

SENATE BILL 904

N1
HB 1038/22 – JUD

3lr3032
CF HB 225

By: **Senator A. Washington**

Introduced and read first time: February 15, 2023

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Foreclosure Proceedings – Residential Mortgagors and Grantors – Access to**
3 **Counsel**

4 FOR the purpose of requiring that certain individuals have access to legal representation
5 in certain foreclosure proceedings; establishing the Access to Counsel in Foreclosure
6 Proceedings Program and requiring the Maryland Legal Services Corporation, under
7 the Program, to provide access to legal representation to certain individuals in
8 foreclosure proceedings under certain circumstances; requiring the Maryland Legal
9 Services Corporation to develop a certain pamphlet and the Commissioner of
10 Financial Regulation to provide individuals in foreclosure proceedings with the
11 pamphlet; requiring the Maryland Legal Services Corporation to designate certain
12 community groups for a certain purpose; establishing the Access to Counsel in
13 Foreclosure Proceedings Special Fund as a special, nonlapsing fund; requiring that
14 the Comptroller collect certain fees on residential property sales and that the fees be
15 paid to the Fund; authorizing a local jurisdiction to adopt certain local laws; and
16 generally relating to the right to counsel in foreclosure proceedings.

17 BY adding to

18 Article – Real Property

19 Section 7–3A–01 through 7–3A–10 to be under the new subtitle “Subtitle 3A. Access
20 to Legal Representation in Foreclosure Proceedings”; and 10–713

21 Annotated Code of Maryland

22 (2015 Replacement Volume and 2022 Supplement)

23 BY repealing and reenacting, without amendments,

24 Article – State Finance and Procurement

25 Section 6–226(a)(2)(i)

26 Annotated Code of Maryland

27 (2021 Replacement Volume and 2022 Supplement)

28 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – State Finance and Procurement
2 Section 6–226(a)(2)(ii)170. and 171.
3 Annotated Code of Maryland
4 (2021 Replacement Volume and 2022 Supplement)

5 BY adding to
6 Article – State Finance and Procurement
7 Section 6–226(a)(2)(ii)172.
8 Annotated Code of Maryland
9 (2021 Replacement Volume and 2022 Supplement)

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

12 **Article – Real Property**

13 **SUBTITLE 3A. ACCESS TO LEGAL REPRESENTATION IN FORECLOSURE**
14 **PROCEEDINGS.**

15 **7–3A–01.**

16 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
17 INDICATED.

18 (B) “COMMUNITY GROUP” MEANS A NONPROFIT ENTITY WITH THE
19 CAPACITY TO CONDUCT OUTREACH TO MORTGAGORS AND GRANTORS AND PROVIDE
20 ENGAGEMENT, EDUCATION, AND INFORMATION.

21 (C) “COVERED INDIVIDUAL” MEANS A MORTGAGOR OR GRANTOR WHO:

22 (1) OWNS AND OCCUPIES A RESIDENTIAL PROPERTY AS THE
23 MORTGAGOR OR GRANTOR’S PRINCIPAL RESIDENCE; AND

24 (2) IS A MEMBER OF A HOUSEHOLD WITH AN INCOME THAT IS NOT
25 GREATER THAN 50% OF THE MEDIAN INCOME IN THE STATE AS DETERMINED BY THE
26 U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES OR ITS SUCCESSOR.

27 (D) “DESIGNATED ORGANIZATION” MEANS A NONPROFIT ENTITY
28 DESIGNATED BY MLSC WITH THE ABILITY TO PROVIDE LEGAL REPRESENTATION TO
29 COVERED INDIVIDUALS.

30 (E) “FUND” MEANS THE ACCESS TO COUNSEL IN FORECLOSURE
31 PROCEEDINGS SPECIAL FUND.

32 (F) “LEGAL REPRESENTATION” INCLUDES ALL REPRESENTATION BY AN

1 ATTORNEY BEYOND BRIEF LEGAL ADVICE AND IS NOT LIMITED TO THE FORMAL
2 ENTRY OF APPEARANCE IN COURT.

3 (G) "MLSC" MEANS THE MARYLAND LEGAL SERVICES CORPORATION.

4 (H) "POSTFILE MEDIATION" HAS THE MEANING STATED IN § 7-105.1 OF
5 THIS TITLE.

