

SENATE BILL 206

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11r0718
CF HB 691

By: **Senator Frosh**

Introduced and read first time: January 26, 2011

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 23, 2011

CHAPTER _____

1 AN ACT concerning

2 **Real Property – Residential Property Foreclosure Procedures – Secured**
3 **Party**

4 FOR the purpose of defining the term “secured party” for purposes of provisions of law
5 governing actions to foreclose certain mortgages and deeds of trust; and
6 generally relating to foreclosure procedures.

7 BY repealing and reenacting, with amendments,
8 Article – Real Property
9 Section 7–105.1
10 Annotated Code of Maryland
11 (2010 Replacement Volume and 2010 Supplement)

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

14 **Article – Real Property**

15 7–105.1.

16 (a) (1) In this section the following words have the meanings indicated.

17 (2) “Final loss mitigation affidavit” means an affidavit that:

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 (i) Is made by a person authorized to act on behalf of a secured
2 party of a mortgage or deed of trust on owner-occupied residential property that is the
3 subject of a foreclosure action;

4 (ii) Certifies the completion of the final determination of loss
5 mitigation analysis in connection with the mortgage or deed of trust; and

6 (iii) If denied, provides an explanation for the denial of a loan
7 modification or other loss mitigation.

8 (3) "Foreclosure mediation" means a conference at which the parties in
9 a foreclosure action, their attorneys, additional representatives of the parties, or a
10 combination of those persons appear before an impartial individual to discuss the
11 positions of the parties in an attempt to reach agreement on a loss mitigation program
12 for the mortgagor or grantor.

13 (4) "Housing counseling services" means assistance provided to
14 mortgagors or grantors by nonprofit and governmental entities that are identified on a
15 list maintained by the Department of Housing and Community Development.

16 (5) "Loss mitigation analysis" means an evaluation of the facts and
17 circumstances of a loan secured by owner-occupied residential property to determine:

18 (i) Whether a mortgagor or grantor qualifies for a loan
19 modification; and

20 (ii) If there will be no loan modification, whether any other loss
21 mitigation program may be made available to the mortgagor or grantor.

22 (6) "Loss mitigation program" means an option in connection with a
23 loan secured by owner-occupied residential property that:

24 (i) Avoids foreclosure through loan modification or other
25 changes to existing loan terms that are intended to allow the mortgagor or grantor to
26 stay in the property;

27 (ii) Avoids foreclosure through a short sale, deed in lieu of
28 foreclosure, or other alternative that is intended to simplify the mortgagor's or
29 grantor's relinquishment of ownership of the property; or

30 (iii) Lessens the harmful impact of foreclosure on the mortgagor
31 or grantor.

32 (7) "Owner-occupied residential property" means residential property
33 in which at least one unit is occupied by an individual who:

34 (i) Has an ownership interest in the property; and

1 (ii) Uses the property as the individual's primary residence.

2 (8) "Preliminary loss mitigation affidavit" means an affidavit that:

3 (i) Is made by a person authorized to act on behalf of a secured
4 party of a mortgage or deed of trust on owner-occupied residential property that is the
5 subject of a foreclosure action;

6 (ii) Certifies the status of an incomplete loss mitigation analysis
7 in connection with the mortgage or deed of trust; and

8 (iii) Includes reasons why the loss mitigation analysis is
9 incomplete.

10 (9) "Residential property" means real property improved by four or
11 fewer single family dwelling units that are designed principally and are intended for
12 human habitation.

13 (10) ~~(H)~~ "SECURED PARTY" MEANS THE ~~OWNER OF~~ PERSON
14 THAT:

15 (I) OWNS A DEBT INSTRUMENT SECURED BY A MORTGAGE
16 OR DEED OF TRUST ON RESIDENTIAL PROPERTY; AND

17 (II) IS ENTITLED TO THE NET PROCEEDS OF A
18 FORECLOSURE SALE OF THE RESIDENTIAL PROPERTY OR OF THE PAYOFF OF
19 THE DEBT INSTRUMENT.

