

# HOUSE BILL 595

N1, Q6

EMERGENCY BILL

4lr1973

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By: **Delegates Niemann, Beidle, Bobo, Braveboy, Carr, Fraser-Hidalgo, Frush, Gilchrist, Griffith, Gutierrez, Healey, Holmes, Lafferty, McComas, McIntosh, McMillan, A. Miller, Norman, S. Robinson, Stein, and Walker**

Introduced and read first time: January 30, 2014

Assigned to: Environmental Matters

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 6, 2014

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Real Property – Foreclosure of Residential Property – Certified Community**  
3 **Development Financial Institutions**

4 FOR the purpose of ~~prohibiting a foreclosure sale of residential property before a~~  
5 ~~secured party responds in a certain manner to a bona fide offer from~~ providing  
6 that no person may require, as a condition of a sale or transfer of  
7 owner-occupied residential property to a certified community development  
8 financial institution to purchase the property, any affidavit, statement,  
9 agreement, or addendum that limits ownership or occupancy of the property by  
10 the immediately preceding mortgagor or grantor under certain circumstances;  
11 providing that any affidavit, statement, agreement, or addendum that limits  
12 ownership or occupancy of owner-occupied residential property by the  
13 immediately preceding mortgagor or grantor may not serve as a basis to avoid a  
14 sale or transfer of the property to a certified community development financial  
15 institution and is unenforceable against certain persons under certain  
16 circumstances; exempting a certified community development financial  
17 institution from the applicability of certain homeowners in foreclosure  
18 protection laws under certain circumstances; providing certain exemptions  
19 under the recordation tax and State transfer tax for an instrument of writing  
20 relating to a transfer from a certified community development financial  
21 institution under certain circumstances; defining a certain term; making this  
22 Act an emergency measure; and generally relating to the foreclosure of

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 residential property and certified community development financial  
2 institutions.

3 BY repealing and reenacting, with amendments,  
4 Article – Real Property  
5 Section 7–105.1(a) and 7–302  
6 Annotated Code of Maryland  
7 (2010 Replacement Volume and 2013 Supplement)

8 BY repealing and reenacting, without amendments,  
9 Article – Real Property  
10 Section 7–105.1(m), (n), (p), (q), and (s)  
11 Annotated Code of Maryland  
12 (2010 Replacement Volume and 2013 Supplement)

13 BY adding to  
14 Article – Real Property  
15 Section 7–105.1(n–1)  
16 Annotated Code of Maryland  
17 (2010 Replacement Volume and 2013 Supplement)

18 BY adding to  
19 Article – Tax – Property  
20 Section 12–108(ff) and 13–207(a)(24)  
21 Annotated Code of Maryland  
22 (2012 Replacement Volume and 2013 Supplement)

23 BY repealing and reenacting, with amendments,  
24 Article – Tax – Property  
25 Section 13–207(a)(22) and (23)  
26 Annotated Code of Maryland  
27 (2012 Replacement Volume and 2013 Supplement)

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

30 **Article – Real Property**

31 7–105.1.

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

33 (2) (i) **“CERTIFIED COMMUNITY DEVELOPMENT FINANCIAL**  
34 **INSTITUTION”** MEANS A COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION  
35 **THAT IS CERTIFIED BY THE COMMUNITY DEVELOPMENT FINANCIAL**  
36 **INSTITUTIONS FUND IN THE U.S. DEPARTMENT OF THE TREASURY UNDER 12**  
37 **U.S.C. § 4701 ET SEQ.**

1                   **(II) “CERTIFIED COMMUNITY DEVELOPMENT FINANCIAL**  
2 **INSTITUTION” INCLUDES ~~AN AFFILIATE OF~~ ANY COMPANY THAT CONTROLS, IS**  
3 **CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH A CERTIFIED**  
4 **COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION.**

5                   **[(2)] (3)**       “Final loss mitigation affidavit” means an affidavit that:

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

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

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

13                   **[(3)] (4)**       “Foreclosure mediation” means a conference at which the  
14 parties in a foreclosure action, their attorneys, additional representatives of the  
15 parties, or a combination of those persons appear before an impartial individual to  
16 discuss the positions of the parties in an attempt to reach agreement on a loss  
17 mitigation program for the mortgagor or grantor.

18                   **[(4)] (5)**       “Housing counseling services” means assistance provided to  
19 mortgagors or grantors by nonprofit and governmental entities that are identified on a  
20 list maintained by the Department of Housing and Community Development.

21                   **[(5)] (6)**       “Loss mitigation analysis” means an evaluation of the facts  
22 and circumstances of a loan secured by owner-occupied residential property to  
23 determine:

24                   (i)       Whether a mortgagor or grantor qualifies for a loan  
25 modification; and

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

28                   **[(6)] (7)**       “Loss mitigation program” means an option in connection  
29 with a loan secured by owner-occupied residential property that:

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

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

4                   (iii) Lessens the harmful impact of foreclosure on the mortgagor  
5 or grantor.

