

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 1277

(Delegates Valderrama and V. Turner)

Environmental Matters

Residential Property - Foreclosure - Notice to Occupants

This bill requires a secured party to send the occupant of residential real property written notice of intent to foreclose at least 45 days before filing an action to foreclose a mortgage or deed of trust and to serve a copy of an order to docket or complaint to foreclose on the occupant.

Fiscal Summary

State Effect: While the bill is expected to increase call volumes from tenants seeking foreclosure assistance, the Department of Housing and Community Development (DHCD) can likely handle the bill's requirements with existing resources.

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

Small Business Effect: None.

Analysis

Bill Summary: The written notice of intent to foreclose a mortgage or deed of trust on residential property sent to the occupant of the property is the same notice required to be sent to the mortgagor or grantor and to the record owner. A copy of the order to docket or complaint to foreclose, and all other papers filed with it, including a "Notice to Occupant," must be personally served on the occupant of the residential property. If two good faith efforts to serve the occupant in person and on different days are unsuccessful, the plaintiff may effect service by filing an affidavit with the court describing the good faith efforts and posting a copy of the order to docket or complaint to foreclose, and all

other papers filed with it, in a conspicuous place on the residential property subject to the mortgage or deed of trust.

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 must 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. If at least two good faith efforts to complete service of process on different days have not succeeded, the plaintiff may effect service by (1) filing an affidavit with the court describing the good faith efforts to complete service; (2) mailing a copy of the order to docket or complaint and all accompanying papers by certified mail, return receipt requested, and first-class mail to the mortgagor’s or grantor’s last known address; and (3) posting a copy of the order to docket or complaint and all accompanying papers in a conspicuous place on the property subject to the mortgage or deed of trust. The individual making service of process must file proof of service with the court in accordance with the Maryland Rules.

Background: In response to an increasing number of residential tenants facing eviction due to landlords in foreclosure, Baltimore City enacted legislation in 2008 that requires a purchaser of residential property at a foreclosure sale, tax sale, or judicial sale to provide the occupant with two weeks notice of the execution of a writ of possession. Notice must be mailed by both certified mail and by first-class mail with certificate of mailing at least 14 days before the scheduled date of execution and must be posted on the premises at least seven days prior to the eviction. (*See* Baltimore City Code, Art. 13 § 8B.)

In 2008, property foreclosure filings in the State increased to 10,030 events during the fourth quarter, an increase of 25.8% from the third quarter. The State’s foreclosure rate in the fourth quarter of 2008 was 229 households per foreclosure event, representing the

eighteenth highest foreclosure concentration rate in the nation. The Commissioner of Financial Regulation received more than 64,000 notices of intent to foreclose during calendar 2008. As of January 2009, DHCD estimated that foreclosure events in the State would increase in the near future, as the State's unemployment rate was 5.8% in December 2008, a 15-year high.

State Expenditures: The bill may generate increased call volume to DHCD's Home Owners Preserving Equity (HOPE) hotline. According to DHCD, the HOPE hotline receives approximately 2,000 to 2,500 calls per month and third-party contractual expenditures for operating the hotline are approximately \$10,000 to \$15,000 per month. The Department of Legislative Services advises that any additional calls can likely be handled with existing resources.

Additional Information

Prior Introductions: None.

Cross File: SB 203 (Senators Jones and Muse) - Judicial Proceedings.

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

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