20 ~~(H) "SECURED PARTY" DOES NOT INCLUDE MORTGAGE~~
21 ~~ELECTRONIC REGISTRATION SYSTEMS, INC. OR ANY OTHER SIMILAR REGISTRY~~
22 ~~OR DATABASE THAT TRACKS MORTGAGE LOAN SERVICERS OR OWNERS.~~

23 (b) (1) Except as provided in paragraph (2) of this subsection, an action to
24 foreclose a mortgage or deed of trust on residential property may not be filed until the
25 later of:

26 (i) 90 days after a default in a condition on which the mortgage
27 or deed of trust provides that a sale may be made; or

28 (ii) 45 days after the notice of intent to foreclose required under
29 subsection (c) of this section is sent.

30 (2) (i) The secured party may petition the circuit court for leave to
31 immediately commence an action to foreclose the mortgage or deed of trust if:

1 1. The loan secured by the mortgage or deed of trust was
2 obtained by fraud or deception;

3 2. No payments have ever been made on the loan
4 secured by the mortgage or deed of trust;

5 3. The property subject to the mortgage or deed of trust
6 has been destroyed; or

7 4. The default occurred after the stay has been lifted in a
8 bankruptcy proceeding.

9 (ii) The court may rule on the petition with or without a
10 hearing.

11 (iii) If the petition is granted, the action may be filed at any time
12 after a default in a condition on which the mortgage or deed of trust provides that a
13 sale may be made and the secured party need not send the written notice of intent to
14 foreclose required under subsection (c) of this section.

15 (c) (1) Except as provided in subsection (b)(2)(iii) of this section, at least
16 45 days before the filing of an action to foreclose a mortgage or deed of trust on
17 residential property, the secured party shall send a written notice of intent to foreclose
18 to the mortgagor or grantor and the record owner.

19 (2) The notice of intent to foreclose shall be sent:

20 (i) By certified mail, postage prepaid, return receipt requested,
21 bearing a postmark from the United States Postal Service; and

22 (ii) By first-class mail.

23 (3) A copy of the notice of intent to foreclose shall be sent to the
24 Commissioner of Financial Regulation.

25 (4) The notice of intent to foreclose shall:

26 (i) Be in the form that the Commissioner of Financial
27 Regulation prescribes by regulation; and

28 (ii) Contain:

29 1. The name and telephone number of:

30 A. The secured party;

31 B. The mortgage servicer, if applicable; and

1 C. An agent of the secured party who is authorized to
2 modify the terms of the mortgage loan;

3 2. The name and license number of the Maryland
4 mortgage lender and mortgage originator, if applicable;

5 3. The amount required to cure the default and reinstate
6 the loan, including all past due payments, penalties, and fees;

7 4. A statement recommending that the mortgagor or
8 grantor seek housing counseling services;

9 5. The telephone number and the Internet address of
10 nonprofit and government resources available to assist mortgagors and grantors facing
11 foreclosure, as identified by the Commissioner of Financial Regulation;

12 6. An explanation of the Maryland foreclosure process
13 and time line, as prescribed by the Commissioner of Financial Regulation; and

14 7. Any other information that the Commissioner of
15 Financial Regulation requires by regulation.

16 (5) The notice of intent to foreclose shall be accompanied by:

17 (i) A loss mitigation application:

18 1. For loss mitigation programs that are applicable to
19 the loan secured by the mortgage or deed of trust that is the subject of the foreclosure
20 action; or

21 2. If the secured party does not have its own loss
22 mitigation application, in the form prescribed by the Commissioner of Financial
23 Regulation;

24 (ii) Instructions for completing the loss mitigation application
25 and a telephone number to call to confirm receipt of the application;

26 (iii) A description of the eligibility requirements for the loss
27 mitigation programs offered by the secured party that may be applicable to the loan
28 secured by the mortgage or deed of trust that is the subject of the foreclosure action;
29 and

30 (iv) An envelope preprinted with the address of the person
31 responsible for conducting loss mitigation analysis on behalf of the secured party for
32 the loan secured by the mortgage or deed of trust that is the subject of the foreclosure
33 action.

