Md. 207, 218 (1876).

5. See *Moran v. Hammersla*, 52 A.2d 727, 728 (Md. 1947) (“The estate of the lessee is considered as personal property, but in practical effect the relation of the lessee to the property is that of owner of the land and improvements thereon, subject to the payment of the annual rent and all taxes on the property.”).

property, any improvements thereon, and all equity in the property.<sup>6</sup> Similar types of property arrangements exist in a handful of other states, most notably Pennsylvania.<sup>7</sup>

Although ground rents had faded from public consciousness during the twentieth century, they still represented very real property rights, as many Baltimore homeowners found out in the 2000s when investors began using the ejectment remedy to seize homes over outrageously small sums of money.<sup>8</sup>

This Note explores the factors that gave rise to this ejectment crisis and considers lessons to be learned from the failures of the reform efforts that followed. Part I gives a historical background, which is essential to understanding how ground rents were able to be exploited by modern-day investors. Part II discusses the ejectment crisis that developed in the 2000s, as ground rent owners and real estate investors seized scores of homes in a booming real estate market. Part III analyzes the emergency legislation passed by Maryland's General Assembly after newspaper reports had finally brought the issue to the public's attention. Part IV discusses the successful legal challenges to the new statutes and considers why and how they failed to withstand constitutional scrutiny. Finally, Part V examines the current state of affairs in Baltimore, explores what can be learned from these events, and suggests possibilities for more effective future reform.

The Baltimore ejectment crisis was made possible by a confluence of uniquely modern factors, including the real estate boom of the late 1990s and early 2000s, significant disparities in knowledge of ground rent law between homeowners and investors, and, perhaps most critically, the failure of Baltimore's courts to prevent unjust transfers of property. By the time Maryland lawmakers took notice of the problem, the crisis had become so severe they felt compelled to pass reforms as quickly as possible. The haste with which the legislature attempted to remedy ground rent abuses led to provisions which were ultimately struck down after constitutional challenges by well-funded ground rent investors. The reversals by the Maryland Court of Appeals caused many ground rents that had been extinguished by the new statutes to come back to life, exposing affected homeowners to fresh risk. Moreover, the decisions act

---

6. *State v. Braverman*, 137 A.3d 377, 381 (Md. Ct. Spec. App. 2016).

7. See generally *Jones v. Magruder*, 42 F. Supp. 193, 195–97 (D. Md. 1941) (presenting an overview of the history of ground rents in Maryland, and the differences between the features of ground rents in Maryland and Pennsylvania); Comment, *Ground Rents—A Term Enmeshed in Ambiguity*, 7 *MIAMI L.Q.* 235 (1953) (describing ground rents and similar types of property interests in Maryland, Pennsylvania, and other states).

8. See *On Shaky Ground*, *supra* note 2 (chronicling ejectment actions initiated over unpaid ground rent sums as low as twenty-four dollars).

as forceful precedents upholding the property rights of ground rent owners, creating additional difficulties for future reform efforts.

The irony of this story is how a property interest with colonial roots, long used to expand opportunities for homeownership, was perverted by modern-day investors to take away residents' homes. It is an important lesson in the power that even antiquated property rights can have. Moreover, as the Maryland General Assembly discovered, such rights cannot be easily swept away by statute. Reformers must take care to avoid infringing the constitutional and property rights of all parties involved, including unscrupulous real estate investors.

## I. HISTORY

The history of ground rents in Maryland and Pennsylvania sheds light on the unique features of this arcane property interest, and understanding those features is essential to deciphering how the modern-day ejectment crisis came about. The historical narrative also lays bare the irony of modern-day ejectment abuses, because ground rents used to be a symbol of Baltimore's proud tradition of widespread, stable, and affordable homeownership. The historical foundations of ground rents reveal just how severely this property arrangement was abused by investors in exploiting the ejectment remedy to engage in what amounted to the legalized theft of residents' homes.

### A. *Origins in Colonial Maryland*

The origins of ground rents from feudal England to the American colonies makes for fascinating historical study.<sup>9</sup> However, they took a familiar form relevant to this discussion in the middle of the eighteenth century. Ground rents began to be used in Baltimore during this time to improve the marketability of land.<sup>10</sup> At a time when cash and credit were in short supply, ground rents were a way to attract buyers with no-money-down financing.<sup>11</sup> A developer named Thomas Harrison introduced the particular innovation of selling less desirable marsh lots

---

9. See generally MAYER, *supra* note 1 (offering a detailed account of the ancient property doctrines behind Maryland's ground rent system and describing the development of real estate in Baltimore City and elsewhere in the state).

10. Garrett Power, *Entail in Two Cities: A Comparative Study of Long Term Leases in Birmingham, England and Baltimore, Maryland 1700-1900*, 9 J. ARCHITECTURAL & PLAN. RES. 315, 317 (1992).

11. GARRETT POWER, *PARCELING OUT LAND IN BALTIMORE 1632-1796*, at 161-62 (1993).

while retaining ninety-nine year ground leases, renewable forever, with no down payment.<sup>12</sup>

Ground rents were long used in Baltimore for real estate financing.<sup>13</sup> By the early 1800s, “[a] majority of Baltimore’s families could afford their own homes,” thanks in significant part to the ground rent system.<sup>14</sup>

### *B. The City of Homes*

Baltimore was long recognized as a city with a “strong tradition of home ownership.”<sup>15</sup> By 1940, over seventy-five percent of Baltimore homes had been built on land subject to ground rents.<sup>16</sup> This was thanks in large part to Harrison’s innovation on the ground rent, which endured throughout the nineteenth and into the twentieth century. Ground rents were crucial to the development of the city’s iconic rowhouses.<sup>17</sup> The property interest was also instrumental in promoting the development of small lots for residential properties.<sup>18</sup>

In the 1880s, Baltimore boasted a higher number of residential homes than Boston, despite having a smaller population.<sup>19</sup> By 1916, Baltimore had claimed the title “City of Homes,”<sup>20</sup> largely due to ground rents.

---

12. *Id.* at 155, 162; see also MARY ELLEN HAYWARD & CHARLES BELFOURE, *THE BALTIMORE ROWHOUSE* 14 (Jan Cigliano ed., 1999).

13. Marshall A. Levin, *Maryland Rule on Forfeiture Under Land Installment Contracts . . . A Suggested Reform*, 9 MD. L. REV. 99, 99–100 (1948).

14. See Power, *supra* note 10, at 317–18.

15. Morton Hoffman, *The Role of Government in Influencing Changes in Housing in Baltimore: 1940 to 1950*, 30 LAND ECON. 125, 126 (1954).

16. *Id.*

17. James J. Kelly, Jr., *Homes Affordable for Good: Covenants and Ground Leases as Long-Term Resale-Restriction Devices*, 29 ST. LOUIS U. PUB. L. REV. 9, 33 n.122 (2009); see also HAYWARD & BELFOURE, *supra* note 12, at 1 (observing that the rowhouses “symbolized homeownership and stability for Baltimore’s working and middle class” for a century and a half).

18. W. Calvin Chesnut, *The Effect of Quia Emptores on Pennsylvania and Maryland Ground Rents*, 91 U. PA. L. REV. 137, 137 (1942).

19. Edward P. Allinson & Boies Penrose, *Ground Rents in Philadelphia*, 2 Q.J. ECON. 297, 297 (1888).

20. Garrett Power, *The Unwisdom of Allowing City Growth to Work Out Its Own Destiny*, 47 MD. L. REV. 626, 661 (1988). Philadelphia, a city with its own version of ground rents, had laid claim to the “City of Homes” title even earlier, in 1887. See Allinson & Penrose, *supra* note 19, at 297. Just as in Baltimore, ground rents were a key factor in the expansion and high rate of homeownership in Philadelphia. *Id.* at 300, 313.

*C. Ground Rents in the Twentieth Century*

While the twenty-first century began with the ejectment crisis that is the subject of this Note, the previous century had begun with an exceedingly optimistic outlook for Baltimore homeownership. Conditions were remarkably stable in those years, with few foreclosures.<sup>21</sup> In fact, virtually no recorded foreclosures can be found between 1900 and 1930.<sup>22</sup> Ground rents were one reason why Baltimore had less of a foreclosure problem than other cities.<sup>23</sup> Ground rents acted as a hedge against homeowner default and foreclosure, because in a ground rent arrangement, the homeowner only needed to “scrape together or borrow” small sums of money to cure arrears and avoid ejectment.<sup>24</sup>

Ground rents were beneficial to both homeowning lessees and landowners. They were popular investment vehicles throughout the twentieth century, seen as safe holdings thanks to the deterrent effect of the ejectment remedy: “[A]n individual who paid \$500 for his house would not risk losing it because of a \$38 annual payment.”<sup>25</sup> Even when rents did go unpaid, ground rent owners typically wrote them off rather than pursuing ejectments.<sup>26</sup> These historical features of Baltimore’s ground rent system are essential to understanding the modern-day problem that unfolded. As it turned out, owners of homes worth much more than \$500 were losing them over unpaid rents that were in some cases less than \$100. The fact that such an obvious injustice could go unaddressed for several years is one of the principal questions explored in this Note.

The Maryland Court of Appeals has observed that “[r]eal property and contractual rights form the basis for economic stability.”<sup>27</sup> Indeed, ground rents were praised historically for contributing to economic

---

21. See Kaufman, *supra* note 1, at 68.

22. HAYWARD & BELFOURE, *supra* note 12, at 124; see also Kaufman, *supra* note 1, at 49 (noting that Baltimore saw relatively few ground rent defaults during the Great Depression).

23. Kaufman, *supra* note 1, at 49–51.

24. See *id.* at 50 (footnote omitted) (“[M]oney panics have often caused foreclosures which have wiped out many working men and discouraged others from attempting to save and finance purchases of their own homes. Baltimore, with a great deal of its property under ground rents rather than mortgages, has not had to bear the full force of any such panic. For as long as the leaseholders were able to scrape together or borrow enough money to meet their rental and tax payments, there were no ground rent ejectments.”).

