

HOUSE BILL 1195

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By: **Delegates B. Robinson, Anderson, Angel, Branch, Carter, Conaway, Cullison, Fennell, Glenn, Haynes, C. Howard, Jackson, Jalisi, Jones, Knotts, Lierman, A. Miller, Oaks, Patterson, Proctor, Rosenberg, Sydnor, Tarlau, Valentino-Smith, Walker, A. Washington, M. Washington, and C. Wilson**

Introduced and read first time: February 25, 2015

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Fair Foreclosure Act of 2015**

3 FOR the purpose of requiring an action to foreclose a mortgage or deed of trust on certain
4 residential property to be commenced by filing a complaint; requiring practice and
5 procedure in an action to foreclose a mortgage or deed of trust on certain residential
6 property to be governed by certain provisions of the Maryland Rules; altering the
7 contents of a certain notice required to be served on a certain mortgagor or grantor;
8 requiring all court proceedings in an action to foreclose a mortgage or deed of trust
9 on certain residential property to be stayed for a certain period; prohibiting a
10 foreclosure sale of residential property from occurring until a certain time; altering
11 the amount that a mortgagor or grantor of residential property must pay in order to
12 cure a certain default; making conforming changes; providing for the application of
13 this Act; and generally relating to actions to foreclose a mortgage or deed of trust on
14 residential property.

15 BY repealing and reenacting, with amendments,
16 Article – Real Property
17 Section 7–105.1
18 Annotated Code of Maryland
19 (2010 Replacement Volume and 2014 Supplement)

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

22 **Article – Real Property**

23 7–105.1.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

2 (2) (i) “Certified community development financial institution” means
3 a community development financial institution that is certified by the Community
4 Development Financial Institutions Fund in the U.S. Department of the Treasury under
5 12 U.S.C. § 4701 et seq.

6 (ii) “Certified community development financial institution”
7 includes any company that controls, is controlled by, or is under common control with a
8 certified community development financial institution.

9 (3) “Final loss mitigation affidavit” means an affidavit that:

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

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

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

17 (4) “Foreclosure mediation” means a conference at which the parties in a
18 foreclosure action, their attorneys, additional representatives of the parties, or a
19 combination of those persons appear before an impartial individual to discuss the positions
20 of the parties in an attempt to reach agreement on a loss mitigation program for the
21 mortgagor or grantor.

22 (5) “Housing counseling services” means assistance provided to mortgagors
23 or grantors by nonprofit and governmental entities that are identified on a list maintained
24 by the Department of Housing and Community Development.

25 (6) “Loss mitigation analysis” means an evaluation of the facts and
26 circumstances of a loan secured by owner-occupied residential property to determine:

27 (i) Whether a mortgagor or grantor qualifies for a loan modification;
28 and

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

31 (7) “Loss mitigation program” means an option in connection with a loan
32 secured by owner-occupied residential property that:

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

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

7 (iii) Lessens the harmful impact of foreclosure on the mortgagor or
8 grantor.

9 (8) "Owner-occupied residential property" means residential property in
10 which at least one unit is occupied by an individual who:

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

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

13 (9) "Postfile mediation" means foreclosure mediation that occurs in
14 accordance with subsection (j) of this section after the date on which the [order to docket
15 or] complaint to foreclose is filed.

16 (10) "Prefile mediation" means foreclosure mediation that occurs in
17 accordance with subsection (d) of this section before the date on which the [order to docket
18 or] complaint to foreclose is filed.

19 (11) "Preliminary loss mitigation affidavit" means an affidavit that:

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

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

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

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

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

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

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

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

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

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

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

11 4. The default occurred after the stay has been lifted in a
12 bankruptcy proceeding.

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

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

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

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

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

25 (ii) By first-class mail.