6                   **[(7)] (8)** "Owner-occupied residential property" means residential  
7 property in which at least one unit is occupied by an individual who:

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

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

10                   **[(8)] (9)** "Postfile mediation" means foreclosure mediation that occurs  
11 in accordance with subsection (j) of this section after the date on which the order to  
12 docket or complaint to foreclose is filed.

13                   **[(9)] (10)** "Prefile mediation" means foreclosure mediation that occurs  
14 in accordance with subsection (d) of this section before the date on which the order to  
15 docket or complaint to foreclose is filed.

16                   **[(10)] (11)** "Preliminary loss mitigation affidavit" means an affidavit  
17 that:

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

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

23                   (iii) Includes reasons why the loss mitigation analysis is  
24 incomplete.

25                   **[(11)] (12)** "Residential property" means real property improved by four  
26 or fewer single family dwelling units that are designed principally and are intended  
27 for human habitation.

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

31                   (2) (i) In the case of postfile mediation, subject to subparagraphs  
32 (ii), (iii), and (iv) of this paragraph, the mortgagor or grantor may file a motion to stay  
33 the foreclosure sale.

1 (ii) A motion to stay under this paragraph shall be filed within  
2 15 days after:

3 1. The date the postfile mediation is held; or

4 2. If no postfile mediation is held, the date the Office of  
5 Administrative Hearings files its report with the court.

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

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

10 (n) A foreclosure sale of residential property may not occur until:

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

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

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

18 (ii) At least 30 days after a final loss mitigation affidavit is  
19 mailed under subsection (i) of this section; and

20 (3) If the residential property is owner-occupied residential property  
21 and postfile mediation is requested, at least 15 days after:

22 (i) The date the postfile mediation is held; or

23 (ii) If no postfile mediation is held, the date the Office of  
24 Administrative Hearings files its report with the court.

25 **(N-1) (1) IF A CERTIFIED COMMUNITY DEVELOPMENT FINANCIAL**  
26 **INSTITUTION MAKES A ~~BONA FIDE~~ AN OFFER TO A SECURED PARTY TO**  
27 **PURCHASE OWNER-OCCUPIED RESIDENTIAL PROPERTY FOR THE PURPOSE OF**  
28 **TRANSFERRING THE PROPERTY TO THE IMMEDIATELY PRECEDING MORTGAGOR**  
29 **OR GRANTOR, ~~A FORECLOSURE SALE MAY NOT OCCUR BEFORE THE SECURED~~**  
30 **~~PARTY RESPONDS IN A COMMERCIALY REASONABLE MANNER TO THE BONA~~**  
31 **~~FIDE OFFER.~~**

1           ~~(2) A SECURED PARTY MAY NOT AVOID OR PREVENT A~~  
 2 ~~FORECLOSURE SALE OF PROPERTY FOR WHICH A BONA FIDE OFFER HAS BEEN~~  
 3 ~~MADE AS DESCRIBED UNDER PARAGRAPH (1) OF THIS SUBSECTION BECAUSE OF~~  
 4 ~~ANY AFFIDAVIT, STATEMENT, OR AGREEMENT THAT LIMITS THE OWNERSHIP OR~~  
 5 ~~OCCUPANCY OF THE PROPERTY BY THE MORTGAGOR OR GRANTOR~~ NO PERSON  
 6 MAY REQUIRE, AS A CONDITION OF A SALE OR TRANSFER OF THE PROPERTY TO  
 7 THE CERTIFIED COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION, ANY  
 8 AFFIDAVIT, STATEMENT, AGREEMENT, OR ADDENDUM THAT LIMITS OWNERSHIP  
 9 OR OCCUPANCY OF THE PROPERTY BY THE IMMEDIATELY PRECEDING  
 10 MORTGAGOR OR GRANTOR.

11           (2) ANY AFFIDAVIT, STATEMENT, AGREEMENT, OR ADDENDUM  
 12 THAT LIMITS OWNERSHIP OR OCCUPANCY OF OWNER-OCCUPIED RESIDENTIAL  
 13 PROPERTY BY THE IMMEDIATELY PRECEDING MORTGAGOR OR GRANTOR:

14           (I) MAY NOT SERVE AS A BASIS TO AVOID A SALE OR  
 15 TRANSFER OF THE PROPERTY TO A CERTIFIED COMMUNITY DEVELOPMENT  
 16 FINANCIAL INSTITUTION; AND

17           (II) IS UNENFORCEABLE AGAINST ANY PERSON NAMED IN  
 18 THE AFFIDAVIT, STATEMENT, AGREEMENT, OR ADDENDUM.