25. See HAYWARD & BELFOURE, *supra* note 12, at 15.

26. See June Arney & Fred Schulte, *Demands for Reform*, BALT. SUN, Dec. 12, 2006, at 10A [hereinafter *Demands for Reform*] (noting that the practice of writing off uncollected rents was observed by both individual ground rent owners and institutional investors, like banks and savings and loans).

27. *Muskin v. State Dep’t of Assessments & Taxation*, 30 A.3d 962, 974 (Md. 2011).

stability in Baltimore<sup>28</sup> and Philadelphia<sup>29</sup> by enabling widespread homeownership. However, the ground rent system, unchanged for decades, was able to be exploited by investors to accomplish goals squarely at odds with the system's traditional aims.

The historical development of ground rents reveals several insights. First, they were traditionally used as a means of facilitating homeownership, not as a vehicle for dispossessing homeowners. Ground rents were also used for over a century as a stable income investment for their owners. They were not seen as a way to make a quick windfall profit, nor were they used as an extortion tool to squeeze arrearages and added fees from homeowners under pain of ejectment. In fact, the historical record contains numerous commentaries on the obvious economic incentives at work in the ground rent arrangement—homeowners would never allow their homes to be lost over tiny sums of money. Yet this is exactly what ended up happening, thanks to a unique convergence of modern factors that gave investors a chance to experience windfalls at the expense of poorly-informed homeowners with limited resources.

## II. THE EJECTMENT CRISIS

In one sense, the wave of ejectments that took place in the 2000s can be traced back to certain weaknesses that have always been inherent in Maryland ground rent law. However, it is notable that ground rents had never before been exploited in the way they were during the 2000s. In fact, some twentieth century ground rent owners, like Victor Posner<sup>30</sup>, were known to be ruthless, immoral, and criminal, yet they did not exploit the ejectment remedy. It took something more to create the conditions leading to this crisis, which was ultimately brought on by a perfect mix of the following factors: the historical quirks of ground rent law, the modern-day consolidation of investment holdings, declining homeowner knowledge of their rights and remedies, and skyrocketing real estate values. The dysfunctional city bureaucracy, along with courts that were either overworked or indifferent (or both), provided the final pieces of the puzzle.

---

28. See Kaufman, *supra* note 1, at 68.

29. See Allinson & Penrose, *supra* note 19, at 300, 313.

30. See discussion *infra* Section II.B.1.

### A. Historical Weaknesses

Despite the numerous and well-documented benefits of ground rents as a positive force for enabling homeownership in Baltimore, the system had significant weaknesses, which were known about more than a century before the ejectment crisis.

For one, this "peculiar"<sup>31</sup> property interest has always been acknowledged as one eluding easy comprehension.<sup>32</sup> Even legal encyclopedias were known to get the law wrong on ground rents,<sup>33</sup> often confusing features of Maryland's ground rents with those of Pennsylvania.<sup>34</sup>

It is significant that ground rents were acknowledged as a confusing subject long before the ejectment crisis. The intervening decades only served to increase the confusion and ignorance around this "mysterious"<sup>35</sup> relic of property law and how it works. In addition to being confusing, ground rents presented certain difficulties in their application that necessitated legislative action even in the nineteenth century.

As far back as 1883, ground rents were known to have "been abused for speculative purposes by the reckless imposition of exorbitant rents."<sup>36</sup> The specific problem at that time centered on the fact that ground rents generally could not be bought out or redeemed by the homeowner.<sup>37</sup> This was changed in 1884, when the Maryland legislature provided that all future-created ground rents longer than fifteen years would be redeemable.<sup>38</sup>

Similar challenges confronted lawmakers in Pennsylvania. Although Pennsylvania's ground rent system differed from Maryland's in meaningful ways, the Commonwealth struggled with the same

---

31. *Heritage Realty, Inc. v. City of Baltimore*, 248 A.2d 898, 899 (Md. 1969).

32. See Kaufman, *supra* note 1, at 1 (admitting that people not from Baltimore tended to be "bewildered" by the ground rent system); see also Lewis, *supra* note 3, at 314 ("Few intricacies of the law are more diabolically designed to baffle and befuddle than the Maryland system of ground rents.").

33. Lewis, *supra* note 3, at 314 n.2.

34. The principal difference between ground rents in the two states is that Pennsylvania ground rents are created by deed and considered realty, while Maryland ground rents are created by lease and considered personal property. *Id.* at 335-36.

35. Kaufman, *supra* note 1, at 1.

36. MAYER, *supra* note 1, at 127.

37. Kaufman, *supra* note 1, at 20.

38. Act of Apr. 8, 1884, ch. 485, 1884 Md. Laws 649. The legislative reforms of that year, and similar nineteenth-century measures passed in Pennsylvania, are discussed in Part III *infra*.



information and notice issues that plagued Maryland homeowners and would prove integral to the twenty-first century ejectment crisis.<sup>39</sup>

Maryland courts throughout the nineteenth and twentieth centuries commented on the difficulties presented by the ground rent system. For instance, the Maryland Court of Appeals made the following observation in a 1909 decision:

[I]t is well known from cases in this Court and otherwise that the complex system of ground rents in this State often rendered titles unmarketable, although in some instances the rents had not been collected for many years, and some of them were for such a nominal sum and were owned by so many persons, that it was difficult to obtain the reversions for anything like a reasonable amount as compared with the rent reserved.<sup>40</sup>

The 1884 statute, in making future ground rents redeemable, thus reflected an acknowledgement of the weaknesses of the system.<sup>41</sup>

Ground rents have been known for many decades to be far from perfect. Yet despite ejectment being an available remedy to ground rent owners for all those years, it was never abused on a mass scale before the twenty-first century. The causes of the ejectment crisis must therefore encompass more than just the traditional weaknesses that have always existed in Maryland's ground rent system. What finally made the crisis possible was a series of peculiarly modern conditions which fundamentally altered the incentives surrounding the rights and obligations of homeowners and ground rent owners.

Knowledge about ground rents and how they worked diminished during the twentieth century, and they were thought by some members

---

39. See Thomas M. Rutter, Jr., Note, *Tenure and Ground Rents in Pennsylvania*, 14 INTRAMURAL L. REV. N.Y.U. 219, 226 (1959) (observing that in nineteenth-century Pennsylvania, "great inconveniences arose from ancient ground rents about which the owners and occupants of the land had no knowledge"). This led to an 1855 law providing for ground rents to be automatically extinguished if no claim were made by the ground rent owner for twenty-one years. *Id.*; see also Act of Apr. 27, 1855, No. 387, § 7, 1855 Pa. Laws 368, 369. This law was later upheld as constitutional by the United States Supreme Court. *Wilson v. Iseminger*, 185 U.S. 55, 65 (1902); Rutter, *supra*, at 227.

40. *Safe Deposit & Tr. Co. v. Marburg*, 72 A. 839, 840 (Md. 1909).

41. See, e.g., *Silberstein v. Epstein*, 126 A. 74, 75 (Md. 1924) (Bond, J., concurring) ("[The 1884 statute] was designed to put a stop to the creation of the irredeemable ground rents which for about a century had been a favored form of security in Baltimore City, but which had survived to become a detriment . . ."); *Spear v. Baker*, 84 A. 62, 64 (Md. 1912) ("[T]he system of irredeemable ground-rents which had prevailed in Baltimore had been very injurious to the prosperity of the city and a sound public policy demanded that the right to redeem be given to holders of leasehold interests . . .").

of the legal community to be fading as early as the 1940s.<sup>42</sup> Toward the end of the century, ruthless investors<sup>43</sup> began buying up ground rent holdings en masse, with the aim of either winning ejectment actions or extracting arrears plus tacked-on attorneys' fees and costs.

Frank Kaufman's landmark 1940 law review article on ground rents<sup>44</sup> reflects the prevailing sensibilities of the time. The policy rationale for this system was understood to be one favoring the interests of the homeowner over the profit motive of the ground rent owner. That sentiment appears to have been lost, along with the general public's knowledge regarding ground rents, in the ensuing decades. It hardly seems reasonable to expect that a home could be lost, along with all equity, over less than \$100. But that is what happened again and again in Baltimore in the early years of the new millennium. Investors, having assembled large ground rent portfolios, turned the screws on homeowners by suing for back rents and, critically, additional fees and costs that often turned the affordable unpaid rents into unaffordable obligations. Homeowners were faced with the choice of paying up or getting kicked out. With the conscience of the investor proving to be no impediment to this scheme,<sup>45</sup> the courts were the last chance for a sensible remedy to be worked out, but they failed to act as a safeguard of homeowners' rights. Scholars and lawyers in Kaufman's day could hardly have foreseen such developments.

In 1940, Kaufman discussed several possible downsides and weaknesses of the ground rent system.<sup>46</sup> Notably, the risk of unfair ejectment was not one of them. The conditions giving rise to the 2000s crisis were distinctively modern.

### B. A Twenty-First Century Problem

By the early 2000s, the ground rent system was no longer fulfilling its role as an engine for expanded homeownership. As one real estate developer told the *Baltimore Sun* in 2006: "I'm not selling my houses any cheaper by having a ground rent on it. I don't think that's been done for

---

42. Levin, *supra* note 13, at 100.

43. *On Shaky Ground*, *supra* note 2 ("The ground rent business is a great business,' [investor Petar] Pecovic said. 'You just have to be ruthless.'").

44. See Shale D. Stiller, *In Memoriam: Frank A. Kaufman*, 57 MD. L. REV. 615, 615 (1998).

45. At times, there were limits to the ruthlessness of those involved in the new ground rent business. See *On Shaky Ground*, *supra* note 2 (interviewing one investor who purchased a home won in an ejectment action and, out of the self-proclaimed goodness of her heart, permitted the former owner to continue living there—as long as she kept current on a \$550 monthly rent payment).

