

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 1288 (Delegate Carter)
Environmental Matters

Foreclosure Prevention and Neighborhood Stabilization Act of 2012

This bill alters the foreclosure process for residential real property. The bill also establishes a foreclosed property registry and grants a one-time \$10,000 tax credit to a purchase of residential property in a foreclosure hotspot if the property is to be used as the purchaser's primary residence.

Fiscal Summary

State Effect: Special fund revenues increase by \$140,100 in FY 2013 due to the bill's requirement that the secured party file a completed request for mediation with the court. Out-years reflect annualization and assume a stable number of mediation requests. Special fund expenditures increase to the extent that the Office of Administrative Hearings (OAH) must hire additional personnel and if any payment for a private mediator is drawn from the Housing Counseling and Foreclosure Mediation Fund to perform an increased number of mediations. General fund revenues increase by \$122,500 in FY 2013 to reflect the collection of registration fees from foreclosure purchasers and the anticipated April 1, 2013 start date for the registry. General fund expenditures increase by \$56,500 in FY 2013 only to account for the need to reprogram the Judiciary's court case management system. General fund expenditures increase by \$211,400 in FY 2013 for additional personnel at the Department of Housing and Community Development (DHCD) to establish and maintain the registry, collect registration fees, and approve property tax credits. Out-years reflect annualization and inflation. The imposition of a new penalty is not anticipated to materially affect governmental finances or operations. Annuity Bond Fund revenues decrease beginning in FY 2013 to the extent property tax credits are granted.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
GF Revenue	\$122,500	\$490,000	\$490,000	\$490,000	\$490,000
SF Revenue	\$140,100	\$186,900	\$186,900	\$186,900	\$186,900
GF Expenditure	\$267,900	\$278,800	\$296,500	\$309,800	\$323,700
SF Expenditure	-	-	-	-	-
Net Effect	(\$5,200)	\$398,100	\$380,300	\$367,100	\$353,200

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Local government property tax revenues decrease beginning in FY 2013 to the extent the property tax credits are granted. The amount of the revenue decrease depends on the number foreclosure properties bought and the assessed value of each, neither of which can be reliably estimated at this time.

Small Business Effect: Minimal.

Analysis

Bill Summary/Current Law:

Foreclosure Filing

The Bill: The bill alters the definition of “owner-occupied residential property” to exclude residential property that has been vacant for more than 30 days.

The bill requires that a request by a secured party for foreclosure mediation include and be accompanied by the same information that an order to docket or a complaint to foreclose a mortgage or deed of trust on residential property must currently include or be accompanied by. The bill also requires that a secured party, rather than the mortgagor or grantor, file a completed request for foreclosure mediation.

Current Law: “Residential property” is defined as real property improved by four or fewer single-family dwelling units designed principally and intended for human habitation. “Owner-occupied residential property” means residential property in which at least one unit is occupied by an individual who has an ownership interest in the property and uses the property as the individual’s primary residence. 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 a notice of intent to foreclose and accompanying loss mitigation application are sent.

The secured party must send written notice of intent to foreclose 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. This notice must be sent by certified

mail, postage prepaid, return receipt requested, and by first-class mail. A copy of the notice must also be sent to the Commissioner of Financial Regulation in the Department of Labor, Licensing, and Regulations (DLLR). The notice must be in the form that the commissioner prescribes by regulation and contain specified information, including the name and telephone number of the secured party and an agent of the secured party who is authorized to modify the terms of the mortgage loan. The notice 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 residential property must contain specified information and be accompanied by specified documents, including (1) an affidavit stating that a notice of intent was sent and was accurate at the time it was sent; (2) a final loss mitigation affidavit; and (3) a request for foreclosure mediation form if the loss mitigation analysis has been completed. If the loss mitigation analysis has not been completed, the secured party must include a preliminary loss mitigation affidavit and related information, file a final loss mitigation affidavit with the court at least 30 days before the foreclosure sale date and no earlier than 28 days after the order to docket or complaint to foreclose is served, and send the final loss mitigation affidavit and a request for foreclosure mediation form to the mortgagor or grantor by certified mail.

