

HOUSE BILL 778

N1, D3

EMERGENCY BILL

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

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 17, 2008

CHAPTER _____

1 AN ACT concerning

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

3 FOR the purpose of authorizing a court to order reasonable discovery in an action to
4 stop or stay a foreclosure sale of residential property under certain
5 circumstances; prohibiting a record owner's right to appeal a final judgment of
6 the circuit court in a certain foreclosure action from being conditioned on the
7 posting of a supersedeas bond exceeding a certain amount; ~~prohibiting a record~~
8 ~~owner's appeal from being dismissed under certain circumstances~~; defining
9 certain terms; making this Act an emergency measure; and generally relating to
10 ~~appeals of certain~~ foreclosure actions.

11 BY adding to

12 Article – Real Property

13 Section 7–105.1

14 Annotated Code of Maryland

15 (2003 Replacement Volume and 2007 Supplement)

16 Preamble

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



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

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

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

11 WHEREAS, The increase in foreclosures in Maryland has focused attention on
12 homeowners who are in foreclosure and who may have legal defenses to the
13 foreclosure; and

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

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

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

22 **Article – Real Property**

23 **7-105.1.**

24 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
25 MEANINGS INDICATED.

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

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

31 (B) IN AN ACTION TO STOP OR STAY A FORECLOSURE SALE ON
32 RESIDENTIAL PROPERTY, A COURT MAY ORDER REASONABLE DISCOVERY
33 WHETHER OR NOT A TEMPORARY STAY IS ISSUED.

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

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

~~(2) THE FUTURE MONTHLY INTEREST DUE UNDER THE LOAN SECURED BY THE MORTGAGE OR DEED OF TRUST DURING THE PENDENCY OF THE APPEAL, AS THE INTEREST ACCRUES.~~ THE MINIMUM FUTURE MONTHLY PAYMENTS, AS THEY COME DUE, UNDER THE LOAN SECURED BY THE MORTGAGE OR DEED OF TRUST DURING THE PENDENCY OF THE APPEAL; AND

(3) THE RESIDENTIAL PROPERTY TAXES, HOMEOWNERS INSURANCE PREMIUMS, AND HOMEOWNERS, CONDOMINIUM, OR COMMUNITY ASSOCIATION DUES, AS EACH COMES DUE.

~~(C) A RECORD OWNER'S APPEAL MAY NOT BE DISMISSED IF:~~

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

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

SECTION 2. AND BE IT FURTHER ENACTED, That this Act ~~shall take effect October 1, 2008~~ is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.