46. Kaufman, *supra* note 1, at 68–72.

decades. I do it because I'm able to do it."<sup>47</sup> The fact that unique conditions were behind the 2000s ejectment crisis is further proven by the fact that twentieth century real estate investors who would have likely jumped at the chance to abuse ejectments did not do so. One such investor was Victor Posner.

### 1. Posner's Example

There have always been unscrupulous characters in the real estate business—wealthy, familiar with the law, and ruthless. Indeed, an undercurrent of exploitation existed long before the 2000s ejectment crisis.<sup>48</sup> However, the events that unfolded in the early twenty-first century required more than just investor greed to become a reality. One notorious ground rent owner from the previous century, Victor Posner, serves as evidence that a peculiar combination of modern factors was necessary to create the conditions in which the wave of ejectments developed.

Posner, described as “a low-quality, cynical, greedy man who didn't care about his own reputation,”<sup>49</sup> was an infamous businessman and Baltimore native who got his start building low-cost housing in the city's African American neighborhoods in the 1950s, retaining ground rent interests in the properties.<sup>50</sup> At one point, Posner was considered “one of the nation's most feared corporate raiders.”<sup>51</sup> By the mid-1990s he was still collecting payments on about 20,000 ground rents.<sup>52</sup>

Posner was by all accounts a vicious, ruthless man driven by mindless greed and a lust for control,<sup>53</sup> yet he held on to his portfolio of ground rents for more than forty years. If anyone would have been

---

47. *Demands for Reform*, *supra* note 26.

48. See Audrey G. MacFarlane, *The Properties of Instability: Markets, Predation, Racialized Geography, and Property Law*, 2011 WIS. L. REV. 855, 893–95 (2011) (arguing that Baltimore ground rents had always been tied in with a culture of exploitation of black homeowners).

49. Kenneth N. Gilpin, *Victor Posner, 83, Master of Hostile Takeover*, N.Y. TIMES, Feb. 13, 2002, at A4.

50. Harold Seneker, *Why Victor Posner Is Riding High*, FORBES, Oct. 29, 1979, at 34, 36. While Seneker suggests this was a bad deal, it might also be seen as being in accord with the city's long tradition of using ground rents to expand access to homeownership. These old ground rent arrangements do not appear to have been originally made with the expectation of seizing the houses after default and ejectment.

51. Laurie P. Cohen, *Daddy Dearest: Victor Posner Lies Ill as Dysfunctional Clan Feuds Over the Spoils—Warring Relatives Accuse Raider of Incest, Abuse and Looting Inheritance—The Boy Wonder's New Role*, WALL ST. J. EUR., Oct. 14, 1994, at A1.

52. *Id.*; Gilpin, *supra* note 49.

53. See Cohen, *supra* note 51 (giving examples of Posner's disreputable conduct in both business and family life).

capable of stealing homes from low-income residents without compunction, it would have been Victor Posner. The fact that he did not do so for decades indicates that the ejectment crisis required unique circumstances to come to fruition.

## 2. House Prices Rise, Followed by Ejectments

Throughout the twentieth century, owners of ground rents saw them as reliable sources of investment income, and residents considered them vehicles for affordable homeownership. For instance, many ground rents were created after World War II for returning GIs.<sup>54</sup> The ejectment crisis was a late development, spurred by the booming housing market of the 1990s and early 2000s and declining homeowner knowledge about ground rent laws and obligations.<sup>55</sup>

During the twentieth century, the properties behind lapsed ground rents were often abandoned or otherwise deemed not worth taking or fixing.<sup>56</sup> Owners routinely wrote off delinquent ground rents rather than pursuing ejectment.<sup>57</sup> During the late 1990s, two simultaneous developments set the stage for the ejectment crisis: real estate prices began to rise while investors began amassing portfolios of hundreds or thousands of ground rents, allowing for more efficient management.<sup>58</sup>

Baltimore saw a seventy-five percent increase in residential real estate values between 2002 and 2005, and observers at the time foresaw how this could create incentives for ground rent owners to attempt to seize properties.<sup>59</sup> These predictions came true, as Baltimore's surging real estate market during the 2000s motivated investors to take advantage of a number of different legal mechanisms to take homes. These included not only ground rents, but also liens arising from past due utility bills and property taxes which were auctioned off by the city.<sup>60</sup>

---

54. Fred Schulte & June Arney, *The New Lords of the Land*, BALT. SUN, Dec. 11, 2006, at 1A [hereinafter *The New Lords of the Land*].

55. *Id.*

56. *Id.*

57. *Demands for Reform*, *supra* note 26.

58. *The New Lords of the Land*, *supra* note 54.

59. Lorraine Mirabella & Jamie Smith Hopkins, *A Washington Village Rowhouse Is Sold at Auction for \$98,000 After the Property Owners Fail to Pay Several Hundred Dollars for the Ground Rent. They Have Appealed*, BALT. SUN, June 2, 2005, at 1D [hereinafter *A Washington Village Rowhouse Is Sold*].

60. See Fred Schulte & June Arney, *Housing Boom Boosts Liens' Appeal*, BALT. SUN, Mar. 25, 2007, at 13A (noting that ninety-eight percent of tax liens were successfully sold by the city in 2006, compared to just fifty-six percent in 2000).

Rising property values had suddenly “made it attractive to attempt to seize houses.”<sup>61</sup> Indeed, much of the ejectment activity clustered around areas beginning to experience gentrification, such as Washington Village.<sup>62</sup> Nevertheless, as late as 2005, ground rent ejectments leading to windfall resales were still considered “unusual” occurrences in Baltimore.<sup>63</sup> Real estate experts at the time considered ejectment to be an unlikely outcome, given the notice requirements for ejectment lawsuits.<sup>64</sup>

### C. *The Crisis Intensifies*

The growing number of ejectments was also made possible by the consolidation of ground rent holdings. Over half of the ground rent ejectment cases between 2000 and 2006 “were brought by entities associated with four groups of individuals and families.”<sup>65</sup>

All the necessary ingredients were thus in place: rising property values, consolidated investment portfolios, and public ignorance of ground rents. Investors were able to begin taking scores of homes through ground rent ejectments and related tax lien and water bill actions. Four themes persisted throughout this crisis: (1) the leverage enjoyed by investors in the form of tacked-on attorneys’ fees and costs, (2) the lack of adequate notice to homeowners, (3) judicial indifference, and (4) a bumbling bureaucracy whose ineptness conveniently helped add money to the city treasury.

#### 1. Added Fees

Homeowners were often forced to choose between settling for amounts which were inflated by added fees to many times the original past due ground rent or surrendering their homes along with all equity. Successful ejectment plaintiffs stood to make tens or hundreds of thousands of dollars in resale profits, while defendants received nothing.<sup>66</sup> Homeowners who tried to fight them in court only saw the fees and costs grow, and they rarely won in the end.<sup>67</sup>

---

61. *On Shaky Ground*, *supra* note 2.

62. *Id.*

63. *A Washington Village Rowhouse Is Sold*, *supra* note 59 (chronicling a successful ejectment action over an unpaid ground rent of a few hundred dollars, followed by a resale for \$98,000).

64. *Id.*

65. *On Shaky Ground*, *supra* note 2.

66. *Id.*

67. *Id.*

In one case, a homeowner was dispossessed over a small unpaid ground rent arrearage that was inflated to more than \$1200 with added fees and costs. The property was sold by the ground rent owner for \$70,000, then later resold for \$128,000. The homeowner was entitled to none of these proceeds.<sup>68</sup> In another case, an unpaid sum of \$252 grew to over \$2100 with additional expenses.<sup>69</sup>

The cases that did not end in ejectment still mostly wound up with the homeowner paying a substantial sum to cure arrearages and pay the added fees.<sup>70</sup> Of course, the ground rent owner still retained the right to seek ejectment for any future lapses in payment. While homeowners had the option to redeem ground rents, as initially established by the 1884 legislation, this was ineffective for the same reasons ejectment actions were successful: homeowners either did not know how to enforce their rights, could not afford to do what was necessary, or both.

Some ground rent investors also obtained property tax liens from the city. These parties could then file "dual lawsuits," threatening both ejectment and foreclosure and putting even more pressure on homeowners who were often confused, overwhelmed, and at a severe financial disadvantage.<sup>71</sup>

Tax liens, like ground rent ejectments, allowed owners to inflate the amounts owed to them by adding on attorneys' fees and other expenses. The owners of these liens could also charge eighteen percent annual interest.<sup>72</sup> In one case, a homeowner whose yearly ground rent obligation was only eighty-four dollars ended up owing more than \$8000 based on a combination of the ground rent arrears, a tax lien, added fees, and interest.<sup>73</sup>

Hundreds of homes were sent to tax sale over city debts of less than \$500. As with ground rent ejectments, the original amounts owed were

---

68. *Id.*

69. *Id.* This particular ejectment gave the *Baltimore Sun* reporters the opportunity to witness the cold efficiency with which the ground rent owner, fresh off of an ejectment victory in court, changed the locks and unceremoniously dumped the former resident's belongings on the street, all under the approving gaze of sheriff's officers. *See id.*

70. *The New Lords of the Land*, *supra* note 54.

71. *Id.* Some of the investors who were eventually implicated in bid rigging at city tax lien auctions were also prominent ground rent investors, and their schemes proved very lucrative. *See* Tricia Bishop, *Ground Rent Investor Pleads Guilty to Rigging Auction Bids*, *BALT. SUN*, Jan. 7, 2010, at 2A; Fred Schulte & June Arney, *Investor Admits Rigging Tax Sale Bids*, *BALT. SUN*, June 12, 2008, at 1D; Fred Schulte, *Tax-Lien Bid-Rigging Paid Off*, *U.S. Says*, *BALT. SUN*, May 18, 2010, at 7A.

72. *The New Lords of the Land*, *supra* note 54.