Foreclosure Mediation

The Bill: The bill *requires* that a *secured party* file with the court a completed request for foreclosure mediation either (1) 30 days after a default in a condition on which a mortgage or deed of trust on residential property provides that a sale may be made; or (2) at the time the secured party files an action to foreclose a mortgage or deed of trust on residential property. Thus, the bill repeals the ability of the secured party to file a motion to strike the request for foreclosure mediation and provisions related to mortgagor or grantor filing a request for foreclosure mediation. If foreclosure mediation is not conducted before a secured party files an action to foreclose a mortgage or deed of trust, the court must stay the foreclosure proceedings until the conclusion of the mediation. The bill authorizes the mortgagor or grantor to waive the right to participate in mediation by submitting a written waiver to the court before the first mediation session.

The bill requires the court to appoint a mediator, within five days after receipt of a request for foreclosure mediation, who is (1) an administrative law judge with OAH; (2) an attorney admitted to the Maryland Bar; or (3) an individual affiliated with a local or national mediation association with sufficient knowledge of relevant areas of law, mortgage financing, and individual debt management. The cost of the mediation must be

split between the secured party and the mortgagor or grantor, and any mediator that it is not a State employee must be paid a mediation fee as annually set by OAH.

Within 60 days after the security party files a request for foreclosure mediation, the court-appointed mediator must conduct the mediation. However, the bill authorizes the court to extend the time for completing the foreclosure mediation if the secured party fails to submit specified information within 14 days after requesting the mediation. The court must extend the time for completing mediation for up to 60 days if the holders of subordinate interests are not notified of the mediation within 14 days after the mediator is appointed. The notice from the court-appointed mediator must contain instructions for the holder of subordinate interests to bring the original or a certified copy of the lien instruments and a statement of the debt remaining due and payable supported by an affidavit of the holder. The holder of a subordinate interest must provide this information and documents within 21 days after the mediation if ordered.

The bill requires the court to, immediately after ordering mediation, send notice to the mortgagor or grantor of (1) the mortgagor's or grantor's rights regarding the mediation, including the right to waive mediation and the consequence of such a waiver; (2) a list of housing counseling services; and (3) a brief description of the law governing mortgages and real property applicable in the mortgagor's or grantor's jurisdiction.

The bill authorizes a foreclosure mediation to be conducted through remote meeting technology if the mortgagor or grantor and the secured party agree. The bill also authorizes the mediator to schedule more than one mediation session.

The bill requires the parties and the mediator to address specified issues at the foreclosure mediation, including the economic consequences to the parties, the mortgagor's or grantor's options under federal and State law, and the most recent assessed value of the property, according to the State Department of Assessments and Taxation.

The bill requires that the parties negotiate in good faith. If the mediator finds that a party is not acting in good faith, the mediator may suspend the mediation and refer the matter to the court to appoint another mediator who must restart the mediation within two weeks of its suspension.

Current Law: A grantor or mortgagor may file with the court a completed request for foreclosure mediation not later than 15 days after the service or mailing of the final loss mitigation affidavit. A \$50 filing fee must accompany the request. A grantor or mortgagor must also mail a copy of the request to the secured party's foreclosure attorney. The secured party may then file a motion to strike, accompanied by an affidavit setting forth the reasons why foreclosure mediation is not appropriate. If the secured party files a motion to strike, it must mail a copy of the motion and affidavit to the grantor or mortgagor. The grantor or mortgagor has 15 days to file a response.

The court must transmit the request to OAH within five days of receiving the mediation request. OAH must conduct the mediation hearing within 60 days of this transmittal, unless the time is extended for good cause. Upon scheduling the mediation hearing, OAH must send notice to the parties detailing the production of specified documents by a specified date.

