Department of Legislative Services

Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 671 (Senator Charles)
Judicial Proceedings

Foreclosure Proceedings - Residential Mortgagors and Grantors - Access to Counsel

This bill establishes, subject to the availability of funding, access to legal representation for individuals meeting specified qualifications ("covered individuals") in specified foreclosure proceedings. To facilitate this access, the bill establishes the Access to Counsel in Foreclosure Proceedings (ACFP) Program, administered by the Maryland Legal Services Corporation (MLSC), to organize and direct services and resources in order to provide all covered individuals with access to legal representation. The bill also (1) establishes the ACFP Special Fund, administered by MLSC and (2) requires the Comptroller to collect specified fees on each residential property sale. The access to legal representation established by the bill must be phased in over time as determined appropriate by MLSC, with a goal of being fully implemented before October 1, 2028.

Fiscal Summary

State Effect: Special fund revenues from home sale fees increase by $19.9 million in FY 2025; special fund expenditures are assumed to correspond, and future years reflect annualization and projected home sale activity. State (primarily general fund) expenditures also increase by at least $3.4 million in FY 2025 for significant one-time programming costs and related staffing and operational costs for State agencies; future years reflect annualization and ongoing costs.

($ in millions)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
SF Revenue	$19.9	$28.9	$30.1	$30.9	$32.0
GF Expenditure	$3.4	$0.4	$0.4	$0.5	$0.5
SF Expenditure	$20.0	$29.0	$30.2	$31.0	$32.1
Net Effect	($3.4)	($0.5)	($0.5)	($0.5)	($0.5)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill is not anticipated to directly affect local government operations or finances, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Selected Definitions

"Community group" means a nonprofit entity with the capacity to conduct outreach to mortgagors and grantors and provide engagement, education, and information.

"Covered individual" means an individual (mortgagor or grantor) who (1) owns and occupies a residential property as the mortgagor or grantor's principal residence and (2) is a member of a household with an income that is not greater than 50% of the State median income, as specified.

"Designated organization" means a nonprofit entity designated by MLSC with the ability to provide legal representation to covered individuals.

"Legal representation" includes all representation by an attorney beyond brief legal advice and is not limited to the formal entry of appearance in court.

Access to Counsel in Foreclosure Proceedings Program

The ACFP Program administered by MLSC is to organize and direct services and resources in order to provide all covered individuals in the State with access to legal representation as required by the bill. MLSC may contract with a designated organization to provide all or part of the legal representation services required by the bill.

Under the program, MLSC must provide a covered individual with access to legal representation for specified proceedings in foreclosure actions (generally, after a notice of intent (NOI) to foreclose is filed with the Commissioner of Financial Regulation (CFR)), including the first appeal of a decision in the proceeding if the dedicated organization determines there are sufficient legal grounds for the appeal. A designated organization must ensure that a covered individual receives access to legal representation in a proceeding as soon as possible after the NOI is filed; CFR must provide a copy of the NOI to MLSC.

Priority in funding during the phase-in period will be given to mortgagors and grantors in local jurisdictions that provide or agree to provide significant additional local funding to effectuate access to counsel in the local justification.

Public Outreach and Reporting Requirements

MLSC must develop an informational pamphlet in English and other appropriate languages describing (1) the legal rights of mortgagors and grantors; (2) the access to counsel established under the bill; and (3) information on resources available to mortgagors and grantors. CFR must provide a copy of the pamphlet to mortgagors and grantors, and MLSC must post a link to a version of the pamphlet on its website.

MLSC must designate and contract with appropriate community groups to conduct relevant public outreach and education to mortgagors and grantors – locally and throughout the State – regarding their rights and the access to legal representation provided in the bill.

Annually by August 31, MLSC must report to the Governor and the General Assembly on (1) the number of covered individuals provided legal representation during the previous fiscal year; (2) information on and metrics evaluating case outcomes; and (3) a summary of the engagement and education of mortgagors and grantors.

Access to Counsel in Foreclosure Proceedings Special Fund

The ACFP Special Fund established by the bill is a special, nonlapsing fund that is only to be used (1) for services provided by a designated organization or activity by a community group to implement the program, as specified in the bill; (2) if a local jurisdiction enacts a similar program, as authorized under the bill, for services provided by the local jurisdiction to implement an ACFP program (including all costs associated with required legal representation in any proceeding and any outreach and education activities); (3) for administrative expenses of MLSC; and (4) for expenses related to the study and evaluation of services, activities, funding amounts, and sources necessary to fully implement the program, as specified.

Local Jurisdictions

Local jurisdictions may enact local laws providing for legal representation in foreclosure proceedings. If a local jurisdiction enacts a substantially similar program, MLSC must direct funding that would have been allocated under the bill’s provisions for the benefit of that jurisdiction’s covered individuals to the local program.

Fees on Residential Property Sales

The bill establishes that the Comptroller must collect a fee on each residential property sale. Fees collected must be paid to the ACFP Special Fund. The bill specifies that fees are collected as follows:

- $25 on a sale of less than $200,000;
- $50 on a sale of at least $200,000 but less than $350,000;
- $100 on a sale of at least $350,000 but less than $500,000; and
- $250 on a sale of $500,00 or more.

Miscellaneous Provisions

The bill contains a severability provision.

Current Law: Generally, for information regarding the State's foreclosure process, please see the **Appendix – Foreclosure Process**.