73. *Id.*

manageable, but they were then inflated by tacked-on fees.<sup>74</sup> One homeowner lost her residence over an original unpaid water bill of \$362.<sup>75</sup> As was the case with ground rent ejectments, investors holding tax liens enjoyed the advantages of greater financial resources and superior knowledge of “the contentious and complex legal process” involved in enforcing their rights against homeowners.<sup>76</sup>

Tax lien investors, like ground rent owners, often controlled large portfolios of holdings, and both types of investors enjoyed a commanding position from which they could force homeowners to choose between paying the arrears with large tacked-on fees or forfeiting their homes.<sup>77</sup>

## 2. Lack of Notice

In some cases, lawsuits were filed and judgments entered with all notices going to defunct addresses, resulting in homeowners never learning of the proceedings against them until it was too late.<sup>78</sup> Ground rent owners also failed in some cases to notify the surviving relatives of deceased homeowners of ongoing ejectment proceedings. In one such instance, the daughter of a homeowner who had passed away was informed for the first time by *Baltimore Sun* reporters.<sup>79</sup> In another case, a property went to tax sale over an unpaid obligation of less than four dollars.<sup>80</sup> Citations had been sent to an old address and were never seen by the homeowner.<sup>81</sup>

Low-income residents were victimized by investors over city tax and utility debts in an identical fashion to the ground rent cases—they would not receive notice until the process was far-advanced, at which point the

---

74. Jamie Smith Hopkins, *They Socked It to Me for \$4, Owner Declares*, BALT. SUN, Aug. 2, 2010, at 1A [hereinafter *They Socked It to Me*].

75. Fred Schulte & Ben Protess, *City Auctions Property Liens*, BALT. SUN, May 18, 2010, at 1A [hereinafter *City Auctions Property Liens*].

76. *Id.*

77. *Id.*

78. *Demands for Reform*, *supra* note 26. This was part of a wider problem in the city. See *They Socked It to Me*, *supra* note 74 (chronicling one homeowner whose property went to tax sale over an unpaid obligation of \$3.91; citations were sent to an old address and were never seen by the homeowner).

79. *Demands for Reform*, *supra* note 26. Indeed, it was soon discovered that ejectment actions had in some cases been filed and granted against dead homeowners. See Fred Schulte & June Arney, *Clerk of Court Reviews Suits on Ground Rent*, BALT. SUN, Dec. 19, 2006, at 1A [hereinafter *Clerk of Court Reviews Suits*]. One circuit court judge admitted “it was a ‘mistake’ to rule against someone who had died” in a ground rent ejectment action. *Id.* The clerk of the court explained that their docket was too busy for officials “to check on whether people named in lawsuits are living or dead.” *Id.*

80. *They Socked It to Me*, *supra* note 74.

81. *Id.*

total financial obligation was too great for them to afford to pay the required lump sum.<sup>82</sup>

### 3. Judicial Indifference

One Baltimore Circuit Court judge remarked that the lack of homeowner responses to ejectment suits did not raise suspicion because it was unclear exactly why they failed to answer the complaints.<sup>83</sup> This rationale is weak and unavailing. The crisis speaks to a larger problem of insufficient recordkeeping and overburdened courts. While the full extent of these problems, and the possibility that the city had an incentive in maintaining a broken status quo, exceeds the scope of this Note, it is at least worth mentioning that responsibility appears to lie more with these institutions than with homeowners.

Judges hearing ejectment matters had the power to impose installment payment plans, but, for reasons that are not clear, they rarely did so.<sup>84</sup> In most cases where homeowners did not object, judges granted ejectment without requiring a hearing.<sup>85</sup> As one former judge remarked: "Think of how many times judges rendered these judgments in all the courtrooms over all those years . . . . You're talking about a lot of property. A lot of people were affected by the loss of these houses."<sup>86</sup>

### 4. Convenient Bureaucratic Incompetence

Baltimore homeowners have dealt for years with property tax payments failing to be credited.<sup>87</sup> One homeowner came within a hairsbreadth of losing her home at a tax sale after the city retroactively reduced a tax credit and lost her check.<sup>88</sup> This was not an isolated incident; it was part of a larger pattern of convenient bureaucratic incompetence that encompassed tax liens, water bills, and ground rent ejectments. Tax lien auctions, for instance, were a way for the city to raise

---

82. *Id.*

83. *On Shaky Ground*, *supra* note 2.

84. *Id.*; see also Fred Schulte & June Arney, *Small Unpaid Bills Put Residents at Risk*, BALT. SUN, Mar. 25, 2007, at 1A [hereinafter *Small Unpaid Bills*] (describing how courts also failed to take available actions to reduce fees in tax lien and utility bill actions).

85. *Demands for Reform*, *supra* note 26.

86. *On Shaky Ground*, *supra* note 2.

87. See, e.g., Liz Kay, *Tax Bills Keep Coming*, BALT. SUN, Feb. 15, 2009, at 4A.

88. Jamie Smith Hopkins, *Lost Check Almost Leads to Lost Home*, BALT. SUN, May 22, 2012, at 1C; Jamie Smith Hopkins, *Baltimore's Tax Sale: Liens Sold on 6,545 Properties, Raising \$20 Million for City*, BALT. SUN (May 22, 2012), <http://www.baltimoresun.com/business/real-estate/wonk/bal-wonk-baltimores-tax-sale-liens-sold-on-6545-properties-raising-20-million-for-city-20120521-story.html> [hereinafter *Baltimore's Tax Sale*].



money for its budget while avoiding the headaches that go with foreclosure and debt collection.<sup>89</sup>

Ground rent ejectments were thus only one part of a larger web of problems in which Baltimore residents, mostly those with low incomes, lost their homes over small unpaid obligations that included utility bills, property taxes, and minor environmental citations in addition to ground rent arrearages.<sup>90</sup>

Investors, who were often attorneys, conspired with each other to rig the bidding in city tax lien auctions during the 2000s.<sup>91</sup> A Justice Department investigation found that three investment groups had won about two-thirds of the tax liens auctioned off by the city in 2006 and 2007.<sup>92</sup>

These four themes persisted throughout the ejectment crisis, which managed in only a few years to tarnish a century and a half of proud tradition surrounding ground rents and homeownership in Baltimore. Investors took advantage of the convergence of disappearing public knowledge of ground rent law and rising real estate values to score windfalls in ejectment suits. When the courts were needed as a last resort for homeowners under siege, they instead appeared to rubber-stamp ejectment relief for investors. By 2007, the situation had become so severe that the Maryland legislature felt compelled to act quickly, leading to future constitutional problems with the laws that were eventually passed.

### III. THE RUSH TO REFORM—EMERGENCY LEGISLATION

Investigative reporting in the *Baltimore Sun* had finally given a voice to homeowners preyed upon by ground rent owners.<sup>93</sup> State legislators vowed to take action within days of the *Sun*'s exposé.<sup>94</sup> By the end of January 2007, "emergency legislation" was on its way to passage in the Maryland legislature.<sup>95</sup>

---

89. *City Auctions Property Liens*, *supra* note 75.

90. *See id.*

91. Fred Schulte & Scott Calvert, *Baltimore Lawyer Admits to Rigging Bids for Tax Sales*, BALT. SUN, Mar. 4, 2011, at 1A.

92. *City Auctions Property Liens*, *supra* note 75.

93. For the three-part series that touched off the public outcry and legislative reforms, see *On Shaky Ground*, *supra* note 2; *The New Lords of the Land*, *supra* note 54; *Demands for Reform*, *supra* note 26.

94. Fred Schulte & June Arney, *Bills to Tackle Ground Rents*, BALT. SUN, Dec. 13, 2006, at 1A [hereinafter *Bills to Tackle Ground Rents*].

95. June Arney & Fred Schulte, *Ground Rent Bill Expected to Pass*, BALT. SUN, Jan. 31, 2007, at 1A [hereinafter *Ground Rent Bill Expected to Pass*].

The 2007 legislation is best understood in light of prior Maryland ground rent measures passed in 1884 and 2003. While the latter proved ineffective in preventing abuse of the ejectment remedy, the former sheds light on why the 2007 laws eventually ran into constitutional trouble.

#### A. *Prior Legislative Reforms*

Maryland and Pennsylvania both acted in the nineteenth century to reform ground rent laws. These prior examples offer guidance on how legislation can be drafted in a way that does not infringe on the constitutional and property rights of ground rent owners. More recent Maryland legislation, from 2003, was largely ineffective and may have backfired by allowing the ground rent owner lobby to argue that additional reforms were unnecessary and inappropriate.

##### 1. *Statutory Modifications of 1884*

Prior to 1884, Maryland homeowners in most cases could not redeem their ground rents.<sup>96</sup> The legislation passed that year provided for all future-created ground rents for a term longer than fifteen years to be redeemable.<sup>97</sup> It also called for rents to be extinguished if no demand for payment were made for more than twenty years.<sup>98</sup>

The 1884 Maryland reforms mirrored those passed by Pennsylvania's legislature in 1855.<sup>99</sup> The purpose of the Pennsylvania statute was "[t]o amend certain defects of the law for the more just and safe transmission and secure enjoyment of real and personal estate."<sup>100</sup> Notably, the law provided that ground rents would be presumed extinguished after twenty-one years with no notice or demand for payment.<sup>101</sup>

Further refinements to the Maryland provisions for ground rent redemption were made in 1888 and 1900. The legislative history and debates behind these statutes are lost, with references in court opinions offering the only hints at the process behind their enactment.<sup>102</sup>

---

96. Kaufman, *supra* note 1, at 20.

97. Act of Apr. 8, 1884, ch. 485, 1884 Md. Laws 649.

98. Act of Apr. 8, 1884, ch. 502, § 25, 1884 Md. Laws 670. This provision was upheld by the Maryland Court of Appeals. *See Safe Deposit & Tr. Co. v. Marburg*, 72 A. 839, 841–43 (Md. 1909).

99. *See Rutter*, *supra* note 39, at 226–28; *see also* Act of Apr. 27, 1855, No. 387, 1855 Pa. Laws 368.

100. 1855 Pa. Laws 368.

101. *Id.* § 7, 1855 Pa. Laws at 369.

