

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 17

(Senator Conway)

Judicial Proceedings

Real Property - Foreclosures - Notices to Record Owners

This bill changes timing requirements for written notices of foreclosure that must be mailed to the record owner of residential real property by a person authorized to make a sale in an action to foreclose a mortgage or deed of trust on the property.

Fiscal Summary

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

Local Effect: None – see above.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The bill changes the timing requirements for two written notices required in residential foreclosure actions. First, it changes the time by which the statutorily prescribed ‘consumer-awareness’ warning of foreclosure must be mailed to no later than *60 days before* an action is docketed from *2 days after* an action is docketed. Accordingly, the bill changes the applicable definition of the intended recipient record owner to mean the person holding record title to the property as of 60 days before the foreclosure action is filed. Second, the bill changes the time by which the required written notice of the time, place, and terms of a foreclosure sale must be mailed to *60 days before* the date of sale from not earlier than *30 days and not later than 10 days* before the date of sale. The corresponding definition of a record owner is also adjusted accordingly.

Current Law/Background: A mortgage or deed of trust may include “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). Under the Maryland Rules, it is not necessary to serve process or hold a hearing prior to the sale in an action to foreclose a lien pursuant to a power of sale or an order for sale under an assent to a decree.

When the lien instrument does not contain a power of sale or an assent to a decree, a complaint to foreclose must be filed, and process must be served. In this case, the action proceeds as any other civil action.

In either case, the person authorized to make the sale must comply with the notice requirements under the Maryland Rules and by statute.

After commencement of an action to foreclose a lien and before making a sale of the subject property, the person authorized to make the sale must publish notice of the time, place, and terms of the sale in a newspaper of general circulation in the county where the action is pending. The notice must be given at least once a week for three successive weeks, with the first publication no less than 15 days prior to sale and the last publication not more than one week prior to the sale.

Before making the sale, the person authorized to make the sale must send notice of the time, place, and terms of the sale by certified mail and by first class mail to the last known address of the debtor, the record owner of the property, and the holder of any subordinate interest in the property. The notices must be sent no more than 30 days and no less than 10 days before the sale date. The notice to the record owner must state the time, place, and terms of the sale.

No less than 15 days prior to the sale, the person authorized to make the sale must also send written notice to the county or municipal corporation where the property is located about • the contact information of the person authorized to make the sale; and • the time, place, and terms of the sale.

The person giving notice must file in the proceedings an affidavit that • the person has complied with the notice provisions; or • the identity or address of the debtor, record owner, or holder of a subordinate interest is not reasonably ascertainable. If the affidavit states that the identity or address was not ascertainable, it must describe in detail the reasonable, good faith efforts that were made to ascertain the identity or address. If the notice was given, the affidavit must state the date, manner, and content of the notice.

In addition to other notice requirements, the person authorized to make the sale is required to give written notice of the proposed sale to the record owner of the property to be sold stating that • the action to foreclose the mortgage or deed of trust may be or has been docketed; and • a foreclosure sale will be held. This ‘consumer awareness’ notice must be sent no later than two days after an action to foreclose has been docketed. The notice must contain a specified warning statement about foreclosure ‘rescues’ as well as contact information for the Consumer Protection Division and must be sent by certified mail, postage repaid, return receipt requested, and by first class mail.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Office of the Attorney General (Consumer Protection Division); Department of Legislative Services

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mcp/jr

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