

HOUSE BILL 1477

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8lr3178

By: **Delegates Ramirez, Barnes, Braveboy, Frush, Healey, Ivey, Pena-Melnyk, V. Turner, Valderrama, Vaughn, and Walker**

Introduced and read first time: February 18, 2008

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Prince George's County – Defenses to Wrongful Foreclosures Act**

3 **PG 427-08**

4 FOR the purpose of providing that, in Prince George's County, a record owner of
5 certain residential real property may raise certain defenses in an action to
6 foreclose a mortgage or deed of trust; providing that a record owner of certain
7 residential real property is entitled to conduct certain discovery in an action to
8 foreclose a mortgage or deed of trust; providing that discovery in an action to
9 foreclose a mortgage or deed of trust shall be completed within a certain time;
10 providing that certain record owners of certain residential real property are
11 entitled to a certain hearing in an action to foreclose a mortgage or deed of
12 trust; providing certain remedies for certain record owners of residential real
13 property; and generally relating to foreclosure actions in Prince George's
14 County.

15 BY adding to

16 Article – Real Property

17 Section 7-105.1

18 Annotated Code of Maryland

19 (2003 Replacement Volume and 2007 Supplement)

20 Preamble

21 WHEREAS, Prince George's County has been identified as the "hotspot" for
22 foreclosures in the State; and

23 WHEREAS, Home foreclosures harm not only lenders and investors but also
24 communities, families, the State, and local governments; and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 WHEREAS, The Washington Post has identified statistically sound studies that
2 have determined that Prince George's County minority homeowners are
3 disproportionately targeted for high-cost, subprime mortgage loans; and

4 WHEREAS, Subprime mortgage loan foreclosure rates far exceed foreclosure
5 rates for traditional mortgage loans; and

6 WHEREAS, Prince George's County homeowners who are facing foreclosure
7 should be entitled to have a reasonable opportunity to raise legal defenses before a
8 foreclosure sale is final; and

9 WHEREAS, The current foreclosure process affords Prince George's County
10 homeowners little opportunity to investigate their defenses through formal civil
11 discovery; and

12 WHEREAS, When given an opportunity to reconsider its holdings concerning
13 what defenses may be investigated and raised in connection with a foreclosure
14 proceeding, the Court of Special Appeals of Maryland failed to do so in the case of
15 Tanya Jones v. Diane Rosenberg, (No. 124, Sept. Term 2007); and

16 WHEREAS, It should be the public policy of the State and Prince George's
17 County to allow Prince George's County homeowners a reasonable opportunity to
18 investigate and present their legal defenses in a foreclosure proceeding in the same
19 manner as any other legal proceeding without unduly burdening lenders; now,
20 therefore,

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

23 **Article - Real Property**

24 **7-105.1.**

25 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
26 MEANINGS INDICATED.

27 (2) "RECORD OWNER" MEANS THE PERSON HOLDING RECORD
28 TITLE TO RESIDENTIAL PROPERTY AS OF THE DATE ON WHICH AN ACTION TO
29 FORECLOSE THE MORTGAGE OR DEED OF TRUST ON THE PROPERTY IS FILED.

30 (3) "RESIDENTIAL PROPERTY" MEANS OWNER-OCCUPIED REAL
31 PROPERTY HAVING A DWELLING ON IT DESIGNED PRINCIPALLY AS A RESIDENCE
32 WITH ACCOMMODATIONS FOR NOT MORE THAN FOUR FAMILIES.

33 (B) THIS SECTION APPLIES ONLY IN PRINCE GEORGE'S COUNTY.

1 (C) **IN AN ACTION TO FORECLOSE A MORTGAGE OR DEED OF TRUST, A**
2 **RECORD OWNER, WITHIN 30 DAYS OF PERSONAL SERVICE OF THE RECORD**
3 **OWNER, MAY RAISE AN AFFIRMATIVE DEFENSE, INCLUDING:**

4 (1) **UNCLEAN HANDS ON BEHALF OF THE LENDER, A MORTGAGE**
5 **BROKER, OR AGENT OR AFFILIATE OF THE LENDER;**

6 (2) **FRAUD;**

7 (3) **UNFAIR OR DECEPTIVE PRACTICES IN VIOLATION OF**
8 **FEDERAL, STATE, OR LOCAL LAWS, INCLUDING A CLAIM OF HOUSING**
9 **DISCRIMINATION; OR**

10 (4) **A VIOLATION OF FEDERAL OR STATE LOSS MITIGATION**
11 **REGULATIONS.**

12 (D) (1) **IN AN ACTION TO FORECLOSE A MORTGAGE OR DEED OF**
13 **TRUST, A RECORD OWNER IS ENTITLED TO CONDUCT DISCOVERY PURSUANT TO**
14 **THE MARYLAND RULES IN SUPPORT OF THE AFFIRMATIVE DEFENSES RAISED.**

15 (2) **UNLESS EXTENDED FOR GOOD CAUSE BY THE COURT,**
16 **DISCOVERY SHALL BE COMPLETED WITHIN 60 DAYS OF PERSONAL SERVICE OF**
17 **THE RECORD OWNER.**

18 (E) (1) **IN AN ACTION TO FORECLOSE A MORTGAGE OR DEED OF**
19 **TRUST, A RECORD OWNER THAT RAISES AN AFFIRMATIVE DEFENSE IN GOOD**
20 **FAITH IS ENTITLED TO A HEARING BEFORE THE SALE OF THE PROPERTY IS**
21 **RATIFIED BY THE COURT.**

22 (2) **IF THE RECORD OWNER PROVES AN AFFIRMATIVE DEFENSE**
23 **BY A PREPONDERANCE OF THE EVIDENCE:**

24 (I) **THE ACTION SHALL BE DISMISSED AND THE SALE SET**
25 **ASIDE, IF IT OCCURRED; AND**

26 (II) **THE RECORD OWNER SHALL BE ENTITLED TO AN**
27 **AWARD OF REASONABLE ATTORNEY'S FEES.**

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 October 1, 2008.