

SENATE BILL 755

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EMERGENCY BILL

4lr2375
CF 4lr2994

By: **Senator Muse**

Introduced and read first time: January 31, 2014

Assigned to: Judicial Proceedings

A BILL ENTITLED

AN ACT concerning

Foreclosure – Moratorium, Notices, Penalties, Redemption Period, and Study

FOR the purpose of prohibiting a lender from maintaining an action to foreclose a mortgage or deed of trust on residential property in the State for a certain period of time; establishing a certain penalty for a person who files a certain affidavit relating to a certain notice when the person knows or has reason to know that the contents of the notice are inaccurate; requiring a court to send a certain checklist to a mortgagor or grantor at a certain time under certain circumstances; altering the time period during which a mortgagor or grantor of residential property may contest a foreclosure or cure a certain default; requiring the Office of the Attorney General to study certain issues related to foreclosures and report its findings to the General Assembly on or before a certain date; making this Act an emergency measure; providing for the termination of certain provisions of this Act; and generally relating to foreclosures.

BY repealing and reenacting, with amendments,

Article – Real Property

Section 7–105.1(e) and (p)

Annotated Code of Maryland

(2010 Replacement Volume and 2013 Supplement)

BY adding to

Article – Real Property

Section 7–105.1(e–1)

Annotated Code of Maryland

(2010 Replacement Volume and 2013 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Real Property

7–105.1.

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

(1) Include:

(i) If applicable, the license number of:

1. The mortgage originator; and
2. The mortgage lender; and

(ii) An affidavit stating:

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

2. If applicable, that:

A. A notice of intent to foreclose was sent to the mortgagor or grantor in accordance with subsection (c) of this section and the date on which the notice was sent; and

B. At the time the notice of intent to foreclose was sent, the contents of the notice of intent to foreclose were accurate; and

(2) Be accompanied by:

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

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

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

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

(v) If any defendant is an individual, an affidavit that is in compliance with § 521 of the Servicemembers Civil Relief Act, 50 U.S.C. App. § 501 et seq.;

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

(vii) If the secured party and mortgagor or grantor have elected to participate in prefile mediation, the report of the prefile mediation issued by the Office of Administrative Hearings;

(viii) If the secured party and the mortgagor or grantor have not elected to participate in prefile mediation, a statement that the parties have not elected to participate in prefile mediation;

(ix) In addition to any other filing fees required by law, a filing fee in the amount of \$300; and

(x) 1. If the loss mitigation analysis has been completed subject to subsection (g) of this section, a final loss mitigation affidavit in the form prescribed by regulation adopted by the Commissioner of Financial Regulation; and

2. If the loss mitigation analysis has not been completed, a preliminary loss mitigation affidavit in the form prescribed by regulation adopted by the Commissioner of Financial Regulation.

(3) IF A PERSON FILES AN AFFIDAVIT UNDER THIS SUBSECTION AND THE PERSON KNOWS OR HAS REASON TO KNOW THAT THE CONTENTS OF THE NOTICE ARE INACCURATE, INCLUDING THAT THE NOTICE IS SIGNED BY A PERSON OTHER THAN THE PERSON WHOSE NAME APPEARS ON THE DOCUMENT, THE PERSON IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$10,000 OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH.

(E-1) AT THE TIME AN ORDER TO DOCKET OR COMPLAINT TO FORECLOSE A MORTGAGE OR DEED OF TRUST ON OWNER-OCCUPIED RESIDENTIAL PROPERTY IS FILED UNDER SUBSECTION (E) OF THIS SECTION, THE COURT SHALL SEND A ONE-PAGE CHECKLIST TO THE MORTGAGOR OR GRANTOR THAT:

(1) REQUESTS VERIFICATION OF RECEIPT BY THE MORTGAGOR OR GRANTOR OF ALL DOCUMENTS AND INFORMATION REQUIRED TO BE SERVED ON THE MORTGAGOR OR GRANTOR BY THE SECURED PARTY UNDER STATE OR FEDERAL LAW;

(2) INFORMS THE MORTGAGOR OR GRANTOR OF THE RIGHT TO DISPUTE THE ORDER TO DOCKET OR COMPLAINT TO FORECLOSE; AND

(3) REQUIRES THE MORTGAGOR OR GRANTOR TO RETURN THE CHECKLIST TO THE COURT WITHIN 15 DAYS.

(p) (1) A MORTGAGOR OR GRANTOR OF RESIDENTIAL PROPERTY MAY CONTEST A FORECLOSURE MADE UNDER THIS SECTION AT ANY TIME UP TO 30 DAYS AFTER THE FORECLOSURE SALE.

[(1)] (2) 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] 30 DAYS AFTER** the foreclosure sale occurs.

[(2)] (3) 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.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) In this section, "residential property" means real property improved by four or fewer single-family dwelling units that are designed principally and are intended for human habitation.

(b) A lender may not maintain an action to foreclose a mortgage or deed of trust on residential property in this State.

SECTION 3. AND BE IT FURTHER ENACTED, That:

(a) The Office of the Attorney General shall study:

(1) legal remedies available to a person who has been the victim of an illegal foreclosure, including an action in which documents are filed that are inaccurate, forged, or signed by a person other than the person whose name appears on the document;

(2) whether fines assessed against lenders for illegal foreclosure actions have been paid to injured homeowners;

(3) whether statistical or other evidence exists that the mortgage loan modification process is fair to homeowners; and

(4) whether the financial practice of pooling various types of contractual debt through securitization is beneficial to homeowners and whether the practice may be considered illegal.

(b) On or before July 1, 2015, the Office of the Attorney General shall report to the General Assembly, in accordance with § 2–1246 of the State Government Article, on its findings under subsection (a) of this section.

SECTION 4. 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 ye 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. Section 2 of this Act shall remain effective for a period of 6 months and, at the end of the 6–month period, with no further action required by the General Assembly, Section 2 of this Act shall be abrogated and of no further force and effect. Section 3 of this Act shall remain effective for a period of 2 years and, at the end of the 2–year period, with no further action required by the General Assembly, Section 3 of this Act shall be abrogated and of no further force and effect.