

Frosh_Favorable_SB 262

Uploaded by: Frosh, Brian

Position: FAV

BRIAN E. FROSH
Attorney General



ELIZABETH HARRIS
Chief Deputy Attorney General

CAROLYN QUATTROCKI
Deputy Attorney General

FACSIMILE No.

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

WRITER'S DIRECT DIAL No.
410-576-6584

February 11, 2020

TO: The Honorable Delores G. Kelley
Chair, Senate Finance Committee

FROM: Brian E. Frosh, Attorney General

RE: SB 262 – Maryland Collection Agency Licensing Act – Definitions and
Legislative Intent (**SUPPORT**)

In August 2018, the Court of Appeals issued a 5-2 majority opinion in a group of consolidated cases, referred to collectively as *Blackstone v. Sharma*, reversing a well-reasoned Court of Special Appeals opinion and the decisions of multiple different trial courts.¹ The majority concluded that foreign statutory trusts, which were created by Wall Street hedge funds as a vehicle to purchase *defaulted* residential mortgage debts and then foreclose on those debts for the benefit of the trusts, are not required to be licensed as collection agencies under the Maryland Collection Agency Licensing Act. Since the Sharma ruling, hedge funds that have taken over the defaulted, secondary mortgage marketplace have gone unregulated in Maryland.

These hedge funds, commonly referred to as “vulture funds,” represent new mortgage players who are purchasing distressed mortgages for significantly less than the amount owed, and then aggressively pursuing collection actions on those debts by initiating foreclosure litigation and other collection activities.

These vulture funds are hurting thousands of struggling homeowners in Maryland. They have no interest in providing loan modifications, but rather are an investment vehicle intended to bring returns to investors as quickly as possible by foreclosure. Unlike traditional lenders, vulture funds are unlikely to work with consumers to obtain modifications or take other steps to prevent foreclosure. Lack of regulations has allowed their predatory conduct to grow.

As reported by the Baltimore Sun, between January 2013 and February 2017, vulture funds have taken over thousands of mortgages here in Maryland:

¹ 461 Md. 87, 191 A.3d 1188 (2018).



3,210	Prince George's County
2,688	Baltimore County
2397	Baltimore City
1,464	Anne Arundel County
1,178	Montgomery County

It's no surprise that the operators of these funds would be opposed to regulation. Opponents claim that requiring these funds to become licensed debt collection agencies would adversely impact borrowers and have a chilling effect on the secondary mortgage market. We have found these claims to be doubtful. In fact:

- States with statutes that require foreign trusts to register as debt collectors do not have any less active a secondary mortgage market;²
- Instead, these foreign statutory trusts that purchase default mortgages are really only designed to benefit investors, not homeowners.

In short, there is no merit to the vulture funds' claims that requiring them to be licensed will make it harder for Marylanders to obtain mortgages.

This Bill would not create a new requirement for "statutory trusts" to become licensed as collection agencies. The term "statutory trusts" is not used anywhere in SB 262. Rather, the Bill clarifies that pursuing foreclosure actions on loans that were in default at the time of purchase is included in the type of collection activities subject to the licensing act. Such a position is consistent with the plain statutory language of multiple other states with similarly-worded licensing/registration statutes.

Identical legislation passed the House overwhelmingly (98-39) during the 2019 Session. To better regulate these predatory vulture funds, and protect consumers, I urge the Committee to favorably report SB 262 (HB 334).

cc: Members of the Finance Committee

² These states include: Arizona, Connecticut, Colorado, Florida, Hawaii, Idaho, Illinois, Kansas, Maine, New Jersey, North Carolina, and Oregon.

Bill Castelli_UNF_SB 262

Uploaded by: Castelli, Bill

Position: UNF



Senate Bill 262– Maryland Collection Agency Licensing Act
Senate Finance Committee
February 11, 2020

Opposed

The groups listed above are strongly opposed to Senate Bill 262 – Maryland Collection Agency Licensing Act. The bill would:

- Require passive, statutory trusts to become licensed debt collection agencies, making Maryland the ONLY state in the country to do so.
- Reverse the well-reasoned 5 – 2 decision of the Maryland Court of Appeals in *Blackstone v. Sharma*, 461 Md. 87 (2018).
- Cause confusion for investors and make compliance impossible - statutory trusts do not have any individuals associated with them.
- Create substantial uncertainty in the mortgage marketplace which relies on a secondary market to keep credit flowing to homeowners.
- Provide no added benefit or enhanced consumer protection, as the trusts, which have no borrower interaction, already use licensed mortgage loan servicers to perform all interaction with borrowers in strict compliance with robust federal and State laws and regulations, including those of the Federal Consumer Financial Protection Bureau and the Maryland Commissioner of Financial Regulation.
- Make lending more expensive by limiting access to mortgage credit.

Effect on Mortgage Lending and Borrowers

The Federal Housing Finance Agency (FHFA), regulates Fannie Mae, Freddie Mac and the Federal Home Loan Banks (the Enterprises) which account for more than 70% of the mortgage marketplace. FHFA has written to Chairman Kelley and Chairman Davis (*copy attached*) stating that:

“... the legislation would adversely impact borrowers and have a chilling effect on the secondary market insofar as Maryland properties are concerned. The burden and the confusion of applying

“FHFA strongly believes both Maryland borrowers and the Enterprises could be adversely impacted by the proposed requirement to require transferees of delinquent Maryland mortgage loans to become licensed debt collection agencies under MCALA.”

“Requiring a trust to be licensed under MCALA provides no added benefit or enhanced consumer protection.”

FHFA requires that the licensed mortgage loan servicers who manage these loans do everything possible to help the borrower avoid foreclosure (*See attached FHFA Fact Sheet*).

Of major concern to everyone involved in making mortgage loans available to Maryland citizens is that, contrary to what has been stated by proponents for the bill, Maryland would be the only state in the country to interpret its debt collection agency licensing statute as requiring that these trusts be licensed as collection agencies. **None of these trusts, which hold mortgages from every state in the country, are licensed in any state.** (*See letter memo from Dentons US LLP*). On the other hand, all of these trusts must follow each state’s foreclosure laws and act through appropriately licensed mortgage loan servicers.

The uncodified language at the end of the bill is unprecedented and equally worrisome.

- What will be the impact on foreclosures which have already occurred?
- Will they be nullified because the holder of the mortgage was not licensed as a collection agency?
- Because no one ever thought this was a requirement, will thousands of foreclosures be nullified and have to start all over again?
- Will all of these trusts have retroactively violated Maryland law and be exposed to civil and criminal penalties as well as class action law suits?

Since 2008, Maryland has enacted numerous statutes to protect consumers whose mortgages are in default and who are exposed to the foreclosure process. *A flow chart and summary of the foreclosure process are attached together with a summary of the legislation, regulations and Rules.* All foreclosures are subject to these laws, including those for mortgages packaged in trusts. If there are concerns about Maryland’s foreclosure process, they should be addressed by amending our foreclosure statutes which are contained in the Real Property Article. There is nothing in this bill or in the debt collection statutes to aid borrowers who are facing foreclosure.

Foreclosures are at Historic Lows

Maryland’s current foreclosure rate has fallen to 1.1%, a 77% decline from its high of 4.93% in Q2 2012. At 1.1%, it matches rates from 23 years ago – 1.1% in 2Q 1996. *Mortgage Bankers Association National Delinquency Survey.*

For all the foregoing reasons, we urge the Committee to give the bill an unfavorable report.



CONTROLLED

Federal Housing Finance Agency

MEMORANDUM

January 29, 2020
Via Electronic Mail

TO: The Honorable Delores G. Kelley The Honorable Dereck E. Davis
 Chair, Finance Committee Chairman, Economic Matters Committee
 Maryland Senate Maryland House of Delegates

FROM: Alfred M. Pollard *AMPollard*
 General Counsel

RE: Maryland Collection Agency Licensing Act—Senate Bill 262 and House Bill 334

The Federal Housing Finance Agency (FHFA) has been informed of the re-introduction of the Maryland Collection Agency Licensing Act that would impose debt collection agency status and registration on certain entities including trusts.

On March 26, 2019, I conveyed issues surrounding this legislation and recommended avoiding a result that would impact adversely Maryland homeowners, particularly when they face economic difficulties and may require action to be taken to address their mortgage obligations. The newly introduced bills raise the same concerns. I have attached that Memorandum for your convenience.

At its core and as noted in the Memorandum, if enacted, the legislation would adversely impact borrowers and have a chilling effect on the secondary market insofar as Maryland properties are concerned. The burden and the confusion of applying the legislation would decrease investor demand and thereby lessen the availability of products to assist homeowners in the State.

FHFA remains committed to efforts of its regulated entities that help homeowners facing challenges. Many have benefitted from these programs.

I hope this information assists you in addressing this legislation. As noted before, I am happy to provide additional information to you or your staff if that would be helpful. My information remains alfred.pollard@fhfa.gov or 202 649 3050.

Attachment



Federal Housing Finance Agency

4

March 26, 2019
Via Electronic Mail

TO: The Honorable Delores G. Kelley The Honorable Dereck E. Davis
Chair, Finance Committee Chairman, Economic Matters Committee
Maryland Senate Maryland House of Delegates

FROM: Alfred M. Pollard *AMPollard*
General Counsel

RE: Senate Bill 485/House Bill 593— Maryland Collection Agency Licensing Act

The Federal Housing Finance Agency (FHFA) has been informed of legislation that would impose registration as a debt collection agency on certain entities including trusts.

Federal Housing Finance Agency oversees Fannie Mae and Freddie Mac (the Enterprises) and the eleven Federal Home Loan Banks. Together, they support mortgage financing for millions of mortgages across the country and in Maryland. The Enterprises, operating under FHFA conservatorships, have continued their operations in making mortgages available and administering major loan modification programs that have assisted over three million homeowners during and since the financial crisis.

Legislation

SB 485 and HB 593 would amend the definition of “consumer claim” and define “mortgage lender” under the Maryland Collection Agency Licensing Act (MCALA). The bills indicate the General Assembly’s intent that the legislation be applied and interpreted to abrogate the decision of the Maryland Court of Appeals in *Blackstone v. Sharma*, 461 Md. 87 (2018), thereby requiring transferees of delinquent loans to become licensed debt collection agencies under MCALA, as held by the Maryland Court of Special Appeals in *Blackstone v. Sharma*, 233 Md. App. 58, 161 A.3d 718 (2017).

Potential Uncertainty and Impact

The proposed legislation would create substantial uncertainty for the Maryland mortgage market and could harm existing Maryland homeowners as well as future borrowers. The bills appear to require any trusts that acquire delinquent Maryland mortgage debt be licensed as a collection agency under MCALA before pursuing a foreclosure. This licensing requirement will provide little or no benefit for Maryland borrowers who have mortgages held or transferred by the Enterprises.

Enterprise Programs. The Enterprises sell seriously delinquent whole loans to investors using non-performing loan offerings (NPL) and many investors purchase these loans intending to securitize them employing trusts. In addition, Freddie Mac periodically transfers delinquent loans into Freddie Mac-created common law trusts, which securitize the loans via two programs— the Seasoned Credit Risk Transfer (SCRT) program (which issues securities backed by loans modified to assist borrowers who are at risk of foreclosure to help them keep their homes) and the Seasoned Loan Structured

Transaction (SLST) program (which issues securities backed by re-performing loans and moderately delinquent loans). The function of the trusts created pursuant to the NPL, SCRT and SLST programs are primarily to hold the subject mortgages and *not* for the purpose of servicing any Maryland borrower's loan. Rather, the trust utilizes a properly licensed or otherwise exempt servicer under Maryland law to perform all servicing-related functions for the Maryland borrower.

The NPL, SCRT and SLST programs are important tools to assist delinquent Maryland borrowers by providing them a second-chance at avoiding foreclosure by working with new investors in delinquent loans. These investors may have additional programs to assist these borrowers, while helping the Enterprises to manage risk on mortgage-related investment portfolios and permitting transfer of credit risk to private sector investors.

Once transferred to a trust (SCRT and SLST) or a purchaser (NPL), the loans are serviced by Enterprise-approved servicers, who must comply with FHFA's servicing guidelines for such sales.¹ Servicers must apply a waterfall of resolution tactics that first includes evaluating borrower eligibility for a loan modification then a short sale or a deed-in-lieu of foreclosure. Modifications must provide a benefit to the borrower and the potential for a sustainable modification and may include principal and/or arrearage forgiveness. Servicers may be able to provide additional options to borrowers with unique situations that may not otherwise be available under the Enterprises' traditional servicing guidelines. Foreclosure must be the last option in any waterfall.

Impact. These programs to keep homeowners in their homes are among the best devices to maintain stability in communities, provide a long-term benefit to neighborhoods and avoid a burden on localities and the State. FHFA strongly believes both Maryland borrowers and the Enterprises could be adversely impacted by the proposed requirement to require transferees of delinquent Maryland mortgage loans to become licensed debt collection agencies under MCALA. If enacted, the requirement could be confusing for investors and difficult to maintain compliance as securitization trusts are special purpose entities that typically do not have individuals associated with them. Requiring a trust to be licensed under MCALA provides no added benefit or enhanced consumer protection, as the trust, which has no borrower interaction, utilizes a servicer to perform all consumer-facing servicing responsibilities in strict compliance with applicable law and relevant FHFA and Enterprise program requirements (in the case of the SCRT and SLST programs).²

Assuming a trust is even able to comply with the existing Maryland Collection Agency License requirements, this burden will undoubtedly create decreased investor demand for products associated with the purchase of delinquent loans in Maryland and potential investor withdrawal from the market, lessening the availability of these products to assist homeowners.

I hope that this information on the substantial uncertainty the proposed legislation may create for the Maryland mortgage market would be taken into consideration as you work on the bills. I would be happy to answer any questions you may have and I may be reached at 202 649 3050 or alfred.pollard@fhfa.gov.

¹ <https://www.fhfa.gov/Media/PublicAffairs/Pages/Non-Performing-Loan-Sale-Guidelines.aspx>

² https://www.freddiemac.com/seasonedloanofferings_docs/npl_sales_guidelines_factsheets.pdf



FACT SHEET: NON-PERFORMING LOAN SALE GUIDELINES

NON-PERFORMING LOAN SALES

BACKGROUND

The Federal Housing Finance Agency (FHFA) requires sales of non-performing loans (NPLs) by Freddie Mac and Fannie Mae (the Enterprises) to meet specific requirements. Drawing on the Enterprises' experience with NPL sales, FHFA continues to enhance its NPL sales requirements, including enhanced standards announced in March 2015 and April 2016.

As of the end of June 2017, Fannie Mae and Freddie Mac had sold over 82,000 mortgages with a total unpaid principal balance of \$16 billion. The loans included in NPL sales are generally severely delinquent. Loans already sold have been, on average, three years delinquent.

FHFA's goal is to achieve more favorable outcomes for borrowers and the Enterprises by providing alternatives to foreclosure wherever possible. FHFA believes that the sale of severely delinquent loans through NPL sales will improve borrower and neighborhood outcomes and will reduce Enterprise losses and risk to taxpayers. Reporting by servicers on borrower outcomes is required. This allows FHFA, the Enterprises and the public to evaluate outcomes, which are periodically reported by FHFA in its *Enterprise Non-Performing Loan Sales Reports*.

NPL SALE GUIDELINES

- **Bidder qualifications:** Bidders are required to identify their servicing partners at the time of qualification and must complete a servicing questionnaire to demonstrate a record of successful resolution of loans through alternatives to foreclosure;
- **Loss mitigation waterfall requirements:** Servicers must apply a waterfall of resolution tactics that first includes evaluating borrower eligibility for a loan modification, then a short sale or a deed-in-lieu of foreclosure. Foreclosure must be the last option in the waterfall. The waterfall may consider net present value to the investor;
- **Modification requirements:**
 - New servicers are required to solicit and evaluate all borrowers (other than those with an imminent foreclosure sale date or vacant property) for a loan modification that provides a benefit to the borrower and has the potential to be sustained by the borrower over the life of the modification;
 - Servicers are required to evaluate borrowers with a mark-to-market loan-to-value ratio above 115 percent for loan modifications that include principal and/or arrearage forgiveness;

KEY ELEMENTS OF NPL SALE GUIDELINES

Servicers must apply a waterfall of resolution tactics that first includes evaluating borrower eligibility for a loan modification, then a short sale or a deed-in-lieu of foreclosure. Modifications must provide a benefit to the borrower and the potential for a sustainable modification, and may include principal and/or arrearage forgiveness. Foreclosure must be the last option in the waterfall.

Servicers are encouraged to sell properties that have gone through foreclosure and entered Real Estate Owned (REO) status to individuals who will occupy the property as their primary residence or to non-profits.

Buyers must agree they will not "walk away" from vacant properties, or enter into "contract for deed" agreements on REO properties, unless the purchaser is a non-profit.

