

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 755 (Senator Muse)
Judicial Proceedings

Foreclosure - Moratorium, Notices, Penalties, Redemption Period, and Study

This emergency bill prohibits a lender from maintaining an action to foreclose a mortgage or deed of trust on residential property in the State for six months.

If an order to docket (OTD) or a complaint to foreclose a mortgage or deed of trust is filed on owner-occupied residential property, the bill requires the court to send a one-page checklist to the mortgagor or grantor containing specified information which must be returned to the court in 15 days. In addition, the bill establishes that a mortgagor or grantor of residential property may contest a foreclosure up to 30 days *after* a foreclosure sale, and it extends the time period during which a mortgagor or grantor may cure a default from up to 1 day before the foreclosure sale occurs to up to 30 days after the foreclosure sale occurs.

The bill requires the Office of the Attorney General (OAG) to submit a report containing specified research findings on illegal foreclosures to the General Assembly by July 1, 2015.

Fiscal Summary

State Effect: General fund expenditures increase by \$29,100 in fiscal 2015 for OAG to hire a contractual attorney to study and report on illegal foreclosures. Special fund revenues for the Department of Housing and Community Development (DHCD) are delayed for the duration of the foreclosure moratorium. General fund/special fund expenditures increase to the extent DHCD incurs costs on Maryland Mortgage Program (MMP) loans affected by the moratorium. Potential minimal increase in general fund expenditures due to the bill's penalty provision. General fund expenditures for the Judiciary increase by \$6,000 for FY 2014 only for programming changes required by the bill.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
SF Revenue	(-)	(-)	-	\$0	\$0
GF Expenditure	\$6,100	\$29,100	\$0	\$0	\$0
GF/SF Exp.	-	-	\$0	\$0	\$0
Net Effect	(\$6,100)	(\$29,100)	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Potential minimal increase in revenues and expenditures due to the bill’s penalty provision. The bill is likely to materially impact circuit court operations and expenditures. While the increase in caseload cannot be reliably quantified, additional workloads may require expenditure increases for circuit courts in some jurisdictions to hire additional personnel. Additional circuit court expenditures may be required to modify information records systems and administer required checklists.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill defines “residential property” for purposes of the moratorium as real property improved by four or fewer single-family dwelling units that are designed principally and are intended for human habitation.

The checklist to be sent by the court must (1) request verification of receipt by the mortgagor or grantor of all documents and information required to be served on the mortgagor or grantor by the secured party under State or federal law; (2) inform the mortgagor or grantor of the right to dispute the OTD or complaint to foreclose; and (3) require the mortgagor or grantor to return the checklist to the court within 15 days.

The bill makes it a misdemeanor for a person to file an affidavit accompanying an OTD or a complaint to foreclose a mortgage or deed of trust on residential property if the person knows, or has reason to know, that the contents of the notice are inaccurate. On conviction, a person is subject to maximum penalties of a \$10,000 fine or one year imprisonment or both.

Current Law:

Foreclosure Process: Except under specified circumstances, to foreclose on residential property in Maryland the secured party must first send a notice of intent to foreclose (NOI) then file and serve an OTD or complaint to foreclose.

Prefile mediation may occur prior to the filing of an OTD or a complaint to foreclose on owner-occupied residential property. A secured party is not required to offer prefile mediation; however, the secured party must include specified information with the NOI if it does offer the option. If a mortgagor or grantor elects to participate in prefile mediation, the mortgagor or grantor must notify the secured party by submitting an application within 25 days after the secured party mails the NOI. Once the secured party receives the application, the secured party must notify the Office of Administrative Hearings (OAH) within five business days. OAH must (1) schedule a prefile mediation session within 60 days after the day on which it receives the notice from the secured party; (2) notify the parties and their attorneys, if any, of the date of the prefile mediation session; and (3) provide a report to the parties and their attorneys, if any, describing the result of the mediation upon its completion.

An action to foreclose a mortgage or deed of trust may not be filed until the later of 90 days after a default in a condition on which the mortgage or deed of trust specifies that a sale may be made or 45 days after an NOI and accompanying loss mitigation application are sent. An OTD or complaint to foreclose must be filed with the circuit court and a copy must be served on the mortgagor or grantor. An OTD or a complaint to foreclose must include, if applicable, the license number of both the mortgage originator and the mortgage lender. The OTD or complaint to foreclose must also contain an affidavit stating the date and nature of the default and, if applicable, that the NOI was sent and that the contents of the NOI were accurate at the time the NOI was sent.

Postfile mediation may occur subsequent to the filing of an OTD or complaint to foreclose under specified circumstances. A grantor or mortgagor may file with the court a completed request for postfile mediation within 15 days after the service or mailing of the final loss mitigation affidavit. The secured party may then file a motion to strike, accompanied by an affidavit setting forth the reasons why postfile mediation is not appropriate. If the secured party files a motion to strike, it must mail a copy of the motion and affidavit to the grantor or mortgagor. The grantor or mortgagor has 15 days to file a response.