6 (I) "PROGRAM" MEANS THE ACCESS TO COUNSEL IN FORECLOSURE
7 PROCEEDINGS PROGRAM.

8 7-3A-02.

9 A COVERED INDIVIDUAL SHALL HAVE ACCESS TO LEGAL REPRESENTATION AS
10 PROVIDED UNDER THIS SUBTITLE.

11 7-3A-03.

12 (A) THERE IS AN ACCESS TO COUNSEL IN FORECLOSURE PROCEEDINGS
13 PROGRAM ADMINISTERED BY MLSC.

14 (B) THE PURPOSE OF THE PROGRAM IS TO ORGANIZE AND DIRECT
15 SERVICES AND RESOURCES IN ORDER TO PROVIDE ALL COVERED INDIVIDUALS IN
16 THE STATE WITH ACCESS TO LEGAL REPRESENTATION AS REQUIRED UNDER THIS
17 SUBTITLE.

18 7-3A-04.

19 (A) UNDER THE PROGRAM, MLSC SHALL PROVIDE FOR ACCESS TO LEGAL
20 REPRESENTATION BY A COVERED INDIVIDUAL FOR PROCEEDINGS UNDER § 7-105.1
21 OF THIS TITLE, INCLUDING THE FIRST APPEAL OF A DECISION IN THE PROCEEDING
22 IF THE DESIGNATED ORGANIZATION DETERMINES THAT THERE ARE SUFFICIENT
23 LEGAL GROUNDS FOR THE APPEAL.

24 (B) (1) UNDER THE PROGRAM, A DESIGNATED ORGANIZATION SHALL
25 ENSURE THAT A COVERED INDIVIDUAL RECEIVES ACCESS TO LEGAL
26 REPRESENTATION BY AN ATTORNEY IN A PROCEEDING AS REQUIRED UNDER THIS
27 SUBTITLE AS SOON AS POSSIBLE AFTER A NOTICE OF INTENT TO FORECLOSE IS
28 FILED WITH THE COMMISSIONER OF FINANCIAL REGULATION.

29 (2) THE COMMISSIONER OF FINANCIAL REGULATION SHALL
30 PROVIDE A COPY OF THE NOTICE OF INTENT DESCRIBED UNDER THIS SUBSECTION
31 TO MLSC.

1 (C) MLSC MAY CONTRACT WITH A DESIGNATED ORGANIZATION TO
2 PROVIDE ALL OR PART OF THE SERVICES REQUIRED UNDER THIS SECTION.

3 7-3A-05.

4 (A) MLSC SHALL DEVELOP AN INFORMATIONAL PAMPHLET IN BOTH
5 ENGLISH AND OTHER LANGUAGES MLSC DETERMINES APPROPRIATE:

6 (1) DESCRIBING THE LEGAL RIGHTS OF MORTGAGORS AND
7 GRANTORS AND THE ACCESS TO COUNSEL ESTABLISHED UNDER THIS SUBTITLE;
8 AND

9 (2) PROVIDING INFORMATION ON RESOURCES AVAILABLE TO
10 MORTGAGORS AND GRANTORS.

11 (B) THE COMMISSIONER OF FINANCIAL REGULATION SHALL PROVIDE A
12 COPY OF THE PAMPHLET DESCRIBED UNDER SUBSECTION (A) OF THIS SECTION TO
13 MORTGAGORS AND GRANTORS.

14 (C) MLSC SHALL POST A LINK TO AN ELECTRONIC VERSION OF THE
15 PAMPHLET DESCRIBED UNDER SUBSECTION (A) OF THIS SECTION ON ITS WEBSITE.

16 7-3A-06.

17 MLSC SHALL DESIGNATE AND CONTRACT WITH APPROPRIATE COMMUNITY
18 GROUPS TO CONDUCT OUTREACH AND PROVIDE EDUCATION TO MORTGAGORS AND
19 GRANTORS LOCALLY AND THROUGHOUT THE STATE REGARDING THE RIGHTS OF
20 MORTGAGORS AND GRANTORS AND THE ACCESS TO LEGAL REPRESENTATION
21 UNDER THIS SUBTITLE.

22 7-3A-07.