Both the grantor or mortgagor and the secured party, or a representative, must be present at the foreclosure mediation. The parties and the mediator must address loss mitigation programs that may be applicable to the loan secured by the mortgage or deed of trust that is the subject of the foreclosure action. OAH must file a report with the court stating the mediation's outcome by a specified date. If no agreement is reached at the foreclosure mediation, the foreclosure attorney may schedule the foreclosure sale, and the grantor or mortgagor may file a motion to stay the sale if filed within a specified date.

Foreclosure Property Registry

The Bill: DHCD must establish and maintain a foreclosed property registry. The bill requires that a person authorized to make a sale of a residential property must register it after commencement of an action to foreclose a lien on the property. The registration must include identification of the property by street address and tax account number and, if known, information on whether the property is vacant.

Current Law: There is no foreclosed property registry required by State law. However, Chapter 149 of 2009 authorized a county or municipal corporation to enact a local law that requires notice to be given to the local government when a foreclosure action is filed on residential property located in the jurisdiction.

Property Tax Credit – Foreclosure Hotspot

The Bill: The bill defines “foreclosure hotspot” as a community designated on a quarterly basis by the Office of Policy, Planning, and Research in DHCD based on the number of foreclosure events during the previous quarter. “Residential property” is defined as real property improved by four or fewer single-family dwelling units that are designed principally and are intended for human habitation.

A purchaser of residential property in a foreclosure hotspot may apply for a one-time tax credit of \$10,000 on or before October 1 of the taxable year for which the credit is sought on an application as provided by DHCD. As noted above, the property must be used as the purchaser's primary residence.

Current Law: A foreclosure purchaser does not receive a property tax credit based on the location of the purchase.

Background: The State’s multifaceted 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, 2010, and 2011 sessions (1) created the Mortgage Fraud Protection Act, Maryland’s first comprehensive mortgage fraud statute; (2) tightened mortgage lending standards and required a lender to give due regard to a borrower’s ability to repay a loan; (3) prohibited foreclosure rescue transactions and granted the Commissioner of Financial Regulation additional enforcement powers; (4) reformed the foreclosure process to provide homeowners with greater time and additional notices before their properties are sold; (5) required additional notices to be given to residential tenants renting properties pending foreclosure; (6) 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; (7) 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 (8) lengthened the time period within which a homeowner may elect to participate in foreclosure mediation. Consumer outreach efforts include statewide public workshops to assist distressed homeowners, in coordination with the Maryland Foreclosure Prevention Pro Bono Project.

Due to a multitude of factors, including the State’s new foreclosure mediation process, consumer outreach efforts, and legal issues surrounding many banks and mortgage companies’ foreclosure practices, the number of foreclosure events decreased significantly from 50,563 in 2010 to 16,049 in 2011, as shown by **Exhibit 1**. Foreclosure events encompass real estate-owned (REO) purchases, notice of foreclosure sales, and notices of mortgage loan default. REO property is property acquired by a financial institution as a result of an unsuccessful foreclosure sale on the property. This type of acquisition often occurs when the amount of the outstanding loan owed to the financial institution is greater than the value of the property. The low level of foreclosure events seems to be holding, though the fourth quarter of 2011 was the first increase in the number of foreclosure events from the previous quarter since the second quarter of 2010.

