

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulation  
Department of Labor, Licensing, and Regulation  
(DLS Control No. 15-240)**

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**Overview and Legal and Fiscal Impact**

The regulation reduces the fee for pre-file mediation from \$350 to \$1.00.

The regulation presents no legal issue of concern.

Housing Counseling and Foreclosure Mediation Fund revenues decrease by approximately \$2,268 due to the reduction of the pre-file mediation fee.

**Regulation of COMAR Affected**

**Department of Labor, Licensing, and Regulation:**

Commissioner of Financial Regulation: Foreclosure Procedures for Residential Property:  
COMAR 09.03.12.09

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**Legal Analysis**

**Background**

On September 15, 2015, Governor Larry Hogan announced a plan to reduce or eliminate a number of fees across State government. This regulation is part of that plan. Additional information regarding Governor Hogan's fee reduction initiative may be found [here](#).

Chapter 156 of 2012 established a process through which a secured party (a person who has an interest in real property secured by a lien, including a mortgagee and the holder of a note secured by a deed of trust) and a mortgagor or grantor (hereinafter "homeowner") may participate in mediation conducted by the Office of Administrative Hearings before an action is filed to foreclose a lien on owner-occupied residential property.

The Act authorized a secured party to offer to participate in pre-file mediation and established procedures for a homeowner to elect to participate in pre-file mediation. As a precondition to pre-file mediation, a homeowner must participate in housing counseling services. A homeowner who participates in pre-file mediation may not request post-file mediation unless allowed under the terms of the pre-file mediation agreement.

The Commissioner of Financial Regulation is required to establish the fee for pre-file mediation by regulation. The fee must be distributed to the Housing Counseling and Foreclosure Mediation Fund, the purposes of which are to:

- (1) support nonprofit and government housing counselors and other nonprofit entities with providing:
  - (i) legal assistance to homeowners or occupants who are trying to avoid foreclosure or manage foreclosure proceedings; and
  - (ii) homebuyer education, housing advice, or financial counseling for homeowners and prospective homeowners;
- (2) support the establishment and operation of nonprofit housing counseling entities;
- (3) support efforts by the Department and the Department of Labor, Licensing, and Regulation to:
  - (i) contact and provide advice and assistance to homeowners or occupants facing financial difficulty or foreclosure; and
  - (ii) provide advice and assistance to prospective homeowners; and
- (4) assist in funding the costs of foreclosure mediations provided by the Office of Administrative Hearings.

The total fee for pre-file mediation is \$350, which must be paid by the secured party. The secured party may elect to pay the fee on behalf of the homeowner or collect all or part of the fee as part of the resolution of the mortgage loan through pre-file mediation or foreclosure, as applicable.

### **Summary of Regulation**

The regulation reduces the fee for pre-file mediation from \$350 to \$1.00.

### **Legal Issue**

The regulation presents no legal issue of concern.

### **Statutory Authority and Legislative Intent**

The Commissioner of Financial Regulation cites § 7-105.1 of the Real Property Article as statutory authority for the proposed regulation. This section governs actions to foreclose a mortgage or deed of trust on residential property and, among other things, establishes the pre-file mediation process, and authorizes the commissioner to set the fee for pre-file mediation.

This authority is correct and complete. However, if the fee reduction affects the balance of the Housing Counseling and Foreclosure Mediation Fund to the extent that it would be unable to carry out its purposes, the regulation may not reflect the legislative intent of the law.

## **Fiscal Analysis**

Housing Counseling and Foreclosure Mediation Fund revenues decrease by approximately \$2,268 due to the reduction of the pre-file mediation fee.

### **Agency Estimate of Projected Fiscal Impact**

The Department of Labor, Licensing, and Regulation (DLLR) advises that the reduction of the pre-file mediation fee from \$350 to \$1 reduces Housing Counseling and Foreclosure Mediation Fund revenues, which are collected by the Department of Housing and Community Development (DHCD), by approximately \$2,268 annually. This estimate is based on actual revenue obtained from this fee in fiscal 2013 and 2014. The Department of Legislative Services concurs and notes that the regulation will likely only be effective for half of fiscal 2016, mitigating the Housing Counseling and Foreclosure Mediation Fund revenue loss in that year only.

DLLR further advises that, to the extent that a reduction in the pre-file mediation fee increases the number of secured parties that offer pre-file mediation, there will be an increase in costs to the Office of Administrative Hearings to conduct such mediation; however, such increases may be offset by a corresponding decline in post-file mediation sessions, as a mortgagor or grantor is not entitled to post-file mediation if the mortgagor or grantor elects to participate in pre-file mediation. The Department of Legislative 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 regulation has minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

### **Additional Comments**

The Housing Counseling and Foreclosure Mediation Fund consists of fee revenues collected pursuant to § 7-105.1 of the Real Property Article. These fee revenues are collected by DHCD and include the filing fee for an order to docket or complaint for foreclosure (\$300), pre-file mediation fee (\$350), and post-file mediation fee (\$50). At the end of fiscal 2015, DHCD reported that the Housing Counseling and Foreclosure Mediation Fund had a \$7,351,791 unencumbered fund balance.

## **Contact Information**

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