102. Kaufman, *supra* note 1, at 28.

## 2. 2003 Reforms

The ejectment crisis was preceded by reforms in 2003 that proved ineffective in stopping the abuses perpetrated by ground rent owners. In that year, the legislature approved a cap on attorneys' fees and introduced a provision for homeowners to buy out ground rents after three years of no contact from the ground rent owner.<sup>103</sup>

These options appear to have been little-known and rarely used.<sup>104</sup> Nevertheless, ground rent owners and realtors successfully used the 2003 laws as political fodder to argue against further reforms, claiming that enough had been done already.<sup>105</sup> This legislation may also have backfired by incentivizing ground rent owners to file more ejectment suits in order to collect the maximum fees allowed by statute.<sup>106</sup>

The 2003 reforms failed to prevent the crisis because they did not address the real problem: an information deficit. Ground rent owners possessed advantages in their knowledge of the applicable laws and remedies. They knew their way around the courts, and they took advantage of lax judicial oversight to secure ejectment judgments and seize properties from bewildered homeowners.<sup>107</sup>

## 3. Emergency Legislation of 2007

The laws passed by the Maryland legislature in 2007 created a ground rent registry and provided for automatic extinguishment of ground rents if their owners failed to register them by September 30, 2010.<sup>108</sup> The legislation also changed the remedy for nonpayment from ejectment to lien-and-foreclosure.<sup>109</sup> These laws were characterized as

---

103. *Demands for Reform*, *supra* note 26; see also Act of May 22, 2003, ch. 464, 2003 Md. Laws 3117 (providing for ground rent redemption if the homeowner has received no bill or other communication from the ground rent owner for three years); Act of Apr. 22, 2003, ch. 80, 2003 Md. Laws 1179 (capping expenses collectible by ground rent owners in actions brought against delinquent homeowners).

104. *Demands for Reform*, *supra* note 26.

105. *Id.*

106. *Bills to Tackle Ground Rents*, *supra* note 94.

107. See *On Shaky Ground*, *supra* note 2 ("Unfortunately, in many of these cases, you're dealing with an uneducated public and an uninformed public," said former Circuit Judge Thomas E. Noel.). An attorney who represented ground rent owners admitted: "The people who file these cases know the law inside and out . . . . Other people [homeowners] don't have a clue about it." *Id.* (alteration in original). A Legal Aid Bureau staff attorney also observed: "If [homeowners are] not eligible for our services and they can't hire a lawyer and they don't know enough to file a letter with the Circuit Court, then it's all over." *Id.*

108. Act of May 8, 2007, ch. 290, 2007 Md. Laws 1872.

109. Act of May 8, 2007, ch. 286, 2007 Md. Laws 1836.

“emergency legislation” in response to the ground rent abuses brought to light by the *Baltimore Sun* investigation.<sup>110</sup>

Government officials and law professors were aware of the possible constitutional deficiencies in the proposed legislation, but the more aggressive lawmakers applied pressure to pass the bills quickly rather than allowing additional time for debate and refinement.<sup>111</sup> A proposed one-year moratorium on ejectments, which would have given breathing room to consider the legislation more carefully, “garnered little traction in Annapolis.”<sup>112</sup>

The rush to pass legislation also meant that alternative measures did not receive due consideration. One such measure was a proposal to require ground rent owners to conduct skip-trace searches to find homeowners and ensure proper notice.<sup>113</sup> One group representing ground rent owners criticized this as too “costly,”<sup>114</sup> a remarkably audacious position to take given the extreme windfalls they enjoyed after successful ejectment actions. The scheme depended in large part on homeowners getting insufficient notice, and the city courts appeared to have been too busy or too indifferent to care. As previously noted, this problem also extended to the courts’ handling of lawsuits over unpaid water bills and tax liens.<sup>115</sup>

The state’s attorney general believed that the proposed bills “seem[ed] to pass constitutional muster.”<sup>116</sup> Ground rent owners disagreed, and a law professor expressed concern that the measures “may be overstepping.”<sup>117</sup> Lobbyists complained that “[t]he bills [were] written in a punitive fashion” and described the proposed measures as “draconian.”<sup>118</sup> A court challenge to the new legislation was inevitable, and the events that followed would vindicate the warnings of observers and the objections of ground rent lobbyists.

---

110. *Ground Rent Bill Expected to Pass*, *supra* note 95. But see *State v. Braverman*, 137 A.3d 377, 391 n.15 (Md. Ct. Spec. App. 2016) (finding that the General Assembly did not show “any manner of undue haste” in passing the 2007 legislation).

111. June Arney, *Ground Rent Bills Assailed*, BALT. SUN, Mar. 5, 2007, at 1B.

112. *Id.*

113. *Demands for Reform*, *supra* note 26.

114. *Id.*

115. See *Small Unpaid Bills*, *supra* note 84 (detailing, in a follow-up to the original December 2006 ground rent investigation, discoveries of additional abuses involving property taxes, unpaid utility bills, and other municipal charges, with evidence of the same judicial indifference seen in ejectment actions).

116. Laura Smitherman, *Ground Rent Curb Urged*, BALT. SUN, Feb. 23, 2007, at 1B.

117. *Id.*

118. *Id.*

## IV. CONSTITUTIONAL CHALLENGES

The most controversial portion of the 2007 legislation, the automatic extinguishment provision, was challenged by ground rent owners as an impermissible taking of their property interests without just compensation. This part of the law was ruled unconstitutional by the Maryland Court of Appeals in 2011.<sup>119</sup> The decision revived previously extinguished ground rents and laid the foundation for another provision, the lien-and-foreclosure remedy, to be struck down in a subsequent case in 2014.<sup>120</sup> Dissenting opinions were filed in both cases, but the two decisions firmly repudiated the 2007 reform efforts and remain strong precedents in favor of the property rights and constitutional protections guaranteed to ground rent owners.

## A. Muskin

The first major challenge centered on the provision that any ground rents not registered with the city by September 30, 2010 would be automatically extinguished. The Maryland Court of Appeals would ultimately declare that provision unconstitutional, dealing a major blow to the 2007 emergency legislation and setting the stage for further constitutional challenges.

## 1. Circuit Court

The plaintiff in this dispute, instead of registering his ground rents, sued for a declaratory judgment that the registration requirement was unconstitutional and for an injunction against extinguishments of the ground rents held by his trusts.<sup>121</sup> He argued that the automatic extinguishment provision was an unconstitutional taking that infringed on the property rights of ground rent owners.<sup>122</sup> The Circuit Court for Baltimore City disagreed, finding no constitutional violation in the law.<sup>123</sup> It saw the extinguishment provision as a condition of ongoing ground rent ownership—in other words, future ownership was conditioned on an owner making sure his or her ground rent was registered by the deadline.<sup>124</sup>

---

119. See discussion *infra* Section IV.A.

120. See discussion *infra* Section IV.B.

121. *Muskin v. State Dep't of Assessments & Taxation*, 30 A.3d 962, 966 (Md. 2011).

122. *Muskin v. State Dep't of Assessments & Taxation*, No. 24-C-10-004437, 2010 WL 6599773, at \*7 (Md. Cir. Ct. Oct. 25, 2010), *rev'd*, 30 A.3d 962 (Md. 2011).

123. *Id.* at \*7–8.

124. *Id.* at \*11–12.

## 2. Maryland Court of Appeals

On appeal, the state's highest court ruled that the extinguishment provision did effect an unconstitutional taking. The registration requirement itself was upheld, but the provision for automatic extinguishment was struck down.<sup>125</sup>

### *a. Majority Opinion*

The court recognized that the purpose of the legislation was to "prevent predatory ejectments by protecting tenants against unintentional default."<sup>126</sup> However, it explained that both the Maryland Constitution and established case law forbid statutes that retroactively abrogate vested property rights.<sup>127</sup>

The majority explained that registration alone is forward-looking, affecting future conduct, and is therefore permissible.<sup>128</sup> Extinguishment, on the other hand, is backward-looking, unlawfully divesting ground rent owners of their existing property interests, and for that reason the automatic extinguishment provision was unconstitutional.<sup>129</sup>

The court suggested that an "interim consequence" provision, such as a prohibition on collection of payments for unregistered ground rents, or a ban on court enforcement until registration of a ground rent is completed, would have been helpful.<sup>130</sup> One cannot help but wonder if reasonable provisions like this would have found their way into the legislation if the General Assembly had not felt compelled to act so quickly.

The court stated that the legislature cannot "give to a law the effect of taking from one man his property and giving it to another . . ."<sup>131</sup> It noted that even a "broken system" cannot be rectified with an unconstitutional remedy.<sup>132</sup>

---

125. *Muskin*, 30 A.3d at 965.

126. *Id.* at 966.

127. *Id.* at 968.

128. *Id.* at 970.

129. *Id.* at 970-71.

130. *Id.* at 970.

131. *Id.* at 973 (quoting *Thistle v. Frostburg Coal Co.*, 10 Md. 129, 144 (1856)).

132. *Id.* at 974.

*b. Dissent*

Judge Adkins dissented, arguing that the statute offered a “reasonable time and opportunity” to comply.<sup>133</sup> She cited *Safe Deposit & Trust Co. v. Marburg*,<sup>134</sup> a case in which the Maryland Court of Appeals upheld the 1884 provision calling for extinguishment of dormant ground rents after twenty years. She argued that the court’s ruling in that case should have guided it to uphold the 2007 legislation.<sup>135</sup>

*c. Analysis*

The majority noted that the registration statute provided for no hearing or appeal process, making it a disproportionate remedy.<sup>136</sup> While the lack of such procedures was problematic (and likely a symptom of the rushed nature of the legislative proceedings), the court glossed over the ejectment crisis, characterizing it as a series of “anecdotal” accounts and stating that the abuses had not been “demonstrated to be systemic or endemic.”<sup>137</sup> This assessment ignored several factors: (1) the disproportionate windfalls being awarded to ground rent owners; (2) the serious equitable concerns raised by the notice and information deficits that existed; and (3) the use of the threat of ejectment to extort substantial additional fees from homeowners, often inflating the total financial obligation to an unaffordable level and placing the ground rent owner in an insurmountable no-lose position.