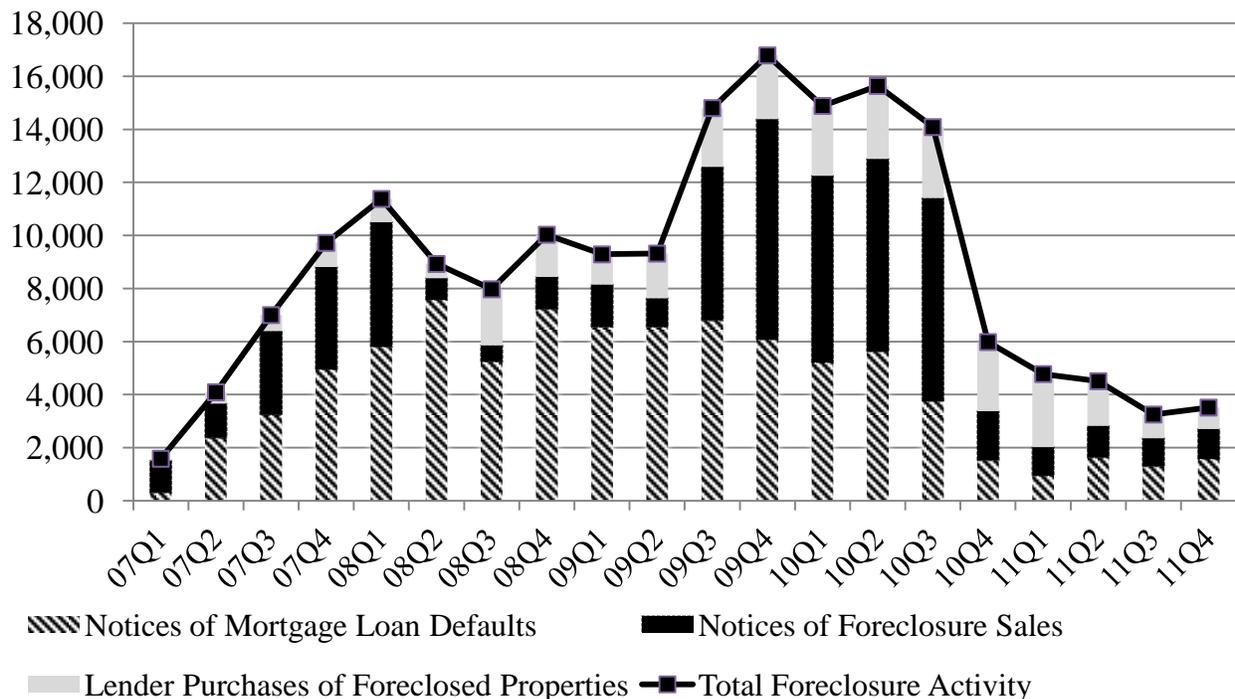
DHCD identifies foreclosure “hotspots” in Maryland. As defined by DHCD, a foreclosure hotspot is a community with 10 or more foreclosure events in one quarter and a high score on a foreclosure index. Based on the foreclosure index score, a community can be categorized as a severe, very high, or high foreclosure hotspot. In the fourth quarter of 2011, approximately 2,248 foreclosure events, or 64% of all foreclosure events, occurred in 76 hotspot communities. The majority of the foreclosure events in hotspot communities occurred in Baltimore City and Prince George’s County.

The Governor convened the Maryland Foreclosure Task Force in fall 2011. The task force included DLLR, DHCD, members of the General Assembly, the Judiciary, and

representatives from private industry. In January 2012, the task force issued its report, including 12 recommendations aimed at addressing the foreclosure crisis in Maryland.

According to the task force, the period of time between a foreclosure sale and the recordation of a deed transferring title to the property is estimated to range from 9 to 18 months. During this “limbo period,” it is difficult for local governments to know who to contact about issues that may arise with the property. This is of special concern when the property is vacant. Local governments have experienced increased costs for code enforcement relating to securing and maintaining vacant foreclosure property. One of the task force’s recommendations was the creation of the registry in order to allow government officials to identify parties responsible for the maintenance of foreclosed property during this limbo period. House Bill 1373, a departmental bill, introduced at the request of DLLR, implements the task force’s recommendation to establish an Internet-based Foreclosed Property Registry.