23 ON OR BEFORE AUGUST 31 EACH YEAR, MLSC SHALL REPORT TO THE
24 GOVERNOR AND THE GENERAL ASSEMBLY:

25 (1) THE NUMBER OF COVERED INDIVIDUALS PROVIDED LEGAL
26 REPRESENTATION DURING THE PREVIOUS FISCAL YEAR;

27 (2) INFORMATION ON AND METRICS EVALUATING CASE OUTCOMES;
28 AND

29 (3) A SUMMARY OF THE ENGAGEMENT AND EDUCATION OF

1 MORTGAGORS AND GRANTORS.

2 7-3A-08.

3 (A) THERE IS AN ACCESS TO COUNSEL IN FORECLOSURE PROCEEDINGS
4 SPECIAL FUND.

5 (B) THE PURPOSE OF THE FUND IS TO PROVIDE FUNDING TO FULLY
6 IMPLEMENT ACCESS TO LEGAL REPRESENTATION IN FORECLOSURE PROCEEDINGS
7 IN THE STATE.

8 (C) MLSC SHALL ADMINISTER THE FUND.

9 (D) MLSC SHALL USE THE FUND TO PROVIDE FUNDING FOR LEGAL
10 SERVICES UNDER THIS TITLE.

11 (E) (1) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT
12 SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

13 (2) THE STATE TREASURER SHALL HOLD THE FUND SEPARATELY,
14 AND THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.

15 (F) THE FUND CONSISTS OF:

16 (1) FEES PAID TO THE FUND UNDER § 10-713(B) OF THIS ARTICLE;

17 (2) MONEY APPROPRIATED IN THE STATE BUDGET TO THE FUND;

18 (3) INTEREST AND INVESTMENT EARNINGS OF THE FUND; AND

19 (4) ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED FOR
20 THE BENEFIT OF THE FUND.

21 (G) THE FUND MAY BE USED ONLY FOR:

22 (1) SERVICES PROVIDED BY A DESIGNATED ORGANIZATION OR
23 ACTIVITY BY A COMMUNITY GROUP TO IMPLEMENT THE PROGRAM AS PROVIDED IN
24 THIS SUBTITLE, INCLUDING ALL COSTS ASSOCIATED WITH REQUIRED LEGAL
25 REPRESENTATION IN ANY PROCEEDING AND ANY OUTREACH AND EDUCATION
26 ACTIVITIES;

27 (2) IF A LOCAL JURISDICTION ENACTS A PROGRAM AUTHORIZED
28 UNDER THIS SUBTITLE, SERVICES PROVIDED BY THE LOCAL JURISDICTION TO

1 IMPLEMENT ACCESS TO COUNSEL IN FORECLOSURE PROCEEDINGS AS PROVIDED
2 FOR IN THIS SUBTITLE, INCLUDING ALL COSTS ASSOCIATED WITH REQUIRED LEGAL
3 REPRESENTATION IN ANY PROCEEDING AND ANY OUTREACH AND EDUCATION
4 ACTIVITIES;

5 (3) ADMINISTRATIVE EXPENSES OF MLSC; AND

6 (4) EXPENSES RELATED TO THE STUDY AND EVALUATION OF:

7 (I) SERVICES AND ACTIVITIES PROVIDED UNDER THIS
8 SUBTITLE;

9 (II) ADDITIONAL LEGAL SERVICES THAT MAY BE PROVIDED TO
10 COVERED INDIVIDUALS FACING FORECLOSURE PROCEEDINGS; AND

11 (III) FUNDING AMOUNTS AND SOURCES NECESSARY TO FULLY
12 EFFECTUATE ACCESS TO COUNSEL IN FORECLOSURE PROCEEDINGS.

13 (H) (1) THE STATE TREASURER SHALL INVEST THE MONEY OF THE FUND
14 IN THE SAME MANNER AS OTHER STATE MONEY MAY BE INVESTED.

15 (2) ANY INTEREST EARNINGS OF THE FUND SHALL BE CREDITED TO
16 THE FUND.

17 (I) EXPENDITURES FROM THE FUND MAY BE MADE ONLY IN ACCORDANCE
18 WITH THE STATE BUDGET.