The extinguishment provision, according to the court, harmed “the reasonable reliance and settled expectations of ground rent owners.”<sup>138</sup> It is notable that the circuit court had dispensed with the plaintiff’s complaint without much trouble, similar to the way in which courts had granted ejectment remedies to ground rent owners without much scrutiny. But when the ground rent owners in this case lost in the trial court, they had the resources and incentives to appeal. The scores of homeowners who lost ejectment suits often lacked the means to pay off several hundred dollars’ worth of arrearages and fees. To them, appealing the courts’ rulings likely seemed impossible.

The plaintiff complained, with no apparent shame, that the registration law would require ground rent owners to conduct title

---

133. *Id.* at 975 (Adkins, J., dissenting).

134. 72 A. 839, 840–42 (Md. 1909).

135. *Muskin*, 30 A.3d at 979–80 (Adkins, J., dissenting).

136. *Id.* at 970 (majority opinion).

137. *Id.*

138. *Id.*

searches at a cost of fifty dollars or more per ground rent.<sup>139</sup> This laid bare the injustice of the situation—when homeowners were faced with excessive tacked-on fees totaling thousands of dollars, the response from ground rent owners and circuit court judges was, essentially, “too bad.”<sup>140</sup>

The majority found that it could not allow automatic extinguishment, which would have the effect of taking the ground rent owner’s property interest and transferring it to the homeowner, who would “receive clear title . . . free of the ground rent lease.”<sup>141</sup> The injustice visited upon homeowners at the circuit court level is further driven home by this sudden concern shown by the Maryland Court of Appeals for ground rent owners, who themselves were the ones receiving clear title in ejectment actions. In those cases, however, they were enjoying wildly disproportionate windfalls by receiving one hundred percent of the equity in the homes.<sup>142</sup> It could be argued that the ejectment actions, requiring enforcement by state courts, were themselves constitutional violations against the homeowners.<sup>143</sup>

### 3. Zombie Rents

In Baltimore, deceased homeowners were sued while extinguished ground rents rose from the dead.<sup>144</sup> In the wake of *Muskin*, unregistered ground rents that had been extinguished by the 2007 legislation sprang

139. *Id.* at 974–75.

140. Homeowners struggled to fight the added fees in the face of rude, dismissive ground rent owners and the judges who accommodated them. One homeowner’s original seventy-five dollar ground rent obligation was inflated by fees after the bills had been sent to a vacant address. *The New Lords of the Land*, *supra* note 54. When she tried to explain the situation to the ground rent owner, he told her to “shut [her] mouth.” *Id.* In another case involving the same ground rent owner, a homeowner ultimately had to pay \$1500 over an original arrearage of eighty-four dollars. *On Shaky Ground*, *supra* note 2. The ground rent owner had rejected an offer of \$1050, telling her “she had no chance in court.” *Id.* The circuit court judge in her ejectment action told her: “You’re in a tough spot because they’re acting in accordance with the law, and the law does allow them to impose fees.” *Id.*

141. *Muskin*, 30 A.3d at 973.

142. See *State v. Braverman*, 137 A.3d 377, 381 (Md. Ct. Spec. App. 2016) (“When the ground-lease owner successfully enforces the right of reentry, the lessees lose any equity that they had accrued.”).

143. Cf. *Shelley v. Kraemer*, 334 U.S. 1, 18–20 (1948) (finding a violation of the Equal Protection Clause of the Fourteenth Amendment in racially discriminatory restrictive covenants in housing, because the private covenants were enforced in state courts); see also MacFarlane, *supra* note 48, at 893–95 (discussing the undercurrent of racial exploitation in the history of Baltimore ground rents).

144. See *Clerk of Court Reviews Suits*, *supra* note 79 (describing ground rent suits filed and won against deceased homeowners).



back to life as “zombie leases.”<sup>145</sup> This put affected homeowners back at risk of ejectment; all the state could do was send those homeowners letters urging them to make sure they were current on their ground rent obligations.<sup>146</sup> An estimated 30,000 to 40,000 unregistered ground rents were breathed new life by the court’s ruling.<sup>147</sup>

## B. Goldberg

The second major challenge to the reform legislation was decided in 2014. This ruling struck down a provision replacing the ejectment remedy with a lien-and-foreclosure solution aimed at preventing homeowners from losing all their equity to ground rent owners.<sup>148</sup> Just as in *Muskin*, key elements of the hastily-drafted 2007 legislation were found to encroach unlawfully on the constitutional and property rights of ground rent owners.

### 1. Majority Opinion

The court described this case as a “re-match” of *Muskin*.<sup>149</sup> The State argued that the provision did not affect ground rent owners’ property rights but instead merely altered the available remedies.<sup>150</sup> The ground rent owners contended that the right to ejectment *was* the substantive vested right at issue, arguing that to replace that remedy with lien-and-foreclosure amounted to an unconstitutional taking.<sup>151</sup>

The Circuit Court for Anne Arundel County held the provision unconstitutional, saying it unlawfully abrogated vested property rights.<sup>152</sup> The Court of Appeals of Maryland, bypassing the state’s intermediate court to hear the case, affirmed the ruling of unconstitutionality.<sup>153</sup>

### 2. Dissent

Judge Adkins dissented, as she had done in *Muskin*, seeing the right of re-entry as a contingent right that did not merit the same protections

---

145. Andrea F. Siegel, *Many ‘Extinguished’ Ground Rents Brought Back to Life*, BALT. SUN, Nov. 7, 2011, at 1A.

146. *Id.*

147. *Id.*

148. Act of May 8, 2007, ch. 286, 2007 Md. Laws 1836.

149. *State v. Goldberg*, 85 A.3d 231, 234 (Md. 2014).

150. *Id.*

151. *Id.* at 236.

152. *Id.* at 234.

153. *Id.* at 234, 236.

afforded to vested rights.<sup>154</sup> She described an essential property right of the ground rent owner as "the right to retain an interest in the land to allow for the enforcement of [the] obligation."<sup>155</sup> Based on that definition, she reasoned that lien-and-foreclosure was both appropriate and effective.<sup>156</sup>

Judge Watts also dissented, noting that *Muskin* was not about ejectment but rather the extinguishment provision.<sup>157</sup> She observed that virtually all properties subject to ground rents in Baltimore have houses on them, and she noted that it was unjust for courts to award windfalls to ground rent owners through ejectment.<sup>158</sup> She agreed with Judge Adkins that the right of re-entry is not a vested right.<sup>159</sup> She additionally noted that ejectment was only one of several traditional remedies available to the ground rent owner, and that the law in question merely sought to replace it with "another adequate remedy."<sup>160</sup>

### 3. Analysis

It is crucial to note that the court's holding in *Muskin* dictated the outcome of *Goldberg*.<sup>161</sup> Lien-and-foreclosure was a reasonable solution, making the ground rent owner whole without granting an unnecessary windfall. Perhaps the remedy might have survived constitutional challenge in the absence of the *Muskin* ruling. *Goldberg* thus appears to be the conclusion to a long series of missteps: the city courts and bureaucracy allowed the ejectment crisis to grow out of control, leading to public outrage and legislative vows to enact quick reforms, which in turn resulted in the automatic extinguishment statute that was ruled unconstitutional in *Muskin*. That ruling may well have sealed the fate of the lien-and-foreclosure remedy in *Goldberg*. What now exists is a formidable stare decisis hurdle for future reformers.

The majority remarked that "[t]he underlying purpose of the ground rent, from the viewpoint of the ground rent leaseholder, never has been limited exclusively to securing the payment, in perpetuity, of rent."<sup>162</sup> What the court missed was the fact that a rational ground rent owner with a rational tenant would never expect to have even a chance to take

---

154. *Id.* at 247 (Adkins, J., dissenting).

155. *Id.* at 249.

156. *Id.* at 252.

157. *Id.* at 257 (Watts, J., dissenting).

158. *Id.* at 263.

159. *Id.* at 260.

160. *Id.* at 262.

161. *Id.* at 239 (majority opinion) ("Put simply, the hash of the present case was settled effectively by the Court's opinion in *Muskin* . . .").

162. *Id.* at 242.

the property through ejectment.<sup>163</sup> The history of ground rents from colonial times through the end of the twentieth century reflects this reality, as ground rents were valued for being safe investments providing a consistent source of income.<sup>164</sup> Simply put, the surrender of all those homes during the 2000s was so contrary to the obvious economic incentives of the homeowners that it should have served as a red flag that the law was being perverted.

Nevertheless, the majority was probably correct in its assessment and ruling. The problem was not that ejectment was available, but rather that homeowners were apparently allowing ejectments to happen without a fight. Why that was happening, and what could have been done to ensure a fairer process, deserved closer scrutiny in the city courts.

What would have happened if the General Assembly had instead passed a law mandating that all future ground rents could only be remedied through lien-and-foreclosure? This would have been similar to the 1884 law making future ground rents redeemable.<sup>165</sup> Would it have been upheld as constitutional? Would it have had much effect at all? These are speculative questions, but they serve to reinforce the fact that the legislature would have benefitted from a more patient and deliberative process.<sup>166</sup>

Judge Watts stated in dissent that lien-and-foreclosure is just as effective a remedy as ejectment.<sup>167</sup> This is true, unless the ground rent owner's real aim is to cheat the homeowner out of the house and seize all its equity in a booming real estate market. Indeed, Judge Watts noted that curbing such abuses was the purpose of the legislature's attempt to substitute lien-and-foreclosure for ejectment.<sup>168</sup> Regardless, the ground rent owners prevailed, and ejectment remained an available remedy.

