

HOUSE BILL 711

N1

~~EMERGENCY BILL~~

0lr1950
CF SB 654

By: **Delegates Healey and Lafferty**

Introduced and read first time: February 4, 2010

Assigned to: Environmental Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 22, 2010

CHAPTER _____

1 AN ACT concerning

2 **Real Property – Tenants in Foreclosure – Conforming to Federal Law**

3 FOR the purpose of providing that an immediate successor in interest who has
4 acquired legal title to certain residential property pursuant to a foreclosure
5 shall assume the interest subject to the provision of a certain notice to vacate
6 and certain rights of a certain bona fide tenant; establishing the circumstances
7 under which a lease or tenancy shall be considered bona fide; authorizing
8 termination of a lease if the purchaser will occupy the property as the
9 purchaser's primary residence; establishing certain requirements for a notice to
10 vacate; providing for the construction of a certain provision of this Act; altering
11 the contents of certain notices required to be sent to occupants of certain
12 residential property in foreclosure; ~~requiring a certain notice to be sent to~~
13 ~~certain persons if a foreclosure action is dismissed, withdrawn, or terminated;~~
14 ~~defining a certain term; making this Act an emergency measure~~ providing for
15 the application of this Act; and generally relating to tenants in foreclosure.

16 BY repealing and reenacting, with amendments,

17 Article – Real Property

18 Section 7–105.6 and 7–105.9

19 Annotated Code of Maryland

20 (2003 Replacement Volume and 2009 Supplement)

21 Preamble

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 WHEREAS, President Obama signed the Helping Families Save Their Homes
2 Act (Public Law No: 111-22) into law on May 20, 2009; and

3 WHEREAS, The new federal law preempts Chapter 615 of the Acts of the
4 General Assembly of 2009, making it necessary to make changes to conform to the
5 federal requirements; now, therefore,

6 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
7 MARYLAND, That the Laws of Maryland read as follows:

8 **Article – Real Property**

9 7-105.6.

10 (a) [Any] **EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION,**
11 ANY purchaser at a foreclosure sale of a mortgage or deed of trust has the same rights
12 and remedies against the tenants of the mortgagor or grantor as the mortgagor or
13 grantor had, and the tenants have the same rights and remedies against the
14 purchaser as they would have had against the mortgagor or grantor on the date the
15 mortgage or deed of trust was recorded.

16 **(B) (1) FOR PURPOSES OF THIS SUBSECTION, A LEASE OR TENANCY**
17 **SHALL BE CONSIDERED “BONA FIDE” ONLY IF:**

18 **(I) THE MORTGAGOR OR GRANTOR OR THE CHILD, SPOUSE,**
19 **OR PARENT OF THE MORTGAGOR OR GRANTOR UNDER THE CONTRACT IS NOT**
20 **THE TENANT;**

21 **(II) THE LEASE OR TENANCY WAS THE RESULT OF AN ARM’S**
22 **LENGTH TRANSACTION; AND**

23 **(III) THE LEASE OR TENANCY REQUIRES THE RECEIPT OF**
24 **RENT THAT IS NOT SUBSTANTIALLY LESS THAN FAIR MARKET RENT FOR THE**
25 **PROPERTY OR THE UNIT’S RENT IS REDUCED OR SUBSIDIZED DUE TO A**
26 **FEDERAL, STATE, OR LOCAL SUBSIDY.**

27 **(2) IN THE CASE OF A FORECLOSURE ON ANY RESIDENTIAL**
28 **PROPERTY, ~~AS DEFINED IN § 7-105.1 OF THIS SUBTITLE,~~ AN IMMEDIATE**
29 **SUCCESSOR IN INTEREST WHO HAS ACQUIRED LEGAL TITLE TO THE PROPERTY**
30 **UNDER THE FORECLOSURE SHALL ASSUME THE INTEREST SUBJECT TO:**

31 **(I) THE PROVISION BY THE SUCCESSOR IN INTEREST OF A**
32 **NOTICE TO VACATE TO ANY BONA FIDE TENANT AT LEAST 90 DAYS BEFORE THE**
33 **EFFECTIVE DATE OF THE NOTICE; AND**