19 (J) MONEY EXPENDED FROM THE FUND IS SUPPLEMENTAL TO AND IS NOT
20 INTENDED TO TAKE THE PLACE OF FUNDING THAT OTHERWISE WOULD BE
21 APPROPRIATED FOR CIVIL LEGAL SERVICES FROM ANY OTHER SOURCE.

22 7-3A-09.

23 (A) LEGAL REPRESENTATION AS REQUIRED UNDER THIS SUBTITLE SHALL
24 BE PHASED IN OVER TIME IN A MANNER THAT MLSC DETERMINES APPROPRIATE
25 WITH THE GOAL OF FULL IMPLEMENTATION BEFORE OCTOBER 1, 2027.

26 (B) PRIORITY IN FUNDING DURING THE PHASE-IN PERIOD WILL BE GIVEN
27 TO MORTGAGORS AND GRANTORS IN A LOCAL JURISDICTION THAT PROVIDES OR
28 AGREES TO PROVIDE SIGNIFICANT ADDITIONAL LOCAL FUNDING TO EFFECTUATE
29 ACCESS TO COUNSEL IN FORECLOSURE PROCEEDINGS IN THE LOCAL JURISDICTION.

30 (C) ACCESS TO LEGAL REPRESENTATION UNDER THIS SUBTITLE IS

1 SUBJECT TO THE AVAILABILITY OF FUNDING.

2 7-3A-10.

3 (A) A LOCAL JURISDICTION MAY ENACT A LOCAL LAW PROVIDING FOR
4 LEGAL REPRESENTATION IN FORECLOSURE PROCEEDINGS FILED IN THE LOCAL
5 JURISDICTION.

6 (B) IF A LOCAL JURISDICTION ENACTS A LOCAL LAW UNDER SUBSECTION
7 (A) OF THIS SECTION PROVIDING FOR LEGAL REPRESENTATION IN FORECLOSURE
8 PROCEEDINGS SUBSTANTIALLY SIMILAR TO THAT DESCRIBED IN THIS SUBTITLE,
9 MLSC SHALL DIRECT FUNDING THAT WOULD HAVE BEEN ALLOCATED UNDER THIS
10 SUBTITLE FOR THE BENEFIT OF COVERED INDIVIDUALS IN THE LOCAL
11 JURISDICTION TO THE LOCAL PROGRAM.

12 10-713.

13 (A) THE COMPTROLLER SHALL COLLECT A FEE ON EACH RESIDENTIAL
14 PROPERTY SALE AS FOLLOWS:

15 (1) \$25 ON A SALE OF LESS THAN \$200,000;

16 (2) \$50 ON A SALE OF AT LEAST \$200,000 BUT LESS THAN \$350,000;

17 (3) \$100 ON A SALE OF AT LEAST \$350,000 BUT LESS THAN \$500,000;

18 AND

19 (4) \$250 ON A SALE OF \$500,000 OR MORE.

20 (B) FEES COLLECTED UNDER THIS SECTION SHALL BE PAID TO THE ACCESS
21 TO COUNSEL IN FORECLOSURE PROCEEDINGS SPECIAL FUND ESTABLISHED
22 UNDER § 7-3A-08 OF THIS ARTICLE.

23 Article – State Finance and Procurement

24 6-226.

25 (a) (2) (i) Notwithstanding any other provision of law, and unless
26 inconsistent with a federal law, grant agreement, or other federal requirement or with the
27 terms of a gift or settlement agreement, net interest on all State money allocated by the
28 State Treasurer under this section to special funds or accounts, and otherwise entitled to
29 receive interest earnings, as accounted for by the Comptroller, shall accrue to the General
30 Fund of the State.

1 (ii) The provisions of subparagraph (i) of this paragraph do not apply
2 to the following funds:

3 170. the Cannabis Public Health Fund; [and]

4 171. the Community Reinvestment and Repair Fund; AND

5 **172. THE ACCESS TO COUNSEL IN FORECLOSURE**
6 **PROCEEDINGS SPECIAL FUND.**

7 SECTION 2. AND BE IT FURTHER ENACTED, That, if any provision of this Act or
8 the application thereof to any person or circumstance is held invalid for any reason in a
9 court of competent jurisdiction, the invalidity does not affect other provisions or any other
10 application of this Act that can be given effect without the invalid provision or application,
11 and for this purpose the provisions of this Act are declared severable.

12 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 October 1, 2023.