#### V. AFTER *MUSKIN* AND *GOLDBERG*

Things seem to have calmed down on the ground rent front. The precise conditions that spurred the ejectment crisis of the 2000s are no longer present, and some provisions of the reform legislation did survive

---

163. See Kaufman, *supra* note 1, at 50–51; Levin, *supra* note 13, at 100–01.

164. See HAYWARD & BELFOURE, *supra* note 12, at 15; see also *The New Lords of the Land*, *supra* note 54 (describing the long-time use of ground rents as a safe investment vehicle and in particular “a good investment for widows because it was so stable”).

165. See *supra* Section III.A.1.

166. But see *State v. Braverman*, 137 A.3d 377, 391 n.15 (Md. Ct. Spec. App. 2016) (finding that the legislation had not been passed hastily).

167. *Goldberg*, 85 A.3d at 262 (Watts, J., dissenting).

168. *Id.* at 263.

the court challenges.<sup>169</sup> But in many respects, things have remained the same. Homeowners are still outgunned by real estate investors in finances, resources, and knowledge. Moreover, the inadequacies of the city bureaucracy show little promise of improvement. For these reasons, the lessons to be learned from the ejectment crisis, and the challenges faced in trying to fix the system, are of critical importance going forward.

#### A. Current Issues for Baltimore Homeowners

Despite the setbacks in *Muskin* and *Goldberg*, a future wave of ejectments is unlikely, due to the greater awareness of the public and lawmakers, as well as the absence of the unique economic conditions of the 2000s. But even though the peculiar factors giving rise to that crisis may no longer be present, homeowners in Baltimore and elsewhere must remain aware of the power of well-funded investors who have influence and the means to establish vast holdings.

One prominent present-day example is Jared Kushner, son-in-law and senior adviser to President Trump, whose real estate firm owns numerous apartments in Baltimore and other “second-tier cities.”<sup>170</sup> Kushner was able to borrow hundreds of millions of dollars to buy properties in bulk, including some holdings formerly owned by Victor Posner.<sup>171</sup>

This is not to suggest anything untoward about this particular investor, but it speaks to the fact that fundamental conditions remain the same, even if the potential for ground rent abuses has been neutralized. Investors still have access to greater financial and legal resources than homeowners, and some will exploit this advantage for unjust gain if at all possible. Homeowners must remain vigilant and informed; if ground rents do not expose them to risk, something else surely will.

Homeowners must also keep an eye on the failures and inadequacies of the bureaucracy. Developments since the ejectment crisis suggest that larger problems involving city incompetence remain.<sup>172</sup> A city council resolution passed in 2012 noted that thousands of homeowners were facing possible foreclosure over erroneous billing during the estimated

---

169. See *Muskin v. State Dep’t of Assessments & Taxation*, 30 A.3d 962, 965 (Md. 2011) (allowing the ground rent registration requirement to survive while striking down the automatic extinguishment provision).

170. Doug Donovan & Jean Marbella, *Trump Relative Recuses Himself*, BALT. SUN, Feb. 25, 2017, at 1A.

171. *Id.*; see also discussion *supra* Section II.B.1.

172. See Luke Broadwater & Julie Scharper, *Council Asks City to Halt Liens over Unpaid Water Bills*, BALT. SUN, Mar. 6, 2012, at 6A (discussing the ongoing public battle over unpaid utility and tax bills, and noting that a review by public works officials had found that about 38,000 resident accounts had been incorrectly billed for water usage).

time needed to upgrade water meters and billing systems.<sup>173</sup> There is a tension here, because the city receives immediate financial benefits from auctioning off liens over these unpaid obligations.<sup>174</sup>

Water bills remain a rocky area for homeowners in Baltimore and elsewhere in Maryland. One recent issue has been unaccountable increases in amounts owed on water bills, with no apparent water leaks or other reasons to explain them.<sup>175</sup> This has led to some homeowners receiving absurdly high water bills totaling in the tens of thousands of dollars.<sup>176</sup> One of the key lessons from the ground rent crisis is that financial obligations that seem ridiculous and insignificant on their face can have very real consequences in the form of ejectment actions or tax sales. Homeowners are forced to take these matters very seriously, and they often know they face a grueling battle with the city to get matters resolved.<sup>177</sup>

Efforts are being made to improve the utility billing system. In 2016, Baltimore switched from quarterly to monthly billing for water usage, a move designed to “allow for more convenient budgeting and give customers more notice of any unusual water consumption trends or spikes.”<sup>178</sup> These measures are encouraging but are best viewed by homeowners with a healthy dose of skepticism. Problems still abound in implementation, and breakdowns in the system tend to favor investors and the city treasury over homeowners, whether or not this is by design.

The ongoing project to fix Baltimore’s “crumbling” and “error-ridden” water-billing system has been expanding in cost, which is being passed on to residents in the form of higher water and sewer rates.<sup>179</sup> Whether

---

173. *Id.*

174. *See Baltimore’s Tax Sale*, *supra* note 88.

175. *See, e.g.,* Luke Broadwater, *Water-Billing System Begins with Complaints of Spiking Totals*, BALT. SUN, Oct. 13, 2016, at 1A (discussing issues with the rollout of the city’s overhauled billing and metering system, and noting that city workers were known to have “made up meter readings”); Brandi Bottalico, *County Residents See Unexplained Spike in Water Bills*, CAP. GAZETTE (Dec. 29, 2015), <http://www.capitalgazette.com/news/annapolis/ph-ac-cn-county-water-bills-1230-20151229-story.html> [hereinafter *Unexplained Spike*] (describing similar issues in Anne Arundel County).

176. *See* Luke Broadwater, *Water Bills Can Run to Thousands*, BALT. SUN, Dec. 21, 2016, at 1A.

177. *See, e.g., Unexplained Spike*, *supra* note 175 (“My first thought [upon receiving an inflated water bill] was a shock, then I laughed. Then I got mad because I knew it would be a struggle to get straightened out.”).

178. Colin Campbell, *City to Send Final Quarterly Water Bills Next Month*, BALT. SUN, Aug. 25, 2016, at 3A.

179. *See* Colin Campbell, *Baltimore Water, Sewer Rates to Grow by 33%*, BALT. SUN, Sept. 1, 2016, at 2A; Luke Broadwater, *Baltimore Contract for New Water-Billing System Grows by \$6 Million*, BALT. SUN (Oct. 5, 2016), <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-water-billing-20161004-story.html>.

these efforts will ultimately effect real change in preventing billing mishaps and the attendant risks to homeowners' property rights remains to be seen, but it may require some measure of wishful thinking for homeowners to have an optimistic outlook on the issue.

### *B. Lessons and Recommendations*

The most important takeaway from the ejectment crisis is that ground rents are ultimately a symptom of a larger network of dangers facing homeowners. Even if ground rents fade into disuse, the lessons learned from the events of the 2000s are of critical importance. The modern-day power of ancient property laws must be respected, and reform efforts must be tailored to respect the rights of all property owners, including large investors. At the same time, the ejectment crisis was exacerbated by the inaction of the city courts, and this story serves as a reminder that equitable powers can and should be used to prevent wildly unjust outcomes. Finally, communities must explore options to protect themselves without waiting for or trusting the city bureaucracy, lawmakers, or judges to prevent abuses.

#### 1. Property Rights Are Not Easily Abolished

Even old, arcane property laws like ground rents retain their legal force. Citizens must be aware, as unscrupulous and greedy investors always are, of the nature and consequences of the laws in place. Legislators must also be careful when crafting statutes aimed at modifying or superseding existing property rights; courts rightly treat the constitutional implications of such laws very seriously.

#### 2. Courts Must Use Equitable Powers

Marshall Levin has observed that "[a] person who is speculating on the chance of a default by a vendee, will not choose the ground rent because the amount of yearly rent is relatively small and it is comparatively easy for a lessee to scrape up that sum."<sup>180</sup> This is a common-sense assessment of the economic incentives that ought to be at work in a ground rent arrangement. The fact that ground rents became profitable through lessee defaults can be attributed to a number of factors: rising real estate values; the lack of homeowner knowledge of both the law and the identity of ground rent owners; the consolidation of ground rent holdings; the tacking on of fees to ground rent arrearages;

---

180. Levin, *supra* note 13, at 100.

and, alarmingly, the frequent acquiescence of judges to ejectment plaintiffs.

One question that remains unanswered is why Baltimore's circuit court judges did not do more to safeguard the rights of homeowners, instead appearing to have largely rubber-stamped ejectments. Why did the wildly disproportionate windfalls to ground rent owners not compel judges to consider more carefully their options in the interest of achieving equitable results? Given a more proactive judicial role during the wave of ejectment suits, the crisis may not have reached such a desperate state as to prompt a hasty legislative response. The Maryland Court of Appeals was presented with flawed statutes; if the city courts had acted to check the abuses, perhaps the reform legislation would have been more constitutionally hardy.

Ground rents used to be an attractive investment because they offered a "feeling of security" to their owners. "[Ground rent owners] feel that the [homeowner] has such a large equity in the property in proportion to the ground rent that he will be very unlikely to forfeit the equity by failing to pay that rent."<sup>181</sup> This well-reasoned position gets at the heart of why city judges should have been counted on to do more. A rational ground rent arrangement would feature a lessor assured of a safe investment and a homeowner highly incentivized to make the manageable payments needed to avoid ejectment.

The wave of ejectment suits in the 2000s should have raised two questions: (1) why ground rent owners, who for decades had used the property interest as a safe income investment, were suddenly in a rush to take properties; and (2) why homeowners were doing nothing, in direct contradiction to their obvious economic incentives. Given that ground rent investors had the resources to track down homeowners and ensure that all procedures and safeguards were being followed, why was a higher burden not imposed on those investors? The city courts, through their inaction, effectively placed the burden on the homeowners, who were at a disadvantage in every way: inferior notice, inferior knowledge of the law and their rights, and inferior resources to pay their obligations or fight back.