NPL buyers and servicers, including subsequent servicers, are required to report loan resolution results and borrower outcomes to the Enterprises for four years after the NPL sale.



FACT SHEET: NON-PERFORMING LOAN SALE GUIDELINES

- Modifications must not include an upfront fee or require prepayment of any amount of mortgage debt. They must either be fixed rate for the term of the modification or offer an initial period of reduced payments with limits on subsequent increases consistent with Home Affordable Modification Program (HAMP) requirements. The initial period must last for at least 5 years and interest rate increases may not exceed 1 percentage point per year thereafter;
- **No “walkaways”:** If a property securing a loan is vacant, buyers and servicers may not abandon the lien and “walk away” from the property. Instead, if a foreclosure alternative is not possible, the servicer must complete a foreclosure or sell or donate the loan, including to a government or non-profit entity;
- **REO sale requirements:** Servicers are encouraged to sell properties that have gone through foreclosure and entered Real Estate Owned (REO) status to individuals who will occupy the property as their primary residence or to non-profits. As a result, for the first 20 days after any NPL that becomes an REO property is marketed, the property may be sold only to buyers who intend to occupy the property as their primary residence or to non-profits;
- **Restriction on “contract for deed:”** NPL buyers must agree that they will not enter into, or allow servicers to enter into, contract for deed or lease to own agreements on REO properties unless the tenant or purchaser is a non-profit organization;
- **Subsequent servicer requirements:** Subsequent servicers must assume all the responsibilities of the initial servicer;
- **Bidding transparency:** To facilitate transparency of the NPL sales program and encourage robust participation by all interested participants, each Enterprise has developed a process for announcing upcoming NPL sale offerings. This includes an NPL webpage on the Enterprise’s website, email distribution to small, non-profit and minority- and women-owned business (MWOB) investors, and proactive outreach to potential bidders;
- **Small pools:** The Enterprises will offer small, geographically concentrated pools of NPLs, where feasible, to maximize opportunities for nonprofit organizations and MWOBs to purchase NPLs. The Enterprises will actively market such offerings to nonprofits and MWOBs and provide additional time for buyers to complete the transaction;
- **Reporting requirements:** NPL buyers and servicers, including subsequent servicers, are required to report loan resolution results and borrower outcomes to the Enterprises for four years after the NPL sale. These reports will help FHFA and the public evaluate the NPL program results and determine whether an NPL buyer and NPL servicer continue to be eligible for future sales based on pool level borrower outcomes, adjusted for subsequent market events. Consistent with applicable law, FHFA and/or the Enterprises provide public reports on aggregate borrower outcomes at the pool level.



大成 DENTONS

Matthew S. Yoon
Partner

matthew.yoon@dentons.com
D +1 212-768-5331

Dentons US LLP
1221 Avenue of the Americas
New York, NY 10020-1089
United States

dentons.com

MEMORANDUM

To: Robert Enten
Gordon Feinblatt
233 East Redwood Street
Baltimore, MD 21202

From: Dentons US LLP

Date: January 24, 2020

Subject: State Collection Agency Licensing for Trusts with Federally-Chartered Trustees

You have asked us to address whether any state in the United States clearly requires a collection agency, debt collector license or similar license (together, "Collection Agency license") to be obtained by a trust with a federally-chartered trustee in order to be able to buy, hold and sell residential mortgage loans, including defaulted and non-performing residential mortgage loans, on the secondary market and/or for securitization purposes (commonly referred to in the mortgage markets as the "Trust Structure").¹

In our long-standing and broad experience across the industry, we are aware that a significant number of market participants use the aforementioned Trust Structure to purchase, hold and sell residential mortgage loans, including defaulted and non-performing residential mortgage loans, on the secondary market and/or for securitization purposes. Significantly, however, with the exception of Maryland, we are unaware of any state regulator that has affirmatively required or even attempted to assert or require such trusts using the Trust Structure, including trusts that are established to purchase defaulted and non-performing residential mortgage loans, to obtain a Collection Agency license.

We understand there has been an assertion that a number of other states require trusts using the Trust Structure that purchase and hold defaulted residential mortgage loans to obtain Collection Agency licenses. We note that these other states have similar statutes to the Maryland Collection Agency Licensing Act ("MCALA"). We note that we have also conducted extensive case law research in all states as well as other research and have not found any cases or other information that would suggest that any state requires

¹ Dentons US LLP has a nationally-recognized and ranked consumer financial law regulatory practice led by attorneys with multiple decades of experience who specialize in residential mortgage regulation across all 50 states and the District of Columbia ("states"), in addition to applicable federal law. Our clients are comprised of large, well-established financial institutions, including money-center banks, non-depository mortgage lenders and mortgage servicers, private equity firms, hedge funds, debt funds, and other Wall Street institutions. We routinely advise our clients on all aspects of state licensing and regulatory matters, including Collection Agency licensing.

trusts using the Trust Structure, including trust that purchase and hold defaulted residential mortgage loans, to obtain a Collection Agency license.

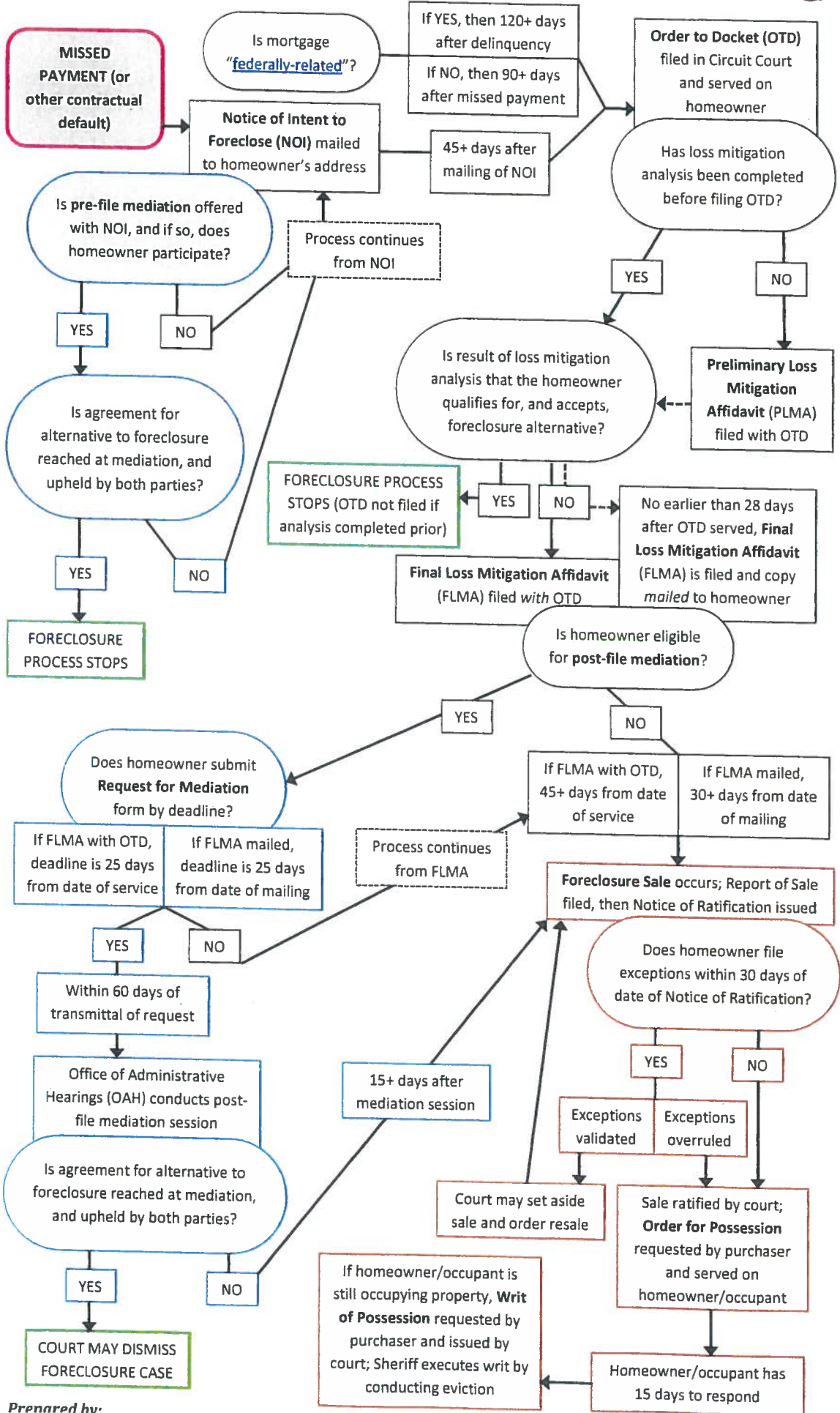
* * * * *

Please note that this is not a legal opinion. The authors of this memorandum are not members of the Bar of any jurisdiction other than New York and the District of Columbia, and we are not licensed to opine on matters in other jurisdictions. It should be noted that the authorities administering the laws discussed in this memorandum have broad discretionary powers which may permit such authorities, among other things, to impose licensing requirements, withdraw exemptions accorded by statute or to impose additional requirements or penalties not explicitly authorized by statute. We have prepared this memorandum solely for the use and benefit by Robert Enten at Gordon Feinblatt, in evaluating state licensing laws, and no other third party. Finally, this memorandum is strictly a confidential attorney-client privileged communication, subject to the full rights of the attorney-client privilege, and should not be shared with any third parties other than Robert Enten at Gordon Feinblatt unless we have provided our written consent.

Please contact Matthew S. Yoon or John P. Holahan or at (212) 768-6700 if you have any follow-up questions, or would like any further assistance.

Maryland Residential Foreclosure Process

10



11

Maryland Residential Foreclosure Process (notes for flow-chart)

NOTICE OF INTENT TO FORECLOSE (NOI)

- The lender can send the NOI to the homeowner any time after the first missed payment or other contractual default.
- The NOI must be sent at least 45 days before filing the Order to Docket.
- Within 5 business days of mailing NOI, the lender must submit an electronic copy of the NOI information to the Commissioner of Financial Regulation. The Commissioner uses NOI data to send outreach letters to homeowners at-risk of foreclosure, and for supervision of licensees as well as internal complaint investigation.
- If the property is *owner-occupied*, the NOI must include a loss mitigation application with instructions for completion. If the property is not owner-occupied, the NOI must include written notice of this determination and a telephone number to contest the determination.¹
- The NOI may include an offer for pre-file mediation. The lender is not required to offer mediation at this stage.
 - If the lender offers pre-file mediation and the homeowner elects to participate, the Office of Administrative Hearings (OAH) holds the session within 60 days after receiving notice from lender.
 - If an agreement is not reached during pre-file mediation (thus continuing the foreclosure process), then the homeowner has forfeited their right to participate in post-file mediation, unless the lender agrees to an additional post-file mediation session.
- If the lender completes the loss mitigation analysis (or if pre-file mediation results in an agreement) and identifies an alternative to foreclosure that the homeowner is eligible for and accepts, then the foreclosure process stops. If not, then the Order to Docket is filed.

ORDER TO DOCKET (OTD)

- The OTD is the first filing in the court action to foreclose.
 - Per *Maryland statute*, the earliest that a lender can file an OTD is 90 days after the first missed payment or other contractual default. Per *federal regulations*, the earliest that a lender can file the foreclosure is 120 days after the borrower's mortgage loan becomes delinquent.
 - The definition for "federally-related" loans determines whether or not the lender needs to follow Maryland statute or federal regulation – note that most loans fall under the category of "federally-related".²
- The OTD will include either a Final Loss Mitigation Affidavit (FLMA) or a Preliminary Loss Mitigation Affidavit (PLMA).
 - An FLMA will be included with the OTD if the lender has completed the loss mitigation analysis and has determined that there are no foreclosure alternatives available.
 - A PLMA will be included with the OTD if the lender has not started, or completed, the homeowner's loss mitigation analysis. If the lender sends a PLMA with the OTD and then determines that there are no foreclosure alternatives available, the lender must wait at least 28 days before filing the FLMA in court.

¹ The definition of *owner-occupied* is at Real Property Section 7-105.1(a)(8): (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.

² The definition of *federally-related* can be found online in the electronic code of federal regulations, [Title 12 Chapter X Part 1024.2](#).

POST-FILE MEDIATION

- Whether the homeowner receives the FLMA with the OTD or it is mailed to them after the OTD – if the homeowner is eligible for post-file mediation, the FLMA must include a Request for Mediation form.
- A homeowner is eligible for post-file mediation if s/he is an owner-occupant and has not participated in “pre-file” mediation (unless the lender has agreed to an additional mediation session).
- The homeowner must request a mediation session with their lender by submitting the request form within 25 days (if FLMA was with OTD, deadline is 25 days from date of service; if FLMA was mailed later, deadline is 25 days from date of mailing).
- The Office of Administrative Hearings (OAH) must conduct the mediation session within 60 days after transmittal of the request for mediation.
- If no agreement is reached during mediation, the foreclosure sale can be scheduled at the earliest, 15 days after the mediation session.

FORECLOSURE SALE

- If the homeowner does *not* request mediation, then the foreclosure sale date depends on whether an FLMA or PLMA is filed with the OTD.
 - If the FLMA is filed *with* the OTD, the foreclosure sale can occur 45 days after the OTD is served.
 - If the FLMA is mailed *after* the OTD (i.e. if the PMLA is filed with the OTD), the foreclosure sale can occur 30 days after the date the FLMA is mailed.

Prior to the Sale

- Terms of the foreclosure sale, including time and place, must be published in local newspaper once a week for 3 weeks prior to the sale. The terms of the foreclosure sale must also be provided to the homeowner by certified and first-class mail not more than 30 days, and not less than ten days, before a sale.
- Homeowner may cure the default, thereby cancelling the sale, by paying all past-due payments and fees up to 1 business day before the sale.

After the Sale

- Not more than 30 days after a sale, the person authorized to make the sale is required to file a report of the sale with the court.
- Also within 30 days after the sale, the foreclosure sale purchaser (including the foreclosing bank if they reclaimed the property) is required to register the property in the Maryland Foreclosed Property Registry. *See next section for more details about the Registry.*
- Upon the filing of a report of sale, the court clerk issues a Notice of Ratification of Sale and the homeowner has 30 days from the date of the notice to file exceptions. Exceptions can only be filed objecting to the procedure of the sale, not to any actions occurring prior to the sale.
 - If no exceptions are filed, or if the court considers any filed exceptions and concludes that the sale was fairly and properly made, the court will ratify the sale.
 - If exceptions are filed within 30 days and validated, or if the purchaser defaults, the court may set aside sale and order resale.

- Where the foreclosing lender purchases the property, the lender or its servicer will ordinarily try to establish contact with the borrower to designate a move-out date and ensure that the property is kept in broom-swept condition. A foreclosing lender may offer incentives, sometimes referred to as “cash for keys”, to ensure that the property is delivered in a timely manner and is maintained appropriately.
- If, after ratification, the person in actual possession fails or refuses to deliver possession, the purchaser may file a Motion for Judgment Awarding Possession.
 - Homeowner has 15 days to file a response to the Motion
 - After 15 days, court may issue an Order Granting Possession
 - If homeowner is still occupying property, purchaser sends Eviction Notice to “All Occupants” at the address of the property
 - If homeowner is still occupying property, purchaser files a Request for Writ of Possession; court clerk issues Writ of Possession; sheriff serves Writ and evicts homeowner/occupants.
 - There is a narrow exception to the requirement that a purchaser obtain a Writ of Possession to evict a person in actual possession of the property. The purchaser may take possession without a Writ of Possession if the purchaser reasonably believes that the former owner has abandoned the property, provides written notice by posting and first-class mail, and receives no response within 15 days after the later of posting or mailing the notice.

Select Changes in Maryland Residential Property Foreclosure Law From April 2008 to January 2020

(14)

Statutory Changes: Md. Code Ann., Real Prop. § 7-105.1. Residential property foreclosure procedure; mediation; related statutory changes		
Effective date of changes	Chapters	Summary of pertinent changes
April 3, 2008	Chs. 1/2 (SB 216/HB 365)	Prohibits an action to foreclose a mortgage or deed of trust on residential property from being filed until the later of 90 days after default or 45 days after a notice of intent to foreclose is sent, except under specified circumstances. Establishes detailed content requirements for foreclosure action filings.
June 1, 2009	Chs. 691/692 (HB 798/SB 807)	Clarifies the definition of "residential property" (and, thus, the applicability of the more protective provisions of the foreclosure process).
July 1, 2009	Ch. 149 (HB 640)	Authorizes local Maryland governments to enact laws requiring that notice of a foreclosure relating to "residential property" be given to a county or municipal agency or official within 5 days after filing an order to docket or a complaint to foreclose.
July 1, 2010	Ch. 485 (HB 472)	Strengthens existing disclosures (part of the Notice of Intent to Foreclose) that must be given to a homeowner at least 45 days before a foreclosure action is filed. Imposes new documentation requirements in connection with the order to docket or complaint to foreclose. Mandates completion of a loss mitigation analysis by the secured party no later than 30 days before a foreclosure sale of owner-occupied residential property. Allows most homeowners to request foreclosure mediation before a foreclosure sale of owner-occupied residential property may occur.
June 1, 2011	Ch. 355 (HB728)	Clarifies that notice of intent to foreclose for property that is not "owner-occupied residential property" does not need to be accompanied by various loss mitigation documents. Extends the amount of time that a borrower has to request mediation in a foreclosure action on owner-occupied residential property.
July 1, 2011	Chs. 36/37 (SB 205/HB 366)	Requires that an affidavit accompanying an order to docket or a complaint to foreclose a mortgage or deed of trust on residential property state, if applicable, that the contents of the notice of intent to foreclose were accurate at the time that notice was sent.