The court must transmit a request for postfile mediation to OAH within five days of receiving the request. OAH must conduct the mediation within 60 days after transmittal of the request, unless the time is extended for good cause. Upon scheduling the mediation, OAH must send notice to the parties with instructions regarding the production of specified documents by a specified date. If no agreement is reached at the foreclosure mediation, the foreclosure attorney may schedule the foreclosure sale, and the grantor or mortgagor may file a motion to stay the sale within a specified period of time.

Curing Defaults: The mortgagor or grantor of residential property has the right to cure a default and reinstate the loan at any time up to one business day before a foreclosure sale

by paying all past-due payments, penalties, and fees. Upon request, and within a reasonable time, the secured party or the secured party's authorized agent must notify the mortgagor or grantor or his or her attorney of the amount necessary to cure the default and reinstate the loan as well as provide instructions for delivering the payment.

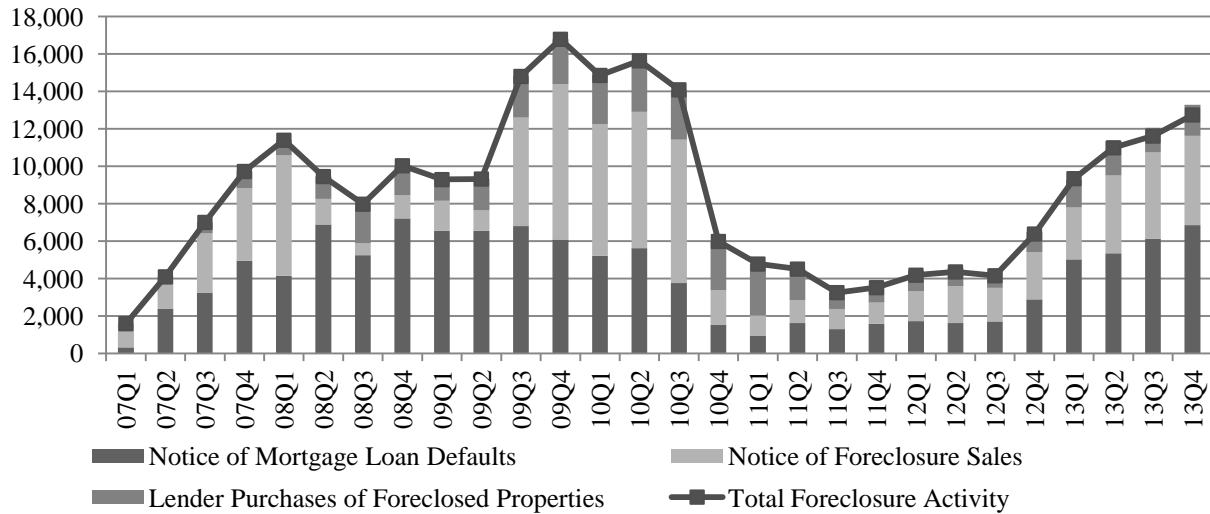
Perjury: A person may not willfully and falsely make an oath or affirmation as to a material fact (1) if the false swearing is perjury at common law; (2) in an affidavit required by any state, federal, or local law; (3) in an affidavit made to induce a court or officer to pass an account or claim; (4) in an affidavit required by any state, federal, or local government or governmental official with legal authority to require the issuance of an affidavit; or (5) in an affidavit or affirmation made under the Maryland Rules.

A violator is guilty of the misdemeanor of perjury and on conviction is subject to imprisonment for up to 10 years.

Background:

Foreclosure Trends: The number of foreclosure events in Maryland has spiked markedly in three separate periods: the latter half of 2007, in 2009, and the latter half of 2012 into 2013. Foreclosure events encompass real estate-owned purchases (property acquired by a lender as a result of an unsuccessful foreclosure sale on the property), notice of foreclosure sales, and notices of mortgage loan default. After the period of high rates of foreclosures in 2009, the number of property foreclosures decreased significantly from 42,446 in 2010 to 14,321 in 2011. However, property foreclosures rose in 2012, totaling 17,126, up 18.8% from 2011 levels. Foreclosure activity began a more rapid increase in the fourth quarter of 2012, with the number of foreclosure events totaling 6,381. This rapid increase in foreclosure activity continued in 2013 with foreclosure activity reaching the highest level in three years during the third quarter. These trends are exhibited in **Exhibit 1**.

