

HOUSE BILL 728

N1

11r1992

By: **Delegate Niemann**

Introduced and read first time: February 10, 2011

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Residential Property – Foreclosure – Required Documents – Timing of**
3 **Mediation**

4 FOR the purpose of altering the documents that must accompany an order to docket or
5 complaint to foreclose a mortgage or deed of trust on residential property;
6 clarifying the documents that must be served on a mortgagor or grantor in a
7 foreclosure action on residential property under certain circumstances;
8 requiring the Commissioner of Financial Regulation to prescribe by regulation
9 certain notices, forms, and supporting documents that must be served on a
10 mortgagor or grantor in a foreclosure action on residential property; altering the
11 authority of the Office of Administrative Hearings to extend the time in which a
12 foreclosure mediation must be held; making stylistic changes; declaring the
13 intent of the General Assembly; and generally relating to the foreclosure of
14 residential property.

15 BY repealing and reenacting, with amendments,
16 Article – Real Property
17 Section 7–105.1
18 Annotated Code of Maryland
19 (2010 Replacement Volume and 2010 Supplement)

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

22 **Article – Real Property**

23 7–105.1.

24 (a) (1) In this section the following words have the meanings indicated.

25 (2) “Final loss mitigation affidavit” means an affidavit that:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (i) Is made by a person authorized to act on behalf of a secured
2 party of a mortgage or deed of trust on owner-occupied residential property that is the
3 subject of a foreclosure action;

4 (ii) Certifies the completion of the final determination of loss
5 mitigation analysis in connection with the mortgage or deed of trust; and

6 (iii) If denied, provides an explanation for the denial of a loan
7 modification or other loss mitigation.

8 (3) "Foreclosure mediation" means a conference at which the parties in
9 a foreclosure action, their attorneys, additional representatives of the parties, or a
10 combination of those persons appear before an impartial individual to discuss the
11 positions of the parties in an attempt to reach agreement on a loss mitigation program
12 for the mortgagor or grantor.

13 (4) "Housing counseling services" means assistance provided to
14 mortgagors or grantors by nonprofit and governmental entities that are identified on a
15 list maintained by the Department of Housing and Community Development.

16 (5) "Loss mitigation analysis" means an evaluation of the facts and
17 circumstances of a loan secured by owner-occupied residential property to determine:

18 (i) Whether a mortgagor or grantor qualifies for a loan
19 modification; and

20 (ii) If there will be no loan modification, whether any other loss
21 mitigation program may be made available to the mortgagor or grantor.

22 (6) "Loss mitigation program" means an option in connection with a
23 loan secured by owner-occupied residential property that:

24 (i) Avoids foreclosure through loan modification or other
25 changes to existing loan terms that are intended to allow the mortgagor or grantor to
26 stay in the property;

27 (ii) Avoids foreclosure through a short sale, deed in lieu of
28 foreclosure, or other alternative that is intended to simplify the mortgagor's or
29 grantor's relinquishment of ownership of the property; or

30 (iii) Lessens the harmful impact of foreclosure on the mortgagor
31 or grantor.

32 (7) "Owner-occupied residential property" means residential property
33 in which at least one unit is occupied by an individual who:

34 (i) Has an ownership interest in the property; and

1 (ii) Uses the property as the individual's primary residence.

2 (8) "Preliminary loss mitigation affidavit" means an affidavit that:

3 (i) Is made by a person authorized to act on behalf of a secured
4 party of a mortgage or deed of trust on owner-occupied residential property that is the
5 subject of a foreclosure action;

6 (ii) Certifies the status of an incomplete loss mitigation analysis
7 in connection with the mortgage or deed of trust; and

8 (iii) Includes reasons why the loss mitigation analysis is
9 incomplete.

10 (9) "Residential property" means real property improved by four or
11 fewer single family dwelling units that are designed principally and are intended for
12 human habitation.

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

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

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

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

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

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

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

28 4. The default occurred after the stay has been lifted in a
29 bankruptcy proceeding.

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

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

5 (c) (1) Except as provided in subsection (b)(2)(iii) of this section, at least
6 45 days before the filing of an action to foreclose a mortgage or deed of trust on
7 residential property, the secured party shall send a written notice of intent to foreclose
8 to the mortgagor or grantor and the record owner.

9 (2) The notice of intent to foreclose shall be sent:

10 (i) By certified mail, postage prepaid, return receipt requested,
11 bearing a postmark from the United States Postal Service; and

12 (ii) By first-class mail.

