

# HOUSE BILL 67

N1

8lr0966

(PRE-FILED)

---

By: **Delegate McConkey**

Requested: October 29, 2007

Introduced and read first time: January 9, 2008

Assigned to: Environmental Matters

---

## A BILL ENTITLED

1 AN ACT concerning

2 **Real Property - Homeowners in Foreclosure Protection Act**

3 FOR the purpose of requiring a written notice of foreclosure sale to contain a certain  
4 statement; requiring a certain person, within a certain time after receiving a  
5 request from the record owner of residential real property, to inform the record  
6 owner of what actions must be taken to reinstate the record owner's mortgage  
7 loan; altering the time by which a certain person must give notice of a  
8 foreclosure sale to the record owner; requiring a certain person to give new  
9 notice of a foreclosure sale to the record owner of residential real property if the  
10 sale is postponed to a later date; providing that a record owner may not be  
11 charged for costs or expenses resulting from the postponement of a foreclosure  
12 sale of residential real property under certain circumstances; requiring that  
13 bidding at a foreclosure sale of residential real property commence within a  
14 certain time; requiring a certain person to publish new notice of a foreclosure  
15 sale if bidding at the sale does not commence within a certain time; providing  
16 that a record owner of residential real property may reinstate a mortgage loan  
17 by fulfilling certain obligations at any time prior to the commencement of  
18 bidding at the foreclosure sale; defining certain terms; providing for the  
19 application of this Act; and generally relating to foreclosure.

20 BY repealing and reenacting, with amendments,  
21 Article - Real Property  
22 Section 7-105  
23 Annotated Code of Maryland  
24 (2003 Replacement Volume and 2007 Supplement)

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

27 **Article - Real Property**

---

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 7-105.

2 (a) **IN THIS SECTION, “MORTGAGE LOAN” MEANS A LOAN OR OTHER**  
3 **EXTENSION OF CREDIT SECURED BY A MORTGAGE OR DEED OF TRUST.**

4 (B) (1) A provision may be inserted in a mortgage or deed of trust  
5 authorizing any natural person named in the instrument, including the secured party,  
6 to sell the property or declaring the borrower’s assent to the passing of a decree for the  
7 sale of the property, on default in a condition on which the mortgage or deed of trust  
8 provides that a sale may be made.

9 (2) A sale made pursuant to this section or to the Maryland Rules,  
10 after final ratification by the court and grant of the property to the purchaser on  
11 payment of the purchase money, has the same effect as if the sale and grant were  
12 made under decree between the proper parties in relation to the mortgage or deed of  
13 trust and in the usual course of the court, and operates to pass all the title which the  
14 borrower had in the property at the time of the recording of the mortgage or deed of  
15 trust.

16 [(a-1)] (C) (1) In this subsection, “record owner” means the person holding  
17 record title to residential real property as of the date on which an action to foreclose  
18 the mortgage or deed of trust is filed.

19 (2) In addition to any notice required to be given by provisions of the  
20 Annotated Code of Maryland or the Maryland Rules, the person authorized to make a  
21 sale in an action to foreclose a mortgage or deed of trust shall give written notice of the  
22 action to the record owner of the property to be sold.

23 (3) [(i)] The written notice shall be sent no later than 2 days after  
24 the action to foreclose is docketed:

25 [1.] (I) By certified mail, postage prepaid, return  
26 receipt requested, bearing a postmark from the United States Postal Service, to the  
27 record owner; and

28 [2.] (II) By first-class mail.

