

SENATE BILL 823

N1

9lr1903

By: **Senators Currie, Gladden, Peters, and Rosapepe**

Introduced and read first time: February 6, 2009

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property – Tenant Rights and Protections**

3 FOR the purpose of authorizing a certain tenant to remain in a property for a certain
4 number of days after a foreclosure sale; establishing the date on which a certain
5 period of tenancy begins to run; requiring that a certain notice of intent to
6 foreclose on a property be sent to certain persons; requiring a landlord to
7 provide a tenant with a certain notice regarding foreclosure; providing for the
8 form of certain notices; requiring a landlord to provide notice to a tenant of the
9 date of a certain foreclosure sale; requiring a certain notice to be sent in a
10 certain manner; providing that a landlord who fails to provide certain notice is
11 guilty of a misdemeanor subject to certain penalties; requiring certain
12 residential leases to contain certain notices regarding foreclosure; prohibiting a
13 landlord from entering into a lease with a certain option under certain
14 conditions; requiring a lease with a certain option to state certain information;
15 requiring certain funds paid by a tenant under a certain lease to be placed in a
16 certain account; providing for certain remedies by a tenant for a certain
17 violation by a landlord; and generally relating to tenant rights and protections.

18 BY repealing and reenacting, with amendments,
19 Article – Real Property
20 Section 7–105 and 7–105.1
21 Annotated Code of Maryland
22 (2003 Replacement Volume and 2008 Supplement)

23 BY adding to
24 Article – Real Property
25 Section 8–209, 8–216, and 8–217
26 Annotated Code of Maryland
27 (2003 Replacement Volume and 2008 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Real Property**

4 7–105.

5 (a) A provision may be inserted in a mortgage or deed of trust authorizing
6 any natural person named in the instrument, including the secured party, to sell the
7 property or declaring the borrower’s assent to the passing of a decree for the sale of the
8 property, on default in a condition on which the mortgage or deed of trust provides
9 that a sale may be made.

10 (b) A sale made pursuant to this section, §§ 7–105.1 through 7–105.8 of this
11 subtitle, or the Maryland Rules, after final ratification by the court and grant of the
12 property to the purchaser on payment of the purchase money, has the same effect as if
13 the sale and grant were made under decree between the proper parties in relation to
14 the mortgage or deed of trust and in the usual course of the court, and operates to pass
15 all the title which the borrower had in the property at the time of the recording of the
16 mortgage or deed of trust.

17 (c) (1) **A TENANT UNDER A RESIDENTIAL LEASE ENTERED INTO**
18 **SUBSEQUENT TO THE RECORDING OF THE MORTGAGE OR DEED OF TRUST OR**
19 **OTHERWISE SUBORDINATED TO THE MORTGAGE OR DEED OF TRUST SHALL BE**
20 **ENTITLED TO RETAIN POSSESSION OF THE PROPERTY FOR A PERIOD NOT TO**
21 **EXCEED 30 DAYS AFTER A FORECLOSURE SALE.**

22 (2) **THE 30-DAY PERIOD UNDER PARAGRAPH (1) OF THIS**
23 **SUBSECTION SHALL BEGIN ON THE DATE ON WHICH A SALE IS MADE IN**
24 **ACCORDANCE WITH THIS SECTION, §§ 7–105.1 THROUGH 7–105.8 OF THIS**
25 **SUBTITLE, OR THE MARYLAND RULES, AFTER FINAL RATIFICATION BY THE**
26 **COURT AND GRANT OF THE PROPERTY TO THE PURCHASER ON PAYMENT OF**
27 **THE PURCHASE MONEY.**

28 7–105.1.

29 (a) In this section, “residential property” means real property improved by
30 four or fewer single family dwelling units.

31 (b) (1) Except as provided in paragraph (2) of this subsection, an action to
32 foreclose a mortgage or deed of trust on residential property may not be filed until the
33 later of:

34 (i) 90 days after a default in a condition on which the mortgage
35 or deed of trust provides that a sale may be made; or

1 (ii) 45 days after the notice of intent to foreclose required under
2 subsection (c) of this section is sent.

