N1 5lr2617 CF 5lr2603

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Introduced and read first time: February 25, 2015 Assigned to: Rules and Executive Nominations

## A BILL ENTITLED

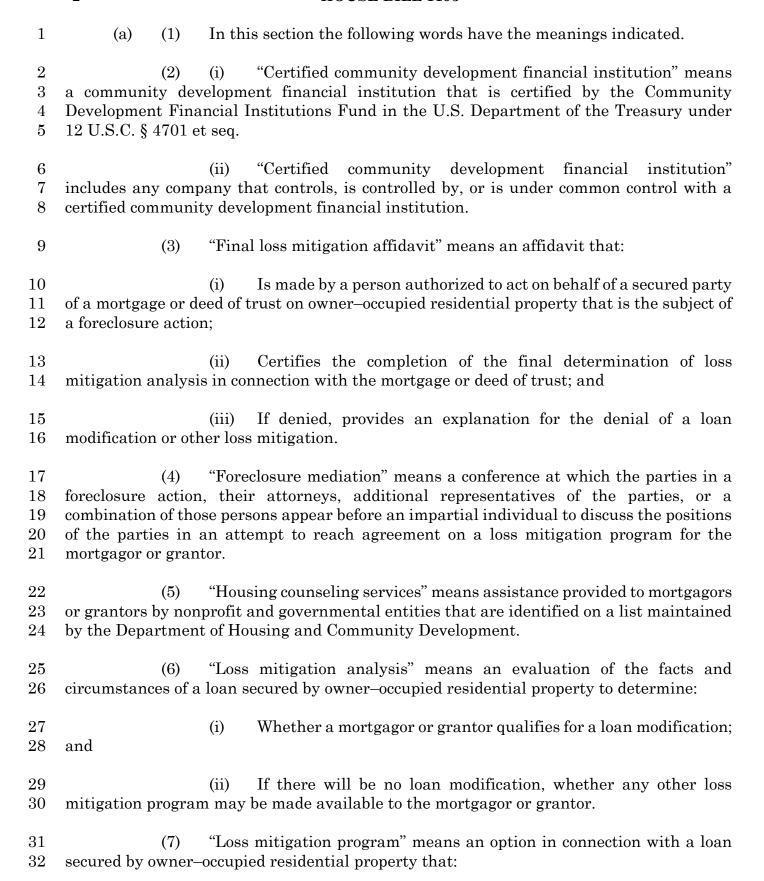
1 AN ACT concerning

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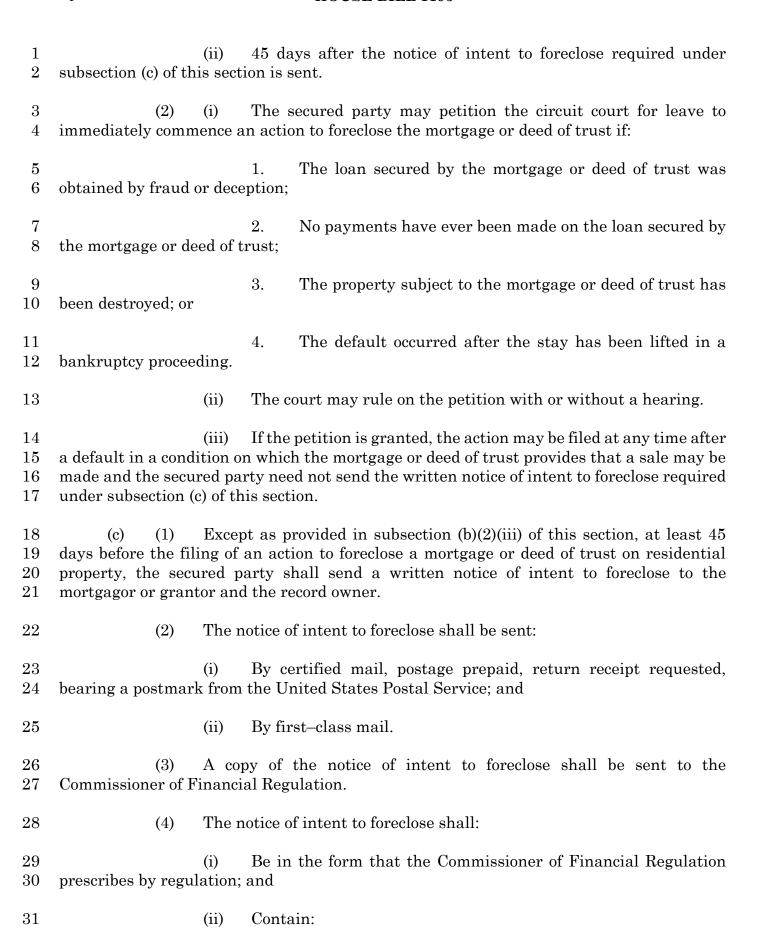
Fair Foreclosure Act of 2015

