

By: Senator Roesser

Requested: August 17, 1995

Introduced and read first time: January 10, 1996

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property - Foreclosure Sales - Subordinate Interests in Property**

3 FOR the purpose of defining a "holder of a subordinate interest" in property subject to a
4 mortgage or deed of trust to include a condominium or homeowners association
5 identified in a declaration of covenants recorded against the property; allowing a
6 condominium or homeowners association to file a request for notice of sale by
7 certain persons; and generally relating to condominium and homeowners
8 associations as holders of a subordinate interest in property against which covenants
9 are recorded.

10 BY repealing and reenacting, with amendments,
11 Article - Real Property
12 Section 7-105(c)
13 Annotated Code of Maryland
14 (1988 Replacement Volume and 1995 Supplement)

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

17 **Article - Real Property**

18 7-105.

19 (c) (1) IN THIS SUBSECTION, "HOLDER OF A SUBORDINATE INTEREST"
20 INCLUDES ANY CONDOMINIUM OR HOMEOWNERS ASSOCIATION IDENTIFIED IN A
21 DECLARATION OF COVENANTS RECORDED AGAINST PROPERTY THAT IS SUBJECT
22 TO A MORTGAGE OR DEED OF TRUST.

23 (2) The person authorized to make a sale in an action to foreclose a
24 mortgage or deed of trust shall give written notice of any proposed foreclosure sale to the
25 holder of any subordinate mortgage, deed of trust, or other subordinate interest,
26 including a judgment, in accordance with subsection (b) of this section and the
27 requirements of the Maryland Rules applicable to the giving of notice to the record owner
28 of the property to be sold.

29 [(2)] (3) (i) The land records office of each county shall maintain a
30 current listing of recorded requests for notice of sale by holders of subordinate

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1 mortgages, deeds of trust, or other subordinate interests. The holder of a subordinate
2 mortgage, deed of trust, or other subordinate interest may file a request for notice under
3 this paragraph.

4 (ii) Each request for notice of sale shall:

5 1. Be recorded in a separate docket or book which shall be
6 indexed under the name of the holder of the superior mortgage or deed of trust and
7 under the book and page numbers where the superior mortgage or deed of trust is
8 recorded;

9 2. Identify the property in which the subordinate interest is
10 held;

11 3. State the name and address of the holder of the subordinate
12 interest; and

13 4. Identify the superior mortgage or deed of trust by stating:

14 A. The names of the original parties to the superior mortgage or
15 deed of trust;

16 B. The date the superior mortgage or deed of trust was
17 recorded; and

18 C. The office, docket or book, and page where the superior
19 mortgage or deed of trust is recorded.

20 (iii) Failure of a holder of a subordinate mortgage, deed of trust, or
21 other subordinate interest to record a request for notice under this paragraph does not
22 affect the duty of a holder of a superior interest to provide notice as required under this
23 subsection.

24 [(3)] (4) The person giving notice under this subsection shall file in the
25 action:

26 (i) The return receipt from the notice; or

27 (ii) An affidavit that:

28 1. The notice provisions of this subsection have been complied
29 with; or

30 2. The address of the holder of the subordinate interest is not
31 reasonably ascertainable.

32 [(4)] (5) The person authorized to make a sale in an action to foreclose a
33 mortgage or deed of trust is not required to give notice to the holder of a subordinate
34 mortgage, deed of trust, or other subordinate interest if:

35 (i) The existence of the mortgage, deed of trust, or other subordinate
36 interest is not reasonably ascertainable;

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1 (ii) The identity or address of the holder of the mortgage, deed of
2 trust, or other subordinate interest is not reasonably ascertainable;

3 (iii) With respect to a recorded or filed subordinate mortgage, deed of
4 trust, or other recorded or filed subordinate interest, the recordation or filing occurred
5 after the later of:

6 1. 30 days before the day on which the foreclosure sale was
7 actually held; and

8 2. The date the action to foreclose the mortgage or deed of
9 trust was filed; or

10 (iv) With respect to an unrecorded or unfiled subordinate mortgage,
11 deed of trust, or other unrecorded or unfiled subordinate interest, the subordinate
12 interest was created after the later of:

13 1. 30 days before the day on which the foreclosure sale was
14 actually held; and

15 2. The date the action to foreclose the mortgage or deed of
16 trust was filed.

17 [(5)] (6) The right of a holder of a subordinate mortgage, deed of trust, or
18 other subordinate interest to file an action for the failure of the person authorized to
19 make a sale in an action to foreclose a mortgage or deed of trust to comply with the
20 provisions of this subsection shall expire 3 years after the date of the order ratifying the
21 foreclosure sale.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 1996.