

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 64 (Delegate McConkey)
Environmental Matters

Real Property - Residential Mortgages and Deeds of Trust - Foreclosure Sales

This bill creates a rebuttable presumption that a foreclosure sale of residential real property is invalid if the sale begins more than 30 minutes after the scheduled time for the sale.

Fiscal Summary

State Effect: If the Consumer Protection Division of the Office of the Attorney General receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled with existing resources.

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

Small Business Effect: None.

Analysis

Current Law: Under the Maryland Rules, a public foreclosure sale of residential property with four or fewer dwelling units must take place in the county where the property is located. If the property is located in more than one county, the sale must occur in the county where the action is pending. The foreclosure sale must take place outside the courthouse entrance, on the property being sold, or at any other court-ordered location.

“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 cannot 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 a notice of intent to foreclose is sent.

Foreclosure Process – Filing

A written notice of intent to foreclose must be sent to the mortgagor or grantor and the record owner at least 45 days before the filing of an action to foreclose a mortgage or deed of trust on residential property. 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 notice 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 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.

Service of Process

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. A foreclosure sale of residential property may not occur until at least 45 days after service of process is made.

Notice to Occupants

At the same time the mortgagor or grantor is served with all required documents, the person authorized to sell the residential property must send written notice to all occupants of the property. The notice must inform the occupants that a foreclosure sale of the property may occur at any time after 45 days from the date of the notice. The notice must also state that the person could be evicted, even if the person is a tenant and has paid all rent due and otherwise complied with the terms of the lease.

Written notice must also be sent to all occupants no earlier than 30 days and no later than 10 days prior to the date of the foreclosure sale, and a final notice must be sent after the entry of a judgment awarding possession of the property and before any attempt to execute the writ of possession. The person giving each notice must file an affidavit of compliance in the foreclosure proceeding after each notice is sent. If the foreclosure sale is postponed, no additional notice is required to be sent to the occupants of the property.

Notice of the time, place, and terms of a foreclosure sale of residential property must be published in a newspaper of general circulation at least once a week for three successive weeks, with the first publication at least 15 days before the sale and the last not more than one week before the sale.

Cure of Loan Default

The mortgagor or grantor of a mortgage or deed of trust has the right to cure a default and reinstate the loan at any time up to one business day before a foreclosure sale by paying all past-due payments, penalties, and fees. Upon request, and within a reasonable time, the secured party or the secured party's authorized agent must notify the mortgagor or grantor or the individual's attorney of the amount necessary to cure the default and reinstate the loan, as well as instructions for delivering the payment.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Department of Assessments and Taxation, Office of the Attorney General (Consumer Protection Division), Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader - February 2, 2010
mlm/kdm

Analysis by: Jason F. Weintraub

Direct Inquiries to:
(410) 946-5510
(301) 970-5510