

Department of Legislative Services  
Maryland General Assembly  
2011 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 728

(Delegate Niemann)

Environmental Matters

Judicial Proceedings

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**Residential Property - Foreclosure - Required Documents - Timing of Mediation**

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This bill reduces the number of documents that must accompany an order to docket or complaint to foreclose on residential property that is *filed* with a court. It expressly requires that specified documents must accompany a copy of the order to docket or complaint to foreclose on residential property that is *served* on a mortgagor or grantor. The mortgagor or grantor must be served with a specified notice about the foreclosure action and, if appropriate, a loss mitigation application with supporting documents and a request for foreclosure mediation with supporting documents. The Commissioner of Financial Regulation is required to prescribe by regulation the notice, forms, and supporting documents that must be served on a mortgagor or grantor. If the residential property is not owner-occupied, a notice of intent to foreclose must also be accompanied by a written notice of the determination that the property is not owner-occupied and a telephone number to call to contest that determination. The bill also extends the amount of time in which specified actions may be taken.

The bill takes effect June 1, 2011.

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**Fiscal Summary**

**State Effect:** The bill's changes may be handled within existing resources. There may be an operational impact as the Judiciary must change its case management system and business processes to account for the bill's extension of specified time periods; however, any impact can be handled with existing resources.

**Local Effect:** The bill's changes may be handled within existing resources.

**Small Business Effect:** None.

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## **Analysis**

**Bill Summary:** The bill extends the amount of time:

- from 15 to 25 days that a mortgagor or grantor may file with the court a completed request for foreclosure mediation in a foreclosure action on owner-occupied residential property; and
- from five to seven days that the Office of Administrative Hearings (OAH) must file a report on the outcome of a request for mediation;

Additionally, OAH may extend the time for completing foreclosure mediation for more than 30 days if all parties agree.

The bill also applies the rules of procedure for contested cases of OAH to circumstances in which there is a failure to appear.

The bill states that it is the intent of the General Assembly that the notices, forms, and supporting documents that the commissioner is required to prescribe by regulation must have a format and content that is no less stringent or detailed than that which is required by statute before the bill's effective date.

A copy of the order to docket or complaint to foreclose served on a mortgagor or grantor in compliance with Maryland law in effect immediately preceding the bill's effective date is deemed to be compliant until the effective date of the commissioner's regulations required to be adopted by the bill.

### **Current Law:**

#### *Foreclosure Process*

*Filing:* The secured party must send written notice of intent to foreclose 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, including the name and telephone number of the secured party and an agent of the secured party who is authorized to modify the terms of the mortgage loan. The notice must also be accompanied by a loss mitigation application, instructions for completing the application, a description of the applicable eligibility requirements for the loss mitigation programs

offered by the secured party, and an envelope preprinted with the address of the person responsible for conducting loss mitigation analysis on behalf of the secured party.

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, including a final loss mitigation affidavit and a request for foreclosure mediation form if the loss mitigation analysis has been completed. If the loss mitigation analysis has not been completed, the secured party must include a preliminary loss mitigation affidavit and related information, file a final loss mitigation affidavit with the court at least 30 days before the foreclosure sale date and no earlier than 28 days after the order to docket or complaint to foreclose is served, and send the final loss mitigation affidavit and a request for foreclosure mediation form to the mortgagor or grantor by certified mail.

*Service of Process:* A copy of the order to docket or complaint and all other papers filed with it must be served by either personal delivery to the borrower, or by leaving the papers with a resident of suitable age and discretion at the borrower's dwelling house or usual place of abode. A foreclosure sale of residential property may not occur until at least 45 days after service of process is made.

*Foreclosure Mediation:* A grantor or mortgagor may file with the court a completed request for foreclosure mediation not later than 15 days after the service or mailing of the final loss mitigation affidavit. A \$50 filing fee must accompany the request. A grantor or mortgagor must also mail a copy of the request to the secured party's foreclosure attorney. The secured party may then file a motion to strike, accompanied by an affidavit setting forth the reasons why foreclosure mediation is not appropriate. If the secured party files a motion to strike, it must mail a copy of the motion and affidavit to the grantor or mortgagor. The grantor or mortgagor has 15 days to file a response.

The court must transmit the mediation request to OAH within five days of receiving the request. OAH must conduct the mediation within 60 days after transmittal of the request, unless the time is extended for good cause. Upon scheduling the mediation hearing, OAH must send notice to the parties detailing the production of specified documents by a specified date.

Both the grantor or mortgagor and the secured party, or a representative, must be present at the foreclosure mediation. The parties and the mediator must address loss mitigation programs that may be applicable to the loan secured by the mortgage or deed of trust that is the subject of the foreclosure action. If no agreement is reached at the foreclosure mediation, the foreclosure attorney may schedule the foreclosure sale, and the grantor or mortgagor may file a motion to stay the sale if filed within a specified time. For good cause, OAH may extend the time for completing the foreclosure mediation for a period not exceeding 30 days. OAH must file a report with the court stating the mediation's

outcome within the earlier of five days after a mediation is held or the end of the 60-day mediation period, plus any authorized extension.