Exhibit 1
State Foreclosure Events
2007-2011



Source: Department of Housing and Community Development

State Fiscal Effect:

Foreclosure Mediation: Special fund revenues increase by \$140,138 in fiscal 2013 accounting for the bill's October 1, 2012 effective date and \$186,850 in subsequent years to account for the bill's requirement that the secured party file a completed request for mediation with the court. Currently, only a mortgagor or grantor may request mediation if a \$50 filing fee is included with the request. As shown by **Exhibit 2**, out of 4,837 eligible events, borrowers have requested mediations on only 1,100, or 22.7%, of eligible orders to docket or complaints to foreclose a mortgage or deed of trust on residential property in fiscal 2011. As a secured party must file a request for mediation with each order to docket, special fund revenues increase by \$140,138 in fiscal 2013 and \$186,850 in subsequent years. This estimate assumes that both the number of orders to docket and the percentage of borrowers who would file for mediation absent the bill remain constant.

Special fund expenditures from the Housing Counseling and Foreclosure Mediation Fund increase to the extent that it is necessary for OAH to hire additional personnel to perform additional mediations. It is unclear whether the bill intends to allow payment for additional private mediators to also be drawn from the Housing Counseling and Foreclosure Mediation Fund as the bill does not modify the explicit purposes of the fund. Moreover, the bill requires the cost of mediation to be split between the parties. The bill's effect on the number of mediations conducted by OAH is unclear. By requiring the secured party to file a request for mediation with each order to docket, the bill most likely increases the total number of OAH mediations. However, the bill also authorizes the court to appoint a private mediator to conduct a mediation session. Currently, foreclosure mediation must be conducted only by OAH.

General fund expenditures increase for the Judiciary by at least \$56,500 to reprogram court case management systems to account for modified notice requirements and the option to appoint a mediator other than OAH.

Exhibit 2
Orders to Docket (OTDs) and Mediation Requests by County
Fiscal 2011

	Owner- Occupied OTDs	OTDs Eligible for Mediation	% of OTDs Eligible for Mediation	Mediation Requests	Mediation Requests as % of Eligible OTDs
Allegany	54	38	70.4%	5	13.2%
Anne Arundel	615	334	54.3%	91	27.2%
Baltimore City	1,386	784	56.6%	147	18.8%
Baltimore	1,040	566	54.4%	134	23.7%
Calvert	115	72	62.6%	15	20.8%
Caroline	69	36	52.2%	4	11.1%
Carroll	168	72	42.9%	30	41.7%
Cecil	161	104	64.6%	15	14.4%
Charles	305	191	62.6%	56	29.3%
Dorchester	85	50	58.8%	6	12.0%
Frederick	300	169	56.3%	34	20.1%
Garrett	35	26	74.3%	8	30.8%
Harford	304	166	54.6%	35	21.1%
Howard	231	125	54.1%	32	25.6%
Kent	32	23	71.9%	4	17.4%
Montgomery	775	460	59.4%	115	25.0%
Prince George's	1,917	1,121	58.5%	277	24.7%
Queen Anne's	85	54	63.5%	9	16.7%
St. Mary's	84	51	60.7%	13	25.5%
Somerset	45	29	64.4%	3	10.3%
Talbot	63	41	65.1%	12	29.3%
Washington	240	142	59.2%	21	14.8%
Wicomico	170	112	65.9%	16	14.3%
Worcester	138	71	51.4%	18	25.4%
Total	8,417	4,837	57.5%	1,100	22.7%

Source: Department of Labor, Licensing, and Regulation

Foreclosure Registry and Property Tax Credit: General fund revenues increase by \$122,500 in fiscal 2013 to reflect the collection of registration fees from foreclosure

purchasers and the anticipated April 1, 2013 start date for the registry. The bill requires a foreclosure purchaser to submit a registration form and the \$35 registration fee immediately after the residential property is purchased at a foreclosure sale. In 2011, there were approximately 14,000 foreclosure sales in the State. Assuming the number of foreclosure sales remains constant, general fund revenues increase by \$122,500 in fiscal 2013 and \$490,000 annually in subsequent years.

