

Department of Legislative Services  
Maryland General Assembly  
2019 Session

FISCAL AND POLICY NOTE  
Third Reader

House Bill 107 (Chair, Environment and Transportation Committee)(By  
Request - Departmental - Labor, Licensing and  
Regulation)

Environment and Transportation

Judicial Proceedings

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Real Property - Residential Property Foreclosure Procedures

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This departmental bill substitutes the Commissioner of Financial Regulation for the Department of Labor, Licensing, and Regulation (DLLR) in specified provisions of law relating to the Foreclosed Property Registry (FPR), and it recodifies provisions related to FPR and other notice and disclosure requirements for foreclosure sales. The bill also makes technical and conforming changes.

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Fiscal Summary

**State Effect:** The bill is not anticipated to materially impact the operations or finances of DLLR, or the Office of the Commissioner of Financial Regulation, a division of DLLR.

**Local Effect:** The bill is not anticipated to impact local government operations or finances.

**Small Business Effect:** DLLR has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

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Analysis

**Bill Summary:** The bill recodifies, from the title of the Real Property Article containing miscellaneous rules to a subtitle that specifically pertains to mortgages and deeds of trust and foreclosure procedure, provisions related to (1) notice and disclosure requirements for foreclosure sales; (2) FPR; (3) procedures related to notice of filings of actions to foreclose; and (4) requirements for filing with a unit of government a notice or registration of

residential property that is subject to foreclosures. The bill also clarifies that any sale of property as part of a foreclosure action must comply with specified notice and disclosure requirements for foreclosure sales and specified procedures related to notice of foreclosure.

**Current Law:** Chapter 155 of 2012 required DLLR to establish and maintain an Internet-based FPR for information relating to foreclosure sales of residential property. The law requires a foreclosure purchaser to submit an initial registration form to DLLR within 30 days of the sale and a final registration form within 30 days after a deed transferring title to the property has been recorded. The initial registration form requires the foreclosure purchaser to provide specified information, including (1) the contact information of the purchaser; (2) the street address of the foreclosed property; (3) whether the property is a single-family or multifamily property; (4) to the best of the purchaser's knowledge, whether the property is vacant; and (5) whether the purchaser has possession of the property.

DLLR is prohibited from granting access to the registry to any person or entity other than a local jurisdiction, its agencies or representatives, or a State agency. FPR is not a public record as defined by the State Government Article and is, therefore, exempt from public access requirements. However, DLLR or a local jurisdiction may provide information for a specific property in the registry to a person who owns property on the same block or a homeowners association or condominium in which the property is located.

Chapters 348 and 349 of 2017 additionally require a person authorized to make a sale of residential property to provide DLLR with a notice of foreclosure containing specified information within seven days of the filing of an order to docket or a complaint to foreclose a mortgage or deed of trust on a form that the department requires, which may be in the form of a registration with FPR. Chapters 348 and 349 of 2017 also impose restrictions, similar to those already in place, on access to FPR data to include the new notices. DLLR or a local jurisdiction may continue to provide information for a specific property in the registry to a person who owns property on the same block or a homeowners association or condominium in which the property is located.

Chapters 348 and 349 of 2018 require DLLR, on receipt of an initial registration of a property by FPR, or any change to existing information filed with FPR, to promptly notify the county and, if appropriate, the municipal corporation in which the property is located. Chapters 348 and 349 of 2018 also require DLLR to establish procedures that require a foreclosure purchaser to submit to FPR any changes to specified information within 21 business days after the change is known to the purchaser.

For more information on the foreclosure process generally, including notice and procedural requirements, see the **Appendix – Foreclosure Process**.

**Background:** DLLR advises that the purpose of the bill is to transfer and consolidate FPR and other notice and disclosure requirements for foreclosure sale provisions into the general foreclosure section of the Real Property Article. DLLR notes that there are two requirements for online foreclosure registration: (1) after the sale (under § 14-126.1 of the Real Property Article); and (2) after the order to docket/complaint to foreclose (under § 14-126.2 of the Real Property Article). There is an additional requirement for lenders to submit copies of the notices of intent to foreclose (under § 7-105.1(c)(3) of the Real Property Article). As operationalized by the Office of the Commissioner of Financial Regulation within DLLR, these requirements will be streamlined on one integrated web-based platform as of approximately June 2019. Thus, DLLR advises that the proposed consolidation of statutes will reduce confusion and aid compliance.

DLLR further advises that FPR received 8,195 initial registrations in fiscal 2018, averaging 683 per month.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Labor, Licensing, and Regulation; Department of Legislative Services

**Fiscal Note History:** First Reader - February 1, 2019  
mag/kdm Third Reader - February 15, 2019

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## Appendix – Foreclosure Process

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Beginning with the financial downturn in 2007, Maryland saw a significant increase in the number of foreclosure actions. Foreclosure activity likely peaked in 2010, when the number of foreclosure events exceeded 50,000. Due to a multitude of factors, including legislation addressing the State’s foreclosure mediation process, consumer outreach efforts, and enhanced mortgage industry regulation and enforcement surrounding many banks’ and mortgage companies’ foreclosure practices, the number of foreclosure events decreased significantly to 16,049 in 2011. However, these changes also resulted in the general lengthening of the foreclosure process, leaving many housing units in limbo for years at a time.