3 (2) (i) The secured party may petition the circuit court for leave to
4 immediately commence an action to foreclose the mortgage or deed of trust if:

5 1. The loan secured by the mortgage or deed of trust was
6 obtained by fraud or deception;

7 2. No payments have ever been made on the loan
8 secured by the mortgage or deed of trust;

9 3. The property subject to the mortgage or deed of trust
10 has been destroyed; or

11 4. The default occurred after the stay has been lifted in a
12 bankruptcy proceeding.

13 (ii) The court may rule on the petition with or without a
14 hearing.

15 (iii) If the petition is granted, the action may be filed at any time
16 after a default in a condition on which the mortgage or deed of trust provides that a
17 sale may be made and the secured party need not send the written notice of intent to
18 foreclose required under subsection (c) of this section.

19 (c) (1) Except as provided in subsection (b)(2)(iii) of this section, at least
20 45 days before the filing of an action to foreclose a mortgage or deed of trust on
21 residential property, the secured party shall send a written notice of intent to foreclose
22 to the mortgagor or grantor [and], the record owner, **AND TO THE OCCUPANTS OF**
23 **THE RESIDENTIAL PROPERTY.**

24 (2) The notice of intent to foreclose shall be [sent]:

25 (i) [By] **SENT BY** certified mail, postage prepaid, return receipt
26 requested, bearing a postmark from the United States Postal Service; [and]

27 (ii) [By] **SENT BY** first-class mail; **AND**

28 (iii) **POSTED CONSPICUOUSLY ON THE RESIDENTIAL**
29 **PROPERTY.**

30 (3) A copy of the notice of intent to foreclose shall be sent to the
31 Commissioner of Financial Regulation.

32 (4) The notice of intent to foreclose shall:

1 (i) Be in the form that the Commissioner of Financial
2 Regulation prescribes by regulation; and

3 (ii) Contain:

4 1. The name and telephone number of:

5 A. The secured party;

6 B. The mortgage servicer, if applicable; and

7 C. An agent of the secured party who is authorized to
8 modify the terms of the mortgage loan;

9 2. The name and license number of the Maryland
10 mortgage lender and mortgage originator, if applicable;

11 3. The amount required to cure the default and reinstate
12 the loan, including all past due payments, penalties, and fees; and

13 4. Any other information that the Commissioner of
14 Financial Regulation requires by regulation.

15 (d) An order to docket or a complaint to foreclose a mortgage or deed of trust
16 on residential property shall:

17 (1) Include:

18 (i) If applicable, the license number of:

19 1. The mortgage originator; and

20 2. The mortgage lender; and

21 (ii) An affidavit stating:

22 1. The date on which the default occurred and the
23 nature of the default; and

24 2. If applicable, that a notice of intent to foreclose was
25 sent to the mortgagor or grantor in accordance with subsection (c) of this section and
26 the date on which the notice was sent; and

27 (2) Be accompanied by:

28 (i) The original or a certified copy of the mortgage or deed of
29 trust;

1 (ii) A statement of the debt remaining due and payable
2 supported by an affidavit of the plaintiff or the secured party or the agent or attorney
3 of the plaintiff or secured party;

4 (iii) A copy of the debt instrument accompanied by an affidavit
5 certifying ownership of the debt instrument;

6 (iv) If applicable, the original or a certified copy of the
7 assignment of the mortgage for purposes of foreclosure or the deed of appointment of a
8 substitute trustee;

9 (v) If any defendant is an individual, an affidavit that:

10 1. The individual is not a servicemember, as defined in
11 the Servicemembers Civil Relief Act, 50 U.S.C. Appendix § 511; or

12 2. The action is authorized by the Act;

13 (vi) If applicable, a copy of the notice of intent to foreclose; and

14 (vii) A notice to the mortgagor in substantially the following
15 form, as prescribed by regulation by the Commissioner of Financial Regulation:

16 “NOTICE

17 An action to foreclose the mortgage/deed of trust on the property located at
18 (insert address) has been filed in the Circuit Court for (county).

19 A foreclosure sale of the property may occur at any time after 45 days from the
20 date that this notice is served on you.

