

Department of Legislative Services  
Maryland General Assembly  
2011 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 366

(Delegate Niemann)

Environmental Matters

Judicial Proceedings

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**Real Property - Residential Property Foreclosure Procedures - Accuracy of Notice  
of Intent to Foreclose**

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This bill requires that an affidavit accompanying an order to docket or a complaint to foreclose a mortgage or deed of trust on residential property state, if applicable, that the contents of the notice of intent (NOI) to foreclose were accurate at the time the NOI was sent.

The bill applies only prospectively and has no application to any order to docket or complaint to foreclose on residential property filed before the bill's effective date.

The bill takes effect July 1, 2011.

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**Fiscal Summary**

**State Effect:** The bill is not anticipated to materially affect State finances or operations.

**Local Effect:** The bill is not anticipated to materially affect local government finances or operations.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** Except under specified circumstances, an action to foreclose a mortgage or deed of trust on residential property cannot be filed until the later of 90 days after a default in a condition on which the mortgage or deed of trust states that a sale may be made or 45 days after an NOI and accompanying loss mitigation application are sent.

A written NOI must be sent to the mortgagor or grantor and the record owner at least 45 days before the filing of an action to foreclose a mortgage or deed of trust on residential property. It must be sent by certified mail, postage prepaid, return receipt requested, and by first-class mail. A copy of the NOI must also be sent to the Commissioner of Financial Regulation in the Maryland Department of Labor, Licensing, and Regulation (DLLR). It must be in the form that the commissioner prescribes by regulation and contain specified information. The NOI must also be accompanied by a loss mitigation application, instructions for completing the application, a description of the applicable eligibility requirements for the loss mitigation programs offered by the secured party, and an envelope preprinted with the address of the person responsible for conducting loss mitigation analysis on behalf of the secured party.

An order to docket or a complaint to foreclose a mortgage or deed of trust on a residential property must include, if applicable, the license number of both the mortgage originator and the mortgage lender. The order or complaint must also contain an affidavit stating the date and nature of the default and, if applicable, that an NOI was properly sent and the date on which it was sent.

Under the prohibition against perjury, a person may not willfully and falsely make an oath or affirmation:

- if the false swearing is perjury at common law;
- in an affidavit required by law;
- in an affidavit made to induce a court or officer to pass an account or claim;
- in an affidavit required as part of a report and return made to the General Assembly or an officer of the government; or
- in an affidavit or affirmation made under the Maryland Rules.

A violator is guilty of the misdemeanor of perjury and on conviction is subject to imprisonment for up to 10 years.

## **Background:**

### *State Response to the Mortgage Crisis*

The State's multi-faceted approach to the foreclosure crisis has involved legislative reforms of mortgage lending laws, extensive consumer outreach efforts, and enhanced mortgage industry regulation and enforcement. Legislation passed during the 2008, 2009, and 2010 sessions:

- created the Mortgage Fraud Protection Act, Maryland’s first comprehensive mortgage fraud statute;
- tightened mortgage lending standards and required a lender to give due regard to a borrower’s ability to repay a loan;
- prohibited foreclosure rescue transactions and granted the Commissioner of Financial Regulation additional enforcement powers;
- reformed the foreclosure process to provide homeowners with greater time and additional notices before their properties are sold;
- required additional notices to be given to residential tenants renting properties pending foreclosure;
- required the secured party to file a specified final loss mitigation affidavit and send to the mortgagor or grantor a copy of the affidavit and a request for foreclosure mediation form; and
- required a lender, under specified circumstances, to provide to a borrower a specified written notice regarding homebuyer education or housing counseling in connection with specified mortgage loans.

#### *Notice of Intent to Foreclose*

Since April 2008, financial institutions and lenders have been required to send copies of NOIs to DLLR. According to DLLR, it has received 354,685 copies of NOIs.

#### *Court of Appeals Foreclosure Rule*

In October 2010, the Maryland Court of Appeals approved an emergency rule allowing circuit courts to appoint independent attorneys to assess foreclosure documents for problems, including the authenticity of a signature or the veracity of an attestation. The rule was adopted following published revelations that two Maryland attorneys had not personally signed foreclosure affidavits that bore their names. More recently, Ally Financial’s GMAC Mortgage Unit agreed to drop approximately 250 foreclosures in Maryland. This action was part of an agreement with a nonprofit group, Civil Justice Inc. In return, Civil Justice dropped a class-action lawsuit. The lawsuit claimed that the foreclosures signed by a particular GMAC employee were defective due to the employee filing affidavits without checking the accuracy of the foreclosure documents. GMAC plans on refiling the 250 foreclosures. GMAC has halted evictions in 23 states due to concerns over this practice, commonly known as “robo-signing.”

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## Additional Information

**Prior Introductions:** None.

**Cross File:** SB 205 (Senator Frosh) - 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; Office of Administrative Hearings; *Maryland Daily Record*; *Bloomberg Business Week*; Department of Legislative Services

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