

# SENATE BILL 203

N1

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By: **Senators Jones and Muse**

Introduced and read first time: January 23, 2009

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Residential Property – Foreclosure – Notice to Occupants**

3 FOR the purpose of requiring a secured party to send a written notice of intent to  
4 foreclose on residential property to the occupant of the property before a certain  
5 time; requiring the notice to contain certain information; requiring the occupant  
6 to be served in a certain manner with a copy of an order to docket or complaint  
7 to foreclose on residential property and certain other papers; authorizing service  
8 to be effected on an occupant in an alternative manner under certain  
9 circumstances; and generally relating to notice to occupants of an action to  
10 foreclose on residential property.

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

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

18 **Article – Real Property**

19 7–105.1.

20 (a) In this section, “residential property” means real property improved by  
21 four or fewer single family dwelling units.

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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, **AND THE OCCUPANT OF THE**  
25 **RESIDENTIAL PROPERTY.**

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

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

29 (ii) By first-class mail.

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

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

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 (d) An order to docket or a complaint to foreclose a mortgage or deed of trust  
16 on residential property shall:

17 (1) Include:

18 (i) If applicable, the license number of:

19 1. The mortgage originator; and

20 2. The mortgage lender; and

21 (ii) An affidavit stating:

22 1. The date on which the default occurred and the  
23 nature of the default; and

24 2. If applicable, that a notice of intent to foreclose was  
25 sent to the mortgagor or grantor in accordance with subsection (c) of this section and  
26 the date on which the notice was sent; and

27 (2) Be accompanied by:

28 (i) The original or a certified copy of the mortgage or deed of  
29 trust;

1 (ii) A statement of the debt remaining due and payable  
2 supported by an affidavit of the plaintiff or the secured party or the agent or attorney  
3 of the plaintiff or secured party;

4 (iii) A copy of the debt instrument accompanied by an affidavit  
5 certifying ownership of the debt instrument;

6 (iv) If applicable, the original or a certified copy of the  
7 assignment of the mortgage for purposes of foreclosure or the deed of appointment of a  
8 substitute trustee;

9 (v) If any defendant is an individual, an affidavit that:

10 1. The individual is not a servicemember, as defined in  
11 the Servicemembers Civil Relief Act, 50 U.S.C. Appendix § 511; or

12 2. The action is authorized by the Act;

13 (vi) If applicable, a copy of the notice of intent to foreclose; and

14 (vii) **1.** A notice to the mortgagor in substantially the  
15 following form, as prescribed by regulation by the Commissioner of Financial  
16 Regulation:

17 "NOTICE

18 An action to foreclose the mortgage/deed of trust on the property located at  
19 (insert address) has been filed in the Circuit Court for (county).

20 A foreclosure sale of the property may occur at any time after 45 days from the  
21 date that this notice is served on you.

22 You may stop the sale and reinstate your mortgage loan by paying all amounts  
23 due on your loan, plus fees and costs of the foreclosure action, at any time up to one  
24 business day before the sale. Please contact (insert name of authorized agent of  
25 secured party) at (insert telephone number) to obtain the amount due to cure the  
26 default on your mortgage loan and instructions for delivering the payment.

27 You are urged to obtain legal advice to discuss other options to stop the  
28 foreclosure sale, which may include filing a motion for injunction with the circuit court  
29 or a petition for bankruptcy in federal bankruptcy court. A motion for injunction or a  
30 bankruptcy petition must be filed before the foreclosure sale occurs.

31 If you are interested in selling your home to avoid a foreclosure sale, you may  
32 wish to contact a licensed real estate broker or salesperson as soon as possible.

1           Housing counseling and financial assistance programs are available through the  
2 Maryland Department of Housing and Community Development. Please call (insert  
3 telephone number) for information on available resources.

4           Some people may approach you about “saving” your home. You should be careful  
5 about any such promises.

6           The State encourages you to become informed about your options in foreclosure  
7 before entering into any agreements with anyone in connection with the foreclosure of  
8 your home. There are government agencies and nonprofit organizations that you may  
9 contact for helpful information about the foreclosure process. For the name and  
10 telephone number of an organization near you, please call the Consumer Protection  
11 Division of the Office of the Attorney General of Maryland at (insert telephone  
12 number). The State does not guarantee the advice of these organizations.

13           **DO NOT DELAY DEALING WITH THE FORECLOSURE BECAUSE YOUR**  
14 **OPTIONS WILL BECOME MORE LIMITED AS TIME PASSES.”; AND**

15                               **2.    A NOTICE TO THE OCCUPANT IN SUBSTANTIALLY**  
16 **THE FOLLOWING FORM, AS PRESCRIBED BY REGULATION BY THE**  
17 **COMMISSIONER OF FINANCIAL REGULATION:**

18   **“NOTICE TO OCCUPANT**

19           **AN ACTION TO FORECLOSE THE MORTGAGE/DEED OF TRUST ON THE**  
20 **PROPERTY LOCATED AT (INSERT ADDRESS) HAS BEEN FILED IN THE CIRCUIT**  
21 **COURT FOR (COUNTY).**