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

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

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

31 (ii) Contain:

- 1 1. The name and telephone number of:
 - 2 A. The secured party;
 - 3 B. The mortgage servicer, if applicable; and
 - 4 C. An agent of the secured party who is authorized to modify
5 the terms of the mortgage loan;
 - 6 2. The name and license number of the Maryland mortgage
7 lender and mortgage originator, if applicable;
 - 8 3. The amount required to cure the default and reinstate the
9 loan, including all past due payments, penalties, and fees;
 - 10 4. A statement recommending that the mortgagor or grantor
11 seek housing counseling services;
 - 12 5. The telephone number and the Internet address of
13 nonprofit and government resources available to assist mortgagors and grantors facing
14 foreclosure, as identified by the Commissioner of Financial Regulation;
 - 15 6. An explanation of the Maryland foreclosure process and
16 time line, as prescribed by the Commissioner of Financial Regulation; and
 - 17 7. Any other information that the Commissioner of Financial
18 Regulation requires by regulation.
- 19 (5) For an owner-occupied residential property, the notice of intent to
20 foreclose shall be accompanied by:
- 21 (i) A loss mitigation application:
 - 22 1. For loss mitigation programs that are applicable to the
23 loan secured by the mortgage or deed of trust that is the subject of the foreclosure action;
24 or
 - 25 2. If the secured party does not have its own loss mitigation
26 application, in the form prescribed by the Commissioner of Financial Regulation;
 - 27 (ii) Instructions for completing the loss mitigation application and a
28 telephone number to call to confirm receipt of the application;
 - 29 (iii) A description of the eligibility requirements for the loss
30 mitigation programs offered by the secured party that may be applicable to the loan secured
31 by the mortgage or deed of trust that is the subject of the foreclosure action;

1 (iv) An envelope addressed to the person responsible for conducting
2 loss mitigation analysis on behalf of the secured party for the loan secured by the mortgage
3 or deed of trust that is the subject of the foreclosure action;

4 (v) If the secured party offers prefile mediation, a notice in the form
5 that the Commissioner of Financial Regulation prescribes by regulation that states that:

6 1. The secured party offers prefile mediation;

7 2. The mortgagor or grantor may elect to participate in
8 prefile mediation;

9 3. The mortgagor or grantor will not be entitled to postfile
10 mediation if the mortgagor or grantor participates in prefile mediation, except as otherwise
11 provided in a prefile mediation agreement;

12 4. The mortgagor or grantor is required to participate in
13 housing counseling services as a precondition to prefile mediation; and

14 5. A fee will be charged for the prefile mediation and the
15 amount of the fee; and

16 (vi) If the secured party offers prefile mediation, an application to
17 participate in prefile mediation and instructions to complete and submit the application,
18 all in the form that the Commissioner of Financial Regulation prescribes by regulation.

19 (6) For a property that is not an owner-occupied residential property, the
20 notice of intent to foreclose shall be accompanied by:

21 (i) A written notice of the determination that the property is not
22 owner-occupied residential property; and

23 (ii) A telephone number to call to contest that determination.

24 (d) (1) For owner-occupied residential property, a secured party may offer to
25 participate in prefile mediation with a mortgagor or grantor to whom the secured party has
26 delivered a notice of intent to foreclose.

27 (2) If offered by a secured party, a mortgagor or grantor may elect to
28 participate in prefile mediation.

29 (3) If a mortgagor or grantor elects to participate in prefile mediation, the
30 mortgagor or grantor shall notify the secured party by submitting the application described
31 in subsection (c)(5)(vi) of this section not more than 25 days after the date on which the
32 notice of intent to foreclose is mailed by the secured party.

1 (4) (i) As a precondition to prefile mediation, a mortgagor or grantor
2 shall participate in housing counseling services.

3 (ii) The Department of Housing and Community Development shall
4 prescribe the timing and form of certification of participation in housing counseling
5 services.

6 (5) If a mortgagor or grantor submits an application to participate in prefile
7 mediation to the secured party in accordance with paragraph (3) of this subsection, the
8 secured party shall notify the Office of Administrative Hearings not more than 5 business
9 days after the date on which the secured party receives the application.

10 (6) The Office of Administrative Hearings shall:

11 (i) Schedule a prefile mediation session not more than 60 days after
12 the day on which it receives notice by a secured party of an election to participate in prefile
13 mediation; and

14 (ii) Notify the parties and their attorneys, if any, of the date of the
15 prefile mediation session.

16 (7) By regulation, the Commissioner of Financial Regulation shall:

17 (i) Establish the fee for prefile mediation; and

18 (ii) Prescribe the form and content of the notice about prefile
19 mediation, the application to participate in prefile mediation, and instructions to complete
20 the application.

