

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulation
Department of Labor, Licensing, and Regulation
(DLS Control No. 14-220)**

Overview and Legal and Fiscal Impact

These regulations update existing procedures for foreclosure of residential property by changing current mediation forms based on input from the Office of Administrative Hearings and adding new notice of intent to foreclose on property forms to reflect recent changes to federal law. The regulations also repeal certain appendices and adopt new appendices related to the updated procedures and forms in COMAR 09.03.12.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulation of COMAR Affected

Department of Labor, Licensing, and Regulation:

Commissioner of Financial Regulation: Foreclosure Procedures for Residential Property:
COMAR 09.03.12.01-.02

Legal Analysis

Background

The Division of Financial Regulation in the Department of Labor, Licensing, and Regulation (department) polled each Administrative Law Judge who has conducted a foreclosure mediation in the State for any recommended changes to the foreclosure mediation process. The department took the suggestions into consideration and decided which changes to pursue.

In January 2014, federal regulations pertaining to loss mitigation procedures took effect. The new federal rules require a borrower to be more than 120 days delinquent in their mortgage payment before a servicer of a federally-related mortgage loan can refer the borrower to foreclosure. In Maryland, prior to this change in federal regulations, a servicer could refer anyone who was delinquent in their mortgage payments to foreclosure after *90 days*. To account for this change, the department added a new form for servicers that service federally related mortgage loans. The department also added a form for servicers that service non-federally related mortgage loans, which continues to follow current State law.

Summary of Regulation

Regulation .01 adds the term “federally related mortgage loan” to the list of defined terms to be used throughout COMAR 09.03.12. Regulation .02 clarifies which notice of intent to foreclose forms must be used in certain circumstances. Regulation .02 also makes a distinction between which notice of intent to foreclose forms to use for federally related mortgage loans and non-federally related mortgage loans. Additionally, Regulation .02 makes a distinction between which notice of intent to foreclose forms to use for owner-occupied residential property and non-owner-occupied residential property.

The rest of the substantive changes contained in this proposed action derive from changes made to the foreclosure process forms that are to be published as appendices along with the regulations. These changes include:

- adding new notice of intent forms that reference the new federal rule requiring servicers to wait 120 days (rather than 90 currently) before making a first filing in a foreclosure action;
- changing the language of the pre- and post-file foreclosure mediation instructions, specifically, to better describe which documents the borrower needs to produce for the mediation session (major additions are directing borrower to the lender or Making Home Affordable website if they have questions about completing documents) and a reminder that documents become 'stale' after a certain time period;
- amending the checklist of what is covered at mediation to exclude some items that are rarely ever discussed (over-equity refinance, structured liquidation, private auction) and to include some items that are discussed but are not on checklist (friendly foreclosure, reinstatement); and
- adding a line for “servicer” to the mediation request form to help the Office of Administrative Hearings (OAH) with scheduling and also to give OAH the ability to schedule multiple mediations for larger servicers on a single day.

Legal Issue

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites § 7-105.1 of the Real Property Article as legal authority for the regulations. Section 7-105.1 authorizes the Commissioner of Financial Regulation to adopt additional regulations necessary to carry out the requirements of § 7-105.1 pertaining to residential property foreclosure procedure. The cited authority is correct and complete. The regulations comply with the legislative intent of the law.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The department advises that the regulations have minimal or no impact on State or local governments. The Department of Legislative Services concurs.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

Contact Information

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