Select Changes in Maryland Residential Property Foreclosure Law From April 2008 to January 2020

(15)

Statutory Changes: Md. Code Ann., Real Prop. § 7-105.1. Residential property foreclosure procedure; mediation; related statutory changes		
Effective date of changes	Chapters	Summary of pertinent changes
	Chs. 245/246 (SB 516/HB 842)	Prohibits a foreclosure sale purchaser from exercising any right to collect rent payments from a bona fide tenant in possession of a residential property unless the purchaser conducts a specified reasonable inquiry concerning the occupancy of the residential property and serves on each bona fide tenant a specified notice concerning rent payments.
	Chs. 477/478 (SB 450/HB 412)	Prohibits a court, in an action to foreclose a mortgage or deed of trust on residential property, from accepting a lost note affidavit in lieu of a copy of the debt instrument unless the affidavit contains specified information.
October 1, 2012	Ch. 155 (HB 1373)	Establishes a Foreclosed Property Registry for certain property and requires foreclosure purchasers of residential property to register certain information, to update the information, and to pay fees.
	Ch. 156 (HB 1374)	Establishes a prefile mediation process between a secured party and a homeowner before commencement of a foreclosure action and establishes a process for local governments to issue certificates of vacancy or of property unfit for human habitation to allow for expedited foreclosure of certain properties.
June 1, 2013	Chs. 514/515 (SB 642/HB 1308)	Prohibits taking possession or threatening to take possession of residential property after a foreclosure from residents by using certain tactics and establishes appropriate ways to take possession of residential property.
April 14, 2014	Ch. 233 (HB 595)	Prohibits as a condition of transfer of owner-occupied residential property to a certified community development financial institution the limiting of ownership or occupancy of the property by the immediately preceding mortgagor or grantor.

Select Changes in Maryland Residential Property Foreclosure Law From April 2008 to January 2020

(16)

Statutory Changes: Md. Code Ann., Real Prop. § 7-105.1. Residential property foreclosure procedure; mediation; related statutory changes		
Effective date of changes	Chapters	Summary of pertinent changes
July 1, 2014	Ch. 592 (HB 274)	Requires that recovery of deficiency judgments arising out of residential property foreclosures must be filed as a motion in the foreclosure action within 3 years after final ratification of the auditor's report. Also reduces from 12 years to 3 years the statute of limitations for civil actions on a deed of trust, mortgage, or promissory note secured by owner-occupied residential property.
October 1, 2017	Chs. 346/347 (HB 26/SB 247)	Required a person authorized to institute a foreclosure sale of residential real property to provide specified notices to condominium or homeowners' association concerning proposed sale and any postponement or cancellation of any sale.
October 1, 2017	Ch. 617 (SB 1033)	Established a procedure for a secured party to petition a circuit court for approval to commence an immediate foreclosure of vacant and abandoned residential real property. Provides factors for a circuit court to use to determine if a residential real property is vacant and abandoned. Provides an alternative method for a secured party to serve foreclosure documents on a mortgagor or grantor.
October 1, 2018	Chs. 348/349 (SB 875/HB 1048)	Required a person authorized to sell residential real property subject to foreclosure to file a specified notice of foreclosure with the Commissioner of Financial Regulation.
January 1, 2019	Chs. 348/349 (HB 78/SB 222)	Required a foreclosure purchaser register with the Foreclosed Property Registry maintained by the Commissioner of Financial Regulation after a foreclosure auction and again after closing on a foreclosure sale. Requires a foreclosure purchaser to submit to the Foreclosed Property Registry any change to specified information within 21 days of such change.
May 13, 2019	Ch. 522 (SB 512)	Established a procedure for a consumer employed by the Federal or State government to obtain a stay of a foreclosure and/or repossession proceeding involving such consumer's residential owner-occupied real property in relation to an involuntary furlough (because of government

**Select Changes in Maryland Residential Property
Foreclosure Law From April 2008 to January 2020**

17

Statutory Changes: Md. Code Ann., Real Prop. § 7-105.1. Residential property foreclosure procedure; mediation; related statutory changes		
Effective date of changes	Chapters	Summary of pertinent changes
		shutdown).
October 1, 2019	Ch. 276 (SB 509)	Authorized Maryland counties and municipalities to conduct <i>in rem</i> judicial tax sale foreclosures for certain vacant real property (property must be a vacant lot or vacant structure unfit for habitation and be encumbered by tax liens exceeding the property value). Establishes procedure for initiating and conducting specified foreclosure proceedings.

Select Changes in Maryland Residential Property Foreclosure Law From April 2008 to January 2020

(18)

Regulatory Changes - COMAR 09.03.12 Foreclosure Procedures for Residential Property		
Effective date of changes	Regs. affected	Summary of pertinent changes
December 29, 2008	All	The chapter was adopted.
July 1, 2010	All	Amended definitions, notice of intent to foreclose form, and notice of filing form. Added timing information, preliminary loss mitigation affidavit form, final loss mitigation affidavit form, request for mediation form, loss mitigation application, instructions for preprinted envelopes, information about the filing of duplicate forms, and instructions form to be provided by the Maryland Office of Administrative Hearings to the parties to foreclosure mediation regarding required documents and information. (Note: This chapter revision was as an emergency provision with emergency status set to expire on December 27, 2010. The emergency status was extended to June 24, 2011, and subsequently extended to November 24, 2011.)
November 26, 2010	.02	Established that submission to the Commissioner of copies of notices of intent to foreclose may be required through electronic method determined by the Commissioner. (Note: This chapter revision was as an emergency provision with emergency status set to expire on April 26, 2011. The emergency status has been extended to October 24, 2011.)
October 25, 2011	All	Substantially revised the Commissioner's foreclosure regulations to comply with Ch. 355 of the 2011 Laws of Maryland.
October 1, 2012	All	Revised the Commissioner's foreclosure regulations to comply with Ch. 156 of the 2012 Laws of Maryland.
October 1, 2012	Registry	Mandated that DLLR establish a Foreclosure Registry Site to maintain and enforce the requirements of Ch. 155 of the 2012 Laws of Maryland.
February 1, 2015	.01 and .02	Added new Notice of Intent to Foreclose forms to conform to federal regulations regarding timeline for foreclosure referral; amended the foreclosure mediation instructions regarding document production prior to mediation; amended the foreclosure mediation checklist; and added a line for mortgage servicer mediation request form.

**Select Changes in Maryland Residential Property
Foreclosure Law From April 2008 to January 2020**

19

Regulatory Changes - COMAR 09.03.12 Foreclosure Procedures for Residential Property		
Effective date of changes	Regs. affected	Summary of pertinent changes
July 3, 2017	.01 and .02	Provided that secured parties may include the Nationwide Mortgage Licensing System and Registry unique identifier for the mortgage lender and originator when sending a notice of intent to foreclose.
July 16, 2018	.01 and .08	Added new definition of "vacant and abandoned" and specified notice form for use when a property is found to be vacant and abandoned.
July 1, 2016	.09	Established procedures for a secured party and a borrower to agree to and participate in a pre-file mediation.

Select Changes in Maryland Residential Property Foreclosure Law From April 2008 to January 2020

20

Rule Changes –Title 14. Sales of Property; Chapter 200. Foreclosure of Lien Instruments.		
Effective date of changes	Rules affected	Summary of pertinent changes
May 1, 2009	All	Replaced the former rules for practice and procedure for foreclosures of interests in real property, primarily to address changes in residential property foreclosure requirements.
June 17, 2009	14-202 14-209 14-210	Amended the definition of "Residential Property" to require that it be designed principally and be intended for human habitation. Amended the notice requirements in actions to foreclose on residential property. Amended the requirements for notice prior to selling property in an action to foreclose a lien.
July 1, 2010	14-202 14-205 14-206 14-207 14-208 14-209.1 14-211 14-212 14-214	Added definitions of "Final Loss Mitigation Affidavit," "Foreclosure Mediation," "Loss Mitigation Analysis," "Loss Mitigation Program," "Owner-Occupied Residential Property," and "Preliminary Loss Mitigation Affidavit." Amended the conditions precedent to the filing of an action to foreclose a lien on residential property. Amended the procedure for filing a petition for immediate foreclosure against owner-occupied residential property. Amended the requirements for filing a complaint to foreclose or order to docket. Amended the subsequent proceedings after the filing of a complaint to foreclose a lien that has neither a power of sale nor an assent to a decree. Added requirements for the advertising of a sale of owner-occupied residential property. Added requirements for a motion by a borrower to stay the sale and dismiss an action to foreclose on owner-occupied residential property. Established that alternative dispute resolution applies to actions that are ineligible for foreclosure mediation. Added a cross reference to the timing of the sale of residential property.
October 20, 2010	14-207 14-207.1	Amended the requirements for service of certain affidavits, pleadings, and papers. Allowed the court to adopt procedures to screen pleadings and papers filed in an action to foreclose a lien.
July 1, 2011	14-210	Amended the requirements for notice prior to selling property in an action to foreclose a lien.

Select Changes in Maryland Residential Property Foreclosure Law From April 2008 to January 2020

(21)

Rule Changes –Title 14. Sales of Property; Chapter 200. Foreclosure of Lien Instruments.		
Effective date of changes	Rules affected	Summary of pertinent changes
November 1, 2011	14-207 14-209 14-209.1 14-211	Revised rules primarily to comply with Ch. 355 of the 2011 Laws of Maryland.
January 1, 2013	14-212	Allows court to refer, prior to sale of the property, a foreclosure action to mediation or another appropriate form of alternative dispute resolution
May 1, 2013	14-202 14-207 14-208.1 14.209.1 14-211 14-214 14-215	Revised rules to implement the new statutory requirements, primarily in Ch. 156.
January 1, 2014	14-215	Added a cross reference to Real Prop. § 7-113(c)(1) (alternative method to take possession of residential real property when the person claiming a right to possession of the property by the terms of foreclosure sale or court order does not have a court-ordered writ of possession executed by the sheriff or constable).
January 1, 2016	14-207.1	Established authority for a circuit court to screen pleadings and other papers filed in a foreclosure proceeding for compliance with applicable law and provided a basis for such court to dismiss the underlying foreclosure action.
April 1, 2017	14-216	Specified that motion for deficiency judgment after ratification of auditor's report must be served in accordance with Rule 2-121.
July 1, 2018	14-208, 14-210, 14-214; 14-214.1	Added a condominium and/or homeowners' association as a party to receive notice of a proposed foreclosure sale; and adjusts internal numbering cross-reference. Adds new rule (14-214) requiring trustee to send notice of sale cancellation/postponement to certain parties. Adds new rule (14-214.1) describing parties authorized to sell property under a power of sale and under a deed of trust and specifies payment terms.

**Select Changes in Maryland Residential Property
Foreclosure Law From April 2008 to January 2020**

22

Rule Changes –Title 14. Sales of Property; Chapter 200. Foreclosure of Lien Instruments.		
Effective date of changes	Rules affected	Summary of pertinent changes
January 1, 2019	14-206	Established procedure for secured party to file petition to be excused from the time and notice requirements of Real Prop. § 7-105.1(b), (c) and Rule 14-205(b) in certain fraud/deception, property destruction, bankruptcy, or vacant/abandoned situations.

Bob Enten_UNF_SB262

Uploaded by: Enten, Bob

Position: UNF



**Senate Bill 262– Maryland Collection Agency Licensing Act
Senate Finance Committee
February 11, 2020**

Opposed

The groups listed above are strongly opposed to Senate Bill 262 – Maryland Collection Agency Licensing Act. The bill would:

- Require passive, statutory trusts to become licensed debt collection agencies, making Maryland the ONLY state in the country to do so.
- Reverse the well-reasoned 5 – 2 decision of the Maryland Court of Appeals in *Blackstone v. Sharma*, 461 Md. 87 (2018).
- Cause confusion for investors and make compliance impossible - statutory trusts do not have any individuals associated with them.
- Create substantial uncertainty in the mortgage marketplace which relies on a secondary market to keep credit flowing to homeowners.
- Provide no added benefit or enhanced consumer protection, as the trusts, which have no borrower interaction, already use licensed mortgage loan servicers to perform all interaction with borrowers in strict compliance with robust federal and State laws and regulations, including those of the Federal Consumer Financial Protection Bureau and the Maryland Commissioner of Financial Regulation.
- Make lending more expensive by limiting access to mortgage credit.

Effect on Mortgage Lending and Borrowers

The Federal Housing Finance Agency (FHFA), regulates Fannie Mae, Freddie Mac and the Federal Home Loan Banks (the Enterprises) which account for more than 70% of the mortgage marketplace. FHFA has written to Chairman Kelley and Chairman Davis (*copy attached*) stating that:

“... the legislation would adversely impact borrowers and have a chilling effect on the secondary market insofar as Maryland properties are concerned. The burden and the confusion of applying

“FHFA strongly believes both Maryland borrowers and the Enterprises could be adversely impacted by the proposed requirement to require transferees of delinquent Maryland mortgage loans to become licensed debt collection agencies under MCALA.”

“Requiring a trust to be licensed under MCALA provides no added benefit or enhanced consumer protection.”

FHFA requires that the licensed mortgage loan servicers who manage these loans do everything possible to help the borrower avoid foreclosure (*See attached FHFA Fact Sheet*).

Of major concern to everyone involved in making mortgage loans available to Maryland citizens is that, contrary to what has been stated by proponents for the bill, Maryland would be the only state in the country to interpret its debt collection agency licensing statute as requiring that these trusts be licensed as collection agencies. **None of these trusts, which hold mortgages from every state in the country, are licensed in any state.** (*See letter memo from Dentons US LLP*). On the other hand, all of these trusts must follow each state’s foreclosure laws and act through appropriately licensed mortgage loan servicers.

The uncodified language at the end of the bill is unprecedented and equally worrisome.

- What will be the impact on foreclosures which have already occurred?
- Will they be nullified because the holder of the mortgage was not licensed as a collection agency?
- Because no one ever thought this was a requirement, will thousands of foreclosures be nullified and have to start all over again?
- Will all of these trusts have retroactively violated Maryland law and be exposed to civil and criminal penalties as well as class action law suits?

Since 2008, Maryland has enacted numerous statutes to protect consumers whose mortgages are in default and who are exposed to the foreclosure process. *A flow chart and summary of the foreclosure process are attached together with a summary of the legislation, regulations and Rules.* All foreclosures are subject to these laws, including those for mortgages packaged in trusts. If there are concerns about Maryland’s foreclosure process, they should be addressed by amending our foreclosure statutes which are contained in the Real Property Article. There is nothing in this bill or in the debt collection statutes to aid borrowers who are facing foreclosure.

Foreclosures are at Historic Lows

Maryland’s current foreclosure rate has fallen to 1.1%, a 77% decline from its high of 4.93% in Q2 2012. At 1.1%, it matches rates from 23 years ago – 1.1% in 2Q 1996. *Mortgage Bankers Association National Delinquency Survey.*

For all the foregoing reasons, we urge the Committee to give the bill an unfavorable report.



CONTROLLED

Federal Housing Finance Agency

MEMORANDUM

January 29, 2020
Via Electronic Mail

TO: The Honorable Delores G. Kelley The Honorable Dereck E. Davis
 Chair, Finance Committee Chairman, Economic Matters Committee
 Maryland Senate Maryland House of Delegates

FROM: Alfred M. Pollard *AMPollard*
 General Counsel

RE: Maryland Collection Agency Licensing Act—Senate Bill 262 and House Bill 334

The Federal Housing Finance Agency (FHFA) has been informed of the re-introduction of the Maryland Collection Agency Licensing Act that would impose debt collection agency status and registration on certain entities including trusts.

On March 26, 2019, I conveyed issues surrounding this legislation and recommended avoiding a result that would impact adversely Maryland homeowners, particularly when they face economic difficulties and may require action to be taken to address their mortgage obligations. The newly introduced bills raise the same concerns. I have attached that Memorandum for your convenience.