1 **(II) THE RIGHTS OF ANY BONA FIDE TENANT AS OF THE**
2 **DATE OF TRANSFER OF LEGAL TITLE UNDER THE FORECLOSURE:**

3 **1. EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS**
4 **SUBSECTION, UNDER A BONA FIDE LEASE ENTERED INTO BEFORE THE**
5 **TRANSFER OF LEGAL TITLE, TO OCCUPY THE PREMISES UNTIL THE END OF THE**
6 **REMAINING TERM OF THE LEASE; OR**

7 **2. WITHOUT A LEASE OR WITH A LEASE TERMINABLE**
8 **AT WILL UNDER STATE LAW, SUBJECT TO THE RECEIPT BY THE TENANT OF THE**
9 **NOTICE REQUIRED UNDER ITEM (I) OF THIS PARAGRAPH.**

10 **(3) SUBJECT TO THE RECEIPT BY THE TENANT OF THE NOTICE TO**
11 **VACATE UNDER PARAGRAPH (2)(I) OF THIS SUBSECTION, A SUCCESSOR IN**
12 **INTEREST MAY TERMINATE A LEASE EFFECTIVE ON THE DATE OF THE SALE OF**
13 **THE RESIDENTIAL PROPERTY TO A PURCHASER WHO WILL OCCUPY THE**
14 **PROPERTY AS THE PURCHASER'S PRIMARY RESIDENCE.**

15 **(4) THE NOTICE REQUIRED UNDER PARAGRAPH (2)(I) OF THIS**
16 **SUBSECTION SHALL:**

17 **(I) BE IN WRITING;**

18 **(II) BE SENT BY FIRST-CLASS AND CERTIFIED MAIL,**
19 **RETURN RECEIPT REQUESTED;**

20 **(III) STATE THE DATE ON WHICH THE NOTICE IS BEING**
21 **GIVEN;**

22 **(IV) STATE THE DATE ON WHICH THE TERMINATION OF THE**
23 **TENANCY IS EFFECTIVE; AND**

24 **(V) STATE WHETHER THE BASIS FOR TERMINATION OF THE**
25 **TENANCY IS:**

26 **1. EXPIRATION OF THE TERM OF THE LEASE;**

27 **2. SALE OF THE PROPERTY TO A PURCHASER WHO**
28 **WILL OCCUPY THE PROPERTY AS THE PURCHASER'S PRIMARY RESIDENCE; OR**

29 **3. TERMINATION OF A MONTH-TO-MONTH OR**
30 **OTHER TERMINABLE-AT-WILL TENANCY.**

31 **(5) THIS SECTION DOES NOT AFFECT THE REQUIREMENTS FOR**
32 **TERMINATION OF ANY FEDERAL- OR STATE-SUBSIDIZED TENANCY OR OF ANY**

1 STATE OR LOCAL LAW THAT PROVIDES LONGER TIME PERIODS OR ADDITIONAL
2 PROTECTION FOR TENANTS.

3 [(b)] (C) (1) If the required advertisement of sale so discloses, a
4 foreclosure sale shall be made subject to one or more of the tenancies entered into
5 subsequent to the recording of the mortgage or deed of trust or otherwise subordinated
6 thereto.

7 (2) Any lease so continuing is unaffected by the sale, except the
8 purchaser shall become the landlord, as of the date of the sale, on ratification of the
9 sale.

10 7-105.9.

11 (a) (1) In this section[, “residential property”] **THE FOLLOWING WORDS**
12 **HAVE THE MEANINGS INDICATED.**

13 (2) **“BONA FIDE TENANT” MEANS A TENANT UNDER A LEASE OR**
14 **TENANCY DESCRIBED IN § 7-105.6(B)(1) OF THIS SUBTITLE.**

15 (3) **“RESIDENTIAL PROPERTY”** has the meaning stated in § 7-105.1
16 of this subtitle.