Exhibit 1
State Foreclosure Events
2007-2013



Source: Department of Housing and Community Development

The dramatic decrease in 2011 was due, in part, to two factors (1) Maryland’s legislative response to the foreclosure crisis, which provided additional protections to homeowners at risk of losing their homes; and (2) the delay by mortgage servicers to begin foreclosure procedures until the results of a foreclosure settlement between five of the largest lenders and the U.S. government were known. The results of the National Mortgage Settlement were announced in February 2012. The uncertainty surrounding the settlement and Maryland’s new increased consumer protections created a backlog of foreclosures which lenders have now begun to address. In the fourth quarter of 2013, Maryland had the second highest foreclosure rate in the nation. DHCD attributes the surge in foreclosure activity that began in 2012 to a “rebound in the housing market which encouraged lenders to return inventory of seriously delinquent loans to the market at an increasing pace” allowing servicers to clear the backlog.

State’s Response to the Foreclosure Crisis: The State’s multifaceted approach has involved legislative reforms of mortgage lending laws, extensive consumer outreach efforts, and enhanced mortgage industry regulation and enforcement. This approach began with the Maryland Home Preservation Task Force, which was convened by the Governor in 2007 in response to the dramatic increase in foreclosure events. The task force’s charge was to develop a plan which addressed escalating foreclosure rates through revisions in statute, increased opportunity for housing counseling and education programs, and enhanced regulatory authority by the Commissioner of Financial Regulation. The task force’s final report in November of 2007 made multiple

recommendations which became the backbone for Maryland's response to the foreclosure crisis.

Legislation passed during the 2008, 2009, 2010, and 2011 sessions:

- created the Mortgage Fraud Protection Act, Maryland's first comprehensive mortgage fraud statute (Chapters 3 and 4 of 2008);
- tightened mortgage lending standards and required a lender to give due regard to a borrower's ability to repay a loan (Chapters 7 and 8 of 2008);
- prohibited foreclosure rescue transactions and granted the Commissioner of Financial Regulation additional enforcement powers (Chapters 5 and 6 of 2008);
- reformed the foreclosure process to provide homeowners with greater time and additional notices before their properties are sold (Chapters 1 and 2 of 2008);
- required additional notices to be given to residential tenants renting properties pending foreclosure (Chapters 614 and 615 of 2009);
- required a lender, under specified circumstances, to provide to a borrower notice regarding homebuyer education or housing counseling (Chapter 736 of 2010);
- established procedures for loan modification or mitigation and postfile mediation (Chapter 485 of 2010); and
- lengthened the time period within which a homeowner may elect to participate in foreclosure mediation (Chapter 355 of 2011).

Consumer outreach efforts include statewide public workshops to assist distressed homeowners, in coordination with the Maryland Foreclosure Prevention Pro Bono Project. These efforts, coupled with the new requirements imposed on the foreclosure process, are at least partially a cause of the decrease in foreclosures in the State.

By the time the Governor convened the next task force, the Maryland Foreclosure Task Force, in fall 2011, foreclosure events had sharply declined from their 2007-2010 amounts. The task force was charged with developing new ideas to combat the continuing foreclosure crisis. It included representatives from the Department of Labor, Licensing, and Regulation; DHCD; the General Assembly; the Judiciary; and private industry. In January 2012, the task force issued its report, including 12 recommendations aimed at addressing the continuing foreclosure crisis in Maryland. Several pieces of 2012 legislation resulted from these recommendations, including laws allowing banks to offer prefile mediation in addition to postfile mediation and the creation of a foreclosure registry.

Foreclosure Settlement: On February 9, 2012, the U.S. Department of Justice, U.S. Department of Housing, and 49 state Attorneys General announced an agreement with five major banks providing for compensation for damages arising from improper

foreclosure procedures, including robo-signing, and to provide relief to states and homeowners from underwater mortgages. The value of the settlement is approximately \$25 billion.

The settlement agreement has four primary components:

- *Principal Reduction:* \$17 billion will be allocated to mortgage debt forgiveness/loan modifications, forbearance, short sales, and other assistance to homeowners, primarily by reducing the principal on mortgages that have negative equity and are delinquent. It is estimated that the funding could benefit up to 1 million homeowners nationally.
- *Refinancing:* Homeowners who have negative equity but are current on their mortgages will receive about \$3.0 billion in refinancing; up to 750,000 homeowners could be eligible for this refinancing.
- *Payments to Foreclosed Homeowners:* About \$1.5 billion is allocated to homeowners who had their homes foreclosed upon between January 1, 2009, and December 31, 2011, and who meet specified criteria. These borrowers will receive approximately \$2,000 each, depending on the level of response from the field of qualified borrowers.
- *Government Payments:* The federal government will receive \$750 million under the settlement. States will receive approximately \$2.5 billion to help fund consumer protection and state foreclosure protection efforts.

