

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 842

(Senators Lenett and Jones)

Judicial Proceedings

Environmental Matters

Real Property - Foreclosure of Mortgages and Deeds of Trust on Residential
Property - Notice to Occupants

This emergency bill requires notices of foreclosure to be sent to all occupants of a residential property (1) when a foreclosure action is filed; (2) no earlier than 30 days and no later than 10 days prior to the foreclosure sale; and (3) a final notice after the entry of a judgment awarding possession of the property and before any attempt to execute the writ of possession.

Fiscal Summary

State Effect: While the bill is expected to increase call volume from tenants seeking foreclosure assistance, the Department of Housing and Community Development (DHCD) can likely handle the bill's requirements with existing resources.

Local Effect: The bill does not directly affect local finances or operations.

Small Business Effect: None.

Analysis

Bill Summary: After the filing of a foreclosure action, and at the same time the mortgagor is served with all required documents, the person authorized to sell the residential property must send written notice to all occupants of the property. The notice must inform the occupants that a foreclosure sale of the property may occur at any time after 45 days from the date of the notice. The notice must also state that the person could be evicted, even if the person is a tenant and has paid all rent due and otherwise complied with the terms of the lease. Written notice must also be sent to all occupants no earlier

than 30 days and no later than 10 days prior to the date of the foreclosure sale, and a final notice must be sent after the entry of a judgment awarding possession of the property and before any attempt to execute the writ of possession. The person giving each notice must file an affidavit of compliance in the foreclosure proceeding after each notice is sent. If the foreclosure sale is postponed, no additional notice is required to be sent to the occupants of the property.

Current Law: “Residential property” is defined as real property improved by four or fewer single-family dwelling units. Except under specified circumstances, an action to foreclose a mortgage or deed of trust on residential property cannot be filed until the later of 90 days after a default in a condition on which the mortgage or deed of trust states that a sale may be made or 45 days after a notice of intent to foreclose is sent.

A written notice of intent to foreclose must be sent to the mortgagor or grantor and the record owner at least 45 days before the filing of an action to foreclose a mortgage or deed of trust on residential property. This notice must be sent by certified mail, postage prepaid, return receipt requested, and by first-class mail. A copy of the notice must also be sent to the Commissioner of Financial Regulation in the Department of Labor, Licensing, and Regulation. The notice must be in the form that the commissioner prescribes by regulation and contain specified information.

An order to docket or a complaint to foreclose a mortgage or deed of trust on residential property must contain specified information and be accompanied by specified documents. A copy of the order to docket or complaint and all other papers filed with it must be served by either personal delivery of the papers to the mortgagor or grantor, or by leaving the papers with a resident of suitable age and discretion at the mortgagor’s or grantor’s dwelling house or usual place of abode. If at least two good faith efforts to complete service of process on different days have not succeeded, the plaintiff may effect service by (1) filing an affidavit with the court describing the good faith efforts to complete service; (2) mailing a copy of the order to docket or complaint and all accompanying papers by certified mail, return receipt requested, and first-class mail to the mortgagor’s or grantor’s last known address; and (3) posting a copy of the order to docket or complaint and all accompanying papers in a conspicuous place on the property subject to the mortgage or deed of trust. The individual making service of process must file proof of service with the court in accordance with the Maryland Rules.

A foreclosure sale of residential property may not occur until at least 45 days after service of process is made. Notice of the time, place, and terms of a foreclosure sale of residential property must be published in a newspaper of general circulation at least once a week for three successive weeks, with the first publication at least 15 days before the sale and the last not more than one week before the sale. In addition, the mortgagor or grantor of a mortgage or deed of trust 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 the individual's attorney of the amount necessary to cure the default and reinstate the loan, as well as instructions for delivering the payment.

Background: Residential tenants in the State currently lack the right to remain in a home sold at foreclosure, as a lease entered into between the original owner and a tenant generally does not survive the foreclosure sale. In response to an increasing number of residential tenants facing eviction due to landlords in foreclosure, Baltimore City enacted legislation in 2008 that requires a purchaser of residential property at a foreclosure sale, tax sale, or judicial sale to provide the occupant with two weeks notice of the execution of a writ of possession. (*See* Balt. City Code Art. 13 § 8B.)

In 2008, property foreclosure filings in the State increased to 10,030 events during the fourth quarter, an increase of 25.8% from the third quarter. The State's foreclosure rate in the fourth quarter of 2008 was 229 households per foreclosure event, representing the eighteenth highest foreclosure concentration rate in the nation. The Commissioner of Financial Regulation received more than 64,000 notices of intent to foreclosure during calendar 2008. As of January 2009, DHCD estimated that foreclosure events in the State would increase in the near future, as the State's unemployment rate was 5.8% in December 2008, a 15-year high.

State Expenditures: The bill may generate increased call volume to DHCD's Home Owners Preserving Equity (HOPE) hotline. According to DHCD, the HOPE hotline receives approximately 2,000 to 2,500 calls per month and third-party contractual expenditures for operating the hotline are approximately \$10,000 to \$15,000 per month. Department of Legislative Services advises that any additional calls can likely be handled with existing resources.

Additional Information

Prior Introductions: None.

Cross File: HB 776 (Delegate Healey, *et al.*) - Environmental Matters.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Housing and Community Development; Baltimore City Department of Legislative Reference; Department of Legislative Services

Fiscal Note History:
ncs/kdm

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