21 (8) (i) Notwithstanding subsection (b)(1) of this section, if the secured
22 party and grantor or mortgagor elect to participate in prefile mediation, [an order to docket
23 or] A complaint to foreclose may not be filed until the completion of prefile mediation in
24 accordance with this section.

25 (ii) The date that prefile mediation is completed is the date that the
26 Office of Administrative Hearings issues the report describing the results of the prefile
27 mediation.

28 (9) The fee for prefile mediation collected under this subsection shall be
29 distributed to the Housing Counseling and Foreclosure Mediation Fund established under
30 § 4–507 of the Housing and Community Development Article.

31 (10) By regulation, the Commissioner of Financial Regulation shall
32 establish a mediation checklist that describes the matters that shall be reviewed and
33 considered in a prefile mediation.

1 (11) (i) At the commencement of a prefile mediation session, each party
2 shall review the mediation checklist.

3 (ii) The mediator shall mark each item on the mediation checklist as
4 the item is addressed at the prefile mediation session.

5 (iii) At the conclusion of a prefile mediation session, each party shall
6 sign the mediation checklist.

7 (12) If the prefile mediation results in an agreement, the parties shall
8 execute a prefile mediation agreement.

9 (13) In addition to describing the terms of the agreement among the parties,
10 the prefile mediation agreement shall, in 14 point, bold font:

11 (i) Designate the person and address to whom the mortgagor or
12 grantor may provide notice of a change of financial circumstances; and

13 (ii) State that the mortgagor or grantor is not entitled to postfile
14 mediation unless otherwise agreed by the parties.

15 (14) The Office of Administrative Hearings shall draft the prefile mediation
16 agreement and provide a copy of the executed agreement to the parties and their attorneys,
17 if any.

18 (15) The Office of Administrative Hearings shall provide a report of results
19 of mediation to the parties and their attorneys, if any.

20 (16) If a mortgagor or grantor notifies the person designated under
21 paragraph (13) of this subsection of a change of financial circumstances, the designee shall:

22 (i) Determine whether the change of financial circumstances shall
23 alter the mediation agreement or outcome of the prefile mediation; and

24 (ii) Notify the mortgagor or grantor of the determination by
25 first-class mail before any additional action is taken with respect to foreclosure.

26 (17) (i) The parties to the prefile mediation agreement may execute an
27 amended prefile mediation agreement based on a material change of financial
28 circumstances of the mortgagor or grantor.

29 (ii) The secured party shall provide a copy of the executed amended
30 agreement to the mortgagor or grantor.

31 (18) To the extent that a notice of intent to foreclose complies with this
32 section and otherwise is valid under the law, a notice of intent to foreclose issued with
33 respect to a property that has been the subject of prefile mediation continues to be valid for

1 1 year after the date on which the initial prefile mediation agreement is executed by the
2 parties.

3 (19) Nothing in this subsection shall prohibit a secured party and mortgagor
4 or grantor from engaging in loss mitigation by other means.

5 **(D-1) (1) NOTWITHSTANDING ANY OTHER LAW OR RULE OR THE**
6 **PROVISIONS OF A DEBT INSTRUMENT, A MORTGAGE, OR A DEED OF TRUST, AN**
7 **ACTION TO FORECLOSE A MORTGAGE OR DEED OF TRUST ON RESIDENTIAL**
8 **PROPERTY SHALL BE COMMENCED BY FILING A COMPLAINT.**

9 **(2) EXCEPT AS PROVIDED IN THIS SECTION, PRACTICE AND**
10 **PROCEDURE IN AN ACTION TO FORECLOSE A MORTGAGE OR DEED OF TRUST ON**
11 **RESIDENTIAL PROPERTY SHALL BE GOVERNED BY TITLE 2 OF THE MARYLAND**
12 **RULES.**

13 (e) [An order to docket or a] A complaint to foreclose a mortgage or deed of trust
14 on residential property shall:

15 (1) Include:

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

17 1. The mortgage originator; and

18 2. The mortgage lender; and

19 (ii) An affidavit stating:

20 1. The date on which the default occurred and the nature of
21 the default; and

22 2. If applicable, that:

23 A. A notice of intent to foreclose was sent to the mortgagor or
24 grantor in accordance with subsection (c) of this section and the date on which the notice
25 was sent; and