At its core and as noted in the Memorandum, if enacted, the legislation would adversely impact borrowers and have a chilling effect on the secondary market insofar as Maryland properties are concerned. The burden and the confusion of applying the legislation would decrease investor demand and thereby lessen the availability of products to assist homeowners in the State.

FHFA remains committed to efforts of its regulated entities that help homeowners facing challenges. Many have benefitted from these programs.

I hope this information assists you in addressing this legislation. As noted before, I am happy to provide additional information to you or your staff if that would be helpful. My information remains alfred.pollard@fhfa.gov or 202 649 3050.

Attachment



Federal Housing Finance Agency

4

March 26, 2019
Via Electronic Mail

TO: The Honorable Delores G. Kelley The Honorable Dereck E. Davis
Chair, Finance Committee Chairman, Economic Matters Committee
Maryland Senate Maryland House of Delegates

FROM: Alfred M. Pollard *AMPollard*
General Counsel

RE: Senate Bill 485/House Bill 593— Maryland Collection Agency Licensing Act

The Federal Housing Finance Agency (FHFA) has been informed of legislation that would impose registration as a debt collection agency on certain entities including trusts.

Federal Housing Finance Agency oversees Fannie Mae and Freddie Mac (the Enterprises) and the eleven Federal Home Loan Banks. Together, they support mortgage financing for millions of mortgages across the country and in Maryland. The Enterprises, operating under FHFA conservatorships, have continued their operations in making mortgages available and administering major loan modification programs that have assisted over three million homeowners during and since the financial crisis.

Legislation

SB 485 and HB 593 would amend the definition of “consumer claim” and define “mortgage lender” under the Maryland Collection Agency Licensing Act (MCALA). The bills indicate the General Assembly’s intent that the legislation be applied and interpreted to abrogate the decision of the Maryland Court of Appeals in *Blackstone v. Sharma*, 461 Md. 87 (2018), thereby requiring transferees of delinquent loans to become licensed debt collection agencies under MCALA, as held by the Maryland Court of Special Appeals in *Blackstone v. Sharma*, 233 Md. App. 58, 161 A.3d 718 (2017).

Potential Uncertainty and Impact

The proposed legislation would create substantial uncertainty for the Maryland mortgage market and could harm existing Maryland homeowners as well as future borrowers. The bills appear to require any trusts that acquire delinquent Maryland mortgage debt be licensed as a collection agency under MCALA before pursuing a foreclosure. This licensing requirement will provide little or no benefit for Maryland borrowers who have mortgages held or transferred by the Enterprises.

Enterprise Programs. The Enterprises sell seriously delinquent whole loans to investors using non-performing loan offerings (NPL) and many investors purchase these loans intending to securitize them employing trusts. In addition, Freddie Mac periodically transfers delinquent loans into Freddie Mac-created common law trusts, which securitize the loans via two programs— the Seasoned Credit Risk Transfer (SCRT) program (which issues securities backed by loans modified to assist borrowers who are at risk of foreclosure to help them keep their homes) and the Seasoned Loan Structured

Transaction (SLST) program (which issues securities backed by re-performing loans and moderately delinquent loans). The function of the trusts created pursuant to the NPL, SCRT and SLST programs are primarily to hold the subject mortgages and *not* for the purpose of servicing any Maryland borrower's loan. Rather, the trust utilizes a properly licensed or otherwise exempt servicer under Maryland law to perform all servicing-related functions for the Maryland borrower.

The NPL, SCRT and SLST programs are important tools to assist delinquent Maryland borrowers by providing them a second-chance at avoiding foreclosure by working with new investors in delinquent loans. These investors may have additional programs to assist these borrowers, while helping the Enterprises to manage risk on mortgage-related investment portfolios and permitting transfer of credit risk to private sector investors.

Once transferred to a trust (SCRT and SLST) or a purchaser (NPL), the loans are serviced by Enterprise-approved servicers, who must comply with FHFA's servicing guidelines for such sales.¹ Servicers must apply a waterfall of resolution tactics that first includes evaluating borrower eligibility for a loan modification then a short sale or a deed-in-lieu of foreclosure. Modifications must provide a benefit to the borrower and the potential for a sustainable modification and may include principal and/or arrearage forgiveness. Servicers may be able to provide additional options to borrowers with unique situations that may not otherwise be available under the Enterprises' traditional servicing guidelines. Foreclosure must be the last option in any waterfall.

Impact. These programs to keep homeowners in their homes are among the best devices to maintain stability in communities, provide a long-term benefit to neighborhoods and avoid a burden on localities and the State. FHFA strongly believes both Maryland borrowers and the Enterprises could be adversely impacted by the proposed requirement to require transferees of delinquent Maryland mortgage loans to become licensed debt collection agencies under MCALA. If enacted, the requirement could be confusing for investors and difficult to maintain compliance as securitization trusts are special purpose entities that typically do not have individuals associated with them. Requiring a trust to be licensed under MCALA provides no added benefit or enhanced consumer protection, as the trust, which has no borrower interaction, utilizes a servicer to perform all consumer-facing servicing responsibilities in strict compliance with applicable law and relevant FHFA and Enterprise program requirements (in the case of the SCRT and SLST programs).²

Assuming a trust is even able to comply with the existing Maryland Collection Agency License requirements, this burden will undoubtedly create decreased investor demand for products associated with the purchase of delinquent loans in Maryland and potential investor withdrawal from the market, lessening the availability of these products to assist homeowners.

I hope that this information on the substantial uncertainty the proposed legislation may create for the Maryland mortgage market would be taken into consideration as you work on the bills. I would be happy to answer any questions you may have and I may be reached at 202 649 3050 or alfred.pollard@fhfa.gov.

¹ <https://www.fhfa.gov/Media/PublicAffairs/Pages/Non-Performing-Loan-Sale-Guidelines.aspx>

² https://www.freddiemac.com/seasonedloanofferings_docs/npl_sales_guidelines_factsheets.pdf



FACT SHEET: NON-PERFORMING LOAN SALE GUIDELINES

NON-PERFORMING LOAN SALES

BACKGROUND

The Federal Housing Finance Agency (FHFA) requires sales of non-performing loans (NPLs) by Freddie Mac and Fannie Mae (the Enterprises) to meet specific requirements. Drawing on the Enterprises' experience with NPL sales, FHFA continues to enhance its NPL sales requirements, including enhanced standards announced in March 2015 and April 2016.

As of the end of June 2017, Fannie Mae and Freddie Mac had sold over 82,000 mortgages with a total unpaid principal balance of \$16 billion. The loans included in NPL sales are generally severely delinquent. Loans already sold have been, on average, three years delinquent.

FHFA's goal is to achieve more favorable outcomes for borrowers and the Enterprises by providing alternatives to foreclosure wherever possible. FHFA believes that the sale of severely delinquent loans through NPL sales will improve borrower and neighborhood outcomes and will reduce Enterprise losses and risk to taxpayers. Reporting by servicers on borrower outcomes is required. This allows FHFA, the Enterprises and the public to evaluate outcomes, which are periodically reported by FHFA in its *Enterprise Non-Performing Loan Sales Reports*.

NPL SALE GUIDELINES

- **Bidder qualifications:** Bidders are required to identify their servicing partners at the time of qualification and must complete a servicing questionnaire to demonstrate a record of successful resolution of loans through alternatives to foreclosure;
- **Loss mitigation waterfall requirements:** Servicers must apply a waterfall of resolution tactics that first includes evaluating borrower eligibility for a loan modification, then a short sale or a deed-in-lieu of foreclosure. Foreclosure must be the last option in the waterfall. The waterfall may consider net present value to the investor;
- **Modification requirements:**
 - New servicers are required to solicit and evaluate all borrowers (other than those with an imminent foreclosure sale date or vacant property) for a loan modification that provides a benefit to the borrower and has the potential to be sustained by the borrower over the life of the modification;
 - Servicers are required to evaluate borrowers with a mark-to-market loan-to-value ratio above 115 percent for loan modifications that include principal and/or arrearage forgiveness;

KEY ELEMENTS OF NPL SALE GUIDELINES

Servicers must apply a waterfall of resolution tactics that first includes evaluating borrower eligibility for a loan modification, then a short sale or a deed-in-lieu of foreclosure. Modifications must provide a benefit to the borrower and the potential for a sustainable modification, and may include principal and/or arrearage forgiveness. Foreclosure must be the last option in the waterfall.

Servicers are encouraged to sell properties that have gone through foreclosure and entered Real Estate Owned (REO) status to individuals who will occupy the property as their primary residence or to non-profits.

Buyers must agree they will not "walk away" from vacant properties, or enter into "contract for deed" agreements on REO properties, unless the purchaser is a non-profit.

NPL buyers and servicers, including subsequent servicers, are required to report loan resolution results and borrower outcomes to the Enterprises for four years after the NPL sale.



FACT SHEET: NON-PERFORMING LOAN SALE GUIDELINES

- Modifications must not include an upfront fee or require prepayment of any amount of mortgage debt. They must either be fixed rate for the term of the modification or offer an initial period of reduced payments with limits on subsequent increases consistent with Home Affordable Modification Program (HAMP) requirements. The initial period must last for at least 5 years and interest rate increases may not exceed 1 percentage point per year thereafter;
- **No “walkaways”:** If a property securing a loan is vacant, buyers and servicers may not abandon the lien and “walk away” from the property. Instead, if a foreclosure alternative is not possible, the servicer must complete a foreclosure or sell or donate the loan, including to a government or non-profit entity;
- **REO sale requirements:** Servicers are encouraged to sell properties that have gone through foreclosure and entered Real Estate Owned (REO) status to individuals who will occupy the property as their primary residence or to non-profits. As a result, for the first 20 days after any NPL that becomes an REO property is marketed, the property may be sold only to buyers who intend to occupy the property as their primary residence or to non-profits;
- **Restriction on “contract for deed:”** NPL buyers must agree that they will not enter into, or allow servicers to enter into, contract for deed or lease to own agreements on REO properties unless the tenant or purchaser is a non-profit organization;
- **Subsequent servicer requirements:** Subsequent servicers must assume all the responsibilities of the initial servicer;
- **Bidding transparency:** To facilitate transparency of the NPL sales program and encourage robust participation by all interested participants, each Enterprise has developed a process for announcing upcoming NPL sale offerings. This includes an NPL webpage on the Enterprise’s website, email distribution to small, non-profit and minority- and women-owned business (MWOB) investors, and proactive outreach to potential bidders;
- **Small pools:** The Enterprises will offer small, geographically concentrated pools of NPLs, where feasible, to maximize opportunities for nonprofit organizations and MWOBs to purchase NPLs. The Enterprises will actively market such offerings to nonprofits and MWOBs and provide additional time for buyers to complete the transaction;
- **Reporting requirements:** NPL buyers and servicers, including subsequent servicers, are required to report loan resolution results and borrower outcomes to the Enterprises for four years after the NPL sale. These reports will help FHFA and the public evaluate the NPL program results and determine whether an NPL buyer and NPL servicer continue to be eligible for future sales based on pool level borrower outcomes, adjusted for subsequent market events. Consistent with applicable law, FHFA and/or the Enterprises provide public reports on aggregate borrower outcomes at the pool level.



大成 DENTONS

Matthew S. Yoon
Partner

matthew.yoon@dentons.com
D +1 212-768-5331

Dentons US LLP
1221 Avenue of the Americas
New York, NY 10020-1089
United States

dentons.com

MEMORANDUM

To: Robert Enten
Gordon Feinblatt
233 East Redwood Street
Baltimore, MD 21202

From: Dentons US LLP

Date: January 24, 2020

Subject: State Collection Agency Licensing for Trusts with Federally-Chartered Trustees

You have asked us to address whether any state in the United States clearly requires a collection agency, debt collector license or similar license (together, "Collection Agency license") to be obtained by a trust with a federally-chartered trustee in order to be able to buy, hold and sell residential mortgage loans, including defaulted and non-performing residential mortgage loans, on the secondary market and/or for securitization purposes (commonly referred to in the mortgage markets as the "Trust Structure").¹

In our long-standing and broad experience across the industry, we are aware that a significant number of market participants use the aforementioned Trust Structure to purchase, hold and sell residential mortgage loans, including defaulted and non-performing residential mortgage loans, on the secondary market and/or for securitization purposes. Significantly, however, with the exception of Maryland, we are unaware of any state regulator that has affirmatively required or even attempted to assert or require such trusts using the Trust Structure, including trusts that are established to purchase defaulted and non-performing residential mortgage loans, to obtain a Collection Agency license.

We understand there has been an assertion that a number of other states require trusts using the Trust Structure that purchase and hold defaulted residential mortgage loans to obtain Collection Agency licenses. We note that these other states have similar statutes to the Maryland Collection Agency Licensing Act ("MCALA"). We note that we have also conducted extensive case law research in all states as well as other research and have not found any cases or other information that would suggest that any state requires

¹ Dentons US LLP has a nationally-recognized and ranked consumer financial law regulatory practice led by attorneys with multiple decades of experience who specialize in residential mortgage regulation across all 50 states and the District of Columbia ("states"), in addition to applicable federal law. Our clients are comprised of large, well-established financial institutions, including money-center banks, non-depository mortgage lenders and mortgage servicers, private equity firms, hedge funds, debt funds, and other Wall Street institutions. We routinely advise our clients on all aspects of state licensing and regulatory matters, including Collection Agency licensing.

trusts using the Trust Structure, including trust that purchase and hold defaulted residential mortgage loans, to obtain a Collection Agency license.

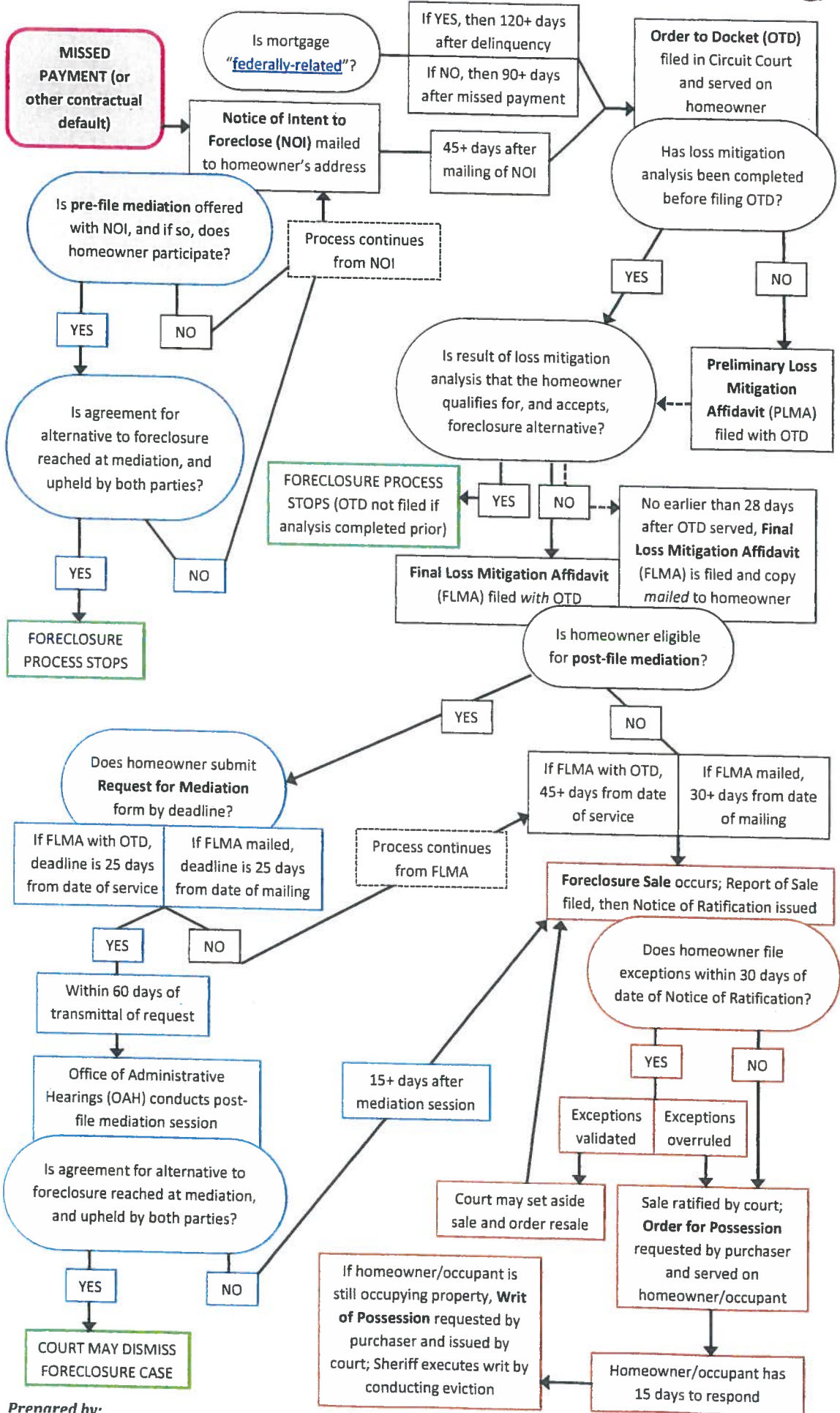
* * * * *

Please note that this is not a legal opinion. The authors of this memorandum are not members of the Bar of any jurisdiction other than New York and the District of Columbia, and we are not licensed to opine on matters in other jurisdictions. It should be noted that the authorities administering the laws discussed in this memorandum have broad discretionary powers which may permit such authorities, among other things, to impose licensing requirements, withdraw exemptions accorded by statute or to impose additional requirements or penalties not explicitly authorized by statute. We have prepared this memorandum solely for the use and benefit by Robert Enten at Gordon Feinblatt, in evaluating state licensing laws, and no other third party. Finally, this memorandum is strictly a confidential attorney-client privileged communication, subject to the full rights of the attorney-client privilege, and should not be shared with any third parties other than Robert Enten at Gordon Feinblatt unless we have provided our written consent.

