

**Department of Legislative Services**  
Maryland General Assembly  
2009 Session

**FISCAL AND POLICY NOTE**

Senate Bill 823

(Senator Currie, *et al.*)

Judicial Proceedings

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**Real Property - Tenant Rights and Protections**

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This bill requires written notice of intent to foreclose to be sent to all occupants of residential property and posted conspicuously on the property at least 45 days before filing an action to foreclose a mortgage or deed of trust. A residential landlord must provide written notice to a tenant of any foreclosure action against the property; the bill specifies terms that must be incorporated into a lease agreement or purchase-option agreement. The bill also allows a residential tenant to retain possession of the property for up to 30 days after the court's final ratification of the foreclosure sale.

The bill takes effect June 1, 2009.

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**Fiscal Summary**

**State Effect:** The bill's requirements can likely be handled with existing budgeted resources. The civil and criminal penalty provisions are not expected to significantly affect State finances or operations.

**Local Effect:** The bill does not materially affect local finances or operations.

**Small Business Effect:** Potential minimal.

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**Analysis**

**Bill Summary:** If a landlord knowingly fails to provide notice to a residential tenant at least 30 days before the date of the foreclosure sale, the landlord is guilty of a misdemeanor and on conviction is subject to maximum penalties of a fine of \$1,000 and/or 30 days imprisonment. Any residential lease entered into on or after July 1, 2009,

must include notice that the dwelling unit is not in foreclosure or short sale status, or that a foreclosure proceeding involving the unit is pending or may be initiated in the next 90 days.

If a residential lease includes a purchase option, the landlord must be the record owner of the property. A lease agreement that includes a purchase option must state the amount of payments that will be credited to the purchase price. Such funds must be placed in a trust account for the benefit of the tenant. If a landlord fails to place those funds applied to the purchase price in a trust account, the landlord is liable for up to three times any damages sustained and reasonable attorney's fees.

**Current Law:** "Residential property" is defined as real property improved by four or fewer single-family dwelling units. Except under specified circumstances, an action to foreclose a mortgage or deed of trust on residential property may not be filed until the later of 90 days after a default in a condition on which the mortgage or deed of trust states that a sale may be made, or 45 days after the secured party sends a written notice of intent to foreclose to the mortgagor or grantor and the record owner.

This notice must be sent by certified mail, postage prepaid, return receipt requested, and by first-class mail. A copy of the notice must also be sent to the Commissioner of Financial Regulation in the Department of Labor, Licensing, and Regulation. The notices must be in the form that the commissioner prescribes by regulation and contain specified information.

An order to docket or a complaint to foreclose a mortgage or deed of trust on residential property is required to contain specified information and be accompanied by specified documents. A copy of the order to docket or complaint and all other papers filed with it must be served by either personal delivery of the papers to the mortgagor or grantor, or by leaving the papers with a resident of suitable age and discretion at the mortgagor's or grantor's dwelling house or usual place of abode.

**Background:** Residential tenants in the State currently lack the right to remain in a home sold at foreclosure, as a lease entered into between the original owner and a tenant generally does not survive the foreclosure sale. If a tenant fails or refuses to deliver possession of the property to the person who purchases it at the foreclosure sale, the purchaser may file a motion requesting the court to enter a judgment awarding possession.

The District of Columbia's landlord-tenant laws state that a residential tenant cannot be evicted from a rental property prior to the expiration of the tenant's lease as long as the tenant continues to pay rent in a timely manner. In the District of Columbia, a residential

tenant with a valid lease may not be evicted solely because the property has been foreclosed upon. (*See* D.C. Code § 42-3505.01.)

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - February 25, 2009  
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