21 You may stop the sale and reinstate your mortgage loan by paying all amounts
22 due on your loan, plus fees and costs of the foreclosure action, at any time up to one
23 business day before the sale. Please contact (insert name of authorized agent of
24 secured party) at (insert telephone number) to obtain the amount due to cure the
25 default on your mortgage loan and instructions for delivering the payment.

26 You are urged to obtain legal advice to discuss other options to stop the
27 foreclosure sale, which may include filing a motion for injunction with the circuit court
28 or a petition for bankruptcy in federal bankruptcy court. A motion for injunction or a
29 bankruptcy petition must be filed before the foreclosure sale occurs.

30 If you are interested in selling your home to avoid a foreclosure sale, you may
31 wish to contact a licensed real estate broker or salesperson as soon as possible.

32 Housing counseling and financial assistance programs are available through the
33 Maryland Department of Housing and Community Development. Please call (insert
34 telephone number) for information on available resources.

1 Some people may approach you about “saving” your home. You should be careful
2 about any such promises.

3 The State encourages you to become informed about your options in foreclosure
4 before entering into any agreements with anyone in connection with the foreclosure of
5 your home. There are government agencies and nonprofit organizations that you may
6 contact for helpful information about the foreclosure process. For the name and
7 telephone number of an organization near you, please call the Consumer Protection
8 Division of the Office of the Attorney General of Maryland at (insert telephone
9 number). The State does not guarantee the advice of these organizations.

10 DO NOT DELAY DEALING WITH THE FORECLOSURE BECAUSE YOUR
11 OPTIONS WILL BECOME MORE LIMITED AS TIME PASSES.”.

12 (e) (1) A copy of the order to docket or complaint to foreclose on
13 residential property and all other papers filed with it shall be served by:

14 (i) Personal delivery of the papers to the mortgagor or grantor;
15 or

16 (ii) Leaving the papers with a resident of suitable age and
17 discretion at the mortgagor’s or grantor’s dwelling house or usual place of abode.

18 (2) If at least two good faith efforts to serve the mortgagor or grantor
19 under paragraph (1) of this subsection on different days have not succeeded, the
20 plaintiff may effect service by:

21 (i) Filing an affidavit with the court describing the good faith
22 efforts to serve the mortgagor or grantor; and

23 (ii) 1. Mailing a copy of the order to docket or complaint to
24 foreclose and all other papers filed with it by certified mail, return receipt requested,
25 and first-class mail to the mortgagor’s or grantor’s last known address and, if
26 different, to the address of the residential property subject to the mortgage or deed of
27 trust; and

28 2. Posting a copy of the order to docket or complaint to
29 foreclose and all other papers filed with it in a conspicuous place on the residential
30 property subject to the mortgage or deed of trust.

31 (3) The individual making service of process under this subsection
32 shall file proof of service with the court in accordance with the Maryland Rules.

33 (f) A foreclosure sale of residential property may not occur until at least 45
34 days after service of process is made under subsection (e) of this section.

1 (g) Notice of the time, place, and terms of a foreclosure sale shall be
2 published in a newspaper of general circulation in the county where the action is
3 pending at least once a week for 3 successive weeks, the first publication to be not less
4 than 15 days before the sale and the last publication to be not more than 1 week before
5 the sale.

6 (h) (1) The mortgagor or grantor has the right to cure the default by
7 paying all past due payments, penalties, and fees and reinstate the loan at any time
8 up to 1 business day before the foreclosure sale occurs.

9 (2) The secured party or an authorized agent of the secured party
10 shall, on request, provide to the mortgagor or grantor or the mortgagor's or grantor's
11 attorney within a reasonable time the amount necessary to cure the default and
12 reinstate the loan and instructions for delivering the payment.

13 (i) An action for failure to comply with the provisions of this section shall be
14 brought within 3 years after the date of the order ratifying the sale.

