

# HOUSE BILL 412

N1

11r1660  
CF SB 450

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By: **Delegate Niemann**

Introduced and read first time: February 4, 2011

Assigned to: Environmental Matters

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 1, 2011

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Real Property – Residential Property Foreclosure Procedures – Lost Note**  
3 **Affidavit**

4 FOR the purpose of prohibiting a court, in an action to foreclose a mortgage or deed of  
5 trust on residential property, from accepting a certain affidavit in lieu of a copy  
6 of the debt instrument unless the affidavit contains certain information;  
7 providing for the application of this Act; and generally relating to residential  
8 property foreclosure procedures.

9 BY repealing and reenacting, without amendments,  
10 Article – Real Property  
11 Section 7–105.1(d)  
12 Annotated Code of Maryland  
13 (2010 Replacement Volume and 2010 Supplement)

14 BY adding to  
15 Article – Real Property  
16 Section 7–105.1(d–1)  
17 Annotated Code of Maryland  
18 (2010 Replacement Volume and 2010 Supplement)

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

21 **Article – Real Property**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 7-105.1.

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

4 (1) Include:

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

6 1. The mortgage originator; and

7 2. The mortgage lender; and

8 (ii) An affidavit stating:

9 1. The date on which the default occurred and the  
10 nature of the default; and

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

14 (2) Be accompanied by:

15 (i) The original or a certified copy of the mortgage or deed of  
16 trust;

17 (ii) A statement of the debt remaining due and payable  
18 supported by an affidavit of the plaintiff or the secured party or the agent or attorney  
19 of the plaintiff or secured party;

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

22 (iv) If applicable, the original or a certified copy of the  
23 assignment of the mortgage for purposes of foreclosure or the deed of appointment of a  
24 substitute trustee;

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

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

28 2. The action is authorized by the Act;

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

1 (vii) In addition to any other filing fees required by law, a filing  
2 fee in the amount of \$300;

3 (viii) Subject to subsection (e) of this section:

4 1. If the loss mitigation analysis has been completed, a  
5 final loss mitigation affidavit in the form prescribed by regulation adopted by the  
6 Commissioner of Financial Regulation; and

7 2. If the loss mitigation analysis has not been completed:

8 A. A preliminary loss mitigation affidavit in the form  
9 prescribed by regulation adopted by the Commissioner of Financial Regulation;

10 B. The loss mitigation application and a description of  
11 the eligibility requirements for loss mitigation programs offered by the secured party  
12 as described in subsection (c)(5) of this section;

13 C. Instructions for completing the loss mitigation  
14 application, including instructions to return the completed application to the attorney  
15 handling the foreclosure; and

16 D. An envelope preprinted with the address of the  
17 attorney handling the foreclosure;

18 (ix) A notice to the mortgagor or grantor in substantially the  
19 following form, as prescribed by regulation by the Commissioner of Financial  
20 Regulation:

21 "NOTICE

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

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

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

31 If you own and live in the home that is subject to foreclosure, your lender may  
32 be required to conduct an analysis of your loan to see if you qualify for a loan  
33 modification or some other loss mitigation. You must apply and provide your lender

1 with specific information as part of this analysis. The results of your lender's analysis  
2 of your loan will be provided to you in the form of an affidavit submitted to the court.

3 If your lender determines that you are not eligible for any loan modification or  
4 other relief, you have the right to file a request with the court and have foreclosure  
5 mediation. This will be a conference with you, someone representing your lender, and  
6 a neutral third party to discuss your loan and possible options. To request foreclosure  
7 mediation, you must complete the Request for Foreclosure Mediation form that will  
8 accompany the lender's final loss mitigation affidavit and mail it to the court and the  
9 lender's foreclosure attorney within 15 days after receipt. If you file a Request for  
10 Foreclosure Mediation, your property cannot go to sale until at least 15 days after your  
11 mediation has been held.

12 You are urged to obtain legal advice and the assistance of a housing counselor to  
13 discuss possible loss mitigation programs, foreclosure mediation, and other options to  
14 stop the foreclosure sale.

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

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

20 Some people may approach you about "saving" your home. You should be careful  
21 about any such promises.

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

29 **DO NOT DELAY DEALING WITH THE FORECLOSURE BECAUSE YOUR**  
30 **OPTIONS WILL BECOME MORE LIMITED AS TIME PASSES.”; and**

31 (x) If the order to docket or complaint to foreclose concerns  
32 owner-occupied residential property and is accompanied by a final loss mitigation  
33 affidavit:

34 1. A request for foreclosure mediation in the form  
35 prescribed by regulation adopted by the Commissioner of Financial Regulation; and

36 2. An envelope preprinted with the address of the clerk  
37 of the court; and

1 3. An envelope preprinted with the address of the  
2 foreclosure attorney.

3 (D-1) NOTWITHSTANDING ANY OTHER LAW, THE COURT MAY NOT ACCEPT  
4 A LOST NOTE AFFIDAVIT IN LIEU OF A COPY OF THE DEBT INSTRUMENT  
5 REQUIRED UNDER SUBSECTION (D)(2)(III) OF THIS SECTION, UNLESS THE  
6 AFFIDAVIT:

7 (1) ~~LISTS EACH OWNER IN THE CHAIN OF TITLE OF THE DEBT~~  
8 ~~INSTRUMENT AND THE DATE ON WHICH EACH OWNER ACQUIRED OWNERSHIP~~  
9 IDENTIFIES THE SECURED PARTY AND THE BASIS FOR THE SECURED PARTY'S  
10 RIGHT TO ENFORCE THE DEBT INSTRUMENT;

11 (2) STATES WHY A COPY OF THE DEBT INSTRUMENT CANNOT BE  
12 PRODUCED; AND

13 (3) DESCRIBES THE GOOD FAITH EFFORTS MADE TO PRODUCE A  
14 COPY OF THE DEBT INSTRUMENT.

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
16 construed to apply only prospectively and may not be applied or interpreted to have  
17 any effect on or application to any order to docket or complaint to foreclose on  
18 residential property filed before July 1, 2011.

19 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take  
20 effect July 1, 2011.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.