## **Background:**

### *State Response to the Mortgage Crisis*

The State's multifaceted approach to the foreclosure crisis has involved legislative reforms of mortgage lending laws, extensive consumer outreach efforts, and enhanced mortgage industry regulation and enforcement. Legislation passed during the 2008, 2009, and 2010 sessions:

- created the Mortgage Fraud Protection Act, Maryland's first comprehensive mortgage fraud statute;
- tightened mortgage lending standards and required a lender to give due regard to a borrower's ability to repay a loan;
- prohibited foreclosure rescue transactions and granted the Commissioner of Financial Regulation additional enforcement powers;
- reformed the foreclosure process to provide homeowners with greater time and additional notices before their properties are sold;
- required additional notices to be given to residential tenants renting properties pending foreclosure; and
- required a lender, under specified circumstances, to provide to a borrower a specified written notice regarding homebuyer education or housing counseling in connection with specified mortgage loans.

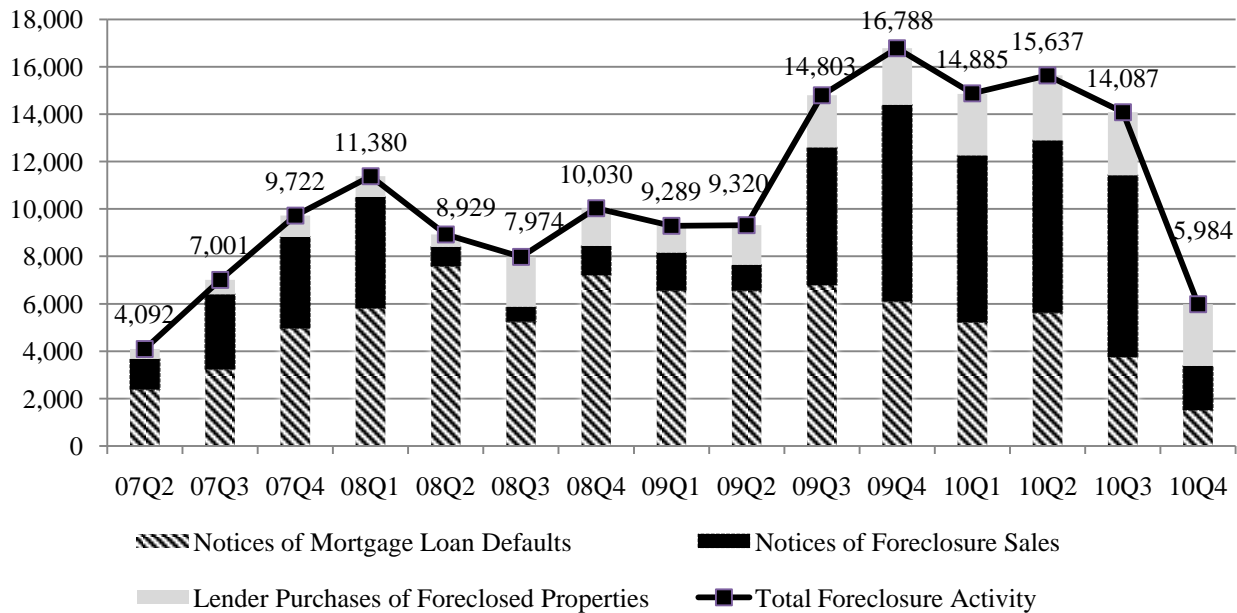
Additionally, Chapter 485 of 2010 required the secured party to file a specified final loss mitigation affidavit and send to the mortgagor or grantor a copy of the affidavit and a request for foreclosure mediation form. According to the *Baltimore Business Journal*, as of January 2011, 317 cases had been closed in mediation and 140 more mediation sessions are pending. More than one-third of the closed cases were resolved by loan modification or other means.

Consumer outreach efforts include statewide public workshops to assist distressed homeowners, in coordination with the Maryland Foreclosure Prevention Pro Bono Project. Since July 2008, over 1,000 volunteer attorneys trained through the project have provided free legal advice at foreclosure solutions workshops and represented borrowers referred from nonprofit housing counseling agencies. The project is coordinated by the Pro Bono Resource Center of Maryland in collaboration with other State agencies, the Maryland State Bar Association, and other nonprofit housing counseling service

providers. In addition to the project, the State has sponsored more than 200 public foreclosure solution workshops attended by approximately 25,000 homeowners.

Due to a multitude of factors, including the State’s new foreclosure mediation process, consumer outreach efforts, and legal issues surrounding many banks and mortgage companies’ foreclosure practices, total foreclosure activity decreased significantly in the fourth quarter of 2010. **Exhibit 1** shows that total foreclosure activity in Maryland is at its lowest level since the second quarter of 2007. The figures in Exhibit 1 incorporate data from the Department of Housing and Community Development’s quarterly foreclosure reports that track documents filed in all three phases of the foreclosure process, including notices of mortgage loan default, notices of foreclosure sales, and properties that have been foreclosed on and repurchased by lenders.

**Exhibit 1**  
**Total Foreclosure Activity in the State**  
**First Quarter 2007-Fourth Quarter 2010**



Source: Department of Housing and Community Development

**Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Office of the Attorney General (Consumer Protection Division); Department of Housing and Community Development; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; *Baltimore Business Journal*; Department of Legislative Services

**Fiscal Note History:** First Reader - March 9, 2011  
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