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 the amount that a mortgagor or grantor of residential property must pay in order to 11 cure a certain default; making conforming changes; providing for the application of 12 13 this Act; and generally relating to actions to foreclose a mortgage or deed of trust on 14 residential property.

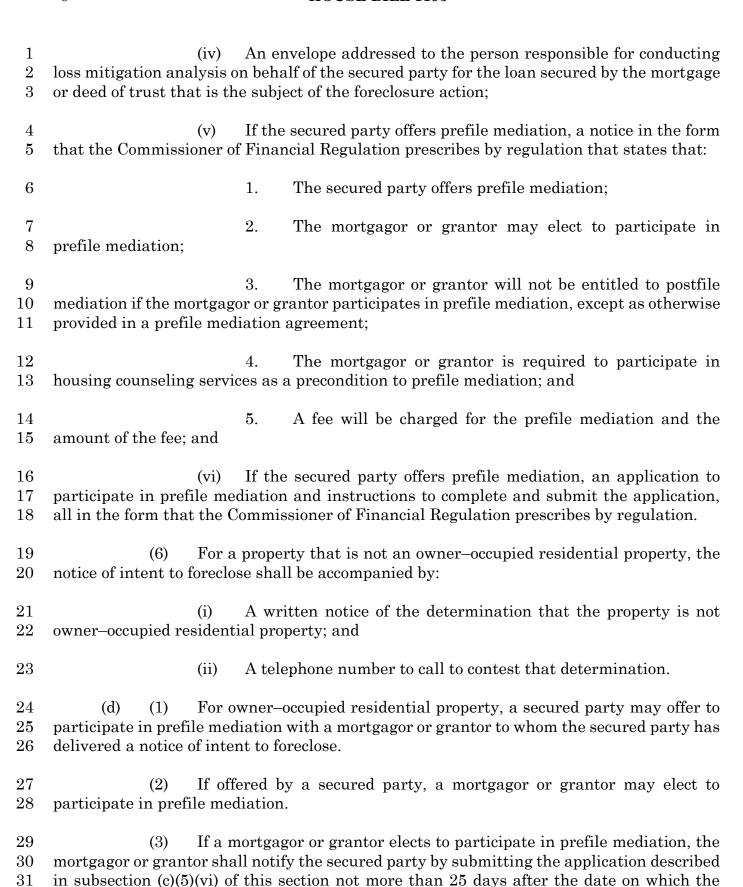
- 15 BY repealing and reenacting, with amendments,
- 16 Article Real Property
- 17 Section 7–105.1
- 18 Annotated Code of Maryland
- 19 (2010 Replacement Volume and 2014 Supplement)
- 20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
- 21 That the Laws of Maryland read as follows:
- 22 Article Real Property
- 23 7–105.1.



