

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

House Bill 842

(Delegate Healey, *et al.*)

Environmental Matters

Judicial Proceedings

Foreclosed Residential Property - Tenants - Collection of Rent Payments - Prior
Notice

This bill prohibits a foreclosure sale purchaser from asserting a claim to rent payments from a bona fide tenant in possession of residential property, unless the purchaser has (1) conducted a reasonable inquiry as required under the Maryland Rules into the occupancy status of the property and whether any individual in possession is a bona fide tenant; and (2) served on each bona fide tenant, by first-class mail with a certificate of mailing, a notice containing the contact information of the purchaser or the purchaser's agent who is responsible for managing and maintaining the property and stating that the tenant must direct rent payments to the purchaser or the agent. A foreclosure sale purchaser waives any claim to rent payments from a bona fide tenant in possession of a residential property for any period of time before the purchaser satisfies these requirements, except for the 15 days immediately prior to the date that the purchaser has satisfied the bill's notice and reasonable inquiry requirements.

The bill takes effect July 1, 2011, and applies prospectively. It may not be applied or interpreted to affect any foreclosure action docketed on or before June 30, 2011.

Fiscal Summary

State Effect: Potential minimal. The requirement that a foreclosure sale purchaser notify a tenant of the tenant's duty to pay rent may reduce the number of landlord tenant disputes for failure to pay rent filed in the District Court.

Local Effect: None. An action in foreclosure is under the jurisdiction of the circuit courts; however, an action for the collection of rent payments is in the jurisdiction of the District Court.

Small Business Effect: Potential minimal.

Analysis

Current Law: After the filing of a foreclosure action, and 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 provide information regarding the rights of a bona fide tenant.

A tenant is “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.

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.

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.

In addition, the Maryland Rules require that a motion for possession following a foreclosure sale be served on a tenant who was not a party to the foreclosure action by (1) personal delivery to the person or a resident of suitable age and discretion at the dwelling house or usual place of abode of the person; or (2) if at least two good faith efforts at personal delivery on different days were unsuccessful, by mailing by first-class and certified mail and posting in a conspicuous place on the property.

If the right to possession arises from a foreclosure sale of a dwelling or residential property, the motion must include affirmations, as specified, establishing either that the person in actual possession is not a bona fide tenant having rights under federal or State law or, if the person in possession is a bona fide tenant, that the notice required under these laws has been given and that the tenant has no further right to possession. If a notice pursuant to federal or State law is required, the motion must state the date the notice was given and a copy of the notice must be attached as an exhibit.

Additional Information

Prior Introductions: None.

Cross File: SB 516 (Senator Forehand, *et al.*) - Judicial Proceedings.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Department of Housing and Community Development; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Legislative Services

Fiscal Note History: First Reader - February 18, 2011
mlm/kdm Revised - House Third Reader - March 24, 2011

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