HB 1319

Department of Legislative Services

Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 1319 (Delegate Mizeur, *et al.*)
Environmental Matters

Real Property - Foreclosures - Deficiency Judgments Prohibited and Definition of "Secured Party" (Foreclosure Protection Act)

This bill defines “secured party,” as the term applies to the residential property foreclosure procedure, as the owner of a debt instrument secured by a mortgage or deed of trust on residential property; the term does not include the Mortgage Electronic Registration Systems, Inc. or any other similar registry or database that tracks mortgage loan servicers or owners.

The bill prohibits a secured party who forecloses on a mortgage or deed of trust on residential property from filing a motion for a deficiency judgment if the proceeds of the sale, deed in lieu of foreclosure, or any other foreclosure-related settlement are insufficient to satisfy the debt and the accrued interest.

Fiscal Summary

State Effect: The bill does not materially impact State finances as discussed below.

Local Effect: The bill may negatively affect local government revenues to the extent that they are unable to collect deficiency judgments on loans secured by deed of trust on residential properties. However, because it is assumed that the bill applies in a limited number of cases, the impact is likely minimal.

Small Business Effect: Minimal.

Analysis

Current Law: Under the Maryland Rules, within 30 days after a foreclosure sale of property, the person authorized to make the sale must file a complete report of the sale with the court. A party or the holder of a subordinate interest in the property may file exceptions to the sale. The court must ratify the sale if (1) the time for filing exceptions has expired and exceptions to the report either were not filed or were filed but overruled and (2) the court is satisfied that the sale was fairly and properly made. Upon ratification of the sale, the court may refer the matter to an auditor to state an account.

At any time after the sale and before final ratification of the auditor's report, any person claiming an interest in the property or in the proceeds of the sale of the property may file an application for the payment of that person's claim from the surplus proceeds of the sale. Within three years after the final ratification of the auditor's report, a secured party, or any appropriate party in interest, may file a motion for a deficiency judgment if the proceeds of the sale, after deducting all costs and expenses allowed by the court, are insufficient to satisfy the debt and accrued interest.

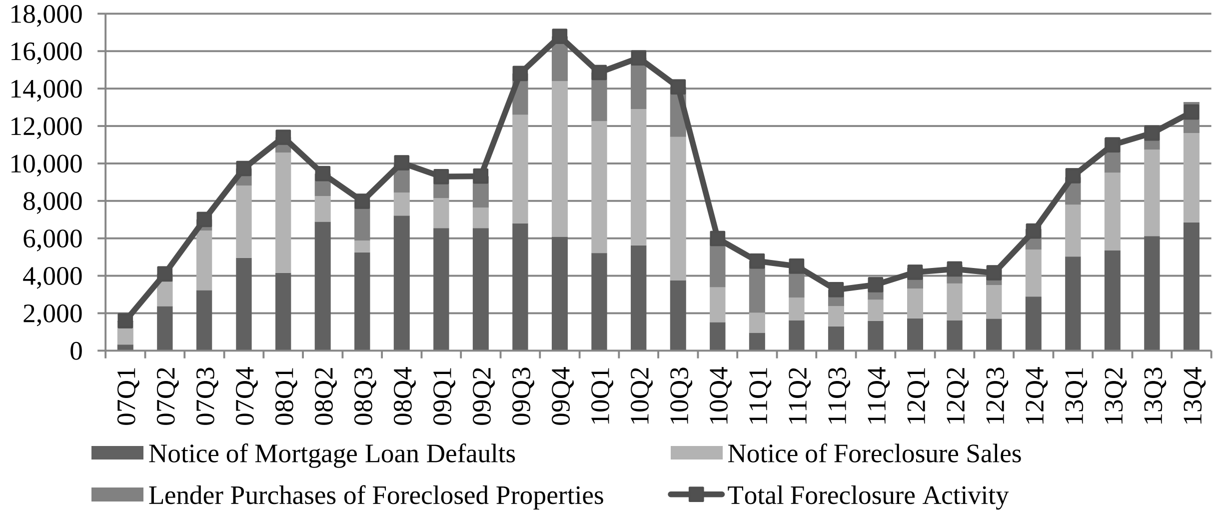
Background: In Maryland, debt collectors may have as long as 36 years to pursue a judgment after a foreclosure: up to 12 years to file a civil action, 12 years following a deficiency judgment to collect, and another 12 years to collect if a notice of renewal is filed. According to the *Washington Post*, the District of Columbia and 40 states, including Maryland and Virginia, allow deficiency judgments. Of those states that do allow deficiency judgments, statutes of limitation range from the time of foreclosure to 20 years, with at least 12 states requiring a judgment be sought within three months and 3 states (Illinois, Kansas and South Carolina) requiring deficiency judgments to be sought at the time of foreclosure.