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

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

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

18 (ii) Contain:

19 1. The name and telephone number of:

20 A. The secured party;

21 B. The mortgage servicer, if applicable; and

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

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

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

28 4. A statement recommending that the mortgagor or
29 grantor seek housing counseling services;

30 5. The telephone number and the Internet address of
31 nonprofit and government resources available to assist mortgagors and grantors facing
32 foreclosure, as identified by the Commissioner of Financial Regulation;

1 6. An explanation of the Maryland foreclosure process
2 and time line, as prescribed by the Commissioner of Financial Regulation; and

3 7. Any other information that the Commissioner of
4 Financial Regulation requires by regulation.

5 (5) The notice of intent to foreclose shall be accompanied by:

6 (i) A loss mitigation application:

7 1. For loss mitigation programs that are applicable to
8 the loan secured by the mortgage or deed of trust that is the subject of the foreclosure
9 action; or

10 2. If the secured party does not have its own loss
11 mitigation application, in the form prescribed by the Commissioner of Financial
12 Regulation;

13 (ii) Instructions for completing the loss mitigation application
14 and a telephone number to call to confirm receipt of the application;

15 (iii) A description of the eligibility requirements for the loss
16 mitigation programs offered by the secured party that may be applicable to the loan
17 secured by the mortgage or deed of trust that is the subject of the foreclosure action;
18 and

19 (iv) An envelope preprinted with the address of the person
20 responsible for conducting loss mitigation analysis on behalf of the secured party for
21 the loan secured by the mortgage or deed of trust that is the subject of the foreclosure
22 action.

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

25 (1) Include:

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

27 1. The mortgage originator; and

28 2. The mortgage lender; and

29 (ii) An affidavit stating:

30 1. The date on which the default occurred and the
31 nature of the default; and

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

4 (2) Be accompanied by:

5 (i) The original or a certified copy of the mortgage or deed of
6 trust;

7 (ii) A statement of the debt remaining due and payable
8 supported by an affidavit of the plaintiff or the secured party or the agent or attorney
9 of the plaintiff or secured party;

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

12 (iv) If applicable, the original or a certified copy of the
13 assignment of the mortgage for purposes of foreclosure or the deed of appointment of a
14 substitute trustee;

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

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

18 2. The action is authorized by the **SERVICEMEMBERS**
19 **CIVIL RELIEF Act, 50 U.S.C. APPENDIX § 511;**

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

21 (vii) In addition to any other filing fees required by law, a filing
22 fee in the amount of \$300; **AND**

23 (viii) **[Subject to subsection (e) of this section:]**

24 1. If the loss mitigation analysis has been completed
25 **SUBJECT TO SUBSECTION (E) OF THIS SECTION**, a final loss mitigation affidavit in
26 the form prescribed by regulation adopted by the Commissioner of Financial
27 Regulation; and

28 2. If the loss mitigation analysis has not been
29 completed [:

30 A. **A], A** preliminary loss mitigation affidavit in the form
31 prescribed by regulation adopted by the Commissioner of Financial Regulation[;

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

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

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

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

15 **DO NOT DELAY DEALING WITH THE FORECLOSURE BECAUSE YOUR**
16 **OPTIONS WILL BECOME MORE LIMITED AS TIME PASSES.”; and**

17 (x) If the order to docket or complaint to foreclose concerns
18 owner-occupied residential property and is accompanied by a final loss mitigation
19 affidavit:

20 1. A request for foreclosure mediation in the form
21 prescribed by regulation adopted by the Commissioner of Financial Regulation; and

22 2. An envelope preprinted with the address of the clerk
23 of the court; and

24 3. An envelope preprinted with the address of the
25 foreclosure attorney].

26 (e) Only for purposes of a final loss mitigation affidavit that is filed with an
27 order to docket or complaint to foreclose, a loss mitigation analysis is not considered
28 complete if the reason for the denial or determination of ineligibility is due to the
29 inability of the secured party to:

30 (1) Establish communication with the mortgagor or grantor; or

31 (2) Obtain all documentation and information necessary to conduct the
32 loss mitigation analysis.