26 B. At the time the notice of intent to foreclose was sent, the
27 contents of the notice of intent to foreclose were accurate; and

28 (2) Be accompanied by:

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

1 (ii) A statement of the debt remaining due and payable supported by
2 an affidavit of the plaintiff or the secured party or the agent or attorney of the plaintiff or
3 secured party;

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

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

8 (v) If any defendant is an individual, an affidavit that is in
9 compliance with § 521 of the Servicemembers Civil Relief Act, 50 U.S.C. App. § 501 et seq.;

10 (vi) If applicable, a copy of the notice of intent to foreclose;

11 (vii) If the secured party and mortgagor or grantor have elected to
12 participate in prefile mediation, the report of the prefile mediation issued by the Office of
13 Administrative Hearings;

14 (viii) If the secured party and the mortgagor or grantor have not
15 elected to participate in prefile mediation, a statement that the parties have not elected to
16 participate in prefile mediation;

17 (ix) In addition to any other filing fees required by law, a filing fee in
18 the amount of \$300; and

19 (x) 1. If the loss mitigation analysis has been completed subject
20 to subsection (g) of this section, a final loss mitigation affidavit in the form prescribed by
21 regulation adopted by the Commissioner of Financial Regulation; and

22 2. If the loss mitigation analysis has not been completed, a
23 preliminary loss mitigation affidavit in the form prescribed by regulation adopted by the
24 Commissioner of Financial Regulation.

25 (f) Notwithstanding any other law, the court may not accept a lost note affidavit
26 in lieu of a copy of the debt instrument required under subsection (e)(2)(iii) of this section,
27 unless the affidavit:

28 (1) Identifies the owner of the debt instrument and states from whom and
29 the date on which the owner acquired ownership;

30 (2) States why a copy of the debt instrument cannot be produced; and

31 (3) Describes the good faith efforts made to produce a copy of the debt
32 instrument.

1 (g) Only for purposes of a final loss mitigation affidavit that is filed with [an order
2 to docket or] A complaint to foreclose, a loss mitigation analysis is not considered complete
3 if the reason for the denial or determination of ineligibility is due to the inability of the
4 secured party to:

5 (1) Establish communication with the mortgagor or grantor; or

6 (2) Obtain all documentation and information necessary to conduct the loss
7 mitigation analysis.

8 (h) (1) A copy of the [order to docket or] complaint to foreclose on residential
9 property and all other papers filed with it in the form and sequence as prescribed by
10 regulations adopted by the Commissioner of Financial Regulation, accompanied by the
11 documents required under paragraphs (2), (3), and (4) of this subsection, shall be served on
12 the mortgagor or grantor by:

13 (i) Personal delivery of the papers to the mortgagor or grantor; or

14 (ii) Leaving the papers with a resident of suitable age and discretion
15 at the mortgagor's or grantor's dwelling house or usual place of abode.

16 (2) The service of documents under paragraph (1) of this subsection shall
17 be accompanied by a separate, clearly marked notice, in the form prescribed by regulation
18 adopted by the Commissioner of Financial Regulation, that states:

19 (i) The significance of the [order to docket or a] complaint to
20 foreclose;

21 **(II) THE TIME WITHIN WHICH THE MORTGAGOR OR GRANTOR**
22 **MUST FILE AN ANSWER TO THE COMPLAINT;**

23 [(ii)] **(III)** The options for the mortgagor or grantor to take, including
24 housing counseling services and financial assistance resources the mortgagor or grantor
25 may consult; and

26 [(iii)] **(IV)** In the case of a mortgagor or grantor who has participated
27 in prefile mediation, that the mortgagor or grantor is not entitled to postfile mediation
28 except as otherwise provided in the prefile mediation agreement.

29 (3) If the [order to docket or] complaint to foreclose is accompanied by a
30 preliminary loss mitigation affidavit, the service of documents under paragraph (1) of this
31 subsection shall be accompanied by a loss mitigation application form and any other
32 supporting documents as prescribed by regulation adopted by the Commissioner of
33 Financial Regulation.

1 (4) (i) Except as provided in subparagraph (ii) of this paragraph, if the
2 [order to docket or] complaint to foreclose is accompanied by a final loss mitigation affidavit
3 and concerns owner-occupied residential property, the service of documents under
4 paragraph (1) of this subsection shall be accompanied by a request for postfile mediation
5 form and any other supporting documents as prescribed by regulation adopted by the
6 Commissioner of Financial Regulation.