17 (b) (1) In addition to any other notice required to be given by this Code or
18 the Maryland Rules, the person authorized to make a sale in an action to foreclose a
19 mortgage or deed of trust on residential property shall send, at the same time as the
20 notice required by § 7-105.1(d)(2)(vii) of this subtitle, a written notice addressed to “all
21 occupants” at the address of the residential property in substantially the following
22 form:

23 “IMPORTANT NOTICE

24 A foreclosure action has been filed against the property located at (insert
25 address) in the circuit court for (insert name of county). This notice is being sent to you
26 as a person who lives in this property. ~~IF YOU ARE RENTING THE PROPERTY NOW,~~
27 ~~YOU MAY HAVE THE RIGHT TO CONTINUE RENTING THE PROPERTY EVEN AFTER~~
28 ~~THE PROPERTY IS SOLD TO A NEW OWNER THROUGH A FORECLOSURE SALE.~~

29 A foreclosure sale of the property may occur at any time after 45 days from the
30 date of this notice. ~~You may want to consult with an attorney [because if a foreclosure~~
31 ~~sale of the property occurs, YOU COULD BE EVICTED, even if you are a tenant and~~
32 ~~even if you have paid the rent due and complied with your lease] TO DETERMINE~~
33 ~~WHETHER YOU ARE A BONA FIDE TENANT WITH THE RIGHT TO CONTINUE~~
34 ~~RENTING THE PROPERTY AFTER FORECLOSURE. IF YOU ARE A BONA FIDE~~
35 ~~TENANT WITH A LEASE FOR A SPECIFIC PERIOD OF TIME, YOU HAVE THE RIGHT~~
36 ~~TO CONTINUE RENTING THE PROPERTY UNTIL THE END OF YOUR LEASE TERM~~

~~1 OR 90 DAYS AFTER THE NEW LEGAL TITLE HOLDER SENDS YOU A WRITTEN
2 NOTICE TO VACATE, WHICHEVER IS LONGER. THERE IS ONE EXCEPTION TO THIS
3 RIGHT: IF A NEW OWNER INTENDS TO OCCUPY THE PROPERTY AS HIS OR HER
4 PRIMARY RESIDENCE, AFTER ACQUIRING LEGAL TITLE, THE NEW OWNER MAY
5 SEND YOU A WRITTEN NOTICE TO VACATE IN 90 DAYS.~~

~~6 IF YOU ARE A BONA FIDE TENANT WITH A MONTH TO MONTH OR OTHER
7 TERMINABLE AT WILL TENANCY, YOU HAVE THE RIGHT TO CONTINUE RENTING
8 THE PROPERTY FOR UP TO 90 DAYS AFTER RECEIVING A WRITTEN NOTICE TO
9 VACATE FROM THE NEW OWNER.~~

~~10 IF YOU ARE NOT A BONA FIDE TENANT AND A FORECLOSURE SALE OF THE
11 PROPERTY OCCURS, YOU COULD BE EVICTED SHORTLY AFTER THE
12 FORECLOSURE SALE, EVEN IF YOU HAVE PAID THE RENT DUE AND COMPLIED
13 WITH YOUR LEASE.~~

14 MOST RENTERS HAVE THE RIGHT TO CONTINUE RENTING THE PROPERTY
15 AFTER IT IS SOLD AT FORECLOSURE. THE FORECLOSURE SALE PURCHASER
16 BECOMES THE NEW LANDLORD.

17 MOST RENTERS WITH A LEASE FOR A SPECIFIC PERIOD OF TIME HAVE
18 THE RIGHT TO CONTINUE RENTING THE PROPERTY UNTIL THE END OF THE
19 LEASE TERM. MOST MONTH-TO-MONTH RENTERS HAVE THE RIGHT TO
20 CONTINUE RENTING THE PROPERTY FOR 90 DAYS AFTER RECEIVING A WRITTEN
21 NOTICE TO VACATE FROM THE NEW OWNER.

22 YOU SHOULD GET LEGAL ADVICE TO DETERMINE IF YOU HAVE THESE
23 RIGHTS.

24 Below you will find the name, address, and telephone number of the person
25 authorized to sell the property. You may contact this person to **NOTIFY HIM OR HER**
26 **THAT YOU ARE A TENANT AT THE PROPERTY AND TO** find out more about the sale.
27 For further information, you may review the file in the office of the clerk of the circuit
28 court. You also may contact the Maryland Department of Housing and Community
29 Development, at (insert telephone number), or consult the Department’s website,
30 (insert website address), for assistance.

31 Person authorized to sell the property:

32 _____
33 Name

34 _____
35 Address

1 _____
2 Telephone

3 _____
4 Date of this notice”.

5 (2) The written notice required by this subsection shall be:

6 (i) A separate document;

7 (ii) Printed in at least 12 point type; and

8 (iii) Sent by first-class mail.