33 (f) (1) A copy of the order to docket or complaint to foreclose on
34 residential property and all other papers filed with it, **ACCOMPANIED BY THE**

1 DOCUMENTS REQUIRED UNDER PARAGRAPHS (2), (3), AND (4) OF THIS
2 SUBSECTION, shall be served ON THE MORTGAGOR OR GRANTOR by:

3 (i) Personal delivery of the papers to the mortgagor or grantor;
4 or

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

7 (2) THE SERVICE OF PROCESS UNDER PARAGRAPH (1) OF THIS
8 SUBSECTION SHALL BE ACCOMPANIED BY A SEPARATE, CLEARLY MARKED
9 NOTICE, IN THE FORM PRESCRIBED BY REGULATION ADOPTED BY THE
10 COMMISSIONER OF FINANCIAL REGULATION, THAT STATES:

11 (I) THE SIGNIFICANCE OF THE ORDER TO DOCKET OR A
12 COMPLAINT TO FORECLOSE; AND

13 (II) THE OPTIONS FOR THE MORTGAGOR OR GRANTOR TO
14 TAKE, INCLUDING HOUSING COUNSELING AND FINANCIAL ASSISTANCE
15 RESOURCES THE MORTGAGOR OR GRANTOR MAY CONSULT.

16 (3) IF THE ORDER TO DOCKET OR COMPLAINT TO FORECLOSE IS
17 ACCOMPANIED BY A PRELIMINARY LOSS MITIGATION AFFIDAVIT, THE SERVICE
18 OF PROCESS UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE
19 ACCOMPANIED BY A LOSS MITIGATION APPLICATION FORM AND ANY OTHER
20 SUPPORTING DOCUMENTS AS PRESCRIBED BY REGULATION ADOPTED BY THE
21 COMMISSIONER OF FINANCIAL REGULATION.

22 (4) IF THE ORDER TO DOCKET OR COMPLAINT TO FORECLOSE IS
23 ACCOMPANIED BY A FINAL LOSS MITIGATION AFFIDAVIT AND CONCERNS
24 OWNER-OCCUPIED RESIDENTIAL PROPERTY, THE SERVICE OF PROCESS UNDER
25 PARAGRAPH (1) OF THIS SUBSECTION SHALL BE ACCOMPANIED BY A REQUEST
26 FOR FORECLOSURE MEDIATION FORM AND ANY OTHER SUPPORTING
27 DOCUMENTS AS PRESCRIBED BY REGULATION ADOPTED BY THE
28 COMMISSIONER OF FINANCIAL REGULATION.

29 [(2)] (5) If at least two good faith efforts to serve the mortgagor or
30 grantor under paragraph (1) of this subsection on different days have not succeeded,
31 the plaintiff may effect service by:

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

34 (ii) 1. Mailing a copy of [the order to docket or complaint to
35 foreclose and all other papers filed with it] ALL THE DOCUMENTS REQUIRED TO BE

1 (ii) 1. A request for foreclosure mediation shall be
2 accompanied by a filing fee of \$50.

3 2. The court may reduce or waive the filing fee under
4 subsubparagraph 1 of this subparagraph if the mortgagor or grantor is eligible for a
5 reduction or waiver under the Maryland Legal Services guidelines.

6 (iii) The mortgagor or grantor shall mail a copy of the request for
7 foreclosure mediation to the secured party's foreclosure attorney.

8 (2) (i) The secured party may file a motion to strike the request for
9 foreclosure mediation in accordance with the Maryland Rules.

10 (ii) The motion to strike must be accompanied by an affidavit
11 that sets forth the reasons why foreclosure mediation is not appropriate.

12 (iii) The secured party shall mail a copy of the motion to strike
13 and the accompanying affidavit to the mortgagor or grantor.

14 (iv) There is a presumption that a mortgagor or grantor is
15 entitled to foreclosure mediation unless good cause is shown why foreclosure
16 mediation is not appropriate.

17 (3) (i) The mortgagor or grantor may file a response to the motion
18 to strike within 15 days.

19 (ii) The mortgagor or grantor shall mail a copy of the response
20 to the foreclosure attorney.

21 (iii) If the court grants the motion to strike, the court shall
22 instruct the Office of Administrative Hearings to cancel any scheduled mediation.

23 (i) (1) Within 5 days after receipt of a request for foreclosure mediation,
24 the court shall transmit the request to the Office of Administrative Hearings for
25 scheduling.

26 (2) (i) Within 60 days after transmittal of the request for
27 foreclosure mediation, the Office of Administrative Hearings shall conduct a
28 foreclosure mediation.

