

# HOUSE BILL 798

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CF SB 807

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By: **Delegates Haddaway and Eckardt**

Introduced and read first time: February 11, 2009

Assigned to: Environmental Matters

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 21, 2009

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Real Property – Residential Mortgages and Deeds of Trust – Recordation and**  
3 **Foreclosure**

4 FOR the purpose of altering the definition of “residential property” for purposes of  
5 certain residential property foreclosure procedures and certain provisions  
6 concerning the recordation of an instrument securing a mortgage loan on  
7 residential property; clarifying the application of a certain provision concerning  
8 a mortgagor’s or grantor’s right to cure a default before a foreclosure sale; and  
9 generally relating to foreclosure procedures and recording instruments in the  
10 land records.

11 BY repealing and reenacting, with amendments,  
12 Article – Real Property  
13 Section 3–104.1 and 7–105.1(a) and (h)  
14 Annotated Code of Maryland  
15 (2003 Replacement Volume and 2008 Supplement)

16 BY repealing and reenacting, without amendments,  
17 Article – Real Property  
18 Section 7–105.1(b) and (c)  
19 Annotated Code of Maryland  
20 (2003 Replacement Volume and 2008 Supplement)

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

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**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 **Article – Real Property**

2 3–104.1.

3 (a) In this section, “residential property” means real property improved by  
4 four or fewer single family dwelling units **THAT ARE DESIGNED PRINCIPALLY AND**  
5 **ARE INTENDED FOR HUMAN HABITATION.**

6 (b) When recorded, a mortgage, deed of trust, or any other instrument  
7 securing a mortgage loan on residential property shall contain:

8 (1) (i) The name and Maryland mortgage originator license  
9 number of the mortgage originator that originated the loan secured by the instrument;  
10 or

11 (ii) An affidavit by the person that originated the mortgage loan  
12 secured by the instrument that the individual who originated the loan is exempt from  
13 the licensing requirement under Title 11, Subtitle 6 of the Financial Institutions  
14 Article; and

15 (2) (i) The name and Maryland mortgage lender license number of  
16 the mortgage lender that made the loan secured by the instrument; or

17 (ii) An affidavit by the lender that made the mortgage loan  
18 secured by the instrument that the lender is exempt from the licensing requirement  
19 under Title 11, Subtitle 5 of the Financial Institutions Article.

20 (c) The Commissioner of Financial Regulation shall adopt regulations to  
21 implement the provisions of this section, including:

22 (1) Minimum requirements for the inclusion of licensing information  
23 when a mortgage, deed of trust, or other instrument securing a mortgage loan on  
24 residential property is recorded; and

25 (2) Consequences, including penalties, for the failure to include  
26 licensing information when a mortgage, deed of trust, or other instrument securing a  
27 mortgage loan on residential property is recorded.

28 7–105.1.

29 (a) In this section, “residential property” means real property improved by  
30 four or fewer single family dwelling units **THAT ARE DESIGNED PRINCIPALLY AND**  
31 **ARE INTENDED FOR HUMAN HABITATION.**

32 (b) (1) Except as provided in paragraph (2) of this subsection, an action to  
33 foreclose a mortgage or deed of trust on residential property may not be filed until the  
34 later of:

1 (i) 90 days after a default in a condition on which the mortgage  
2 or deed of trust provides that a sale may be made; or

3 (ii) 45 days after the notice of intent to foreclose required under  
4 subsection (c) of this section is sent.

5 (2) (i) The secured party may petition the circuit court for leave to  
6 immediately commence an action to foreclose the mortgage or deed of trust if:

7 1. The loan secured by the mortgage or deed of trust was  
8 obtained by fraud or deception;

9 2. No payments have ever been made on the loan  
10 secured by the mortgage or deed of trust;

11 3. The property subject to the mortgage or deed of trust  
12 has been destroyed; or

13 4. The default occurred after the stay has been lifted in a  
14 bankruptcy proceeding.

15 (ii) The court may rule on the petition with or without a  
16 hearing.

17 (iii) If the petition is granted, the action may be filed at any time  
18 after a default in a condition on which the mortgage or deed of trust provides that a  
19 sale may be made and the secured party need not send the written notice of intent to  
20 foreclose required under subsection (c) of this section.

21 (c) (1) Except as provided in subsection (b)(2)(iii) of this section, at least  
22 45 days before the filing of an action to foreclose a mortgage or deed of trust on  
23 residential property, the secured party shall send a written notice of intent to foreclose  
24 to the mortgagor or grantor and the record owner.

25 (2) The notice of intent to foreclose shall be sent:

26 (i) By certified mail, postage prepaid, return receipt requested,  
27 bearing a postmark from the United States Postal Service; and

28 (ii) By first-class mail.

29 (3) A copy of the notice of intent to foreclose shall be sent to the  
30 Commissioner of Financial Regulation.

31 (4) The notice of intent to foreclose shall:

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1 (i) Be in the form that the Commissioner of Financial  
2 Regulation prescribes by regulation; and

3 (ii) Contain:

4 1. The name and telephone number of:

5 A. The secured party;

6 B. The mortgage servicer, if applicable; and

7 C. An agent of the secured party who is authorized to  
8 modify the terms of the mortgage loan;

9 2. The name and license number of the Maryland  
10 mortgage lender and mortgage originator, if applicable;

11 3. The amount required to cure the default and reinstate  
12 the loan, including all past due payments, penalties, and fees; and

13 4. Any other information that the Commissioner of  
14 Financial Regulation requires by regulation.

15 (h) (1) The mortgagor or grantor **OF RESIDENTIAL PROPERTY** has the  
16 right to cure the default by paying all past due payments, penalties, and fees and  
17 reinstate the loan at any time up to 1 business day before the foreclosure sale occurs.

18 (2) The secured party or an authorized agent of the secured party  
19 shall, on request, provide to the mortgagor or grantor or the mortgagor's or grantor's  
20 attorney within a reasonable time the amount necessary to cure the default and  
21 reinstate the loan and instructions for delivering the payment.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
23 October 1, 2009.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.