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

3 (1) Include:

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

5 1. The mortgage originator; and

6 2. The mortgage lender; and

7 (ii) An affidavit stating:

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

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

13 (2) Be accompanied by:

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

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

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

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

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

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

27 2. The action is authorized by the Act;

28 (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 (i) File with the court a final loss mitigation affidavit in the
2 form prescribed by regulation adopted by the Commissioner of Financial Regulation;
3 and

4 (ii) Send to the mortgagor or grantor by first class and by
5 certified mail:

6 1. A copy of the final loss mitigation affidavit; and

7 2. A request for foreclosure mediation form and
8 envelopes described in subsection (d)(2)(x) of this section.

9 (2) A final loss mitigation affidavit shall be filed under this subsection
10 no earlier than 28 days after the order to docket or complaint to foreclose is served on
11 the mortgagor or grantor.

12 (h) (1) (i) In a foreclosure action on owner-occupied residential
13 property, the mortgagor or grantor may file with the court a completed request for
14 foreclosure mediation not later than:

15 1. If the final loss mitigation affidavit was delivered
16 along with service of the copy of the order to docket or complaint to foreclose under
17 subsection (f) of this section, 15 days after that service on the mortgagor or grantor; or

18 2. If the final loss mitigation affidavit was mailed as
19 provided in subsection (g) of this section, 15 days after the mailing of the final loss
20 mitigation affidavit.

21 (ii) 1. A request for foreclosure mediation shall be
22 accompanied by a filing fee of \$50.

23 2. The court may reduce or waive the filing fee under
24 subparagraph 1 of this subparagraph if the mortgagor or grantor is eligible for a
25 reduction or waiver under the Maryland Legal Services guidelines.

26 (iii) The mortgagor or grantor shall mail a copy of the request for
27 foreclosure mediation to the secured party's foreclosure attorney.

28 (2) (i) The secured party may file a motion to strike the request for
29 foreclosure mediation in accordance with the Maryland Rules.

30 (ii) The motion to strike must be accompanied by an affidavit
31 that sets forth the reasons why foreclosure mediation is not appropriate.

32 (iii) The secured party shall mail a copy of the motion to strike
33 and the accompanying affidavit to the mortgagor or grantor.

1 (iv) There is a presumption that a mortgagor or grantor is
2 entitled to foreclosure mediation unless good cause is shown why foreclosure
3 mediation is not appropriate.

4 (3) (i) The mortgagor or grantor may file a response to the motion
5 to strike within 15 days.

6 (ii) The mortgagor or grantor shall mail a copy of the response
7 to the foreclosure attorney.

8 (iii) If the court grants the motion to strike, the court shall
9 instruct the Office of Administrative Hearings to cancel any scheduled mediation.

10 (i) (1) Within 5 days after receipt of a request for foreclosure mediation,
11 the court shall transmit the request to the Office of Administrative Hearings for
12 scheduling.

13 (2) (i) Within 60 days after transmittal of the request for
14 foreclosure mediation, the Office of Administrative Hearings shall conduct a
15 foreclosure mediation.

16 (ii) For good cause, the Office of Administrative Hearings may
17 extend the time for completing the foreclosure mediation for a period not exceeding 30
18 days.

19 (3) The Office of Administrative Hearings shall send notice of the
20 scheduled foreclosure mediation to the foreclosure attorney, the secured party, and the
21 mortgagor or grantor.

22 (4) The notice from the Office of Administrative Hearings shall:

23 (i) Include instructions regarding the documents and
24 information, as required by regulations adopted by the Commissioner of Financial
25 Regulation, that must be provided by each party to the other party and to the
26 mediator; and

27 (ii) Require the information and documents to be provided no
28 later than 20 days before the scheduled date of the foreclosure mediation.