Please contact Matthew S. Yoon or John P. Holahan or at (212) 768-6700 if you have any follow-up questions, or would like any further assistance.

Maryland Residential Foreclosure Process

10



11

Maryland Residential Foreclosure Process (notes for flow-chart)

NOTICE OF INTENT TO FORECLOSE (NOI)

- The lender can send the NOI to the homeowner any time after the first missed payment or other contractual default.
- The NOI must be sent at least 45 days before filing the Order to Docket.
- Within 5 business days of mailing NOI, the lender must submit an electronic copy of the NOI information to the Commissioner of Financial Regulation. The Commissioner uses NOI data to send outreach letters to homeowners at-risk of foreclosure, and for supervision of licensees as well as internal complaint investigation.
- If the property is *owner-occupied*, the NOI must include a loss mitigation application with instructions for completion. If the property is not owner-occupied, the NOI must include written notice of this determination and a telephone number to contest the determination.¹
- The NOI may include an offer for pre-file mediation. The lender is not required to offer mediation at this stage.
 - If the lender offers pre-file mediation and the homeowner elects to participate, the Office of Administrative Hearings (OAH) holds the session within 60 days after receiving notice from lender.
 - If an agreement is not reached during pre-file mediation (thus continuing the foreclosure process), then the homeowner has forfeited their right to participate in post-file mediation, unless the lender agrees to an additional post-file mediation session.
- If the lender completes the loss mitigation analysis (or if pre-file mediation results in an agreement) and identifies an alternative to foreclosure that the homeowner is eligible for and accepts, then the foreclosure process stops. If not, then the Order to Docket is filed.

ORDER TO DOCKET (OTD)

- The OTD is the first filing in the court action to foreclose.
 - Per *Maryland statute*, the earliest that a lender can file an OTD is 90 days after the first missed payment or other contractual default. Per *federal regulations*, the earliest that a lender can file the foreclosure is 120 days after the borrower's mortgage loan becomes delinquent.
 - The definition for "federally-related" loans determines whether or not the lender needs to follow Maryland statute or federal regulation – note that most loans fall under the category of "federally-related".²
- The OTD will include either a Final Loss Mitigation Affidavit (FLMA) or a Preliminary Loss Mitigation Affidavit (PLMA).
 - An FLMA will be included with the OTD if the lender has completed the loss mitigation analysis and has determined that there are no foreclosure alternatives available.
 - A PLMA will be included with the OTD if the lender has not started, or completed, the homeowner's loss mitigation analysis. If the lender sends a PLMA with the OTD and then determines that there are no foreclosure alternatives available, the lender must wait at least 28 days before filing the FLMA in court.

¹ The definition of *owner-occupied* is at Real Property Section 7-105.1(a)(8): (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.

² The definition of *federally-related* can be found online in the electronic code of federal regulations, [Title 12 Chapter X Part 1024.2](#).

POST-FILE MEDIATION

- Whether the homeowner receives the FLMA with the OTD or it is mailed to them after the OTD – if the homeowner is eligible for post-file mediation, the FLMA must include a Request for Mediation form.
- A homeowner is eligible for post-file mediation if s/he is an owner-occupant and has not participated in “pre-file” mediation (unless the lender has agreed to an additional mediation session).
- The homeowner must request a mediation session with their lender by submitting the request form within 25 days (if FLMA was with OTD, deadline is 25 days from date of service; if FLMA was mailed later, deadline is 25 days from date of mailing).
- The Office of Administrative Hearings (OAH) must conduct the mediation session within 60 days after transmittal of the request for mediation.
- If no agreement is reached during mediation, the foreclosure sale can be scheduled at the earliest, 15 days after the mediation session.

FORECLOSURE SALE

- If the homeowner does *not* request mediation, then the foreclosure sale date depends on whether an FLMA or PLMA is filed with the OTD.
 - If the FLMA is filed *with* the OTD, the foreclosure sale can occur 45 days after the OTD is served.
 - If the FLMA is mailed *after* the OTD (i.e. if the PMLA is filed with the OTD), the foreclosure sale can occur 30 days after the date the FLMA is mailed.

Prior to the Sale

- Terms of the foreclosure sale, including time and place, must be published in local newspaper once a week for 3 weeks prior to the sale. The terms of the foreclosure sale must also be provided to the homeowner by certified and first-class mail not more than 30 days, and not less than ten days, before a sale.
- Homeowner may cure the default, thereby cancelling the sale, by paying all past-due payments and fees up to 1 business day before the sale.

After the Sale

- Not more than 30 days after a sale, the person authorized to make the sale is required to file a report of the sale with the court.
- Also within 30 days after the sale, the foreclosure sale purchaser (including the foreclosing bank if they reclaimed the property) is required to register the property in the Maryland Foreclosed Property Registry. *See next section for more details about the Registry.*
- Upon the filing of a report of sale, the court clerk issues a Notice of Ratification of Sale and the homeowner has 30 days from the date of the notice to file exceptions. Exceptions can only be filed objecting to the procedure of the sale, not to any actions occurring prior to the sale.
 - If no exceptions are filed, or if the court considers any filed exceptions and concludes that the sale was fairly and properly made, the court will ratify the sale.
 - If exceptions are filed within 30 days and validated, or if the purchaser defaults, the court may set aside sale and order resale.

- Where the foreclosing lender purchases the property, the lender or its servicer will ordinarily try to establish contact with the borrower to designate a move-out date and ensure that the property is kept in broom-swept condition. A foreclosing lender may offer incentives, sometimes referred to as “cash for keys”, to ensure that the property is delivered in a timely manner and is maintained appropriately.
- If, after ratification, the person in actual possession fails or refuses to deliver possession, the purchaser may file a Motion for Judgment Awarding Possession.
 - Homeowner has 15 days to file a response to the Motion
 - After 15 days, court may issue an Order Granting Possession
 - If homeowner is still occupying property, purchaser sends Eviction Notice to “All Occupants” at the address of the property
 - If homeowner is still occupying property, purchaser files a Request for Writ of Possession; court clerk issues Writ of Possession; sheriff serves Writ and evicts homeowner/occupants.
 - There is a narrow exception to the requirement that a purchaser obtain a Writ of Possession to evict a person in actual possession of the property. The purchaser may take possession without a Writ of Possession if the purchaser reasonably believes that the former owner has abandoned the property, provides written notice by posting and first-class mail, and receives no response within 15 days after the later of posting or mailing the notice.

Select Changes in Maryland Residential Property Foreclosure Law From April 2008 to January 2020

(14)

Statutory Changes: Md. Code Ann., Real Prop. § 7-105.1. Residential property foreclosure procedure; mediation; related statutory changes		
Effective date of changes	Chapters	Summary of pertinent changes
April 3, 2008	Chs. 1/2 (SB 216/HB 365)	Prohibits an action to foreclose a mortgage or deed of trust on residential property from being filed until the later of 90 days after default or 45 days after a notice of intent to foreclose is sent, except under specified circumstances. Establishes detailed content requirements for foreclosure action filings.
June 1, 2009	Chs. 691/692 (HB 798/SB 807)	Clarifies the definition of "residential property" (and, thus, the applicability of the more protective provisions of the foreclosure process).
July 1, 2009	Ch. 149 (HB 640)	Authorizes local Maryland governments to enact laws requiring that notice of a foreclosure relating to "residential property" be given to a county or municipal agency or official within 5 days after filing an order to docket or a complaint to foreclose.
July 1, 2010	Ch. 485 (HB 472)	Strengthens existing disclosures (part of the Notice of Intent to Foreclose) that must be given to a homeowner at least 45 days before a foreclosure action is filed. Imposes new documentation requirements in connection with the order to docket or complaint to foreclose. Mandates completion of a loss mitigation analysis by the secured party no later than 30 days before a foreclosure sale of owner-occupied residential property. Allows most homeowners to request foreclosure mediation before a foreclosure sale of owner-occupied residential property may occur.
June 1, 2011	Ch. 355 (HB728)	Clarifies that notice of intent to foreclose for property that is not "owner-occupied residential property" does not need to be accompanied by various loss mitigation documents. Extends the amount of time that a borrower has to request mediation in a foreclosure action on owner-occupied residential property.
July 1, 2011	Chs. 36/37 (SB 205/HB 366)	Requires that an affidavit accompanying an order to docket or a complaint to foreclose a mortgage or deed of trust on residential property state, if applicable, that the contents of the notice of intent to foreclose were accurate at the time that notice was sent.

Select Changes in Maryland Residential Property Foreclosure Law From April 2008 to January 2020

(15)

Statutory Changes: Md. Code Ann., Real Prop. § 7-105.1. Residential property foreclosure procedure; mediation; related statutory changes		
Effective date of changes	Chapters	Summary of pertinent changes
	Chs. 245/246 (SB 516/HB 842)	Prohibits a foreclosure sale purchaser from exercising any right to collect rent payments from a bona fide tenant in possession of a residential property unless the purchaser conducts a specified reasonable inquiry concerning the occupancy of the residential property and serves on each bona fide tenant a specified notice concerning rent payments.
	Chs. 477/478 (SB 450/HB 412)	Prohibits a court, in an action to foreclose a mortgage or deed of trust on residential property, from accepting a lost note affidavit in lieu of a copy of the debt instrument unless the affidavit contains specified information.
October 1, 2012	Ch. 155 (HB 1373)	Establishes a Foreclosed Property Registry for certain property and requires foreclosure purchasers of residential property to register certain information, to update the information, and to pay fees.
	Ch. 156 (HB 1374)	Establishes a prefile mediation process between a secured party and a homeowner before commencement of a foreclosure action and establishes a process for local governments to issue certificates of vacancy or of property unfit for human habitation to allow for expedited foreclosure of certain properties.
June 1, 2013	Chs. 514/515 (SB 642/HB 1308)	Prohibits taking possession or threatening to take possession of residential property after a foreclosure from residents by using certain tactics and establishes appropriate ways to take possession of residential property.
April 14, 2014	Ch. 233 (HB 595)	Prohibits as a condition of transfer of owner-occupied residential property to a certified community development financial institution the limiting of ownership or occupancy of the property by the immediately preceding mortgagor or grantor.

Select Changes in Maryland Residential Property Foreclosure Law From April 2008 to January 2020

(16)

Statutory Changes: Md. Code Ann., Real Prop. § 7-105.1. Residential property foreclosure procedure; mediation; related statutory changes		
Effective date of changes	Chapters	Summary of pertinent changes
July 1, 2014	Ch. 592 (HB 274)	Requires that recovery of deficiency judgments arising out of residential property foreclosures must be filed as a motion in the foreclosure action within 3 years after final ratification of the auditor's report. Also reduces from 12 years to 3 years the statute of limitations for civil actions on a deed of trust, mortgage, or promissory note secured by owner-occupied residential property.
October 1, 2017	Chs. 346/347 (HB 26/SB 247)	Required a person authorized to institute a foreclosure sale of residential real property to provide specified notices to condominium or homeowners' association concerning proposed sale and any postponement or cancellation of any sale.
October 1, 2017	Ch. 617 (SB 1033)	Established a procedure for a secured party to petition a circuit court for approval to commence an immediate foreclosure of vacant and abandoned residential real property. Provides factors for a circuit court to use to determine if a residential real property is vacant and abandoned. Provides an alternative method for a secured party to serve foreclosure documents on a mortgagor or grantor.
October 1, 2018	Chs. 348/349 (SB 875/HB 1048)	Required a person authorized to sell residential real property subject to foreclosure to file a specified notice of foreclosure with the Commissioner of Financial Regulation.
January 1, 2019	Chs. 348/349 (HB 78/SB 222)	Required a foreclosure purchaser register with the Foreclosed Property Registry maintained by the Commissioner of Financial Regulation after a foreclosure auction and again after closing on a foreclosure sale. Requires a foreclosure purchaser to submit to the Foreclosed Property Registry any change to specified information within 21 days of such change.
May 13, 2019	Ch. 522 (SB 512)	Established a procedure for a consumer employed by the Federal or State government to obtain a stay of a foreclosure and/or repossession proceeding involving such consumer's residential owner-occupied real property in relation to an involuntary furlough (because of government

**Select Changes in Maryland Residential Property
Foreclosure Law From April 2008 to January 2020**

17

Statutory Changes: Md. Code Ann., Real Prop. § 7-105.1. Residential property foreclosure procedure; mediation; related statutory changes		
Effective date of changes	Chapters	Summary of pertinent changes
		shutdown).
October 1, 2019	Ch. 276 (SB 509)	Authorized Maryland counties and municipalities to conduct <i>in rem</i> judicial tax sale foreclosures for certain vacant real property (property must be a vacant lot or vacant structure unfit for habitation and be encumbered by tax liens exceeding the property value). Establishes procedure for initiating and conducting specified foreclosure proceedings.

**Select Changes in Maryland Residential Property
Foreclosure Law From April 2008 to January 2020**

18

Regulatory Changes - COMAR 09.03.12 Foreclosure Procedures for Residential Property		
Effective date of changes	Regs. affected	Summary of pertinent changes
December 29, 2008	All	The chapter was adopted.
July 1, 2010	All	Amended definitions, notice of intent to foreclose form, and notice of filing form. Added timing information, preliminary loss mitigation affidavit form, final loss mitigation affidavit form, request for mediation form, loss mitigation application, instructions for preprinted envelopes, information about the filing of duplicate forms, and instructions form to be provided by the Maryland Office of Administrative Hearings to the parties to foreclosure mediation regarding required documents and information. (Note: This chapter revision was as an emergency provision with emergency status set to expire on December 27, 2010. The emergency status was extended to June 24, 2011, and subsequently extended to November 24, 2011.)
November 26, 2010	.02	Established that submission to the Commissioner of copies of notices of intent to foreclose may be required through electronic method determined by the Commissioner. (Note: This chapter revision was as an emergency provision with emergency status set to expire on April 26, 2011. The emergency status has been extended to October 24, 2011.)
October 25, 2011	All	Substantially revised the Commissioner's foreclosure regulations to comply with Ch. 355 of the 2011 Laws of Maryland.
October 1, 2012	All	Revised the Commissioner's foreclosure regulations to comply with Ch. 156 of the 2012 Laws of Maryland.
October 1, 2012	Registry	Mandated that DLLR establish a Foreclosure Registry Site to maintain and enforce the requirements of Ch. 155 of the 2012 Laws of Maryland.
February 1, 2015	.01 and .02	Added new Notice of Intent to Foreclose forms to conform to federal regulations regarding timeline for foreclosure referral; amended the foreclosure mediation instructions regarding document production prior to mediation; amended the foreclosure mediation checklist; and added a line for mortgage servicer mediation request form.

**Select Changes in Maryland Residential Property
Foreclosure Law From April 2008 to January 2020**

19

Regulatory Changes - COMAR 09.03.12 Foreclosure Procedures for Residential Property		
Effective date of changes	Regs. affected	Summary of pertinent changes
July 3, 2017	.01 and .02	Provided that secured parties may include the Nationwide Mortgage Licensing System and Registry unique identifier for the mortgage lender and originator when sending a notice of intent to foreclose.
July 16, 2018	.01 and .08	Added new definition of "vacant and abandoned" and specified notice form for use when a property is found to be vacant and abandoned.
July 1, 2016	.09	Established procedures for a secured party and a borrower to agree to and participate in a pre-file mediation.

