

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 1502
Judiciary

(Delegate Vallario)

Estates - Foreclosure of Mortgage or Deed of Trust - Notice of Proposed Sale

This bill allows a person who is authorized to make a sale of property in an action to foreclose a mortgage or deed of trust to satisfy a requirement to provide notice of the sale by sending the notice to “occupant” of the property or any other alternative address provided to a lienholder if the owner of the property died on or before the sale and no personal representative has been appointed.

The bill is to be applied prospectively and may not be applied to the estate of any decedent who dies before the bill’s October 1, 2004 effective date.

Fiscal Summary

State Effect: None.

Local Effect: The bill’s notification procedure could be handled within the existing resources of the register of wills in each local jurisdiction.

Small Business Effect: None.

Analysis

Bill Summary: An individual authorized to make a sale of a property in a foreclosure action must give written notice of the proposed sale to: (1) the record owner of the property; (2) the personal representative of a decedent who was the record owner at the mailing address listed for the representative in the estate filing; or (3) if the individual giving notice has reason to believe an owner is deceased and no personal representative has been appointed, to an occupant at the address of the property or any other alternative

address provided to the lienholder by the decedent before death or a person claiming to represent the decedents' interest.

Current Law: "Record owner" means the person holding record title to property as of the later of:

- 30 days before the day on which a foreclosure sale of the property is actually held; and
- the date on which an action to foreclose the mortgage or deed of trust is filed.

The person authorized to make a sale in an action to foreclose a mortgage or deed of trust shall give written notice of the proposed sale to the record owner of the property. The written notice must be sent by certified mail and first class mail. The notice shall state the time, place, and terms of the sale and must be sent not earlier than 30 days and not later than 10 days before the date of sale. The person authorized to make a sale in an action to foreclose a mortgage or deed of trust is not required to give notice to a record owner whose address is not reasonably ascertainable.

Statute provides that all property of a decedent passes directly to the personal representative, who holds the legal title for administration and distribution, without any distinction, preference, or priority as between real and personal property.

Background: Most title insurance companies require foreclosing creditors to ensure that a notice of sale is received by a record owner. Title 7 of the Real Property Article provides that written notice of the proposed sale should be given to the "record owner" of a property. If a property owner dies before the sale and an estate is set up, the notice is sent to the personal representative to satisfy the requirements of the Article. However, if no estate is created, there is no personal representative to receive the notice and title insurers have generally required creditors have an estate opened for the decedent so that a personal representative may be appointed to receive the notice. While this is not specifically required in State law, this practice is required by title insurers to protect against subsequent challenges to the foreclosure based on the notice requirements. A creditor must open an estate at its own expense.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Caroline County, Howard County, Montgomery County,
Register of Wills, Department of Legislative Services

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mh/jr

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