

Department of Legislative Services  
Maryland General Assembly  
2019 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

House Bill 425  
Judiciary

(Delegates Sydnor and Pena-Melnyk)

Judicial Proceedings

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Civil Actions - Unfair, Abusive, or Deceptive Trade Practices by Mortgage  
Servicer - Statute of Limitations

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This bill extends the statute of limitations for filing a civil action by a homeowner for specified claims of unfair, abusive, or deceptive trade practices by a mortgage servicer related to residential property. The bill specifies that such an action must be filed within the *earlier* of either five years after a foreclosure sale of the residential property or, if the mortgage servicer discloses its unfair, abusive, or deceptive trade practice to the homeowner, three years after the disclosure. The bill applies prospectively and may not be applied to any cause of action arising before the bill's October 1, 2019 effective date.

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Fiscal Summary

**State Effect:** The bill is not anticipated to materially affect State finances or operations.

**Local Effect:** The bill is not anticipated to materially affect local government finances or operations. The circuit courts can likely handle any increase in litigation with existing resources.

**Small Business Effect:** Potential meaningful.

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Analysis

**Bill Summary:** "Homeowner" means (1) a record owner of residential property that is owner occupied at the time the alleged violation of specified provisions of the Maryland Consumer Protection Act (MCPA) related to unfair, abusive, or deceptive trade practices or other State law occurred or (2) an individual who occupies residential property under a use and possession order issued under specified provisions of the Family Law Article

related to the disposition of property in annulment or divorce. The bill incorporates the existing definitions for “mortgage servicer,” as established under Title 11 of the Financial Institutions Article, and “unfair, abusive, or deceptive trade practices,” as established by Title 13 of the Commercial Law Article.

The bill applies only to claims relating to residential property.

## **Current Law:**

### *Defined Terms*

“Mortgage servicer” means a person who (1) engages in whole or in part in the business of servicing mortgage loans for others or (2) collects or otherwise receives payments on mortgage loans directly from borrowers for distribution to any other person. “Residential property” means real property improved by four or fewer single-family dwelling units that are designed principally and are intended for human habitation.

Under MCPA, an “unfair, abusive, or deceptive trade practice” includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair, abusive, or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

### *Statute of Limitations – Civil Actions*

Generally, a civil action must be filed within three years from the date it accrues, unless otherwise established by State law. State law specifies a longer statute of limitations for filing civil actions for specialties, including (1) a promissory note or other instrument under seal; (2) a bond, except a public officer’s bond; (3) a judgment; (4) recognizance; and (5) a contract under seal. With the exception of a specialty taken for the use of the State, or a deed of trust, mortgage, or promissory note that has been signed under seal and secures or is secured by owner-occupied residential property, a civil action for a specialty must be filed within 12 years after the cause of action accrues, or within 12 years from the date of the death of the last to die of the principal debtor or creditor, whichever is sooner. *Black’s Law Dictionary* defines a “specialty” as “a contract under seal” or “a writing sealed and delivered, containing some agreement,” including one “given as a security for the payment of a debt, in which such debt is particularly specified.”

Additionally, when a cause of action accrues in favor of a minor or a person who is under a disability, that person must file his or her action within the *lesser* of three years or the applicable period of limitations after the date the disability is removed. By law, imprisonment, absence from the State, or marriage are not disabilities which can extend the statute of limitations.

**Background:** The Consumer Protection Division of the Office of the Attorney General is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$10,000 for each violation and up to \$25,000 for each repetition of the same violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

**Small Business Effect:** Mortgage servicers that qualify as small businesses may be subject to additional actions from homeowners that are related to claims of unfair, abusive, or deceptive trade practices.

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### Additional Information

**Prior Introductions:** None.

**Cross File:** None.

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

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Analysis by: Nathan W. McCurdy

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510