29 (ii) For good cause, the Office of Administrative Hearings may
30 extend the time for completing the foreclosure mediation for a period not exceeding 30
31 days **OR, IF ALL PARTIES AGREE, FOR A LONGER PERIOD OF TIME.**

32 (3) The Office of Administrative Hearings shall send notice of the
33 scheduled foreclosure mediation to the foreclosure attorney, the secured party, and the
34 mortgagor or grantor.

1 (4) The notice from the Office of Administrative Hearings shall:

2 (i) Include instructions regarding the documents and
3 information, as required by regulations adopted by the Commissioner of Financial
4 Regulation, that must be provided by each party to the other party and to the
5 mediator; and

6 (ii) Require the information and documents to be provided no
7 later than 20 days before the scheduled date of the foreclosure mediation.

8 (j) (1) At a foreclosure mediation:

9 (i) The mortgagor or grantor shall be present;

10 (ii) The mortgagor or grantor may be accompanied by a housing
11 counselor and may have legal representation;

12 (iii) The secured party, or a representative of the secured party,
13 shall be present; and

14 (iv) Any representative of the secured party must have the
15 authority to settle the matter or be able to readily contact a person with authority to
16 settle the matter.

17 (2) At the foreclosure mediation, the parties and the mediator shall
18 address loss mitigation programs that may be applicable to the loan secured by the
19 mortgage or deed of trust that is the subject of the foreclosure action.

20 (3) The Office of Administrative Hearings shall file a report with the
21 court that states the outcome of the request for foreclosure mediation within the
22 earlier of:

23 (i) 5 days after a foreclosure mediation is held; or

24 (ii) The end of the 60-day mediation period specified in
25 subsection (i)(2) of this section, plus any extension granted by the Office of
26 Administrative Hearings.

27 (4) Except for a request for postponement, the rules of procedure for
28 contested cases of the Office of Administrative Hearings do not govern a foreclosure
29 mediation conducted by the Office.

30 (k) (1) If the parties do not reach an agreement at the foreclosure
31 mediation, or the 60-day mediation period expires without an extension granted by
32 the Office of Administrative Hearings, the foreclosure attorney may schedule the
33 foreclosure sale.

1 (2) (i) Subject to subparagraphs (ii), (iii), and (iv) of this
2 paragraph, the mortgagor or grantor may file a motion to stay the foreclosure sale.

3 (ii) A motion to stay under this paragraph shall be filed within
4 15 days after:

5 1. The date the foreclosure mediation is held; or

6 2. If no foreclosure mediation is held, the date the Office
7 of Administrative Hearings files its report with the court.

8 (iii) A motion to stay under this paragraph must allege specific
9 reasons why loss mitigation should have been granted.

10 (3) Nothing in this subtitle precludes the mortgagor or grantor from
11 pursuing any other remedy or legal defense available to the mortgagor or grantor.

12 (1) A foreclosure sale of residential property may not occur until:

13 (1) If the residential property is not owner-occupied residential
14 property, at least 45 days after service of process is made under subsection (f) of this
15 section;

16 (2) If the residential property is owner-occupied residential property
17 and foreclosure mediation is not held, the later of:

18 (i) At least 45 days after service of process that includes a final
19 loss mitigation affidavit made under subsection (f) of this section; or

20 (ii) At least 30 days after a final loss mitigation affidavit is
21 mailed under subsection (g) of this section; and

22 (3) If the residential property is owner-occupied residential property
23 and foreclosure mediation is requested, at least 15 days after:

24 (i) The date the foreclosure mediation is held; or

25 (ii) If no foreclosure mediation is held, the date the Office of
26 Administrative Hearings files its report with the court.

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

1 (n) (1) The mortgagor or grantor of residential property has the right to
2 cure the default by paying all past due payments, penalties, and fees and reinstate the
3 loan at any time up to 1 business day before the foreclosure sale occurs.

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

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

10 (p) Revenue collected from the filing fees required under subsections
11 (d)(2)(vii) and (h)(1)(ii) of this section shall be distributed to the Housing Counseling
12 and Foreclosure Mediation Fund established under § 4-507 of the Housing and
13 Community Development Article.

14 SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the
15 General Assembly that the notices, forms, and supporting documents that the
16 Commissioner of Financial Regulation is required to prescribe by regulation under this
17 Act shall have a format and content that is no less stringent or detailed than that
18 which is required by statute before the effective date of this Act.

19 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 June 1, 2011.