The seizure by ground rent investors of residents' homes, along with tens or hundreds of thousands of dollars of equity, after brazenly inadequate notice and perfunctory court proceedings, was unconscionable and did no good for the community.<sup>182</sup>

---

181. Kaufman, *supra* note 1, at 54.

182. Cf. Frank Bailey, *How a Home Maker Became an Anarchist*, 18 *WORLD'S WORK* 11577 (1909). This story concerned an immigrant living in a New York City tenement from the 1880s through the turn of the century. *Id.* After sixteen years of sacrifice and saving,

As far back as 1948, it was observed that "the statement . . . 'Equity abhors a forfeiture' is so often repeated that it needs no citation."<sup>183</sup> It has long been within the power of the courts to prevent unjust outcomes like the ones suffered by Baltimore homeowners in the ejectment crisis.<sup>184</sup> "[E]quity and fairness were traditionally part of contract law."<sup>185</sup>

The U.S. Supreme Court has affirmed this principle in a context relevant to this discussion:

In the absence of legislation, courts of equity have exercised jurisdiction in suits for the foreclosure of mortgages to fix the time and terms of sale and to refuse to confirm sales upon equitable grounds *where they were found to be unfair or inadequacy of price was so gross as to shock the conscience*.<sup>186</sup>

The Baltimore courts could have exercised equitable discretion in ejectment cases, but they did not.<sup>187</sup> The failure to prevent such wildly unfair outcomes might have been due to overloaded dockets, indifference, or some combination of the two.<sup>188</sup> Whatever the reasons, in failing to be more proactive, the courts failed to act in accordance with historical precedent and to serve as a last resort to protect victimized homeowners in the interests of equity.<sup>189</sup>

### 3. Reform Legislation Must Be Carefully Crafted

Any future legislation aimed at the ground rent system must strike a balance between the ineffectual provisions of 2003 and the

he could finally afford to purchase a \$6000 house while taking out two mortgages. *Id.* at 11578. He lost everything in foreclosure due to the 1907 economic downturn. *Id.* at 11578–79. As a result, he became "a violent anarchist," his family torn apart and his life ruined. *Id.* at 11578. If mere foreclosure could create anarchists, what is possible when people are stripped of their homes, along with all equity, over a debt of less than a hundred dollars?

183. Levin, *supra* note 13, at 120.

184. See, e.g., Thomas P. Egan, *Equitable Doctrines Operating Against the Express Provisions of a Written Contract (or When Black and White Equals Gray)*, 5 DEPAUL BUS. L.J. 261, 302 (1993) (explaining that courts have historically used their equitable powers as justification for refusing to enforce unconscionable contracts).

185. *Id.* at 311.

186. *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 446 (1934) (emphasis added).

187. See MacFarlane, *supra* note 48, at 923–24 (arguing that equitable principles should have been invoked to prevent the unjust ejectments approved by courts in Baltimore).

188. See *On Shaky Ground*, *supra* note 2 (quoting one city judge who claimed that it was unknown why so few homeowners responded to ejectment suits, because "[b]y itself, that doesn't raise any suspicions").

189. See MAYER, *supra* note 1, at 103 (noting that courts of equity were known as far back as the nineteenth century to stay ground rent ejectments and restore possession to homeowners upon payment of arrearages).



unconstitutional provisions of 2007. Ground rent owners will take their time mounting challenges to any new laws, and the courts will take their time considering their arguments. Therefore, it is essential that lawmakers draft legislation in a deliberate and careful manner. To be fair, the situation in 2007 was made more urgent by the naked greed of investors and the failings of the city's courts and bureaucracy.

#### 4. The Community Must Explore Independent Solutions

Community alternatives outside the realm of legislation also merit consideration. These possibilities include community ground rent trusts that take some of the management principles used by investors and apply them for the good of the homeowners.<sup>190</sup> Education is also critical. Programs aimed at informing homeowners about their rights and obligations under the law could help close the information gap between cunning investors and unaware homeowners. It is not sufficient to assume that the courts or anyone else will serve as a backstop to prevent egregious abuses like those seen in the 2000s. While this crisis was not homeowners' fault, despite the claims of callous investors to the contrary,<sup>191</sup> they can benefit from being better informed.

Not all ground rent owners acted in a predatory fashion. Those who retained a conscience offer clues to possible future solutions. For example, the Marion I. and Henry J. Knott Foundation, an organization supporting Catholic charities, owned about 1600 ground rents as of 2006 and had gone a decade without filing a single ejectment lawsuit.<sup>192</sup> One possible strategy is to steer large portfolios of ground rent holdings into organizations committed to the best interests of homeowners. Charitable organizations like the Knott Foundation, as well as community ground rent trusts, can serve as a bulwark against unscrupulous investors. If homeowners fail to act in accordance with their economic incentives (either due to lack of knowledge or inability to catch up on their obligations when inflated by fees and costs), this experience has proven that courts cannot necessarily be counted on to demand fair legal processes and outcomes. Nor is it guaranteed that the legislature will put forth solutions capable of passing constitutional muster. Given these harsh realities, perhaps it would be best for homeowners to take a more

---

190. See, e.g., James J. Kelly, Jr., *Maryland's Affordable Housing Land Trust Act*, 19 J. AFFORDABLE HOUSING 345, 348–49 (2010) (discussing various programs aimed at preserving the affordability of low and moderate income housing).

191. See, e.g., *On Shaky Ground*, *supra* note 2 (alteration in original) (“I really don’t see [that there is] a problem with gouging. People are never happy to pay a lawyer, especially someone else’s lawyer. They should have paid in the first place.”).

192. *Id.*

proactive role in protecting themselves. The best hope for Baltimore to regain the title "City of Homes"<sup>193</sup> might therefore lie outside the legislative or judicial processes.

### CONCLUSION

The hapless wife of a Baltimore practitioner, roped into assisting with research for her husband's 1939 law review article on ground rents, contributed the following poem expressing the feelings brought on by this onerous task:

I can't imagine duller facts  
Than those about an income tax,  
Or see a particle of sense  
In delving into old ground rents.  
Of knowledge there may be a store,  
But as for me [it's] all a bore.<sup>194</sup>

Most citizens would likely share the sentiment if they had to study this dusty corner of property law. But knowledge is power, and homeowners' lapsed knowledge about the ground rent system created an opening for real estate investors to capitalize on the unique conditions of the 2000s to seize their homes.

It seems unbelievable that a homeowner could fail to produce twenty-four dollars to save his or her residence. But the devil was in the fees—investors often rejected, with the approval of the courts, offers by homeowners to pay in full the actual past due amounts, insisting instead on receiving lump sum payments of hundreds or thousands of dollars in additional charges to avoid ejectment.<sup>195</sup> In many cases, a trivial unpaid ground rent morphed into an unaffordable debt that amounted to an eviction notice.

While ancient quirks of property law such as ground rents will eventually fall into disuse or be replaced by statute, it is certain that the same opportunistic and unscrupulous characters who took advantage of the Baltimore ground rent system will pounce on the next opportunity

---

193. See Power, *supra* note 20, at 661.

194. Lewis, *supra* note 3, at 337.

195. For several examples of homeowners trying and failing to resolve matters by paying the original ground rent arrearages minus added fees, see *On Shaky Ground*, *supra* note 2; *The New Lords of the Land*, *supra* note 54.

for slimy gain that presents itself.<sup>196</sup> This crisis was not a one-off problem, but rather a symptom of a larger web of issues affecting low-income homeowners and minorities in the city.

Fixing the problem also proved to be a more difficult task than originally thought. The Maryland legislature ultimately could not provide a quick fix by statute, because the constitutional rights of ground rent owners merited protection. Hopefully this experience will serve as a wake-up call for citizens, legislators, and judges, who can rest assured that those who seek to use the law to cheat the vulnerable will exploit any opening that presents itself.

In 1992, Garrett Power, a professor at the University of Maryland School of Law and an expert on Maryland property law,<sup>197</sup> described the ground rent as “an endangered species.”<sup>198</sup> That statement was well-founded; any surviving pre-1884 irredeemable ground rents have long since been rendered insignificant by inflation, while homeowners should have an incentive to redeem post-1884 ground rents whenever the prevailing interest rate drops below their six percent capitalization rate.<sup>199</sup>

Professor Power was correct in his observation that “[t]wentieth century forces [had] push[ed ground rents] toward extinction.”<sup>200</sup> The crisis that emerged in the 2000s was made possible by several difficult-to-predict developments, including the real estate boom, the efficient streamlining of ground rent ownership and management, the disappearance of a working knowledge of the system by homeowners, and the failure of courts to protect the rights of those homeowners. These factors all worked together to rescue ground rents from the endangered species list in a most cynical and ironic manner.

---

196. See MacFarlane, *supra* note 48, at 893–95 (discussing Baltimore ground rents and ejectments as part of a larger overview of systemic and historic sources of instability for minority homeowners throughout the United States).

197. See *Demands for Reform*, *supra* note 26; see also Edward C. Papenfuse, *Tribute to Professor Garrett Power*, 66 MD. L. REV. 851, 851–52 (2007).

198. Power, *supra* note 10, at 322.

199. *Id.*

200. *Id.*

Professor Power's well-reasoned conclusion in 1992 was that "ground rents have been dumped on the tenurial trash heap."<sup>201</sup> The actions of ground rent investors over a decade later might therefore be described as an exercise in dumpster diving.<sup>202</sup>

---

201. *Id.*

202. For the mindset of the ground rent owners who exploited ejectments in their own words, see *Demands for Reform*, *supra* note 26 (first alteration in original) ("What I'd like to see is the parties [who own homes] be more responsible . . . . There's no reason for more laws or regulations."; "I think the system works very well[.]"; "Anytime someone's got a problem, . . . that person can 'take it to a judge.'"); *The New Lords of the Land*, *supra* note 54 ("Most people involved in this business are very interesting people . . . . You have to be a certain kind of person to be involved in all of this."); *On Shaky Ground*, *supra* note 2 ("I can't deny an economic incentive to make a windfall profit[.]"; "If you don't pay, you are putting your property at risk . . . . A ground rent owner isn't going to just sit back and say, 'I'm sorry someone's died,' and forget about it."; "You can make a very good living doing this[.]"; "Business is business.").