

Chapter 233

(House Bill 595)

AN ACT concerning

Real Property – Foreclosure of Residential Property – Certified Community Development Financial Institutions

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

BY repealing and reenacting, with amendments,

Article – Real Property

Section 7–105.1(a) and 7–302

Annotated Code of Maryland

(2010 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, without amendments,

Article – Real Property

Section 7–105.1(m), (n), (p), (q), and (s)

Annotated Code of Maryland

(2010 Replacement Volume and 2013 Supplement)

BY adding to

Article – Real Property

Section 7–105.1(n–1)
 Annotated Code of Maryland
 (2010 Replacement Volume and 2013 Supplement)

BY adding to

Article – Tax – Property
 Section 12–108(ff) and 13–207(a)(24)
 Annotated Code of Maryland
 (2012 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,

Article – Tax – Property
 Section 13–207(a)(22) and (23)
 Annotated Code of Maryland
 (2012 Replacement Volume and 2013 Supplement)

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

Article – Real Property

7–105.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[(10)] (11) “Preliminary loss mitigation affidavit” means an affidavit that:

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

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

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

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

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

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

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

1. The date the postfile mediation is held; or
2. If no postfile mediation is held, the date the Office of Administrative Hearings files its report with the court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7-302.

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

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

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

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

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

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

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

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

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

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

(i) While the person:

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

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

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

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

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

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

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

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

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

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

Article – Tax – Property

12–108.

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

13–207.

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

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

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

(24) § 12–108(FF) OF THIS ARTICLE (TRANSFER FROM A CERTIFIED COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION).

SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three–fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.

Approved by the Governor, April 14, 2014.