7 (ii) The [order to docket or] complaint to foreclose may exclude the
8 request for postfile mediation form if:

9 1. The mortgagor or grantor has participated in prefile
10 mediation and the prefile mediation agreement does not give the mortgagor or grantor the
11 right to participate in postfile mediation; or

12 2. The property subject to the mortgage or deed of trust is not
13 owner-occupied.

14 (5) If at least two good faith efforts to serve the mortgagor or grantor under
15 paragraph (1) of this subsection on different days have not succeeded, the plaintiff may
16 effect service by:

17 (i) Filing an affidavit with the court describing the good faith efforts
18 to serve the mortgagor or grantor; and

19 (ii) 1. Mailing a copy of all the documents required to be served
20 under paragraph (1) of this subsection by certified mail, return receipt requested, and
21 first-class mail to the mortgagor's or grantor's last known address and, if different, to the
22 address of the residential property subject to the mortgage or deed of trust; and

23 2. Posting a copy of all the documents required to be served
24 under paragraph (1) of this subsection in a conspicuous place on the residential property
25 subject to the mortgage or deed of trust.

26 (6) The individual making service of documents under this subsection shall
27 file proof of service with the court in accordance with the Maryland Rules.

28 (i) (1) If the [order to docket or] complaint to foreclose is accompanied by a
29 preliminary loss mitigation affidavit, the secured party, at least 30 days before the date of
30 a foreclosure sale, shall:

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

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

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

1 2. A request for postfile mediation form and supporting
2 documents as provided under subsection (h)(4) of this section.

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

6 (j) (1) (i) This paragraph applies to a mortgagor or grantor who:

7 1. Has not participated in prefile mediation; or

8 2. Has participated in prefile mediation that resulted in a
9 prefile mediation agreement that gives the mortgagor or grantor the right to participate in
10 postfile mediation.

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

14 1. If the final loss mitigation affidavit was delivered along
15 with service of the copy of the [order to docket or] complaint to foreclose under subsection
16 (h) of this section, 25 days after that service on the mortgagor or grantor; or

17 2. If the final loss mitigation affidavit was mailed as provided
18 in subsection (i) of this section, 25 days after the mailing of the final loss mitigation
19 affidavit.

20 (iii) 1. A request for postfile mediation shall be accompanied by a
21 filing fee of \$50.

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

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

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

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

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

1 (iv) There is a presumption that a mortgagor or grantor is entitled to
2 postfile mediation with respect to owner-occupied residential property unless:

3 1. Good cause is shown why postfile mediation is not
4 appropriate; or

5 2. The mortgagor or grantor participated in prefile mediation
6 and the prefile mediation agreement does not give the mortgagor or grantor the right to
7 participate in postfile mediation.

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

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

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

14 (k) (1) Within 5 days after receipt of a request for postfile mediation, the court
15 shall transmit the request to the Office of Administrative Hearings for scheduling.

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

18 (ii) For good cause, the Office of Administrative Hearings may
19 extend the time for completing the foreclosure mediation for a period not exceeding 30 days
20 or, if all parties agree, for a longer period of time.

21 **(3) ALL COURT PROCEEDINGS IN THE FORECLOSURE ACTION SHALL**
22 **BE STAYED UNTIL THE EARLIER OF:**

23 **(I) THE DATE THE OFFICE OF ADMINISTRATIVE HEARINGS**
24 **FILES A REPORT WITH THE COURT UNDER SUBSECTION (L)(4) OF THIS SECTION; OR**

25 **(II) THE END OF THE 60-DAY PERIOD SPECIFIED IN PARAGRAPH**
26 **(2) OF THIS SUBSECTION, PLUS ANY EXTENSION GRANTED BY THE OFFICE OF**
27 **ADMINISTRATIVE HEARINGS.**

28 ~~[(3)]~~ (4) The Office of Administrative Hearings shall send notice of the
29 scheduled foreclosure mediation to the foreclosure attorney, the secured party, and the
30 mortgagor or grantor.