- 1 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 Lessens the harmful impact of foreclosure on the mortgagor or (iii) 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. "Postfile mediation" means foreclosure mediation that occurs in 13 accordance with subsection (j) of this section after the date on which the Jorder to docket 14 15 or complaint to foreclose is filed. 16 "Prefile mediation" means foreclosure mediation that occurs in (10)accordance with subsection (d) of this section before the date on which the Jorder to docket 17 18 or complaint to foreclose is filed. "Preliminary loss mitigation affidavit" means an affidavit that: 19 (11)20 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 a foreclosure action: 2223Certifies the status of an incomplete loss mitigation analysis in (ii) 24connection with the mortgage or deed of trust; and 25 Includes reasons why the loss mitigation analysis is incomplete. (iii) 26 "Residential property" means real property improved by four or fewer 27 single family dwelling units that are designed principally and are intended for human habitation. 28 29 Except as provided in paragraph (2) of this subsection, an action to (1) 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              | 1.   | The name and telephone number of:  |
|----------------|--|--|
| 2              | A.   | The secured party;   |
| 3              | В.   | The mortgage servicer, if applicable; and  |
| 4<br>5         |  | An agent of the secured party who is authorized to modify n;   |
| 6<br>7         |  | The name and license number of the Maryland mortgage or, if applicable;  |
| 8<br>9         |  | The amount required to cure the default and reinstate the syments, penalties, and fees;  |
| 10             |  | A statement recommending that the mortgagor or grantor ces;  |
| 12<br>13<br>14 | nonprofit and government re  | The telephone number and the Internet address of sources available to assist mortgagors and grantors facing a Commissioner of Financial Regulation;                        |
| 15<br>16       |  | An explanation of the Maryland foreclosure process and Commissioner of Financial Regulation; and   |
| 17<br>18       |  | Any other information that the Commissioner of Financial tion.   |
| 19<br>20       | (5) For an owner–occupied residential property, the notice of intent to foreclose shall be accompanied by: |  |
| 21             | (i) A lo   | ss mitigation application:   |
| 22<br>23<br>24 | loan secured by the mortgage   | For loss mitigation programs that are applicable to the or deed of trust that is the subject of the foreclosure action;  |
| 25<br>26       |  | If the secured party does not have its own loss mitigation ribed by the Commissioner of Financial Regulation;  |
| 27<br>28       |  | cructions for completing the loss mitigation application and a enfirm receipt of the application;  |
| 29<br>30<br>31 | mitigation programs offered by   | description of the eligibility requirements for the loss y the secured party that may be applicable to the loan secured ast that is the subject of the foreclosure action; |



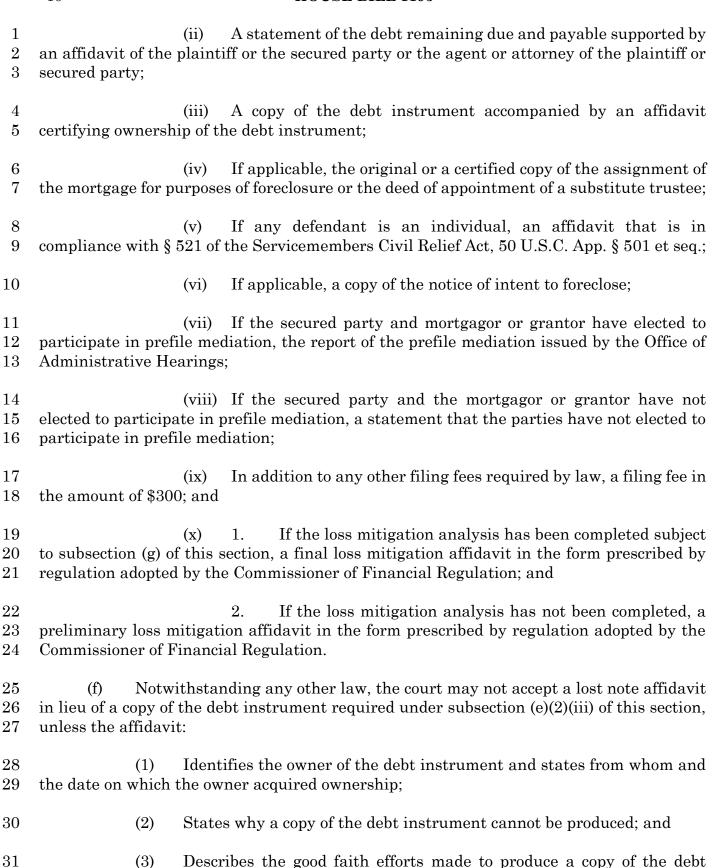
notice of intent to foreclose is mailed by the secured party.

