

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

House Bill 778

(Delegate Bobo, *et al.*)

Environmental Matters

Judicial Proceedings

Richard Atta Poku Foreclosure Defense Act

This emergency bill specifies that the right of a “record owner” of residential property to appeal a final judgment of the circuit court in a foreclosure action may not be conditioned on the posting of a supersedeas bond in an amount exceeding • the past due monthly payments under the loan secured by the mortgage or deed of trust and any late fees; • the minimum future monthly payments, as they come due, under the loan during the pendency of the appeal; and • the residential property taxes, homeowners insurance premiums, and homeowners, condominium, or community association dues, as each comes due.

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: None.

Analysis

Bill Summary: The bill defines a record owner as the person holding record title to residential property as of the date on which an action to foreclose the mortgage or deed of trust on the property is filed. “Residential property” is defined as real property improved by four or fewer single-family dwelling units. In an action to stop or stay a foreclosure sale on residential property, a court may order reasonable discovery whether or not a temporary stay is issued.

Current Law: 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. In order for a property owner to stay execution of a foreclosure judgment during an appeal of the decision, a court may require the owner to post and maintain a reasonable supersedeas bond that protects the rights of lenders and property purchasers. Currently, a supersedeas bond for stay of a foreclosure pending appeal is typically the value of the property in question.

Background: The bill was inspired by events surrounding the foreclosure of the home of Mr. Richard Atta Poku, a resident of Howard County. Mr. Atta Poku purchased a home in 1992, and the secured party eventually became Washington Mutual Bank. After a series of refinancings, Washington Mutual asserted that it had never been repaid for the original debt from the refinancing proceeds. After attempted collections, the property was sold at foreclosure sale after Washington Mutual Bank foreclosed on the deed of trust. Exceptions filed by Mr. Atta Poku’s attorney were overruled by the circuit court, and the foreclosure sale was ratified. Mr. Atta Poku then filed an appeal with the Court

of Special Appeals, as well as a request for a stay of the proceedings with both the circuit court and the Court of Special Appeals, but the request for a stay was denied because a supersedeas bond had not been posted. After the Court of Special Appeals and the Court of Appeals denied the request for a stay, the Court of Special Appeals dismissed the appeal of the foreclosure sale because Mr. Atta Poku did not file any bond with the court, nor did he file a request that the amount of the bond be set.

The Court of Appeals finally dismissed the appeal, holding that an appeal of a foreclosure sale made without the required bond was moot because the property had already been sold to a bona fide purchaser and therefore a reversal on appeal would have no effect. Typically, once a bona fide purchaser has purchased the property, it cannot be restored to the previous owner, and courts have historically upheld this principle in order not to discourage nonparty individuals from bidding on foreclosure properties.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Maryland Court of Special Appeals; Department of Legislative Services

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