9 (3) The outside of the envelope containing the written notice required
10 by this subsection shall state, on the address side, in bold, capitalized letters in at
11 least 12 point type, the following: “IMPORTANT NOTICE TO ALL OCCUPANTS:
12 FORECLOSURE INFORMATION ENCLOSED. OPEN IMMEDIATELY.”.

13 (c) (1) In addition to any other notice required to be given by this Code or
14 the Maryland Rules, the person authorized to make a sale in an action to foreclose a
15 mortgage or deed of trust on residential property shall send a written notice of the sale
16 not earlier than 30 days and not later than 10 days before the date of sale addressed to
17 “all occupants” at the address of the residential property in substantially the following
18 form:

19 “NOTICE OF IMPENDING FORECLOSURE SALE

20 A foreclosure action has been filed against the property located at (insert
21 address) in the circuit court for (insert name of county). This notice is being sent to you
22 as a person who lives in this property. ~~IF YOU ARE RENTING THE PROPERTY NOW,
23 YOU MAY HAVE THE RIGHT TO CONTINUE RENTING THE PROPERTY EVEN AFTER
24 THE PROPERTY IS SOLD TO A NEW OWNER THROUGH A FORECLOSURE SALE.~~

25 A foreclosure sale of the property is scheduled to occur as follows:

26 Date: _____

27 Time: _____

28 Place: _____

29 [After this sale, YOU COULD BE EVICTED, even if you are a tenant and even if you
30 have paid the rent due and complied with your lease.]

31 ~~YOU MAY WANT TO CONSULT AN ATTORNEY TO DETERMINE WHETHER YOU
32 ARE A BONA FIDE TENANT WITH THE RIGHT TO CONTINUE RENTING THE~~

~~PROPERTY AFTER FORECLOSURE. IF YOU ARE A BONA FIDE TENANT WITH A LEASE FOR A SPECIFIC PERIOD OF TIME, YOU HAVE THE RIGHT TO CONTINUE RENTING THE PROPERTY UNTIL THE END OF YOUR LEASE TERM OR 90 DAYS AFTER THE NEW LEGAL TITLE HOLDER SENDS YOU A WRITTEN NOTICE TO VACATE, WHICHEVER IS LONGER. THERE IS ONE EXCEPTION TO THIS RIGHT: IF A NEW OWNER INTENDS TO OCCUPY THE PROPERTY AS HIS OR HER PRIMARY RESIDENCE, AFTER ACQUIRING LEGAL TITLE, THE NEW OWNER MAY SEND YOU A WRITTEN NOTICE TO VACATE IN 90 DAYS.~~

~~IF YOU ARE A BONA FIDE TENANT WITH A MONTH TO MONTH OR OTHER TERMINABLE AT WILL TENANCY, YOU HAVE THE RIGHT TO CONTINUE RENTING THE PROPERTY FOR UP TO 90 DAYS AFTER RECEIVING A WRITTEN NOTICE TO VACATE FROM THE NEW OWNER.~~

~~IF YOU ARE NOT A BONA FIDE TENANT AND A FORECLOSURE SALE OF THE PROPERTY OCCURS, YOU COULD BE EVICTED SHORTLY AFTER THE FORECLOSURE SALE, EVEN IF YOU HAVE PAID THE RENT DUE AND COMPLIED WITH YOUR LEASE.~~

MOST RENTERS HAVE THE RIGHT TO CONTINUE RENTING THE PROPERTY AFTER IT IS SOLD AT FORECLOSURE. THE FORECLOSURE SALE PURCHASER BECOMES THE NEW LANDLORD.

MOST RENTERS WITH A LEASE FOR A SPECIFIC PERIOD OF TIME HAVE THE RIGHT TO CONTINUE RENTING THE PROPERTY UNTIL THE END OF THE LEASE TERM. MOST MONTH-TO-MONTH RENTERS HAVE THE RIGHT TO CONTINUE RENTING THE PROPERTY FOR 90 DAYS AFTER RECEIVING A WRITTEN NOTICE TO VACATE FROM THE NEW OWNER.

YOU SHOULD GET LEGAL ADVICE TO DETERMINE IF YOU HAVE THESE RIGHTS.