The Maryland Consumer Rights Coalition (MCRC) estimates that, since 2008, at least 400 deficiency collection cases have been pursued in Maryland with 120 deficiency collection cases in 2012 and 57 cases in the first half of 2013. The majority of cases have occurred in Prince George's County, Baltimore City, Montgomery County, and Baltimore County. According to MCRC, the median deficiency is $88,000, with the average ranging greatly among local jurisdictions.

Foreclosure Trends: The number of foreclosure events in Maryland has spiked markedly in three separate periods: the latter half of 2007, in 2009, and the latter half of 2012 into 2013. Foreclosure events encompass real estate-owned purchases (property acquired by a lender as a result of an unsuccessful foreclosure sale on the property), notice of foreclosure sales, and notices of mortgage loan default. After the period of high rates of foreclosures in 2009, the number of property foreclosures decreased significantly from 42,446 in 2010 to 14,321 in 2011. However, property foreclosures rose in 2012, totaling

17,126, up 18.8% from 2011 levels. Foreclosure activity began a more rapid increase in the fourth quarter of 2012, with the number of foreclosure events totaling 6,381. This rapid increase in foreclosure activity continued in 2013 with foreclosure activity reaching the highest level in three years during the third quarter. These trends are exhibited in **Exhibit 1**.

Exhibit 1
State Foreclosure Events
2007-2013



Source: Department of Housing and Community Development

The dramatic decrease in 2011 was due, in part, to two factors: (1) Maryland's legislative response to the foreclosure crisis which provided additional protections to homeowners at risk of losing their homes; and (2) the delay by mortgage servicers to begin foreclosure procedures until the results of a foreclosure settlement between five of the largest lenders and the U.S. government were known. The results of the National Mortgage Settlement were announced in February 2012. The uncertainty surrounding the settlement and Maryland's new increased consumer protections created a backlog of foreclosures which lenders have now begun to address. In the fourth quarter of 2013, Maryland had the second highest foreclosure rate in the nation. The Department of Housing and Community Development (DHCD) attributes the surge in foreclosure activity that began in 2012 to a "rebound in the housing market which encouraged lenders to return inventory of seriously delinquent loans to the market at an increasing pace" allowing servicers to clear the backlog.

State Fiscal Effect: Since most deficiency judgments are handled without a trial or hearing, any decrease in Judiciary operations or expenditures is minimal. Notably, prior to the effective date, the bill may result in a rise in motions for deficiency judgments by lenders and other secured parties. However, it is expected that the Judiciary can implement the bill's requirements with existing resources.

The bill does not materially impact DHCD operations or finances. DHCD advises that, because the mortgage insurer has first right of deficiency judgment funds in the Maryland Mortgage Program (MMP), the department rarely collects deficiency judgments for MMP.

Additional Comments: To the extent that mortgage lenders respond to the bill by instituting stricter lending requirements, home sales may decrease. A decrease in home sales could cause a reduction in State and local tax revenues related to property transfers, including State transfer taxes and local transfer and recordation taxes.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Montgomery and Prince George's counties; Department of Housing and Community Development; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Legislative Services

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ncs/kdm

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