Despite improvements, the number of foreclosure events in Maryland has remained stubbornly high, even with national trends downward. According to the real estate information company RealtyTrac, as of November 2018, Maryland ranked first in overall foreclosure rate among states and the District of Columbia, with 1 in every 989 housing units facing some form of foreclosure action, compared to the national average of 1 in every 2,486 housing units. Other states with high foreclosure rates include New Jersey (1 in every 996 housing units) and Delaware (1 in every 1,324 housing units).

### *Foreclosure Process in Maryland*

Generally, to foreclose on residential property in Maryland, the secured party must first send a notice of intent to foreclose (NOI) to the mortgagor or grantor and the record owner, then file and serve an order to docket (OTD) or a complaint to foreclose. A copy of the NOI must be sent to the Commissioner of Financial Regulation, and if the property is owner-occupied, the NOI must be accompanied by a loss mitigation application. Whether the filing of an OTD, or a complaint to foreclose, is appropriate depends on the lien instrument held by the secured party. An action to foreclose a mortgage or deed of trust may not be filed until the later of (1) 90 days (or 120 days if the loan is “federally related”) after a default in a condition on which the mortgage or deed of trust specifies that a sale may be made or (2) 45 days after an NOI is sent. An OTD or complaint to foreclose must be filed with the circuit court, and a copy must be served on the mortgagor or grantor. An OTD or a complaint to foreclose must include, if applicable, the license number of both the mortgage originator and the mortgage lender. The OTD or complaint to foreclose must also contain an affidavit stating the date and nature of the default and, if applicable, that the NOI was sent and that the contents of the NOI were accurate at the time it was sent.

A secured party may petition the circuit court for leave to immediately commence an action to foreclose the mortgage or deed of trust if:

- the loan secured by the mortgage or deed of trust was obtained by fraud or deception;
- no payments have ever been made on the loan secured by the mortgage or deed of trust;
- the property subject to the mortgage or deed of trust has been destroyed;
- the default occurred after the stay has been lifted in a bankruptcy proceeding; or
- the property is found by a court to be vacant and abandoned.

The court may rule on the petition with or without a hearing. If the petition is granted, the action may be filed at any time after a default in a condition on which the mortgage or deed of trust provides that a sale may be made, and the secured party is not required to send a written NOI.

#### *Prerequisites for Foreclosure Sales*

Generally, if the residential property is *not* owner-occupied, a foreclosure sale may not occur until at least 45 days after specified notice is given. If the residential property is owner-occupied, and foreclosure mediation is not held, a foreclosure sale may not occur until the later of (1) at least 45 days after providing specified notice that includes a final loss mitigation affidavit or (2) at least 30 days after a final loss mitigation affidavit is mailed. Finally, if the residential property is owner-occupied residential property and postfile mediation is requested, a foreclosure sale may not occur until at least 15 days after the date the postfile mediation is held or, if no postfile mediation is held, the date the Office of Administrative Hearings (OAH) files its report with the court.

A foreclosure mediation may be extended for good cause by OAH for up to 30 days, unless all parties agree to a longer extension. Additionally, both parties have an obligation to provide instructions regarding documents and information to each other and the mediator. Any motion to stay a foreclosure sale must come within 15 days of the date the postfile mediation is held. Notice of the sale of a foreclosed property must be sent 10 days before the date of sale.

Generally, notice of the time, place, and terms of a foreclosure sale must be published in a newspaper of general circulation in the county where the action is pending at least once a week for three successive weeks. The first publication of the notice must be more than 15 days before the sale, and the last publication must be within one week of the sale.

### *Curing Defaults*

The mortgagor or grantor of residential property has the right to cure a default and reinstate the loan at any time up to one business day before a foreclosure sale by paying all past-due payments, penalties, and fees. Upon request, and within a reasonable time, the secured party or the secured party's authorized agent must notify the mortgagor or grantor or his or her attorney of the amount necessary to cure the default and reinstate the loan as well as provide instructions for delivering the payment.

### *Expedited Foreclosure Process for Vacant and Abandoned Property*

In an effort to reduce the number of vacant and abandoned residential properties lingering in foreclosure, Maryland passed legislation during the 2017 session designed to expedite the foreclosure process. Chapter 617 of 2017 authorized a secured party to petition the circuit court for leave to immediately begin an action to foreclose a mortgage or deed of trust on a vacant and abandoned residential property, and required the court to promptly rule on the petition. A residential property is vacant and abandoned if (1) the court finds that the mortgage or deed of trust on the property has been in default for 120 days or more; (2) no mortgagor or grantor has filed with the court an answer or objection that would prevent the court from entering a final judgment and a decree of foreclosure; (3) no mortgagor or grantor has filed with the court a written statement that the property is not vacant and abandoned; and (4) at least three of several criteria listed in statute, such as the accumulation of debris or the lack of connected utilities, are present.

Generally, if the residential property is found to be vacant and abandoned and the court grants the petition for leave to immediately begin an action to foreclose a mortgage or deed of trust, specified mediation and other preliminary foreclosure process requirements do not apply.

## ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Real Property- Residential Property Foreclosure Procedures

BILL NUMBER: HB 107

PREPARED BY: Nora Corasaniti, Director of Legislative Response and Special Response

### PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

### PART B. ECONOMIC IMPACT ANALYSIS

The proposal is not expected to have impact on Maryland small business.