Below you will find the name, address, and telephone number of the person authorized to sell the property. You may contact this person to **NOTIFY HIM OR HER THAT YOU ARE A TENANT AT THE PROPERTY AND TO** find out more about the sale. For further information, you may review the file in the office of the clerk of the circuit court. [You may want to consult an attorney to determine your rights.] You also may contact the ~~{Maryland Department of Housing and Community Development}~~ **CONSUMER PROTECTION DIVISION, OFFICE OF THE ATTORNEY GENERAL**, at (insert telephone number), or consult the ~~{Department's}~~ **DIVISION'S** website, (insert website address), for assistance.

Person authorized to sell the property:

1 Name

2 _____

3 Address

4 _____

5 Telephone

6 _____

7 Date of this notice”.

8 (2) The written notice required by this subsection shall be:

9 (i) A separate document;

10 (ii) Printed in at least 12 point type; and

11 (iii) Sent by first-class mail.

12 (3) The outside of the envelope containing the written notice required
13 by this subsection shall state, on the address side, in bold, capitalized letters in at
14 least 12 point type, the following: “IMPORTANT NOTICE TO ALL OCCUPANTS:
15 FORECLOSURE INFORMATION ENCLOSED. OPEN IMMEDIATELY.”.

16 (d) (1) In addition to any other notice required to be given by this Code or
17 the Maryland Rules, the person who purchases residential property in a foreclosure
18 sale shall send, after the entry of a judgment awarding possession and before any
19 attempt to execute the writ of possession, a written notice addressed to “all occupants”
20 at the address of the residential property in substantially the following form:

21 “IMPORTANT EVICTION NOTICE

22 The circuit court for (insert name of county) has entered a judgment awarding
23 possession of the property located at (insert address). **YOU COULD BE EVICTED**
24 **FROM THE PROPERTY ON ANY DAY AFTER** (insert **FIRST** date **AFTER WHICH**
25 **EVICTION COULD LEGALLY OCCUR UNDER STATE AND LOCAL LAW).**

26 Below you will find the name, address, and telephone number of the person who
27 purchased the property or the purchaser’s agent. You may contact this person to find
28 out more about the court order. For further information, you may review the file in the
29 office of the clerk of the circuit court. You may want to consult an attorney to
30 determine your rights. You also may contact the Maryland Department of Housing
31 and Community Development, at (insert telephone number), or consult the
32 Department’s website, (insert website address), for assistance.

33 Purchaser of the property or purchaser’s agent:

1 _____

2 Name

3 _____

4 Address

5 _____

6 Telephone

7 _____

8 Date of this notice”.

9 (2) The written notice required by this subsection shall be:

10 (i) A separate document;

11 (ii) Printed in at least 12 point type; and

12 (iii) Sent by first-class mail.

13 (3) The outside of the envelope containing the written notice required
14 by this subsection shall state, on the address side, in bold, capitalized letters in at
15 least 12 point type, the following: “IMPORTANT NOTICE TO ALL OCCUPANTS:
16 EVICTION INFORMATION ENCLOSED. OPEN IMMEDIATELY.”.

17 (e) The person giving a notice required by this section shall file in the
18 foreclosure proceeding after each notice is sent an affidavit of compliance with the
19 provisions of this section.

20 (f) In the event of postponement of the sale, which may be done in the
21 discretion of the person authorized to make the sale, no new or additional notice need
22 be given pursuant to this section.

23 ~~(G) IF A FORECLOSURE ACTION IS DISMISSED, WITHDRAWN, OR~~
24 ~~TERMINATED FOR ANY REASON BEFORE TRANSFER OF LEGAL TITLE, A NOTICE~~
25 ~~OF THE DISMISSAL, WITHDRAWAL, OR TERMINATION SHALL BE SENT TO EACH~~
26 ~~TENANT WHOSE IDENTITY IS KNOWN AND TO “ALL OCCUPANTS” BY FIRST CLASS~~
27 ~~MAIL.~~

28 ~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency~~
29 ~~measure, is necessary for the immediate preservation of the public health or safety,~~
30 ~~has been passed by a yea and nay vote supported by three fifths of all the members~~
31 ~~elected to each of the two Houses of the General Assembly, and shall take effect from~~
32 ~~the date it is enacted.~~

33 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
34 construed to apply only prospectively and may not be applied or interpreted to have

1 any effect on or application to any foreclosures docketed before the effective date of
2 this Act.

3 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 June 1, 2010.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.