

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 901

(Delegate Beitzel)

Environmental Matters

Judicial Proceedings

Real Property - Payment of Interest After Foreclosure Sale - Garrett County

This bill adds Garrett County to the list of counties that may require the payment of interest on a mortgage or deed of trust for 60 days following a foreclosure sale or until the sale is ratified, whichever occurs first.

Fiscal Summary

State Effect: The bill would not directly affect State finances or operations.

Local Effect: The bill would not directly affect local finances or operations.

Small Business Effect: Potential minimal.

Analysis

Current Law: In a mortgage or note secured by a deed of trust, the interest provided in the mortgage or note is payable in certain counties for a specified time period after a foreclosure sale or until the audit of the sale is ratified, whichever occurs first. The time period is 60 days in Calvert, Caroline, Cecil, Charles, Frederick, Kent, Queen Anne's, St. Mary's, and Talbot counties, and 180 days in Worcester County.

Background: Most mortgage or deeds of trust include a "power of sale" (a provision authorizing a foreclosure sale of the property after a default) or an "assent to decree" (a provision declaring an assent to the entry of an order for a foreclosure sale after a default). When the lien instrument does not contain a power of sale or an assent to a decree, foreclosure requires the filing of a complaint, and process must be served. In this

case, the action proceeds as any other civil action. Under the Maryland Rules, however, it is not necessary to serve process or hold a hearing prior to a foreclosure sale pursuant to a power of sale or an assent to a decree.

In these situations, an action to foreclose is commenced by the filing of an order to docket in the circuit court for the county where the property is located. The homeowner is not entitled to be personally served with process. Notice of the filing of the action is required to be sent to the homeowner by certified and first-class mail; however, the lender is not required to show that the notice was actually received. Written notice of the foreclosure sale must also be sent by certified and first-class mail not earlier than 30 days and not later than 10 days before the date of the sale, but actual notice is not required. The homeowner is not entitled to a hearing before the sale – the only recourse under State law to challenge the lender’s claim of default is to file a motion for injunction to stay the sale.

Notice of the sale is required to be published in a newspaper of general circulation once a week for three successive weeks before the sale. A sale can conceivably occur within 15 days after the filing of the order to docket, but this rarely occurs in actual practice. The person making the sale must file a report of the sale with the court within 30 days. The homeowner may file exceptions to the ratification of the sale. Objections are generally based on the insufficiency of the sales price. However, the sales price must be so low as to “shock the conscience of the court” in order to set aside the sale. A period of time usually elapses between the foreclosure sale of a property and ratification of the sale by the court, during which time any existing mortgage is still outstanding.

Additional Information

Prior Introductions: None.

Cross File: SB 875 (Senator Edwards) – Rules.

Information Source(s): Garrett County; Department of Labor, Licensing, and Regulation; Department of Legislative Services

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mll/hlb

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