

HOUSE BILL 778

N1, D3

8lr1728

By: **Delegates Bobo, Barnes, Carr, Frush, Gaines, Gutierrez, Guzzone, Hecht, Holmes, Hubbard, Lafferty, Mizeur, Montgomery, Niemann, Pendergrass, Ramirez, Stein, and F. Turner**

Introduced and read first time: February 4, 2008

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Richard Atta Poku Right to Appeal Foreclosure Act**

3 FOR the purpose of prohibiting a record owner's right to appeal a final judgment of
4 the circuit court in a certain foreclosure action from being conditioned on the
5 posting of a supersedeas bond exceeding a certain amount; prohibiting a record
6 owner's appeal from being dismissed under certain circumstances; defining
7 certain terms; and generally relating to appeals of certain foreclosure actions.

8 BY adding to

9 Article – Real Property

10 Section 7–105.1

11 Annotated Code of Maryland

12 (2003 Replacement Volume and 2007 Supplement)

13 Preamble

14 WHEREAS, Homeowners facing foreclosure should be entitled to a reasonable
15 opportunity to appeal their cases as may any other party to a civil action in the State;
16 and

17 WHEREAS, A court may require a record owner to post and maintain a
18 reasonable supersedeas bond that protects the rights of lenders and purchasers during
19 an appeal; and

20 WHEREAS, The appellate courts have established exceptions to the general
21 appeal rules in any other kind of case when a matter becomes moot but a published
22 decision may be in the public interest, except for foreclosure actions involving
23 homeowners; and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 WHEREAS, When given an opportunity to reconsider their holdings, the
2 Maryland appellate courts have failed to do so as recently as in the case of Richard
3 Atta Poku v. Alvin E. Friedman, et al. (No. 50, Sept. Term 2007); and

4 WHEREAS, The increase in foreclosures in Maryland has focused attention on
5 homeowners who are in foreclosure and who may have legal defenses to the
6 foreclosure; and

7 WHEREAS, These defenses are issues of first impression in Maryland and the
8 merits of these defenses should, when possible, be considered by the appellate courts
9 to benefit the public interest; and

10 WHEREAS, It should be the public policy of the State to allow Maryland
11 homeowners a reasonable right to appeal judgments of the circuit courts; now,
12 therefore,

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

15 **Article – Real Property**

16 **7-105.1.**

17 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
18 MEANINGS INDICATED.

19 (2) “RECORD OWNER” MEANS THE PERSON HOLDING RECORD
20 TITLE TO RESIDENTIAL PROPERTY AS OF THE DATE ON WHICH AN ACTION TO
21 FORECLOSE THE MORTGAGE OR DEED OF TRUST ON THE PROPERTY IS FILED.

22 (3) “RESIDENTIAL PROPERTY” MEANS REAL PROPERTY
23 IMPROVED BY FOUR OR FEWER SINGLE FAMILY DWELLING UNITS.

24 (B) THE RIGHT OF A RECORD OWNER TO APPEAL A FINAL JUDGMENT OF
25 THE CIRCUIT COURT MAY NOT BE CONDITIONED ON THE POSTING OF A
26 SUPERSEDEAS BOND IN AN AMOUNT EXCEEDING:

27 (1) THE PAST DUE MONTHLY PAYMENTS UNDER THE LOAN
28 SECURED BY THE MORTGAGE OR DEED OF TRUST AND ANY LATE FEES; AND

29 (2) THE FUTURE MONTHLY INTEREST DUE UNDER THE LOAN
30 SECURED BY THE MORTGAGE OR DEED OF TRUST DURING THE PENDENCY OF
31 THE APPEAL, AS THE INTEREST ACCRUES.

32 (C) A RECORD OWNER’S APPEAL MAY NOT BE DISMISSED IF:

1 (1) THE RECORD OWNER MAKES A TIMELY REQUEST TO SET THE
2 AMOUNT OF A SUPERSEDEAS BOND; AND

3 (2) THE CIRCUIT COURT FAILS TO DETERMINE THE APPROPRIATE
4 AMOUNT OF THE SUPERSEDEAS BOND.

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 2008.