In addition to the above components, the settlement also requires mortgage servicers to reform several of their practices. According to the Office of Mortgage Settlement Oversight, these reforms are intended to prevent servicers from the practice of robo-signing and other improper foreclosure procedures.

State Fiscal Impact:

Mediation Proceedings

Although OAH advises that the bill does not have a fiscal impact on its operations, the Department of Legislative Services (DLS) advises that OAH's caseload related to mediation proceedings is likely affected during the foreclosure moratorium (by reducing or eliminating cases) and in the months following the moratorium (with any pent-up demand for cases). For example, in 2013, 22,679 OTDs eligible for mediation were filed, and 5,183 mediation requests were made. However, during the six-month moratorium, it is not clear whether the language in the bill prohibiting a lender from "maintaining an action" applies to new actions only or encompasses any actions already filed, including

mediation proceedings already requested. Thus, any such impact on OAH has not been accounted for in this analysis.

Maryland Mortgage Program Loans Affected by Foreclosure Moratorium

DHCD administers MMP, which provides low-interest mortgage loans. DHCD advises that over the past three years, an annual average of approximately 360 loans under the program have been foreclosed and approximately 500 foreclosure cases are currently active. The foreclosure moratorium may negatively impact, for six months after the bill's enactment, DHCD finances associated with these loans to the extent that the department (1) may be unable to collect special fund revenues associated with mortgage insurance associated with the loans; (2) incurs additional legal costs associated with loans already in the foreclosure process; and (3) incurs additional real estate taxes and hazard insurance on would-be foreclosed homes.

Housing Counseling and Foreclosure Mediation Fund

Special fund revenues for DHCD are reduced due to the prohibition on collecting specified fees that occurs upon enactment of the bill. The loss of revenues is likely to be offset by recovery of those revenues at a later date, which is likely to commence after the moratorium is lifted. The timing of full recovery of these special fund revenues cannot be reliably projected, but it is likely to begin sometime in the latter half of fiscal 2015.

DHCD collects fees during the foreclosure process for the Housing Counseling and Foreclosure Mediation Fund. These fees include (1) \$300 fee for every OTD or complaint to foreclose that is filed; (2) a prefile mediation fee; and (3) a \$50 postfile mediation fee. In the last six months, DHCD collected \$4.96 million in fees. *For illustrative purposes*, if a similar trend were followed, DHCD would not collect as much as \$4.96 million in special fund revenues during the moratorium. It is anticipated, however, that these revenues could be collected in the months following the moratorium, thus, mitigating the impact of the moratorium during the second half of fiscal 2015.

Study and Report on Illegal Foreclosures

General fund expenditures increase by \$29,105 in fiscal 2015. This estimate reflects the cost of OAG hiring one half-time contractual attorney to perform the study required by the bill. It includes a salary, fringe benefits, one-time start-up costs, and operating expenses for the first six months of fiscal 2015 only. This estimate assumes completion of the study and report in advance of its July 1, 2015 due date.

Contractual Position	0.5
Salaries and Fringe Benefits	\$24,442
Operating Expenses	<u>4,663</u>
Total FY 2015 State Expenditures	\$29,105

Court Information Systems

The Judiciary advises that modifications to the information records systems of the circuit courts are required to allow for the docketing and logging of checklist mailing and the return of notice. Judicial Information Systems is responsible for 21 jurisdictions, while the remaining three jurisdictions (Montgomery County, Prince George’s County, and Baltimore City) have stand-alone systems. As the State incurs the expenses to modify the system for the 21 jurisdictions for which Judicial Information Systems is responsible, general fund expenditures increase by \$6,052 in fiscal 2014 only. DLS notes that the system should be in place by the time the moratorium is lifted; thus, expenditures are assumed to be incurred in fiscal 2014.

Local Expenditures: The Judiciary advises that the three stand-alone systems (for circuit courts in Montgomery County, Prince George’s County, and Baltimore City) likely also have to be modified to allow for the docketing and logging of checklist mailing and the return of notice. Judicial Information Systems advises that the costs for each of those stand-alone systems could be similar to the cost for the other jurisdictions. Thus, to the extent such modifications are necessary, the cost for each stand-alone system likely approximates \$6,100 – to be incurred in fiscal 2014. This one-time cost is in addition to any increased operational costs that may be incurred for administering the required documents.

Additional Information

Prior Introductions: None.

Cross File: HB 1322 (Delegate Braveboy) - Environmental Matters.

Information Source(s): Department of Housing and Community Development; Department of Labor, Licensing, and Regulation; Office of Administrative Hearings; www.nationalmortgagesettlement.com ; Department of Legislative Services

Fiscal Note History: First Reader - February 27, 2014
ncs/kdm

Analysis by: Joshua A. Lowery

Direct Inquiries to:
(410) 946-5510
(301) 970-5510