

SENATE BILL 450

N1

1lr1659
CF HB 412

By: **Senator Frosh**

Introduced and read first time: February 4, 2011

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 8, 2011

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**

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 OWNER OF THE DEBT INSTRUMENT AND STATES FROM WHOM**
10 **AND THE DATE ON WHICH THE OWNER ACQUIRED OWNERSHIP;**

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:

Governor.

President of the Senate.

Speaker of the House of Delegates.