



MEMORANDUM

TO: The Pennsylvania House of Representatives

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: September 16, 2019

RE: OPPOSITION TO HOUSE BILL 365 P.N. 2490 (WHITE)

[HB 365](#) (PN 2490) is intended to prevent illegal trespassing (“squatting”), but its provisions would have significant unintended consequences for occupants with legitimate ownership or tenancy rights. The bill would shift the careful, deliberate review of property disputes from the courts to the police, allowing curbside determinations of disputed ownership and possession claims. HB 365 would allow law enforcement to evict alleged squatters from residential properties based solely on probable cause, thereby allowing legitimate owners and occupants to be evicted from their residences without basic due process rights.

On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose House Bill 365 for the following reasons:

HB 365 would strip due process protections from occupants

Procedural due process is guaranteed by the 14th Amendment of the U.S. Constitution and grants people the right to notice and an opportunity to object to one’s deprivation of life, liberty or property. Before anyone is stripped of the safety and security of their home, they are entitled to this due process. HB 365 deprives occupants of due process rights of notice and the opportunity to respond.

HB 365 would cede unchallengeable and unreviewable power to police

HB 365 would allow police to remove alleged squatters from residential properties based solely on “probable cause.” Probable cause would be based upon an affidavit supplied by the property owner, sworn under penalty of perjury. The law enforcement officer would need to get a warrant prior to executing the removal and would be required to provide the occupant a “reasonable time” to provide the law enforcement officer with proof of legal occupancy. But HB 365:

- Does not allow an occupant to challenge a law enforcement officer’s determination of unlawful occupancy or the Magisterial District Judge’s approval of a warrant; and
- Does not provide an occupant time to contact and retain legal counsel.

HB 365 would shift the careful review of property disputes from the courts—where these disputes belong—to the police, who are ill-equipped to make snap decisions about disputed ownership claims.

HB 365 will create unintended consequences for vulnerable populations

Domestic violence: It is not uncommon in situations of domestic violence to have the property in the name of the abuser only. Under HB 365, an abuser could merely call the police, allege that the victim is a “squatter,” and the police would become unknowing pawns in a continuing cycle of abuse.

Owners with tangled titles and victims of deed theft who are often unable to prove their ownership interest with documents demanded by police on the spot. It is not uncommon to see false accusations of “squatting” when the situation is actually an ownership dispute. Legitimate owners would face police removal from their homes under HB 365. That is why these cases belong in the courts. The courts have emergency procedures available to address extraordinary events.

Tenants: Unscrupulous landlords will abuse this law to circumvent the eviction process. In many cases, the landlord holds all the cards. They decide whether a lease will be oral or written, whether to accept cash only for the rent, whether or not to bring their receipt book every month when they collect rent. When a dispute arises, there is very little to prevent that same landlord from accusing the tenant of being a squatter. Landlords often make false accusations of “squatting” when the situation is actually the landlord seeking removal of a tenant. The bill also criminalizes innocent tenants who have been scammed by fraudsters who are renting out properties they do not own. HB 365 threatens these individuals with police removal from their homes.

The complexity of determining legal ownership and tenancy rights of occupants of residential properties makes it likely that law enforcement tasks with implementing the provisions in HB 365 will get it wrong from time to time. The consequences will be costly for any person or family suddenly stripped of their home.

For these reasons, we urge you to oppose House Bill 365.