

CAPITOL ♦ TITLE

MARYLAND LEGAL BULLETIN

ARE UNREGISTERED GROUND RENTS EXTINGUISHED AFTER 9/30/2010?

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On May 8, 2010, Governor O'Malley signed into law Chapter 290, HB 580 entitled "**Ground Rents – Registry of Properties Subject to Ground Leases**" (the "Act") which provides for the creation of an on-line registry for properties subject to ground rents and requires that all ground rent owners register their ground rents with the MD State Department of Assessments and Taxation ("SDAT") by September 30, 2010. The Act further provides that if such registration is not timely made the ground rent will be extinguished by operation of law and the ground rent will no longer be payable. In addition, the Act allows for a leasehold property owner to apply for and receive a ground lease extinguishment certificate from SDAT following the failure of the ground rent holder to register, which certificate may be recorded in the land records.

A legal challenge to the Act has been asserted in a case filed in Baltimore City entitled *Charles Muskin vs. State Department of Assessments and Taxation* (Case No. 4C10004437). The basis of the challenge is that the Act, which provides for the extinguishment of the ground rent upon a failure to timely register, constitutes an unconstitutional taking (of a property right) without due process of law. As a result of this pending litigation, it is uncertain whether the extinguishment of ground rents provided for in the Act will be upheld and several title insurers have indicated that they will not insure that any such unregistered ground rents are extinguished until such time as the litigation has run its course and final ruling has been made by the courts.

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