Select Changes in Maryland Residential Property Foreclosure Law From April 2008 to January 2020

20

Rule Changes –Title 14. Sales of Property; Chapter 200. Foreclosure of Lien Instruments.		
Effective date of changes	Rules affected	Summary of pertinent changes
May 1, 2009	All	Replaced the former rules for practice and procedure for foreclosures of interests in real property, primarily to address changes in residential property foreclosure requirements.
June 17, 2009	14-202 14-209 14-210	Amended the definition of "Residential Property" to require that it be designed principally and be intended for human habitation. Amended the notice requirements in actions to foreclose on residential property. Amended the requirements for notice prior to selling property in an action to foreclose a lien.
July 1, 2010	14-202 14-205 14-206 14-207 14-208 14-209.1 14-211 14-212 14-214	Added definitions of "Final Loss Mitigation Affidavit," "Foreclosure Mediation," "Loss Mitigation Analysis," "Loss Mitigation Program," "Owner-Occupied Residential Property," and "Preliminary Loss Mitigation Affidavit." Amended the conditions precedent to the filing of an action to foreclose a lien on residential property. Amended the procedure for filing a petition for immediate foreclosure against owner-occupied residential property. Amended the requirements for filing a complaint to foreclose or order to docket. Amended the subsequent proceedings after the filing of a complaint to foreclose a lien that has neither a power of sale nor an assent to a decree. Added requirements for the advertising of a sale of owner-occupied residential property. Added requirements for a motion by a borrower to stay the sale and dismiss an action to foreclose on owner-occupied residential property. Established that alternative dispute resolution applies to actions that are ineligible for foreclosure mediation. Added a cross reference to the timing of the sale of residential property.
October 20, 2010	14-207 14-207.1	Amended the requirements for service of certain affidavits, pleadings, and papers. Allowed the court to adopt procedures to screen pleadings and papers filed in an action to foreclose a lien.
July 1, 2011	14-210	Amended the requirements for notice prior to selling property in an action to foreclose a lien.

Select Changes in Maryland Residential Property Foreclosure Law From April 2008 to January 2020

(21)

Rule Changes –Title 14. Sales of Property; Chapter 200. Foreclosure of Lien Instruments.		
Effective date of changes	Rules affected	Summary of pertinent changes
November 1, 2011	14-207 14-209 14-209.1 14-211	Revised rules primarily to comply with Ch. 355 of the 2011 Laws of Maryland.
January 1, 2013	14-212	Allows court to refer, prior to sale of the property, a foreclosure action to mediation or another appropriate form of alternative dispute resolution
May 1, 2013	14-202 14-207 14-208.1 14.209.1 14-211 14-214 14-215	Revised rules to implement the new statutory requirements, primarily in Ch. 156.
January 1, 2014	14-215	Added a cross reference to Real Prop. § 7-113(c)(1) (alternative method to take possession of residential real property when the person claiming a right to possession of the property by the terms of foreclosure sale or court order does not have a court-ordered writ of possession executed by the sheriff or constable).
January 1, 2016	14-207.1	Established authority for a circuit court to screen pleadings and other papers filed in a foreclosure proceeding for compliance with applicable law and provided a basis for such court to dismiss the underlying foreclosure action.
April 1, 2017	14-216	Specified that motion for deficiency judgment after ratification of auditor's report must be served in accordance with Rule 2-121.
July 1, 2018	14-208, 14-210, 14-214; 14-214.1	Added a condominium and/or homeowners' association as a party to receive notice of a proposed foreclosure sale; and adjusts internal numbering cross-reference. Adds new rule (14-214) requiring trustee to send notice of sale cancellation/postponement to certain parties. Adds new rule (14-214.1) describing parties authorized to sell property under a power of sale and under a deed of trust and specifies payment terms.

**Select Changes in Maryland Residential Property
Foreclosure Law From April 2008 to January 2020**

22

Rule Changes –Title 14. Sales of Property; Chapter 200. Foreclosure of Lien Instruments.		
Effective date of changes	Rules affected	Summary of pertinent changes
January 1, 2019	14-206	Established procedure for secured party to file petition to be excused from the time and notice requirements of Real Prop. § 7-105.1(b), (c) and Rule 14-205(b) in certain fraud/deception, property destruction, bankruptcy, or vacant/abandoned situations.

Rich Green_UNF_SB 262

Uploaded by: Green, Rich

Position: UNF



Senate Bill 262– Maryland Collection Agency Licensing Act
Senate Finance Committee
February 11, 2020

Opposed

The groups listed above are strongly opposed to Senate Bill 262 – Maryland Collection Agency Licensing Act. The bill would:

- Require passive, statutory trusts to become licensed debt collection agencies, making Maryland the ONLY state in the country to do so.
- Reverse the well-reasoned 5 – 2 decision of the Maryland Court of Appeals in *Blackstone v. Sharma*, 461 Md. 87 (2018).
- Cause confusion for investors and make compliance impossible - statutory trusts do not have any individuals associated with them.
- Create substantial uncertainty in the mortgage marketplace which relies on a secondary market to keep credit flowing to homeowners.
- Provide no added benefit or enhanced consumer protection, as the trusts, which have no borrower interaction, already use licensed mortgage loan servicers to perform all interaction with borrowers in strict compliance with robust federal and State laws and regulations, including those of the Federal Consumer Financial Protection Bureau and the Maryland Commissioner of Financial Regulation.
- Make lending more expensive by limiting access to mortgage credit.

Effect on Mortgage Lending and Borrowers

The Federal Housing Finance Agency (FHFA), regulates Fannie Mae, Freddie Mac and the Federal Home Loan Banks (the Enterprises) which account for more than 70% of the mortgage marketplace. FHFA has written to Chairman Kelley and Chairman Davis (*copy attached*) stating that:

“... the legislation would adversely impact borrowers and have a chilling effect on the secondary market insofar as Maryland properties are concerned. The burden and the confusion of applying

“FHFA strongly believes both Maryland borrowers and the Enterprises could be adversely impacted by the proposed requirement to require transferees of delinquent Maryland mortgage loans to become licensed debt collection agencies under MCALA.”

“Requiring a trust to be licensed under MCALA provides no added benefit or enhanced consumer protection.”

FHFA requires that the licensed mortgage loan servicers who manage these loans do everything possible to help the borrower avoid foreclosure (*See attached FHFA Fact Sheet*).

Of major concern to everyone involved in making mortgage loans available to Maryland citizens is that, contrary to what has been stated by proponents for the bill, Maryland would be the only state in the country to interpret its debt collection agency licensing statute as requiring that these trusts be licensed as collection agencies. **None of these trusts, which hold mortgages from every state in the country, are licensed in any state.** (*See letter memo from Dentons US LLP*). On the other hand, all of these trusts must follow each state’s foreclosure laws and act through appropriately licensed mortgage loan servicers.

The uncodified language at the end of the bill is unprecedented and equally worrisome.

- What will be the impact on foreclosures which have already occurred?
- Will they be nullified because the holder of the mortgage was not licensed as a collection agency?
- Because no one ever thought this was a requirement, will thousands of foreclosures be nullified and have to start all over again?
- Will all of these trusts have retroactively violated Maryland law and be exposed to civil and criminal penalties as well as class action law suits?

Since 2008, Maryland has enacted numerous statutes to protect consumers whose mortgages are in default and who are exposed to the foreclosure process. *A flow chart and summary of the foreclosure process are attached together with a summary of the legislation, regulations and Rules.* All foreclosures are subject to these laws, including those for mortgages packaged in trusts. If there are concerns about Maryland’s foreclosure process, they should be addressed by amending our foreclosure statutes which are contained in the Real Property Article. There is nothing in this bill or in the debt collection statutes to aid borrowers who are facing foreclosure.

Foreclosures are at Historic Lows

Maryland’s current foreclosure rate has fallen to 1.1%, a 77% decline from its high of 4.93% in Q2 2012. At 1.1%, it matches rates from 23 years ago – 1.1% in 2Q 1996. *Mortgage Bankers Association National Delinquency Survey.*

For all the foregoing reasons, we urge the Committee to give the bill an unfavorable report.



CONTROLLED

Federal Housing Finance Agency

MEMORANDUM

January 29, 2020
Via Electronic Mail

TO: The Honorable Delores G. Kelley The Honorable Dereck E. Davis
 Chair, Finance Committee Chairman, Economic Matters Committee
 Maryland Senate Maryland House of Delegates

FROM: Alfred M. Pollard *AMPollard*
 General Counsel

RE: Maryland Collection Agency Licensing Act—Senate Bill 262 and House Bill 334

The Federal Housing Finance Agency (FHFA) has been informed of the re-introduction of the Maryland Collection Agency Licensing Act that would impose debt collection agency status and registration on certain entities including trusts.

On March 26, 2019, I conveyed issues surrounding this legislation and recommended avoiding a result that would impact adversely Maryland homeowners, particularly when they face economic difficulties and may require action to be taken to address their mortgage obligations. The newly introduced bills raise the same concerns. I have attached that Memorandum for your convenience.

At its core and as noted in the Memorandum, if enacted, the legislation would adversely impact borrowers and have a chilling effect on the secondary market insofar as Maryland properties are concerned. The burden and the confusion of applying the legislation would decrease investor demand and thereby lessen the availability of products to assist homeowners in the State.

FHFA remains committed to efforts of its regulated entities that help homeowners facing challenges. Many have benefitted from these programs.

I hope this information assists you in addressing this legislation. As noted before, I am happy to provide additional information to you or your staff if that would be helpful. My information remains alfred.pollard@fhfa.gov or 202 649 3050.

Attachment



Federal Housing Finance Agency

4

March 26, 2019
Via Electronic Mail

TO: The Honorable Delores G. Kelley The Honorable Dereck E. Davis
Chair, Finance Committee Chairman, Economic Matters Committee
Maryland Senate Maryland House of Delegates

FROM: Alfred M. Pollard *AMPollard*
General Counsel

RE: Senate Bill 485/House Bill 593— Maryland Collection Agency Licensing Act

The Federal Housing Finance Agency (FHFA) has been informed of legislation that would impose registration as a debt collection agency on certain entities including trusts.

Federal Housing Finance Agency oversees Fannie Mae and Freddie Mac (the Enterprises) and the eleven Federal Home Loan Banks. Together, they support mortgage financing for millions of mortgages across the country and in Maryland. The Enterprises, operating under FHFA conservatorships, have continued their operations in making mortgages available and administering major loan modification programs that have assisted over three million homeowners during and since the financial crisis.

Legislation

SB 485 and HB 593 would amend the definition of “consumer claim” and define “mortgage lender” under the Maryland Collection Agency Licensing Act (MCALA). The bills indicate the General Assembly’s intent that the legislation be applied and interpreted to abrogate the decision of the Maryland Court of Appeals in *Blackstone v. Sharma*, 461 Md. 87 (2018), thereby requiring transferees of delinquent loans to become licensed debt collection agencies under MCALA, as held by the Maryland Court of Special Appeals in *Blackstone v. Sharma*, 233 Md. App. 58, 161 A.3d 718 (2017).

Potential Uncertainty and Impact

The proposed legislation would create substantial uncertainty for the Maryland mortgage market and could harm existing Maryland homeowners as well as future borrowers. The bills appear to require any trusts that acquire delinquent Maryland mortgage debt be licensed as a collection agency under MCALA before pursuing a foreclosure. This licensing requirement will provide little or no benefit for Maryland borrowers who have mortgages held or transferred by the Enterprises.

Enterprise Programs. The Enterprises sell seriously delinquent whole loans to investors using non-performing loan offerings (NPL) and many investors purchase these loans intending to securitize them employing trusts. In addition, Freddie Mac periodically transfers delinquent loans into Freddie Mac-created common law trusts, which securitize the loans via two programs— the Seasoned Credit Risk Transfer (SCRT) program (which issues securities backed by loans modified to assist borrowers who are at risk of foreclosure to help them keep their homes) and the Seasoned Loan Structured

Transaction (SLST) program (which issues securities backed by re-performing loans and moderately delinquent loans). The function of the trusts created pursuant to the NPL, SCRT and SLST programs are primarily to hold the subject mortgages and *not* for the purpose of servicing any Maryland borrower's loan. Rather, the trust utilizes a properly licensed or otherwise exempt servicer under Maryland law to perform all servicing-related functions for the Maryland borrower.

The NPL, SCRT and SLST programs are important tools to assist delinquent Maryland borrowers by providing them a second-chance at avoiding foreclosure by working with new investors in delinquent loans. These investors may have additional programs to assist these borrowers, while helping the Enterprises to manage risk on mortgage-related investment portfolios and permitting transfer of credit risk to private sector investors.

Once transferred to a trust (SCRT and SLST) or a purchaser (NPL), the loans are serviced by Enterprise-approved servicers, who must comply with FHFA's servicing guidelines for such sales.¹ Servicers must apply a waterfall of resolution tactics that first includes evaluating borrower eligibility for a loan modification then a short sale or a deed-in-lieu of foreclosure. Modifications must provide a benefit to the borrower and the potential for a sustainable modification and may include principal and/or arrearage forgiveness. Servicers may be able to provide additional options to borrowers with unique situations that may not otherwise be available under the Enterprises' traditional servicing guidelines. Foreclosure must be the last option in any waterfall.

Impact. These programs to keep homeowners in their homes are among the best devices to maintain stability in communities, provide a long-term benefit to neighborhoods and avoid a burden on localities and the State. FHFA strongly believes both Maryland borrowers and the Enterprises could be adversely impacted by the proposed requirement to require transferees of delinquent Maryland mortgage loans to become licensed debt collection agencies under MCALA. If enacted, the requirement could be confusing for investors and difficult to maintain compliance as securitization trusts are special purpose entities that typically do not have individuals associated with them. Requiring a trust to be licensed under MCALA provides no added benefit or enhanced consumer protection, as the trust, which has no borrower interaction, utilizes a servicer to perform all consumer-facing servicing responsibilities in strict compliance with applicable law and relevant FHFA and Enterprise program requirements (in the case of the SCRT and SLST programs).²

Assuming a trust is even able to comply with the existing Maryland Collection Agency License requirements, this burden will undoubtedly create decreased investor demand for products associated with the purchase of delinquent loans in Maryland and potential investor withdrawal from the market, lessening the availability of these products to assist homeowners.

I hope that this information on the substantial uncertainty the proposed legislation may create for the Maryland mortgage market would be taken into consideration as you work on the bills. I would be happy to answer any questions you may have and I may be reached at 202 649 3050 or alfred.pollard@fhfa.gov.

¹ <https://www.fhfa.gov/Media/PublicAffairs/Pages/Non-Performing-Loan-Sale-Guidelines.aspx>

² https://www.freddiemac.com/seasonedloanofferings_docs/npl_sales_guidelines_factsheets.pdf



FACT SHEET: NON-PERFORMING LOAN SALE GUIDELINES

NON-PERFORMING LOAN SALES

BACKGROUND

The Federal Housing Finance Agency (FHFA) requires sales of non-performing loans (NPLs) by Freddie Mac and Fannie Mae (the Enterprises) to meet specific requirements. Drawing on the Enterprises' experience with NPL sales, FHFA continues to enhance its NPL sales requirements, including enhanced standards announced in March 2015 and April 2016.

As of the end of June 2017, Fannie Mae and Freddie Mac had sold over 82,000 mortgages with a total unpaid principal balance of \$16 billion. The loans included in NPL sales are generally severely delinquent. Loans already sold have been, on average, three years delinquent.

FHFA's goal is to achieve more favorable outcomes for borrowers and the Enterprises by providing alternatives to foreclosure wherever possible. FHFA believes that the sale of severely delinquent loans through NPL sales will improve borrower and neighborhood outcomes and will reduce Enterprise losses and risk to taxpayers. Reporting by servicers on borrower outcomes is required. This allows FHFA, the Enterprises and the public to evaluate outcomes, which are periodically reported by FHFA in its *Enterprise Non-Performing Loan Sales Reports*.

NPL SALE GUIDELINES

- **Bidder qualifications:** Bidders are required to identify their servicing partners at the time of qualification and must complete a servicing questionnaire to demonstrate a record of successful resolution of loans through alternatives to foreclosure;
- **Loss mitigation waterfall requirements:** Servicers must apply a waterfall of resolution tactics that first includes evaluating borrower eligibility for a loan modification, then a short sale or a deed-in-lieu of foreclosure. Foreclosure must be the last option in the waterfall. The waterfall may consider net present value to the investor;
- **Modification requirements:**
 - New servicers are required to solicit and evaluate all borrowers (other than those with an imminent foreclosure sale date or vacant property) for a loan modification that provides a benefit to the borrower and has the potential to be sustained by the borrower over the life of the modification;
 - Servicers are required to evaluate borrowers with a mark-to-market loan-to-value ratio above 115 percent for loan modifications that include principal and/or arrearage forgiveness;

KEY ELEMENTS OF NPL SALE GUIDELINES

Servicers must apply a waterfall of resolution tactics that first includes evaluating borrower eligibility for a loan modification, then a short sale or a deed-in-lieu of foreclosure. Modifications must provide a benefit to the borrower and the potential for a sustainable modification, and may include principal and/or arrearage forgiveness. Foreclosure must be the last option in the waterfall.