29 [(ii)] (4) The notice **REQUIRED BY THIS SUBSECTION**  
30 shall:

31 (I) [state] **STATE** that an action to foreclose the mortgage or  
32 deed of trust may be or has been docketed and that a foreclosure sale of the property  
33 will be held[.];

1                   (ii) **CONTAIN A STATEMENT, PRINTED IN AT LEAST 14**  
2 **POINT BOLDFACE TYPE, THAT INCLUDES:**

3                   1. **THE PHRASE “FOR INFORMATION ON HOW TO**  
4 **REINSTATE YOUR LOAN, CALL THE FOLLOWING TELEPHONE NUMBER:\_\_\_\_\_”;**  
5 **AND**

6                   2. **THE NAME AND TELEPHONE NUMBER OF A**  
7 **CONTACT PERSON THE RECORD OWNER MAY CALL TO OBTAIN SPECIFIC**  
8 **INSTRUCTIONS ON HOW TO REINSTATE THE MORTGAGE LOAN UNDER**  
9 **SUBSECTION (F) OF THIS SECTION; AND**

10                   (iii) [The notice shall contain] **CONTAIN** the following statement  
11 printed in at least 14 point boldface type:

12                   **“NOTICE REQUIRED BY MARYLAND LAW**

13                   Mortgage foreclosure is a complex process. Some people may approach you  
14 about “saving” your home. You should be careful about any such promises.

15                   The State encourages you to become informed about your options in foreclosure  
16 before entering into any agreements with anyone in connection with the foreclosure of  
17 your home. There are government agencies and nonprofit organizations that you may  
18 contact for helpful information about the foreclosure process. For the name and  
19 telephone number of an organization near you, please call the Consumer Protection  
20 Division of the Office of the Attorney General of Maryland at 1-888-743-0023. The  
21 State does not guarantee the advice of these organizations.

22                   Do not delay dealing with the foreclosure because your options may become  
23 more limited as time passes.”.

24                   **(5) WITHIN 1 BUSINESS DAY AFTER RECEIVING A REQUEST FOR**  
25 **REINSTATEMENT INSTRUCTIONS FROM THE RECORD OWNER, THE PERSON**  
26 **DESIGNATED IN THE NOTICE AS THE CONTACT PERSON SHALL INFORM THE**  
27 **RECORD OWNER OF WHAT ACTIONS MUST BE TAKEN, INCLUDING THE AMOUNT**  
28 **OF MONEY THAT MUST BE TENDERED, TO REINSTATE THE MORTGAGE LOAN**  
29 **UNDER SUBSECTION (F) OF THIS SECTION.**

30                   **[(b) (D) (1) (i)]** In this subsection, “record owner” means the person  
31 holding record title to property as of the later of:

32                   1. 30 days before the day on which a foreclosure sale of  
33 the property is actually held; and



1                   **2. UNLESS THE POSTPONEMENT IS CAUSED BY THE**  
2 **RECORD OWNER, THE RECORD OWNER MAY NOT BE CHARGED FOR ANY COSTS**  
3 **OR EXPENSES RESULTING FROM THE POSTPONEMENT.**

4                   (4) The right of a record owner to file an action for the failure of the  
5 person authorized to make a sale in an action to foreclose a mortgage or deed of trust  
6 to comply with the provisions of this subsection shall expire 3 years after the date of  
7 the order ratifying the foreclosure sale.

8                   **(E) (1) BIDDING AT A FORECLOSURE SALE OF RESIDENTIAL REAL**  
9 **PROPERTY SHALL COMMENCE WITHIN ONE-HALF HOUR AFTER THE TIME OF**  
10 **SALE SPECIFIED IN THE NOTICE REQUIRED TO BE PUBLISHED IN A NEWSPAPER**  
11 **OF GENERAL CIRCULATION UNDER MARYLAND RULE 14-206.**

12                   **(2) IF BIDDING AT A FORECLOSURE SALE OF RESIDENTIAL REAL**  
13 **PROPERTY DOES NOT COMMENCE WITHIN THE TIME SPECIFIED IN PARAGRAPH**  
14 **(1) OF THIS SUBSECTION, THE PERSON AUTHORIZED TO MAKE THE SALE SHALL**  
15 **PUBLISH NOTICE OF THE NEW TIME, PLACE, AND TERMS OF SALE IN A**  
16 **NEWSPAPER OF GENERAL CIRCULATION AS REQUIRED BY MARYLAND RULE**  
17 **14-206.**

18                   **(F) (1) IN THIS SUBSECTION, "RECORD OWNER" MEANS THE PERSON**  
19 **HOLDING TITLE TO RESIDENTIAL REAL PROPERTY.**