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

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

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

28           (s) The Commissioner of Financial Regulation may adopt additional  
 29 regulations necessary to carry out the requirements of this section.

30 7-302.

31           (a) Except as provided in subsection (b) of this section, this subtitle does not  
 32 apply to:

33           (1) An individual admitted to practice law in the State, while  
 34 performing any activity related to the individual's regular practice of law in the State;

1           (2) A person who holds or services a mortgage loan secured by a  
2 residence in default while the person performs servicing, collection, and loss  
3 mitigation activities in regard to that mortgage loan, provided the mortgage loan did  
4 not arise as a result of a foreclosure consulting contract;

5           (3) (i) A person doing business under any law of this State or the  
6 United States regulating banks, trust companies, savings and loan associations, credit  
7 unions, or insurance companies, while the person performs services as a part of the  
8 person's normal business activities; and

9           (ii) Any subsidiary, affiliate, or agent of a person described in  
10 item (i) of this item, while the subsidiary, affiliate, or agent performs services as a part  
11 of the subsidiary's, affiliate's, or agent's normal business activities;

12           (4) A judgment creditor of the homeowner, if the judgment creditor's  
13 claim accrued before the written notice of foreclosure sale required under § 7-105.2 of  
14 this title is sent;

15           (5) A person licensed as a mortgage lender under Title 11, Subtitle 5 of  
16 the Financial Institutions Article while:

17           (i) Acting under the authority of that license in regard to a  
18 residence in default; and

19           (ii) Arranging for a refinancing of a mortgage loan for the  
20 residence in default;

21           (6) A person licensed as a real estate broker, associate real estate  
22 broker, or real estate salesperson under Title 17 of the Business Occupations and  
23 Professions Article only:

24           (i) While the person:

25                   1. Engages in any activity for which the person is  
26 licensed under Title 17 of the Business Occupations and Professions Article; and

27                   2. Does not violate any provision of § 7-307 of this  
28 subtitle or Title 17 of the Business Occupations and Professions Article; and

29           (ii) If the residence in default for which the person is conducting  
30 a licensed activity:

31                   1. Is listed in the local multiple listing service; and

32                   2. Is sold or transferred through a settlement, including  
33 the conveyance or transfer of deed, title, or establishment of equitable interest; [or]

1 (7) A nonprofit organization that solely offers counseling or advice to  
 2 homeowners in foreclosure or loan default, if the organization is not directly or  
 3 indirectly related to and does not contract for services with for-profit lenders; **OR**

4 **(8) A CERTIFIED COMMUNITY DEVELOPMENT FINANCIAL**  
 5 **INSTITUTION THAT PURCHASES OWNER-OCCUPIED RESIDENTIAL PROPERTY**  
 6 **FOR THE PURPOSE OF TRANSFERRING THE PROPERTY TO THE IMMEDIATELY**  
 7 **PRECEDING MORTGAGOR OR GRANTOR UNDER THE CIRCUMSTANCES SPECIFIED**  
 8 **IN § 7-105.1 OF THIS TITLE.**

9 (b) This subtitle does apply to an individual who:

10 (1) Is functioning in a position listed under subsection (a)**(1)**  
 11 **THROUGH (7)** of this section; and

12 (2) Is engaging in activities or providing services designed or intended  
 13 to transfer title to a residence in default directly or indirectly to that individual, a  
 14 relative of that individual, or an agent or affiliate of that individual.

#### 15 **Article – Tax – Property**

16 12-108.

17 **(FF) AN INSTRUMENT OF WRITING THAT TRANSFERS RESIDENTIAL REAL**  
 18 **PROPERTY FROM A CERTIFIED COMMUNITY DEVELOPMENT FINANCIAL**  
 19 **INSTITUTION TO THE IMMEDIATELY PRECEDING MORTGAGOR OR GRANTOR OF**  
 20 **THE PROPERTY UNDER THE CIRCUMSTANCES SPECIFIED IN § 7-105.1 OF THE**  
 21 **REAL PROPERTY ARTICLE IS NOT SUBJECT TO RECORDATION TAX.**

22 13-207.

23 (a) An instrument of writing is not subject to transfer tax to the same extent  
 24 that it is not subject to recordation tax under:

25 (22) § 12-108(dd) of this article (Transfer from an estate); **[or]**

26 (23) § 12-108(ee) of this article (Transfer to a trust and transfer from a  
 27 trust under specified circumstances); **OR**

28 **(24) § 12-108(FF) OF THIS ARTICLE (TRANSFER FROM A**  
 29 **CERTIFIED COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION).**

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency  
 31 measure, is necessary for the immediate preservation of the public health or safety,  
 32 has been passed by a yea and nay vote supported by three-fifths of all the members



1 elected to each of the two Houses of the General Assembly, and shall take effect from  
2 the date it is enacted.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.