15 **8-209.**

16 (A) (1) **A LANDLORD SHALL PROVIDE WRITTEN NOTICE TO A TENANT**
17 **OF ANY FORECLOSURE ACTION AGAINST THE PROPERTY.**

18 (2) **THE WRITTEN NOTICE SHALL STATE:**

19 **"THIS PROPERTY IS IN FORECLOSURE AND YOUR RIGHT TO CONTINUE TO**
20 **LIVE IN THIS PROPERTY MAY BE AFFECTED. IF THIS PROPERTY IS SOLD AT A**
21 **FORECLOSURE SALE, THE NEW OWNER MAY CANCEL ANY LEASE YOU HAVE AND**
22 **YOU MAY BE REQUIRED TO MOVE. UNDER § 7-105 OF THE REAL PROPERTY**
23 **ARTICLE OF THE ANNOTATED CODE OF MARYLAND, YOU MAY REMAIN IN THE**
24 **PROPERTY UP TO 30 DAYS AFTER ANY FORECLOSURE SALE."**

25 (B) (1) **A LANDLORD SHALL PROVIDE WRITTEN NOTICE TO A TENANT**
26 **AT LEAST 30 DAYS BEFORE THE DATE OF ANY SCHEDULED FORECLOSURE SALE.**

27 (2) **A LANDLORD SHALL PROVIDE WRITTEN NOTICE TO A TENANT**
28 **OF ANY CHANGE IN THE DATE OF A FORECLOSURE SALE.**

29 (C) **THE NOTICE OF A FORECLOSURE SALE SHALL BE:**

30 (1) **SENT BY CERTIFIED MAIL, POSTAGE PREPAID, RETURN**
31 **RECEIPT REQUESTED, BEARING A POSTMARK FROM THE UNITED STATES**
32 **POSTAL SERVICE; AND**

33 (2) **POSTED CONSPICUOUSLY ON THE RESIDENTIAL PROPERTY.**

1 (D) A LANDLORD WHO KNOWINGLY FAILS TO PROVIDE THE NOTICE
2 REQUIRED UNDER THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON
3 CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 30 DAYS OR A
4 FINE NOT EXCEEDING \$1,000 OR BOTH.

5 **8-216.**

6 A RESIDENTIAL LEASE ENTERED INTO ON OR AFTER JULY 1, 2009, SHALL
7 INCLUDE IN THE LEASE AGREEMENT A NOTICE THAT:

8 (1) THE RESIDENTIAL DWELLING UNIT IS NOT IN FORECLOSURE
9 OR IN SHORT SALE STATUS; OR

10 (2) A FORECLOSURE PROCEEDING INVOLVING THE RENTAL UNIT
11 IS PENDING OR MAY BE INITIATED WITHIN THE NEXT 90 DAYS.

12 **8-217.**

13 (A) THIS SECTION APPLIES TO A LEASE THAT PROVIDES THE TENANT
14 WITH THE OPTION TO PURCHASE THE PROPERTY.

15 (B) IN A LEASE OFFERING THE TENANT THE OPTION TO PURCHASE THE
16 PROPERTY, THE LANDLORD MUST BE THE RECORD OWNER OF THE PROPERTY,
17 AS INDICATED IN THE LAND RECORDS OF THE COUNTY IN WHICH THE PROPERTY
18 IS LOCATED.

19 (C) A LEASE AGREEMENT SHALL STATE THE AMOUNT OF:

20 (1) PAYMENTS THAT WILL BE CREDITED TOWARDS THE
21 PURCHASE OF THE PROPERTY; AND

22 (2) PAYMENTS THAT WILL NOT BE CREDITED TOWARDS THE
23 PURCHASE OF THE PROPERTY.

24 (D) ANY FUNDS PAID BY THE TENANT THAT ARE TO BE CREDITED
25 TOWARDS THE PURCHASE OF THE PROPERTY SHALL BE PLACED BY THE
26 LANDLORD IN A TRUST ACCOUNT FOR THE BENEFIT OF THE TENANT.

27 (E) IF A LANDLORD VIOLATES SUBSECTION (D) OF THIS SECTION, THE
28 TENANT IS ENTITLED TO UP TO THREE TIMES ANY DAMAGES SUSTAINED, PLUS
29 REASONABLE ATTORNEY'S FEES.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 June 1, 2009.