20                   **(2) AT ANY TIME BEFORE THE COMMENCEMENT OF BIDDING AT A**  
21 **SALE TO FORECLOSE A MORTGAGE OR DEED OF TRUST, THE RECORD OWNER OF**  
22 **THE PROPERTY TO BE SOLD, OR AN AGENT OF THE RECORD OWNER, MAY**  
23 **REINSTATE THE MORTGAGE LOAN AND PREVENT THE SALE OR OTHER**  
24 **DISPOSITION OF THE PROPERTY BY:**

25                   **(I) CURING ANY EXISTING DEFAULT UNDER THE TERMS OF**  
26 **THE MORTGAGE LOAN, OTHER THAN THE PAYMENT OF THE PORTION OF THE**  
27 **PRINCIPAL THAT WOULD NOT HAVE BEEN DUE HAD NO ACCELERATION**  
28 **OCCURRED; AND**

29                   **(II) PAYING ALL COSTS AND EXPENSES REQUIRED BY THE**  
30 **TERMS OF THE MORTGAGE LOAN TO BE PAID AS A RESULT OF THE DEFAULT.**

31                   **(3) ON REINSTATEMENT OF A MORTGAGE LOAN UNDER THIS**  
32 **SUBSECTION, THE MORTGAGE LOAN SHALL REMAIN IN FULL FORCE AND**  
33 **EFFECT AS IF NO ACCELERATION OR DEFAULT HAD OCCURRED.**

34                   **[(c)] (G) (1) In this subsection, "holder of a subordinate interest"**  
35 **includes any condominium council of unit owners or homeowners association that has**  
36 **filed a request for notice of sale under paragraph (3) of this subsection.**

1           (2) The person authorized to make a sale in an action to foreclose a  
2 mortgage or deed of trust shall give written notice of any proposed foreclosure sale to  
3 the holder of any subordinate mortgage, deed of trust, or other subordinate interest,  
4 including a judgment, in accordance with subsection [(b)] **(D)** of this section and the  
5 requirements of Maryland Rule 14–206.

6           (3) (i) The land records office of each county shall maintain a  
7 current listing of recorded requests for notice of sale by holders of subordinate  
8 mortgages, deeds of trust, or other subordinate interests. The holder of a subordinate  
9 mortgage, deed of trust, or other subordinate interest may file a request for notice  
10 under this paragraph.

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

12                               1. Be recorded in a separate docket or book which shall  
13 be indexed under the name of the holder of the superior mortgage or deed of trust and  
14 under the book and page numbers where the superior mortgage or deed of trust is  
15 recorded;

16                               2. Identify the property in which the subordinate  
17 interest is held;

18                               3. State the name and address of the holder of the  
19 subordinate interest; and

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

22                                       A. The names of the original parties to the superior  
23 mortgage or deed of trust;

24                                       B. The date the superior mortgage or deed of trust was  
25 recorded; and

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

28                               (iii) 1. Except as provided in sub-subparagraph 2 of this  
29 subparagraph, failure of a holder of a subordinate mortgage, deed of trust, or other  
30 subordinate interest to record a request for notice under this paragraph does not affect  
31 the duty of a holder of a superior interest to provide notice as required under this  
32 subsection.

33                                       2. A holder of a superior interest does not have a duty to  
34 provide notice to a condominium council of unit owners or homeowners association  
35 that has not filed a request for notice under this paragraph.

1                   (4)    The person giving notice under this subsection shall file in the  
2 action:

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

4                   (ii)   An affidavit that:

5                               1.    The notice provisions of this subsection have been  
6 complied with; or

7                               2.    The address of the holder of the subordinate interest  
8 is not reasonably ascertainable.

9                   (5)    The person authorized to make a sale in an action to foreclose a  
10 mortgage or deed of trust is not required to give notice to the holder of a subordinate  
11 mortgage, deed of trust, or other subordinate interest if:

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

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

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

19                                       1.    30 days before the day on which the foreclosure sale  
20 was actually held; and

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

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

26                                       1.    30 days before the day on which the foreclosure sale  
27 was actually held; and

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

30                               (v)   With respect to a condominium council of unit owners or  
31 homeowners association, the condominium council of unit owners or homeowners  
32 association has not filed a request for notice under paragraph (3) of this subsection.