29 (j) (1) At a foreclosure mediation:

30 (i) The mortgagor or grantor shall be present;

31 (ii) The mortgagor or grantor may be accompanied by a housing
32 counselor and may have legal representation;

1 (iii) The secured party, or a representative of the secured party,
2 shall be present; and

3 (iv) Any representative of the secured party must have the
4 authority to settle the matter or be able to readily contact a person with authority to
5 settle the matter.

6 (2) At the foreclosure mediation, the parties and the mediator shall
7 address loss mitigation programs that may be applicable to the loan secured by the
8 mortgage or deed of trust that is the subject of the foreclosure action.

9 (3) The Office of Administrative Hearings shall file a report with the
10 court that states the outcome of the request for foreclosure mediation within the
11 earlier of:

12 (i) 5 days after a foreclosure mediation is held; or

13 (ii) The end of the 60-day mediation period specified in
14 subsection (i)(2) of this section, plus any extension granted by the Office of
15 Administrative Hearings.

16 (4) Except for a request for postponement, the rules of procedure for
17 contested cases of the Office of Administrative Hearings do not govern a foreclosure
18 mediation conducted by the Office.

19 (k) (1) If the parties do not reach an agreement at the foreclosure
20 mediation, or the 60-day mediation period expires without an extension granted by
21 the Office of Administrative Hearings, the foreclosure attorney may schedule the
22 foreclosure sale.

23 (2) (i) Subject to subparagraphs (ii), (iii), and (iv) of this
24 paragraph, the mortgagor or grantor may file a motion to stay the foreclosure sale.

25 (ii) A motion to stay under this paragraph shall be filed within
26 15 days after:

27 1. The date the foreclosure mediation is held; or

28 2. If no foreclosure mediation is held, the date the Office
29 of Administrative Hearings files its report with the court.

30 (iii) A motion to stay under this paragraph must allege specific
31 reasons why loss mitigation should have been granted.

32 (3) Nothing in this subtitle precludes the mortgagor or grantor from
33 pursuing any other remedy or legal defense available to the mortgagor or grantor.

1 (l) A foreclosure sale of residential property may not occur until:

2 (1) If the residential property is not owner-occupied residential
3 property, at least 45 days after service of process is made under subsection (f) of this
4 section;

5 (2) If the residential property is owner-occupied residential property
6 and foreclosure mediation is not held, the later of:

7 (i) At least 45 days after service of process that includes a final
8 loss mitigation affidavit made under subsection (f) of this section; or

9 (ii) At least 30 days after a final loss mitigation affidavit is
10 mailed under subsection (g) of this section; and

11 (3) If the residential property is owner-occupied residential property
12 and foreclosure mediation is requested, at least 15 days after:

13 (i) The date the foreclosure mediation is held; or

14 (ii) If no foreclosure mediation is held, the date the Office of
15 Administrative Hearings files its report with the court.

16 (m) Notice of the time, place, and terms of a foreclosure sale shall be
17 published in a newspaper of general circulation in the county where the action is
18 pending at least once a week for 3 successive weeks, the first publication to be not less
19 than 15 days before the sale and the last publication to be not more than 1 week before
20 the sale.

21 (n) (1) The mortgagor or grantor of residential property has the right to
22 cure the default by paying all past due payments, penalties, and fees and reinstate the
23 loan at any time up to 1 business day before the foreclosure sale occurs.

24 (2) The secured party or an authorized agent of the secured party
25 shall, on request, provide to the mortgagor or grantor or the mortgagor's or grantor's
26 attorney within a reasonable time the amount necessary to cure the default and
27 reinstate the loan and instructions for delivering the payment.

28 (o) An action for failure to comply with the provisions of this section shall be
29 brought within 3 years after the date of the order ratifying the sale.

30 (p) Revenue collected from the filing fees required under subsections
31 (d)(2)(vii) and (h)(1)(ii) of this section shall be distributed to the Housing Counseling
32 and Foreclosure Mediation Fund established under § 4-507 of the Housing and
33 Community Development Article.

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.