Servicers are encouraged to sell properties that have gone through foreclosure and entered Real Estate Owned (REO) status to individuals who will occupy the property as their primary residence or to non-profits.

Buyers must agree they will not "walk away" from vacant properties, or enter into "contract for deed" agreements on REO properties, unless the purchaser is a non-profit.

NPL buyers and servicers, including subsequent servicers, are required to report loan resolution results and borrower outcomes to the Enterprises for four years after the NPL sale.



FACT SHEET: NON-PERFORMING LOAN SALE GUIDELINES

- Modifications must not include an upfront fee or require prepayment of any amount of mortgage debt. They must either be fixed rate for the term of the modification or offer an initial period of reduced payments with limits on subsequent increases consistent with Home Affordable Modification Program (HAMP) requirements. The initial period must last for at least 5 years and interest rate increases may not exceed 1 percentage point per year thereafter;
- **No “walkaways”:** If a property securing a loan is vacant, buyers and servicers may not abandon the lien and “walk away” from the property. Instead, if a foreclosure alternative is not possible, the servicer must complete a foreclosure or sell or donate the loan, including to a government or non-profit entity;
- **REO sale requirements:** Servicers are encouraged to sell properties that have gone through foreclosure and entered Real Estate Owned (REO) status to individuals who will occupy the property as their primary residence or to non-profits. As a result, for the first 20 days after any NPL that becomes an REO property is marketed, the property may be sold only to buyers who intend to occupy the property as their primary residence or to non-profits;
- **Restriction on “contract for deed:”** NPL buyers must agree that they will not enter into, or allow servicers to enter into, contract for deed or lease to own agreements on REO properties unless the tenant or purchaser is a non-profit organization;
- **Subsequent servicer requirements:** Subsequent servicers must assume all the responsibilities of the initial servicer;
- **Bidding transparency:** To facilitate transparency of the NPL sales program and encourage robust participation by all interested participants, each Enterprise has developed a process for announcing upcoming NPL sale offerings. This includes an NPL webpage on the Enterprise’s website, email distribution to small, non-profit and minority- and women-owned business (MWOB) investors, and proactive outreach to potential bidders;
- **Small pools:** The Enterprises will offer small, geographically concentrated pools of NPLs, where feasible, to maximize opportunities for nonprofit organizations and MWOBs to purchase NPLs. The Enterprises will actively market such offerings to nonprofits and MWOBs and provide additional time for buyers to complete the transaction;
- **Reporting requirements:** NPL buyers and servicers, including subsequent servicers, are required to report loan resolution results and borrower outcomes to the Enterprises for four years after the NPL sale. These reports will help FHFA and the public evaluate the NPL program results and determine whether an NPL buyer and NPL servicer continue to be eligible for future sales based on pool level borrower outcomes, adjusted for subsequent market events. Consistent with applicable law, FHFA and/or the Enterprises provide public reports on aggregate borrower outcomes at the pool level.



大成 DENTONS

Matthew S. Yoon
Partner

matthew.yoon@dentons.com
D +1 212-768-5331

Dentons US LLP
1221 Avenue of the Americas
New York, NY 10020-1089
United States

dentons.com

MEMORANDUM

To: Robert Enten
Gordon Feinblatt
233 East Redwood Street
Baltimore, MD 21202

From: Dentons US LLP

Date: January 24, 2020

Subject: State Collection Agency Licensing for Trusts with Federally-Chartered Trustees

You have asked us to address whether any state in the United States clearly requires a collection agency, debt collector license or similar license (together, "Collection Agency license") to be obtained by a trust with a federally-chartered trustee in order to be able to buy, hold and sell residential mortgage loans, including defaulted and non-performing residential mortgage loans, on the secondary market and/or for securitization purposes (commonly referred to in the mortgage markets as the "Trust Structure").¹

In our long-standing and broad experience across the industry, we are aware that a significant number of market participants use the aforementioned Trust Structure to purchase, hold and sell residential mortgage loans, including defaulted and non-performing residential mortgage loans, on the secondary market and/or for securitization purposes. Significantly, however, with the exception of Maryland, we are unaware of any state regulator that has affirmatively required or even attempted to assert or require such trusts using the Trust Structure, including trusts that are established to purchase defaulted and non-performing residential mortgage loans, to obtain a Collection Agency license.

We understand there has been an assertion that a number of other states require trusts using the Trust Structure that purchase and hold defaulted residential mortgage loans to obtain Collection Agency licenses. We note that these other states have similar statutes to the Maryland Collection Agency Licensing Act ("MCALA"). We note that we have also conducted extensive case law research in all states as well as other research and have not found any cases or other information that would suggest that any state requires

¹ Dentons US LLP has a nationally-recognized and ranked consumer financial law regulatory practice led by attorneys with multiple decades of experience who specialize in residential mortgage regulation across all 50 states and the District of Columbia ("states"), in addition to applicable federal law. Our clients are comprised of large, well-established financial institutions, including money-center banks, non-depository mortgage lenders and mortgage servicers, private equity firms, hedge funds, debt funds, and other Wall Street institutions. We routinely advise our clients on all aspects of state licensing and regulatory matters, including Collection Agency licensing.

trusts using the Trust Structure, including trust that purchase and hold defaulted residential mortgage loans, to obtain a Collection Agency license.

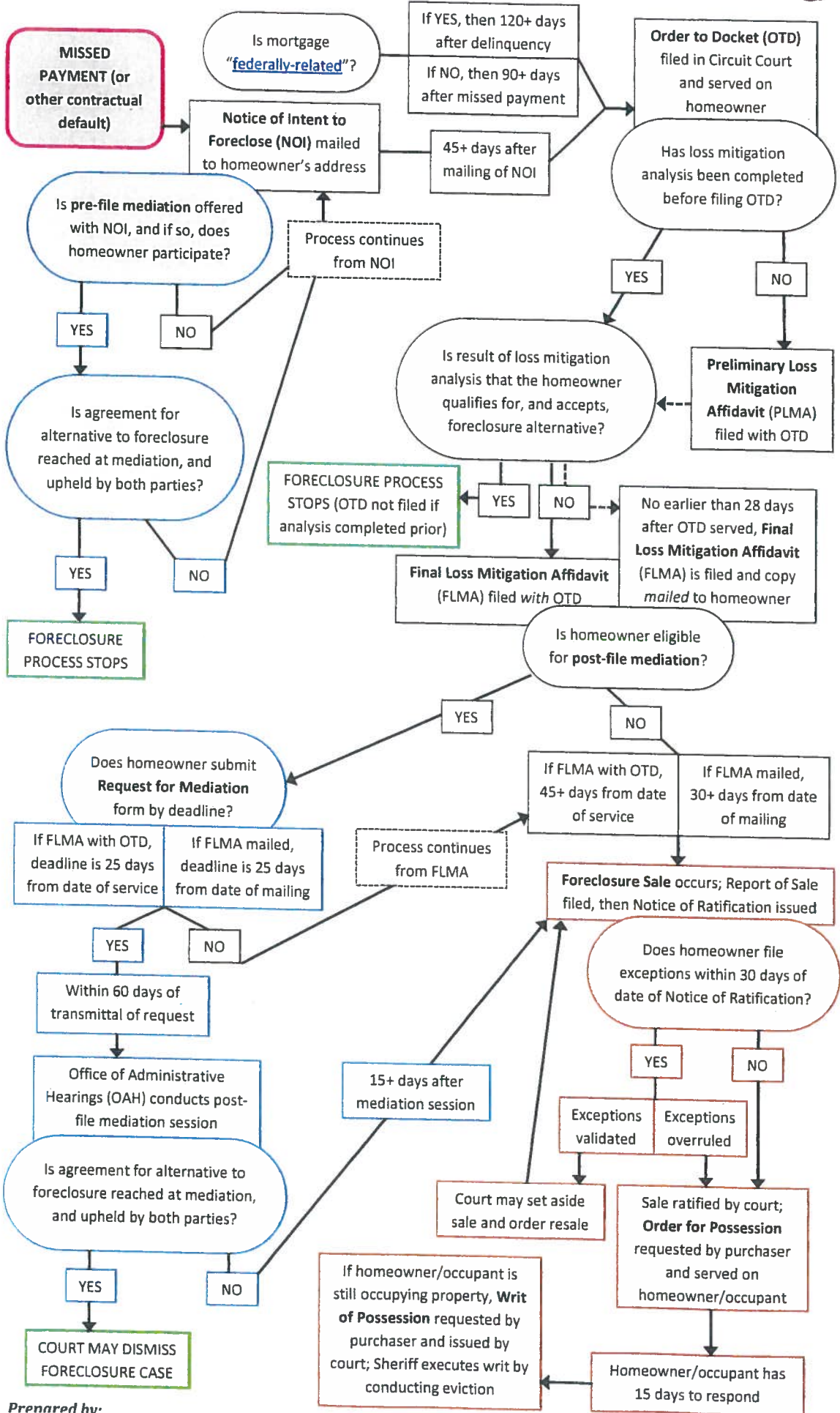
* * * * *

Please note that this is not a legal opinion. The authors of this memorandum are not members of the Bar of any jurisdiction other than New York and the District of Columbia, and we are not licensed to opine on matters in other jurisdictions. It should be noted that the authorities administering the laws discussed in this memorandum have broad discretionary powers which may permit such authorities, among other things, to impose licensing requirements, withdraw exemptions accorded by statute or to impose additional requirements or penalties not explicitly authorized by statute. We have prepared this memorandum solely for the use and benefit by Robert Enten at Gordon Feinblatt, in evaluating state licensing laws, and no other third party. Finally, this memorandum is strictly a confidential attorney-client privileged communication, subject to the full rights of the attorney-client privilege, and should not be shared with any third parties other than Robert Enten at Gordon Feinblatt unless we have provided our written consent.

Please contact Matthew S. Yoon or John P. Holahan or at (212) 768-6700 if you have any follow-up questions, or would like any further assistance.

Maryland Residential Foreclosure Process

10



11

Maryland Residential Foreclosure Process (notes for flow-chart)

NOTICE OF INTENT TO FORECLOSE (NOI)

- The lender can send the NOI to the homeowner any time after the first missed payment or other contractual default.
- The NOI must be sent at least 45 days before filing the Order to Docket.
- Within 5 business days of mailing NOI, the lender must submit an electronic copy of the NOI information to the Commissioner of Financial Regulation. The Commissioner uses NOI data to send outreach letters to homeowners at-risk of foreclosure, and for supervision of licensees as well as internal complaint investigation.
- If the property is *owner-occupied*, the NOI must include a loss mitigation application with instructions for completion. If the property is not owner-occupied, the NOI must include written notice of this determination and a telephone number to contest the determination.¹
- The NOI may include an offer for pre-file mediation. The lender is not required to offer mediation at this stage.
 - If the lender offers pre-file mediation and the homeowner elects to participate, the Office of Administrative Hearings (OAH) holds the session within 60 days after receiving notice from lender.
 - If an agreement is not reached during pre-file mediation (thus continuing the foreclosure process), then the homeowner has forfeited their right to participate in post-file mediation, unless the lender agrees to an additional post-file mediation session.
- If the lender completes the loss mitigation analysis (or if pre-file mediation results in an agreement) and identifies an alternative to foreclosure that the homeowner is eligible for and accepts, then the foreclosure process stops. If not, then the Order to Docket is filed.

ORDER TO DOCKET (OTD)

- The OTD is the first filing in the court action to foreclose.
 - Per *Maryland statute*, the earliest that a lender can file an OTD is 90 days after the first missed payment or other contractual default. Per *federal regulations*, the earliest that a lender can file the foreclosure is 120 days after the borrower's mortgage loan becomes delinquent.
 - The definition for "federally-related" loans determines whether or not the lender needs to follow Maryland statute or federal regulation – note that most loans fall under the category of "federally-related".²
- The OTD will include either a Final Loss Mitigation Affidavit (FLMA) or a Preliminary Loss Mitigation Affidavit (PLMA).
 - An FLMA will be included with the OTD if the lender has completed the loss mitigation analysis and has determined that there are no foreclosure alternatives available.
 - A PLMA will be included with the OTD if the lender has not started, or completed, the homeowner's loss mitigation analysis. If the lender sends a PLMA with the OTD and then determines that there are no foreclosure alternatives available, the lender must wait at least 28 days before filing the FLMA in court.

¹ The definition of *owner-occupied* is at Real Property Section 7-105.1(a)(8): (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.

² The definition of *federally-related* can be found online in the electronic code of federal regulations, [Title 12 Chapter X Part 1024.2](#).

POST-FILE MEDIATION

- Whether the homeowner receives the FLMA with the OTD or it is mailed to them after the OTD – if the homeowner is eligible for post-file mediation, the FLMA must include a Request for Mediation form.
- A homeowner is eligible for post-file mediation if s/he is an owner-occupant and has not participated in “pre-file” mediation (unless the lender has agreed to an additional mediation session).
- The homeowner must request a mediation session with their lender by submitting the request form within 25 days (if FLMA was with OTD, deadline is 25 days from date of service; if FLMA was mailed later, deadline is 25 days from date of mailing).
- The Office of Administrative Hearings (OAH) must conduct the mediation session within 60 days after transmittal of the request for mediation.
- If no agreement is reached during mediation, the foreclosure sale can be scheduled at the earliest, 15 days after the mediation session.

FORECLOSURE SALE

- If the homeowner does *not* request mediation, then the foreclosure sale date depends on whether an FLMA or PLMA is filed with the OTD.
 - If the FLMA is filed *with* the OTD, the foreclosure sale can occur 45 days after the OTD is served.
 - If the FLMA is mailed *after* the OTD (i.e. if the PMLA is filed with the OTD), the foreclosure sale can occur 30 days after the date the FLMA is mailed.

Prior to the Sale

- Terms of the foreclosure sale, including time and place, must be published in local newspaper once a week for 3 weeks prior to the sale. The terms of the foreclosure sale must also be provided to the homeowner by certified and first-class mail not more than 30 days, and not less than ten days, before a sale.
- Homeowner may cure the default, thereby cancelling the sale, by paying all past-due payments and fees up to 1 business day before the sale.

After the Sale

- Not more than 30 days after a sale, the person authorized to make the sale is required to file a report of the sale with the court.
- Also within 30 days after the sale, the foreclosure sale purchaser (including the foreclosing bank if they reclaimed the property) is required to register the property in the Maryland Foreclosed Property Registry. *See next section for more details about the Registry.*
- Upon the filing of a report of sale, the court clerk issues a Notice of Ratification of Sale and the homeowner has 30 days from the date of the notice to file exceptions. Exceptions can only be filed objecting to the procedure of the sale, not to any actions occurring prior to the sale.
 - If no exceptions are filed, or if the court considers any filed exceptions and concludes that the sale was fairly and properly made, the court will ratify the sale.
 - If exceptions are filed within 30 days and validated, or if the purchaser defaults, the court may set aside sale and order resale.

- Where the foreclosing lender purchases the property, the lender or its servicer will ordinarily try to establish contact with the borrower to designate a move-out date and ensure that the property is kept in broom-swept condition. A foreclosing lender may offer incentives, sometimes referred to as “cash for keys”, to ensure that the property is delivered in a timely manner and is maintained appropriately.
- If, after ratification, the person in actual possession fails or refuses to deliver possession, the purchaser may file a Motion for Judgment Awarding Possession.
 - Homeowner has 15 days to file a response to the Motion
 - After 15 days, court may issue an Order Granting Possession
 - If homeowner is still occupying property, purchaser sends Eviction Notice to “All Occupants” at the address of the property
 - If homeowner is still occupying property, purchaser files a Request for Writ of Possession; court clerk issues Writ of Possession; sheriff serves Writ and evicts homeowner/occupants.
 - There is a narrow exception to the requirement that a purchaser obtain a Writ of Possession to evict a person in actual possession of the property. The purchaser may take possession without a Writ of Possession if the purchaser reasonably believes that the former owner has abandoned the property, provides written notice by posting and first-class mail, and receives no response within 15 days after the later of posting or mailing the notice.