DHCD advises that five full-time staff members and three contractual employees are necessary to establish and maintain the registry, review applications for the property tax credit, and collect registration fees. The Department of Legislative Services does not concur with this assessment.

Despite the bill's October 1, 2012 effective date, DHCD advises the registry will not be operational until April 1, 2013. Given the complexity of the registry and volume of the registrants, the estimate assumes this start date is reasonable. It is not necessary to hire an accountant to collect registration fees until April 1, 2013, when it is expected that the registry will accept registrations. Thus, general fund expenditures increase by at least \$211,359 in fiscal 2013. This estimate reflects the cost of hiring the accountant, in April and two database specialists to establish, implement, and maintain the registry and one program administrator to operate the foreclosure hotspot and related tax credit program as of October 1, 2012. The estimate reflects the retention of consulting services relating to the planning, creation, testing, implementation, and ongoing maintenance of the registry database for \$25,000 in fiscal 2013.

The estimate also include salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Total Positions (full-time equivalent)	4
Salaries and Fringe Benefits	\$161,793
Database Consultant	25,000
Other Operating Expenses	<u>24,566</u>
Total FY 2013 DHCD General Fund Expenditures	\$211,359

Future year expenditures reflect full salaries with annual increases, employee turnover, annual increases in ongoing operating expenses, and \$10,000 annually for registry maintenance.

The estimate does not include the amount paid by DHCD when acting as a secured party in a foreclosure mediation because the number of foreclosures performed by DHCD in fiscal 2013 and subsequent years is unknown.

Annuity Bond Fund revenues decrease beginning in fiscal 2013 to the extent property tax credits are granted. The amount of the revenue decrease depends on the number of foreclosure properties bought and the assessed value of each, neither of which can be reliably estimated at this time. As evidenced by **Exhibit 3**, the amount of State and local property taxes paid on the average assessed value of a home in a particular jurisdiction is far below the bill's one-time \$10,000 tax credit.

Exhibit 3
Amount of State and Local Property Taxes per Jurisdiction
Fiscal 2012

County	Average Assessed Value	FY 2012 Tax Rate	State Property Taxes	Local Property Taxes
Allegany	\$109,143	\$0.9820	\$122	\$1,072
Anne Arundel	339,716	0.9100	380	3,091
Baltimore City	151,366	2.2680	170	3,433
Baltimore	245,548	1.1000	275	2,701
Calvert	325,230	0.8920	364	2,901
Caroline	199,495	0.8700	223	1,736
Carroll	291,622	1.0280	327	2,998
Cecil	227,026	0.9401	254	2,134
Charles	260,999	1.0665	292	2,784
Dorchester	183,808	0.9760	206	1,794
Frederick	269,234	1.0640	302	2,865
Garrett	153,570	0.9900	172	1,520
Harford	263,865	1.0420	296	2,749
Howard	387,712	1.1495	434	4,457
Kent	271,844	1.0220	304	2,778
Montgomery	444,066	0.9590	497	4,259
Prince George's	230,220	1.3190	258	3,037
Queen Anne's	369,108	0.8471	413	3,127
St. Mary's	293,182	0.8570	328	2,513
Somerset	125,405	0.8837	140	1,108
Talbot	462,920	0.4480	518	2,074
Washington	199,669	0.9480	224	1,893
Wicomico	158,374	0.7690	177	1,218
Worcester	247,442	0.7000	277	1,732

Source: Department of Legislative Services

Local Fiscal Effect: Local government property tax revenues decrease beginning in fiscal 2013 to the extent that property tax credits are granted. The amount of the revenue decrease depends on the number foreclosure properties bought and the assessed value of each, neither of which can be reliably estimated at this time.

Additional Information

Prior Introductions: None.

Cross File: SB 786 (Senators Muse and Ramirez) - Judicial Proceedings and Budget and Taxation.

Information Source(s): State Department of Assessments and Taxation; 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; Department of Legislative Services

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