

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 1528

(Delegate Goodwin)

Judiciary

Property - Foreclosure on Decedent's Property - Notification Required

This bill provides that in addition to any other foreclosure requirements, when a mortgagee intends to foreclose on a decedent's real property and the personal representative of the estate has not been appointed, the person authorized to make the sale must notify the orphans' court or register of wills. The notice must be given after the commencement of an action to foreclose the lien and before selling the property.

Fiscal Summary

State Effect: Any change in State activities would not materially affect State finances.

Local Effect: Any change in local government activities would not materially affect local government finances.

Small Business Effect: Minimal.

Analysis

Bill Summary: If a personal representative is appointed after the foreclosure process begins, the personal representative has the right to a hearing by filing a complaint in the orphans' court under the bill. Within 30 days after the notice is served, the personal representative may file a complaint in the orphans' court for the county where any part of the property is located to determine whether the foreclosure procedure was brought prematurely.

The complaint must include: (1) the names of the complainant and the party seeking to establish rights over the property as the personal representative of the decedent; (2) a copy of the notice; and (3) an affidavit containing a statement of facts that would preclude foreclosure of the decedent's estate.

Current Law: Generally, the requirements for foreclosing a lien on real property are established under the Maryland Rules. Under the Rules, an action to foreclose a lien may be filed at any time after the lien has been recorded and there has been a default in a condition upon which the lien instrument provides that a sale may be made. The action must be filed in the county in which all or any part of the property is located.

Before making a sale of the property to foreclose a lien, the person authorized to make the sale must file a bond. After commencing the action and before making the sale, the person must publish a notice of the time, place, and terms of the sale in a newspaper of general circulation in the county where the action is pending. Before making a sale, the person authorized to make the sale must send notice of the time, place, and terms by certified mail and first class mail to the last known address of the debtor, the record owner, and the holder of any subordinate interest in the property. Notice must be sent to the record owner no later than two days after the action to foreclose is docketed and must include specified information. Notice must be sent no more than 30 days nor fewer than 10 days before the date of the sale to all other persons whose identity and address are actually known or reasonably ascertainable from a document recorded, indexed, and available for public inspection.

An interested person or a creditor may request judicial probate by filing a petition for probate of a will or a determination of the intestacy of the decedent, and for the appointment of a personal representative. Generally, a personal representative is a fiduciary and is under a general obligation to settle and distribute the estate of the decedent in accordance with the terms of a will and the estates and decedents law. After appointment, a personal representative must make a reasonably diligent effort to ascertain the names and addresses of the decedent's creditors and notify the creditors about how to make their claims.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Register of Wills, Office of the Attorney General (Consumer Protection Division), Department of Legislative Services

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mam/jr

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