Select Changes in Maryland Residential Property Foreclosure Law From April 2008 to January 2020

(14)

Statutory Changes: Md. Code Ann., Real Prop. § 7-105.1. Residential property foreclosure procedure; mediation; related statutory changes		
Effective date of changes	Chapters	Summary of pertinent changes
April 3, 2008	Chs. 1/2 (SB 216/HB 365)	Prohibits an action to foreclose a mortgage or deed of trust on residential property from being filed until the later of 90 days after default or 45 days after a notice of intent to foreclose is sent, except under specified circumstances. Establishes detailed content requirements for foreclosure action filings.
June 1, 2009	Chs. 691/692 (HB 798/SB 807)	Clarifies the definition of "residential property" (and, thus, the applicability of the more protective provisions of the foreclosure process).
July 1, 2009	Ch. 149 (HB 640)	Authorizes local Maryland governments to enact laws requiring that notice of a foreclosure relating to "residential property" be given to a county or municipal agency or official within 5 days after filing an order to docket or a complaint to foreclose.
July 1, 2010	Ch. 485 (HB 472)	Strengthens existing disclosures (part of the Notice of Intent to Foreclose) that must be given to a homeowner at least 45 days before a foreclosure action is filed. Imposes new documentation requirements in connection with the order to docket or complaint to foreclose. Mandates completion of a loss mitigation analysis by the secured party no later than 30 days before a foreclosure sale of owner-occupied residential property. Allows most homeowners to request foreclosure mediation before a foreclosure sale of owner-occupied residential property may occur.
June 1, 2011	Ch. 355 (HB728)	Clarifies that notice of intent to foreclose for property that is not "owner-occupied residential property" does not need to be accompanied by various loss mitigation documents. Extends the amount of time that a borrower has to request mediation in a foreclosure action on owner-occupied residential property.
July 1, 2011	Chs. 36/37 (SB 205/HB 366)	Requires that an affidavit accompanying an order to docket or a complaint to foreclose a mortgage or deed of trust on residential property state, if applicable, that the contents of the notice of intent to foreclose were accurate at the time that notice was sent.

Select Changes in Maryland Residential Property Foreclosure Law From April 2008 to January 2020

(15)

Statutory Changes: Md. Code Ann., Real Prop. § 7-105.1. Residential property foreclosure procedure; mediation; related statutory changes		
Effective date of changes	Chapters	Summary of pertinent changes
	Chs. 245/246 (SB 516/HB 842)	Prohibits a foreclosure sale purchaser from exercising any right to collect rent payments from a bona fide tenant in possession of a residential property unless the purchaser conducts a specified reasonable inquiry concerning the occupancy of the residential property and serves on each bona fide tenant a specified notice concerning rent payments.
	Chs. 477/478 (SB 450/HB 412)	Prohibits a court, in an action to foreclose a mortgage or deed of trust on residential property, from accepting a lost note affidavit in lieu of a copy of the debt instrument unless the affidavit contains specified information.
October 1, 2012	Ch. 155 (HB 1373)	Establishes a Foreclosed Property Registry for certain property and requires foreclosure purchasers of residential property to register certain information, to update the information, and to pay fees.
	Ch. 156 (HB 1374)	Establishes a prefile mediation process between a secured party and a homeowner before commencement of a foreclosure action and establishes a process for local governments to issue certificates of vacancy or of property unfit for human habitation to allow for expedited foreclosure of certain properties.
June 1, 2013	Chs. 514/515 (SB 642/HB 1308)	Prohibits taking possession or threatening to take possession of residential property after a foreclosure from residents by using certain tactics and establishes appropriate ways to take possession of residential property.
April 14, 2014	Ch. 233 (HB 595)	Prohibits as a condition of transfer of owner-occupied residential property to a certified community development financial institution the limiting of ownership or occupancy of the property by the immediately preceding mortgagor or grantor.

Select Changes in Maryland Residential Property Foreclosure Law From April 2008 to January 2020

(16)

Statutory Changes: Md. Code Ann., Real Prop. § 7-105.1. Residential property foreclosure procedure; mediation; related statutory changes		
Effective date of changes	Chapters	Summary of pertinent changes
July 1, 2014	Ch. 592 (HB 274)	Requires that recovery of deficiency judgments arising out of residential property foreclosures must be filed as a motion in the foreclosure action within 3 years after final ratification of the auditor's report. Also reduces from 12 years to 3 years the statute of limitations for civil actions on a deed of trust, mortgage, or promissory note secured by owner-occupied residential property.
October 1, 2017	Chs. 346/347 (HB 26/SB 247)	Required a person authorized to institute a foreclosure sale of residential real property to provide specified notices to condominium or homeowners' association concerning proposed sale and any postponement or cancellation of any sale.
October 1, 2017	Ch. 617 (SB 1033)	Established a procedure for a secured party to petition a circuit court for approval to commence an immediate foreclosure of vacant and abandoned residential real property. Provides factors for a circuit court to use to determine if a residential real property is vacant and abandoned. Provides an alternative method for a secured party to serve foreclosure documents on a mortgagor or grantor.
October 1, 2018	Chs. 348/349 (SB 875/HB 1048)	Required a person authorized to sell residential real property subject to foreclosure to file a specified notice of foreclosure with the Commissioner of Financial Regulation.
January 1, 2019	Chs. 348/349 (HB 78/SB 222)	Required a foreclosure purchaser register with the Foreclosed Property Registry maintained by the Commissioner of Financial Regulation after a foreclosure auction and again after closing on a foreclosure sale. Requires a foreclosure purchaser to submit to the Foreclosed Property Registry any change to specified information within 21 days of such change.
May 13, 2019	Ch. 522 (SB 512)	Established a procedure for a consumer employed by the Federal or State government to obtain a stay of a foreclosure and/or repossession proceeding involving such consumer's residential owner-occupied real property in relation to an involuntary furlough (because of government

**Select Changes in Maryland Residential Property
Foreclosure Law From April 2008 to January 2020**

17

Statutory Changes: Md. Code Ann., Real Prop. § 7-105.1. Residential property foreclosure procedure; mediation; related statutory changes		
Effective date of changes	Chapters	Summary of pertinent changes
		shutdown).
October 1, 2019	Ch. 276 (SB 509)	Authorized Maryland counties and municipalities to conduct <i>in rem</i> judicial tax sale foreclosures for certain vacant real property (property must be a vacant lot or vacant structure unfit for habitation and be encumbered by tax liens exceeding the property value). Establishes procedure for initiating and conducting specified foreclosure proceedings.

**Select Changes in Maryland Residential Property
Foreclosure Law From April 2008 to January 2020**

18

Regulatory Changes - COMAR 09.03.12 Foreclosure Procedures for Residential Property		
Effective date of changes	Regs. affected	Summary of pertinent changes
December 29, 2008	All	The chapter was adopted.
July 1, 2010	All	Amended definitions, notice of intent to foreclose form, and notice of filing form. Added timing information, preliminary loss mitigation affidavit form, final loss mitigation affidavit form, request for mediation form, loss mitigation application, instructions for preprinted envelopes, information about the filing of duplicate forms, and instructions form to be provided by the Maryland Office of Administrative Hearings to the parties to foreclosure mediation regarding required documents and information. (Note: This chapter revision was as an emergency provision with emergency status set to expire on December 27, 2010. The emergency status was extended to June 24, 2011, and subsequently extended to November 24, 2011.)
November 26, 2010	.02	Established that submission to the Commissioner of copies of notices of intent to foreclose may be required through electronic method determined by the Commissioner. (Note: This chapter revision was as an emergency provision with emergency status set to expire on April 26, 2011. The emergency status has been extended to October 24, 2011.)
October 25, 2011	All	Substantially revised the Commissioner's foreclosure regulations to comply with Ch. 355 of the 2011 Laws of Maryland.
October 1, 2012	All	Revised the Commissioner's foreclosure regulations to comply with Ch. 156 of the 2012 Laws of Maryland.
October 1, 2012	Registry	Mandated that DLLR establish a Foreclosure Registry Site to maintain and enforce the requirements of Ch. 155 of the 2012 Laws of Maryland.
February 1, 2015	.01 and .02	Added new Notice of Intent to Foreclose forms to conform to federal regulations regarding timeline for foreclosure referral; amended the foreclosure mediation instructions regarding document production prior to mediation; amended the foreclosure mediation checklist; and added a line for mortgage servicer mediation request form.

**Select Changes in Maryland Residential Property
Foreclosure Law From April 2008 to January 2020**

19

Regulatory Changes - COMAR 09.03.12 Foreclosure Procedures for Residential Property		
Effective date of changes	Regs. affected	Summary of pertinent changes
July 3, 2017	.01 and .02	Provided that secured parties may include the Nationwide Mortgage Licensing System and Registry unique identifier for the mortgage lender and originator when sending a notice of intent to foreclose.
July 16, 2018	.01 and .08	Added new definition of "vacant and abandoned" and specified notice form for use when a property is found to be vacant and abandoned.
July 1, 2016	.09	Established procedures for a secured party and a borrower to agree to and participate in a pre-file mediation.

Select Changes in Maryland Residential Property Foreclosure Law From April 2008 to January 2020

20

Rule Changes –Title 14. Sales of Property; Chapter 200. Foreclosure of Lien Instruments.		
Effective date of changes	Rules affected	Summary of pertinent changes
May 1, 2009	All	Replaced the former rules for practice and procedure for foreclosures of interests in real property, primarily to address changes in residential property foreclosure requirements.
June 17, 2009	14-202 14-209 14-210	Amended the definition of "Residential Property" to require that it be designed principally and be intended for human habitation. Amended the notice requirements in actions to foreclose on residential property. Amended the requirements for notice prior to selling property in an action to foreclose a lien.
July 1, 2010	14-202 14-205 14-206 14-207 14-208 14-209.1 14-211 14-212 14-214	Added definitions of "Final Loss Mitigation Affidavit," "Foreclosure Mediation," "Loss Mitigation Analysis," "Loss Mitigation Program," "Owner-Occupied Residential Property," and "Preliminary Loss Mitigation Affidavit." Amended the conditions precedent to the filing of an action to foreclose a lien on residential property. Amended the procedure for filing a petition for immediate foreclosure against owner-occupied residential property. Amended the requirements for filing a complaint to foreclose or order to docket. Amended the subsequent proceedings after the filing of a complaint to foreclose a lien that has neither a power of sale nor an assent to a decree. Added requirements for the advertising of a sale of owner-occupied residential property. Added requirements for a motion by a borrower to stay the sale and dismiss an action to foreclose on owner-occupied residential property. Established that alternative dispute resolution applies to actions that are ineligible for foreclosure mediation. Added a cross reference to the timing of the sale of residential property.
October 20, 2010	14-207 14-207.1	Amended the requirements for service of certain affidavits, pleadings, and papers. Allowed the court to adopt procedures to screen pleadings and papers filed in an action to foreclose a lien.
July 1, 2011	14-210	Amended the requirements for notice prior to selling property in an action to foreclose a lien.

Select Changes in Maryland Residential Property Foreclosure Law From April 2008 to January 2020

(21)

Rule Changes –Title 14. Sales of Property; Chapter 200. Foreclosure of Lien Instruments.		
Effective date of changes	Rules affected	Summary of pertinent changes
November 1, 2011	14-207 14-209 14-209.1 14-211	Revised rules primarily to comply with Ch. 355 of the 2011 Laws of Maryland.
January 1, 2013	14-212	Allows court to refer, prior to sale of the property, a foreclosure action to mediation or another appropriate form of alternative dispute resolution
May 1, 2013	14-202 14-207 14-208.1 14.209.1 14-211 14-214 14-215	Revised rules to implement the new statutory requirements, primarily in Ch. 156.
January 1, 2014	14-215	Added a cross reference to Real Prop. § 7-113(c)(1) (alternative method to take possession of residential real property when the person claiming a right to possession of the property by the terms of foreclosure sale or court order does not have a court-ordered writ of possession executed by the sheriff or constable).
January 1, 2016	14-207.1	Established authority for a circuit court to screen pleadings and other papers filed in a foreclosure proceeding for compliance with applicable law and provided a basis for such court to dismiss the underlying foreclosure action.
April 1, 2017	14-216	Specified that motion for deficiency judgment after ratification of auditor's report must be served in accordance with Rule 2-121.
July 1, 2018	14-208, 14-210, 14-214; 14-214.1	Added a condominium and/or homeowners' association as a party to receive notice of a proposed foreclosure sale; and adjusts internal numbering cross-reference. Adds new rule (14-214) requiring trustee to send notice of sale cancellation/postponement to certain parties. Adds new rule (14-214.1) describing parties authorized to sell property under a power of sale and under a deed of trust and specifies payment terms.

**Select Changes in Maryland Residential Property
Foreclosure Law From April 2008 to January 2020**

22

Rule Changes –Title 14. Sales of Property; Chapter 200. Foreclosure of Lien Instruments.		
Effective date of changes	Rules affected	Summary of pertinent changes
January 1, 2019	14-206	Established procedure for secured party to file petition to be excused from the time and notice requirements of Real Prop. § 7-105.1(b), (c) and Rule 14-205(b) in certain fraud/deception, property destruction, bankruptcy, or vacant/abandoned situations.

MDDCCUA_UNF_SB262

Uploaded by: Murray, Rory

Position: UNF



Chairwoman Delores Kelley
3 East
Miller Senate Office Building
Annapolis, Maryland 21401

SB262: Maryland Collection Agency Licensing Act
Testimony on Behalf of MD|DC Credit Union Association
Position: Oppose

Chairwoman Kelley, Vice-Chair Feldman and Members of the Committee:

On behalf of the MD|DC Credit Union Association and the 84 Credit Unions and their 2 million members that we represent in the State of Maryland, we appreciate the opportunity to testify on this legislation. Credit Unions are member-owned, not-for-profit financial cooperatives whose mission is to promote thrift and provide access to credit for provident and productive purposes for our members. We respectfully oppose this bill.

Many of our members engage in mortgage lending and have the goal of providing consumer friendly mortgages for their members. Part of being able to offer mortgage loans that are best for our members is having the support of the government supported enterprises (GSEs) Fannie Mae and Freddie Mac, the Federal Home Loan banks and the Federal Housing Finance Agency (FHFA) which oversees these entities. These entities are the largest buyers and insurers of mortgages in the nation and are vital to the mortgage industry. The FHFA has publicly stated, in no uncertain terms, that this legislation would create “substantial uncertainty” in the Maryland mortgage market and “could harm existing Maryland homeowners as well as future borrowers.”

Without reiterating the points that General Counsel Pollard made in his submitted written testimony (FHFA Memorandum dated January 29, 2020), we oppose this legislation. The requirements proposed in this bill “would create no added benefit or consumer protection” but could very likely cause instability in the Maryland mortgage market.

Please do not hesitate to contact me at 443-325-0774 or jbratsakis@mddccua.org, or our VP of Advocacy, Rory Murray at rmurray@mddccua.org should you have any questions. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "John Bratsakis". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

John Bratsakis
President and CEO
MD|DC Credit Union Association

MSBARealpropsection_UNF_SB262

Uploaded by: O'Connell, Bill

Position: UNF

To: Members of The Senate Finance Committee

From: William A. O'Connell, Real Property Section Legislative Chair

Date: February 11, 2020

Subject: SB262 - Maryland Collection Agency Licensing Act - Definitions and Legislative

Position: Oppose

The Maryland State Bar Association (MSBA) Real Property Section Council **opposes Senate Bill #262** - Maryland Collection Agency Licensing Act - Definitions and Legislative.

A mortgage loan made to a consumer on residential property is already probably the most heavily regulated loan transaction. The laws related to foreclosing them were strengthened to in 2008 to give consumers time and an opportunity to work it out with the lender before the property went to sale. In addition, there are mechanisms in place to allow a consumer to file objections to the sale and be heard in the Circuit Court before the sale becomes final. Requiring a lender to become a licensed debt collector in order to foreclose helps no one and adds no further protection to the debtor.

The Court of Appeals decided *Blackstone v. Sharma*, 461 Md. 87, 191 A.3d 1188 (2018), based on several Maryland laws, not just the Maryland Collection Agency Licensing Act. The Maryland foreclosure laws and their interplay with the issues under consideration were also studied by the Court. It is necessary to decide cases in the context of the entire Maryland Code. That is what the Court of Appeals did in *Blackstone v. Sharma*, and that is why this decision should not be interfered with by legislative decree.

Even if the substance of this bill were to be considered favorably, Section 2(c), which appears on lines 2-5 of page 4 cannot stand. That section provides that the bill applies only prospectively to foreclosure sales where the properties are purchased by bona fide purchasers. The inference is that the bill applies retroactively to sales where the lender bought the property. This would mean that many past foreclosure sales would be set aside because of this bill. Significantly, of the sales that would be set aside, many relate to houses that have been sold and resold many times after the original foreclosure sale. This would put the title to all these houses in jeopardy. Many of these houses are now owned and occupied by unsuspecting homebuyers. These



520 West Fayette St., Baltimore, MD 21201
410-685-7878 | 800-492-1964
fax 410-685-1016 | tdd 410-539-3186
msba.org

unsuspecting homebuyers would come to find out that they do not own the houses where they and their families live.

For these reasons the MSBA Real Property Section Council **opposes** Senate Bill #262 and asks that the Committee issue an **unfavorable report**.

Should you have any questions, please contact The MSBA's Legislative Office at (410)-269-6464 / (410)-685-7878 ext: 3066 or at Richard@MSBA.org and Parker@MSBA.org