MLSC, as established in Title 11 of the Human Services Article, generally has the purpose of receiving and distributing funds to "grantees" that provide legal assistance to eligible clients in civil proceedings or matters. A grantee means a nonprofit organization that is (1) qualified under § 501(c)(3) of the Internal Revenue Code; (2) provides legal assistance to eligible clients; and (3) receives financial assistance, as specified, from MLSC. Pursuant to Chapter 746 of 2021, MLSC also administers the State Access to Counsel in Evictions Program.

State Fiscal Effect: Special fund revenues increase significantly from revenues collected from residential home sale fees that are directed to the special fund established under the bill; special fund expenditures are assumed to increase correspondingly as the funding is used to implement the bill's provisions. General and special fund expenditures increase further for staffing, mailing, programming, and contractual costs for the Comptroller and the Maryland Department of Labor (MDL), as discussed below. Although not reflected in this analysis, even with the special fund revenues generated from home sale fees (discussed below), it is possible that general fund expenditures are required to fully implement the access to legal representation under the bill.

As previously noted, the bill establishes a residential home sale fee; the fee collected must be distributed to the ACFP Special Fund. Based on the estimate prepared by the Comptroller, the new fee generates revenues of approximately $19.9 million in fiscal 2025 (which reflects the bill's October 1, 2024 effective date), and by at least $28.9 million annually thereafter; special fund expenditures correspondingly increase as the funds are used for authorized purposes under the bill.

Although this fiscal and policy note generally assumes special funds from home sale fee revenues are being allocated for use within the same fiscal year in which they are collected, overall expenditures for specific fiscal years may differ, as the impact will depend on decisions made by MLSC, the availability of additional funding, and the volume of foreclosure proceedings. The Department of Legislative Services notes that the fund created by the bill is also specifically authorized to be used for expenses related to *the study of funding amounts* and sources necessary to *fully* effectuate ACFP.

Office of the Comptroller

The Comptroller generally indicates that the bill's requirements necessitate significant programming costs and additional staff to execute administrative duties associated with the collection of the new fee. Based on information previously provided for similar legislation in a prior year, general fund expenditures therefore are assumed to increase by $3.4 million in fiscal 2025 for one-time programming changes and additional staff (five revenue examiners and one revenue administrator to facilitate the collection of the new fee); the estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	6.0
Salaries and Fringe Benefits	$319,395
Other Operating Costs	43,536
Programming Costs	3,000,000
FY 2025 State Expenditures – Comptroller	**$3,362,931**

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Maryland Department of Labor

MDL indicates that the bill's requirements necessitate programming and mailing costs to provide NOI data to MLSC and information to borrowers as required under the bill. Consequently, special fund expenditures increase by a minimum of $71,875 in fiscal 2025 (which accounts for the bill's October 1, 2024 effective date and one-time programming costs of $32,500) and at least $53,000 annually thereafter. MDL advises that mailing costs are dependent on the number of NOIs submitted each year. Although this fiscal and policy note assumes a sufficient special fund balance is available to cover the *minimum* estimated costs for the time period covered in this analysis, to the extent that the number of mailings remains at its current volume, general funds are likely required in future years.

Judiciary

The Judiciary advises that the bill results in a significant operational impact. Generally, the average length of a case may increase with the presence of counsel, requiring more clerical and judicial attention. However, any operational impact is not anticipated to materially affect State finances (or those of the circuit courts).

Local Fiscal Effect: As noted above, pursuant to MLSC's existing statutory authority (which is unchanged by this bill), its purpose is to receive and distribute funds to specified "grantees," which are nonprofit organizations. Although the bill includes requirements for MLSC to direct funding that would have been allocated for the benefit of a local jurisdiction's mortgagors and grantors to a local program, if a local program is enacted, it is assumed that local jurisdictions that elect to establish a program similar to the program under the bill will not *directly* be provided funding from MLSC. Instead, it is assumed that eligible nonprofit entities within these jurisdictions receive funding from MLSC for services rendered in foreclosure proceedings for the benefit of the local jurisdiction's covered individuals.

Small Business Effect: Any small business lenders are subject to potential increases in legal costs to the extent that having opposing counsel results in additional time spent on each case.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See HB 225 of 2023 and HB 1038 of 2022.

Designated Cross File: None.

Information Source(s): Comptroller's Office; Judiciary (Administrative Office of the Courts); Maryland Department of Labor; Department of Housing and Community Development; Department of Legislative Services

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rh/jkb

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Appendix – Foreclosure Process

Beginning with the financial downturn in 2007, Maryland saw a significant increase in the number of foreclosure actions. Foreclosure activity likely peaked in 2010, when the number of foreclosure events exceeded 50,000. Due to a multitude of factors, including legislation addressing the State's foreclosure mediation process, consumer outreach efforts, and enhanced mortgage industry regulation and enforcement surrounding many banks' and mortgage companies' foreclosure practices, the number of foreclosure events decreased significantly to 16,049 in 2011. However, these changes also resulted in the general lengthening of the foreclosure process, leaving many housing units in limbo for years at a time. The most recent statewide data regarding foreclosures can be found on the online database maintained by the Maryland Department of Labor.

Foreclosure Process in Maryland

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

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

- the loan secured by the mortgage or deed of trust was obtained by fraud or deception;
- no payments have ever been made on the loan secured by the mortgage or deed of trust;
- the property subject to the mortgage or deed of trust has been destroyed;

- the default occurred after the stay has been lifted in a bankruptcy proceeding; or
- the property is found by a court to be vacant and abandoned.

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

Prerequisites for Foreclosure Sales

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

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

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

Curing Defaults

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

Expedited Foreclosure Process for Vacant and Abandoned Property

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