31 ~~[(4)]~~ (5) The notice from the Office of Administrative Hearings shall:

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

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

6 (l) (1) (i) By regulation, the Commissioner of Financial Regulation shall
7 establish a mediation checklist that describes the matters that shall be reviewed and
8 considered in a postfile mediation.

9 (ii) At the commencement of a postfile mediation session, each party
10 shall review the mediation checklist.

11 (iii) The mediator shall mark each item on the mediation checklist as
12 the item is addressed at the postfile mediation session.

13 (iv) At the conclusion of a postfile mediation session, each party shall
14 sign the mediation checklist.

15 (2) At a foreclosure mediation:

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

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

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

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

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

26 (4) The Office of Administrative Hearings shall file a report with the court
27 that states the outcome of the request for foreclosure mediation within the earlier of:

28 (i) 7 days after a foreclosure mediation is held; or

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

1 (5) Except for a request for postponement or a failure to appear, the rules
2 of procedure for contested cases of the Office of Administrative Hearings do not govern a
3 foreclosure mediation conducted by the Office.

4 (m) [(1) If the parties do not reach an agreement at the postfile mediation, or
5 the 60-day mediation period expires without an extension granted by the Office of
6 Administrative Hearings, the foreclosure attorney may schedule the foreclosure sale.

7 (2) (i) In the case of postfile mediation, subject to subparagraphs (ii),
8 (iii), and (iv) of this paragraph, the mortgagor or grantor may file a motion to stay the
9 foreclosure sale.

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

12 1. The date the postfile mediation is held; or

13 2. If no postfile mediation is held, the date the Office of
14 Administrative Hearings files its report with the court.

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

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

19 (n)] A foreclosure sale of residential property may not occur until[:

20 (1) If the residential property is not owner-occupied residential property,
21 at least 45 days after service of process is made under subsection (h) of this section;

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

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

26 (ii) At least 30 days after a final loss mitigation affidavit is mailed
27 under subsection (i) of this section; and

28 (3) If the residential property is owner-occupied residential property and
29 postfile mediation is requested, at least 15 days after:

30 (i) The date the postfile mediation is held; or

31 (ii) If no postfile mediation is held, the date the Office of
32 Administrative Hearings files its report with the court] **AT LEAST 30 DAYS AFTER THE**

1 **COURT ENTERS A JUDGMENT IN THE FORECLOSURE ACTION IN FAVOR OF THE**
2 **SECURED PARTY UNLESS THE COURT STAYS THE JUDGMENT PENDING APPEAL.**

3 [(n-1)] (N) (1) If a certified community development financial institution makes
4 an offer to a secured party to purchase owner-occupied residential property for the purpose
5 of transferring the property to the immediately preceding mortgagor or grantor, no person
6 may require, as a condition of a sale or transfer of the property to the certified community
7 development financial institution, any affidavit, statement, agreement, or addendum that
8 limits ownership or occupancy of the property by the immediately preceding mortgagor or
9 grantor.

10 (2) Any affidavit, statement, agreement, or addendum that limits
11 ownership or occupancy of owner-occupied residential property by the immediately
12 preceding mortgagor or grantor:

13 (i) May not serve as a basis to avoid a sale or transfer of the property
14 to a certified community development financial institution; and

15 (ii) Is unenforceable against any person named in the affidavit,
16 statement, agreement, or addendum.

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

21 (p) (1) The mortgagor or grantor of residential property has the right to cure
22 the default [by paying all past due payments, penalties, and fees and reinstate the loan] at
23 any time up to 1 business day before the foreclosure sale occurs **BY PAYING THE AMOUNT**
24 **ORDERED BY THE COURT PLUS INTEREST ON THE AMOUNT OF THE JUDGMENT FROM**
25 **THE DATE OF ENTRY OF THE JUDGMENT.**

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

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

32 (r) Revenue collected from the filing fees required under subsections (e)(2)(ix) and
33 (j)(1)(iii) of this section shall be distributed to the Housing Counseling and Foreclosure
34 Mediation Fund established under § 4-507 of the Housing and Community Development
35 Article.

1 (s) The Commissioner of Financial Regulation may adopt additional regulations
2 necessary to carry out the requirements of this section.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
4 apply only prospectively and may not be applied or interpreted to have any effect on or
5 application to any action to foreclose a mortgage or deed of trust on residential property
6 filed before the effective date of this Act.

7 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2015.