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

6           [(d)] (H)     (1)     Absent a provision to the contrary in a mortgage or note  
7 secured by a deed of trust, in the enumerated counties, the interest provided in a  
8 mortgage or note secured by a deed of trust is payable for the time period provided in  
9 paragraph (2) of this subsection or until the audit of the sale is ratified, whichever  
10 occurs first.

11           (2)     Under paragraph (1) of this subsection, the time period following  
12 sale is:

13                   (i)     60 days in Calvert, Cecil, Frederick, Kent, Queen Anne's,  
14 Talbot, Caroline, Charles, and St. Mary's counties; and

15                   (ii)    180 days in Worcester County.

16           [(e)] (I)     No title to property acquired at sale of property subject to a  
17 mortgage or deed of trust is invalid by reason of the fact that the property was  
18 purchased by the secured party, his assignee, or representative, or for his account.

19           [(f)] (J)     (1)     Any purchaser at a foreclosure sale of a mortgage or deed of  
20 trust has the same rights and remedies against the tenants of the mortgagor or  
21 grantor as the mortgagor or grantor had, and the tenants have the same rights and  
22 remedies against the purchaser as they would have had against the mortgagor or  
23 grantor on the date the mortgage or deed of trust was recorded.

24           (2)     If the required advertisement of sale so discloses, a foreclosure sale  
25 shall be made subject to one or more of the tenancies entered into subsequent to the  
26 recording of the mortgage or deed of trust or otherwise subordinated thereto. Any  
27 lease so continuing is unaffected by the sale, except the purchaser shall become the  
28 landlord, as of the date of the sale, on ratification of the sale.

29           [(g)] (K)     (1)     Except as provided in this subsection, unless the mortgage  
30 or deed of trust provides otherwise, if any property is encumbered by a mortgage or  
31 deed of trust, annual crops planted or cultivated by any debtor or those claiming under  
32 him do not pass with the property at any sale under or by virtue of the mortgage or  
33 deed of trust, but the crops remain the property of the debtor or those claiming under  
34 him.

35           (2)     Notwithstanding the provisions of paragraph (1) of this subsection,  
36 after the sale, the debtor or those claiming under him and the purchaser or those  
37 claiming under him may agree on a reasonable rental of the part of the property  
38 occupied by the crops. This rental is a lien on the crops and continues until paid in



1 favor of the purchaser or those claiming under him, and neither the crops nor any part  
2 of them may be removed until after payment. If the parties are unable to agree on the  
3 rental, any party in interest may apply to the court having jurisdiction over the sale or  
4 the confirmation of it for the appointment of disinterested appraisers to determine the  
5 rental, whose award shall be final.

6 (3) In addition to any other remedy, the purchaser or those claiming  
7 under him, on ascertainment of the rent, may distrain for the rent or any part of it  
8 remaining due, as in the case of landlord and tenant. No provision of this section is  
9 intended to interfere with the right of the purchaser or those claiming under him to  
10 have possession of the property, except as to the part occupied by the crop, with  
11 necessary ingress or egress.

12 [(h)] (L) The entry of an order for resale on default by a purchaser at a sale  
13 under this section and Title 14 of the Maryland Rules:

14 (1) Does not affect the prior ratification of the sale and does not  
15 restore to the mortgagor or former record owner any right or remedy that was  
16 extinguished by the prior sale and its ratification; and

17 (2) Extinguishes all interest of the defaulting purchaser in the real  
18 property being foreclosed and in the proceeds of the resale.

19 SECTION 2. AND BE IT FURTHER ENACTED, That § 7-105(f) of the Real  
20 Property Article, as enacted by Section 1 of this Act, shall be construed to apply only  
21 prospectively and may not be applied or interpreted to have any effect on or  
22 application to any mortgage loan made before the effective date of this Act.

23 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
24 October 1, 2008.