

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 654

(Senator Lenett, *et al.*)

Judicial Proceedings

Environmental Matters

Real Property - Tenants in Foreclosure - Conforming to Federal Law

This bill amends existing law governing the rights of residential tenants of foreclosed properties to conform to the federal Protecting Tenants at Foreclosure Act of 2009. Specifically, the bill (1) incorporates the federal definition of a “bona fide” tenant in State law; (2) requires that a 90-day notice to vacate be sent to a bona fide tenant stating the landlord’s basis for terminating the tenancy; and (3) alters the contents of notices required to be sent to occupants of residential property subject to foreclosure. The bill applies only prospectively and may not be applied or interpreted to affect any foreclosure docketed before June 1, 2010.

The bill takes effect June 1, 2010.

Fiscal Summary

State Effect: The bill does not significantly affect State finances or operations.

Local Effect: None.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The bill defines a lease or tenancy as “bona fide” only if the mortgagor or grantor or the child, spouse, or parent of the mortgagor or grantor is not the tenant; the lease or tenancy was an arms-length transaction; and the lease or tenancy requires rent payments that are not substantially less than fair market rental rates, unless the rent is reduced or subsidized due to a federal, State, or local subsidy. In the case of a

foreclosure on any residential property, an immediate successor in interest who has acquired legal title to the property assumes the interest subject to (1) notifying any bona fide tenant in writing to vacate at least 90 days before the notice's effective date; and (2) the rights of any bona fide tenant as of the date of transfer of legal title. A bona fide tenant who entered into a lease before the transfer of legal title has the right to occupy the premises until the end of the remaining lease term or 90 days after the notice to vacate is sent, whichever is longer. A bona fide tenant without a lease or with a lease terminable at will has the right to stay for at least 90 days after the notice to vacate is sent. However, a successor in interest may terminate a lease effective on the date of the sale of the residential property to a purchaser who will occupy the property as his or her primary residence.

Current Law: Chapters 614 and 615 of 2009 required notices of foreclosure to be sent to all occupants of a residential property (1) when a foreclosure action is filed; (2) no earlier than 30 days and no later than 10 days prior to the foreclosure sale; and (3) a final notice after the entry of a judgment awarding possession of the property and before any attempt to execute the writ of possession.

After the filing of a foreclosure action, and at the same time the mortgagor 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.

Background: This bill alters the State-approved notices provided to occupants of residential property subject to a foreclosure proceeding to conform to the federal Protecting Tenants at Foreclosure Act of 2009. The federal Act terminates on December 31, 2012.

Additional Information

Prior Introductions: None.

Cross File: HB 711 (Delegates Healey and Lafferty) - Environmental Matters.

Information Source(s): U.S. Congress; Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation (Office of the Commissioner of Financial Regulation); Department of Legislative Services

Fiscal Note History: First Reader - February 21, 2010
ncs/kdm Revised - Senate Third Reader - April 1, 2010

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