22           **A FORECLOSURE SALE OF THE PROPERTY MAY OCCUR AT ANY TIME**  
23 **AFTER 45 DAYS FROM THE DATE THAT THIS NOTICE IS SERVED ON YOU.**

24           **HOUSING COUNSELING AND FINANCIAL ASSISTANCE PROGRAMS ARE**  
25 **AVAILABLE THROUGH THE MARYLAND DEPARTMENT OF HOUSING AND**  
26 **COMMUNITY DEVELOPMENT. PLEASE CALL (INSERT TELEPHONE NUMBER) FOR**  
27 **INFORMATION ON AVAILABLE RESOURCES.**

28           **SOME PEOPLE MAY APPROACH YOU ABOUT “SAVING” YOUR HOME. YOU**  
29 **SHOULD BE CAREFUL ABOUT ANY SUCH PROMISES.**

30           **THE STATE ENCOURAGES YOU TO BECOME INFORMED ABOUT YOUR**  
31 **OPTIONS IN FORECLOSURE BEFORE ENTERING INTO ANY AGREEMENTS WITH**  
32 **ANYONE IN CONNECTION WITH THE FORECLOSURE OF YOUR HOME. THERE ARE**  
33 **GOVERNMENT AGENCIES AND NONPROFIT ORGANIZATIONS THAT YOU MAY**  
34 **CONTACT FOR HELPFUL INFORMATION ABOUT THE FORECLOSURE PROCESS.**  
35 **FOR THE NAME AND TELEPHONE NUMBER OF AN ORGANIZATION NEAR YOU,**

1 PLEASE CALL THE CONSUMER PROTECTION DIVISION OF THE OFFICE OF THE  
 2 ATTORNEY GENERAL OF MARYLAND AT (INSERT TELEPHONE NUMBER). THE  
 3 STATE DOES NOT GUARANTEE THE ADVICE OF THESE ORGANIZATIONS.

4 DO NOT DELAY DEALING WITH THE FORECLOSURE BECAUSE  
 5 YOUR OPTIONS WILL BECOME MORE LIMITED AS TIME PASSES.”.

6 (e) (1) A copy of the order to docket or complaint to foreclose on  
 7 residential property and all other papers filed with it shall be served by:

8 (i) Personal delivery of the papers to the:

9 1. [mortgagor] **MORTGAGOR** or grantor; **AND**

10 2. **OCCUPANT OF THE RESIDENTIAL PROPERTY;** or

11 (ii) Leaving the papers with a resident of suitable age and  
 12 discretion at:

13 1. [the] **THE** mortgagor’s or grantor’s dwelling house or  
 14 usual place of abode; **AND**

15 2. **THE RESIDENTIAL PROPERTY SUBJECT TO THE**  
 16 **MORTGAGE OR DEED OF TRUST.**

17 (2) If at least two good faith efforts to serve the mortgagor or grantor  
 18 under paragraph (1) of this subsection on different days have not succeeded, the  
 19 plaintiff may effect service by:

20 (i) Filing an affidavit with the court describing the good faith  
 21 efforts to serve the mortgagor or grantor; and

22 (ii) 1. Mailing a copy of the order to docket or complaint to  
 23 foreclose and all other papers filed with it by certified mail, return receipt requested,  
 24 and first-class mail to the mortgagor’s or grantor’s last known address and, if  
 25 different, to the address of the residential property subject to the mortgage or deed of  
 26 trust; and

27 2. Posting a copy of the order to docket or complaint to  
 28 foreclose and all other papers filed with it in a conspicuous place on the residential  
 29 property subject to the mortgage or deed of trust.

30 **(3) IF AT LEAST TWO GOOD FAITH EFFORTS TO SERVE THE**  
 31 **OCCUPANT UNDER PARAGRAPH (1) OF THIS SUBSECTION ON DIFFERENT DAYS**  
 32 **HAVE NOT SUCCEEDED, THE PLAINTIFF MAY EFFECT SERVICE BY:**

1                   **(I) FILING AN AFFIDAVIT WITH THE COURT DESCRIBING**  
2 **THE GOOD FAITH EFFORTS TO SERVE THE OCCUPANT; AND**

3                   **(II) POSTING A COPY OF THE ORDER TO DOCKET OR**  
4 **COMPLAINT TO FORECLOSE AND ALL OTHER PAPERS FILED WITH IT IN A**  
5 **CONSPICUOUS PLACE ON THE RESIDENTIAL PROPERTY SUBJECT TO THE**  
6 **MORTGAGE OR DEED OF TRUST.**

7                   [(3)] (4) The individual making service of process under this  
8 subsection shall file proof of service with the court in accordance with the Maryland  
9 Rules.

10                  (f) A foreclosure sale of residential property may not occur until at least 45  
11 days after service of process is made under subsection (e) of this section.

12                  (g) Notice of the time, place, and terms of a foreclosure sale shall be  
13 published in a newspaper of general circulation in the county where the action is  
14 pending at least once a week for 3 successive weeks, the first publication to be not less  
15 than 15 days before the sale and the last publication to be not more than 1 week before  
16 the sale.

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

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

24                  (i) An action for failure to comply with the provisions of this section shall be  
25 brought within 3 years after the date of the order ratifying the sale.

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