- 1 **(4)** As a precondition to prefile mediation, a mortgagor or grantor (i) 2 shall participate in housing counseling services. 3 The Department of Housing and Community Development shall prescribe the timing and form of certification of participation in housing counseling 4 5 services. 6 If a mortgagor or grantor submits an application to participate in prefile (5)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 Notify the parties and their attorneys, if any, of the date of the (ii) prefile mediation session. 15 By regulation, the Commissioner of Financial Regulation shall: 16 (7)Establish the fee for prefile mediation; and 17 (i) 18 Prescribe the form and content of the notice about prefile (ii) 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 22party and grantor or mortgagor elect to participate in prefile mediation, [an order to docket or A complaint to foreclose may not be filed until the completion of prefile mediation in 23accordance with this section. 2425The 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 The fee for prefile mediation collected under this subsection shall be 29distributed 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 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 of mediation to the parties and their attorneys, if any.
- 20 (16) If a mortgagor or grantor notifies the person designated under paragraph (13) of this subsection of a change of financial circumstances, the designee shall:
- 22 (i) Determine whether the change of financial circumstances shall 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 year after the date on which the initial prefile mediation agreement is executed by the 1 2 parties. 3 Nothing in this subsection shall prohibit a secured party and mortgagor (19)4 or grantor from engaging in loss mitigation by other means. 5 NOTWITHSTANDING ANY OTHER LAW OR RULE OR THE (D-1)(1)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 PROCEDURE IN AN ACTION TO FORECLOSE A MORTGAGE OR DEED OF TRUST ON 10 11 RESIDENTIAL PROPERTY SHALL BE GOVERNED BY TITLE 2 OF THE MARYLAND 12 RULES. 13 An order to docket or a A complaint to foreclose a mortgage or deed of trust 14 on residential property shall: Include: (1) 15 If applicable, the license number of: 16 (i) 1. The mortgage originator; and 17 18 2. The mortgage lender; and 19 An affidavit stating: (ii) 20 1. The date on which the default occurred and the nature of 21the default; and 22 2. If applicable, that: 23A notice of intent to foreclose was sent to the mortgagor or Α. 24grantor in accordance with subsection (c) of this section and the date on which the notice 25was sent; and 26 В. At the time the notice of intent to foreclose was sent, the contents of the notice of intent to foreclose were accurate; and 2728(2) Be accompanied by: 29 (i) The original or a certified copy of the mortgage or deed of trust;

instrument.



- 1 Only for purposes of a final loss mitigation affidavit that is filed with an order (g) 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 Establish communication with the mortgagor or grantor; or (1) 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 regulations adopted by the Commissioner of Financial Regulation, accompanied by the 10 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 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 The service of documents under paragraph (1) of this subsection shall (2) 17 be accompanied by a separate, clearly marked notice, in the form prescribed by regulation adopted by the Commissioner of Financial Regulation, that states: 18 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 22MUST FILE AN ANSWER TO THE COMPLAINT; 23[(ii)] **(III)** The options for the mortgagor or grantor to take, including 24housing counseling services and financial assistance resources the mortgagor or grantor 25may consult; and 26 In the case of a mortgagor or grantor who has participated [(iii)] (IV) 27 in prefile mediation, that the mortgagor or grantor is not entitled to postfile mediation 28except 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.

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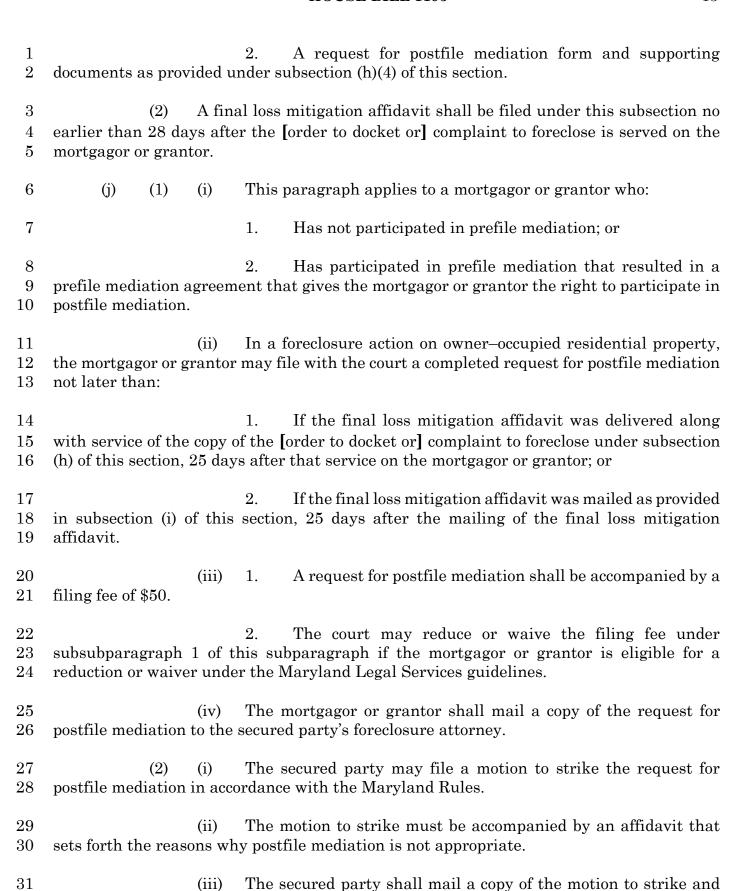
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mail:

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- 1 **(4)** Except as provided in subparagraph (ii) of this paragraph, if the (i) 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 paragraph (1) of this subsection shall be accompanied by a request for postfile mediation 4 form and any other supporting documents as prescribed by regulation adopted by the 5 Commissioner of Financial Regulation. 6 7 The [order to docket or] complaint to foreclose may exclude the (ii) 8 request for postfile mediation form if: 9 The mortgagor or grantor has participated in prefile 1. 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 If at least two good faith efforts to serve the mortgagor or grantor under (5)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) 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 22address of the residential property subject to the mortgage or deed of trust; and 232. Posting a copy of all the documents required to be served 24under paragraph (1) of this subsection in a conspicuous place on the residential property 25subject to the mortgage or deed of trust. 26 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 29preliminary loss mitigation affidavit, the secured party, at least 30 days before the date of a foreclosure sale, shall: 30 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
  - 1. A copy of the final loss mitigation affidavit; and

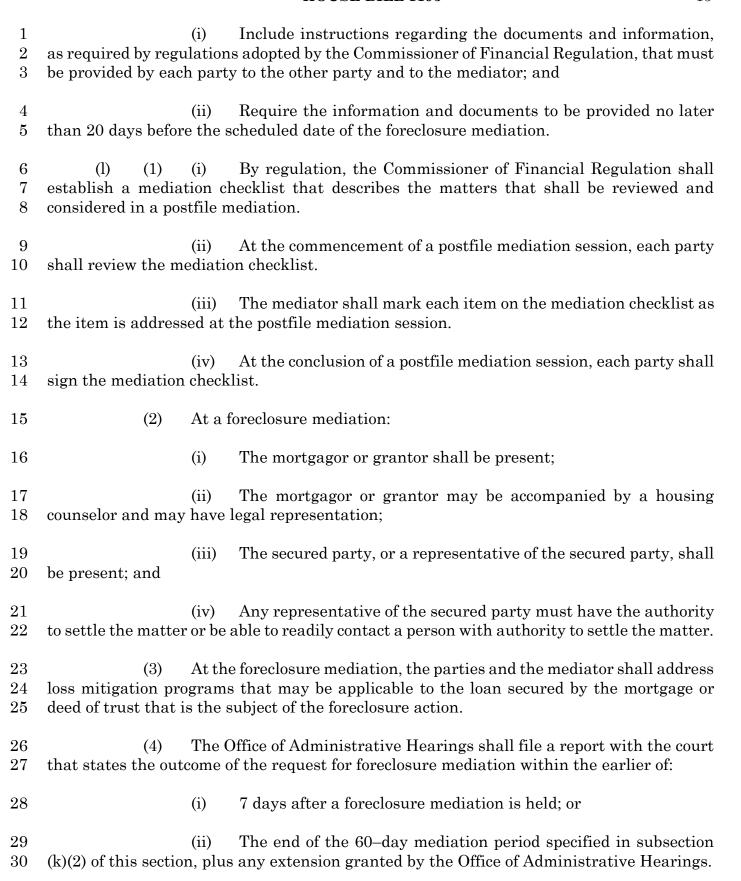
Send to the mortgagor or grantor by first class and by certified



the accompanying affidavit to the mortgagor or grantor.

mortgagor or grantor.

- 1 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 2. 5 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 The mortgagor or grantor may file a response to the motion to (3)strike within 15 days. 9 10 The mortgagor or grantor shall mail a copy of the response to the (ii) 11 foreclosure attorney. 12 (iii) If the court grants the motion to strike, the court shall instruct the Office of Administrative Hearings to cancel any scheduled postfile mediation. 13 14 (k) 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 Within 60 days after transmittal of the request for foreclosure (2)17 mediation, the Office of Administrative Hearings shall conduct a foreclosure mediation. 18 For good cause, the Office of Administrative Hearings may extend the time for completing the foreclosure mediation for a period not exceeding 30 days 19 20 or, if all parties agree, for a longer period of time. 21 ALL COURT PROCEEDINGS IN THE FORECLOSURE ACTION SHALL **(3)** 22BE STAYED UNTIL THE EARLIER OF: 23THE DATE THE OFFICE OF ADMINISTRATIVE HEARINGS **(I)** 24FILES A REPORT WITH THE COURT UNDER SUBSECTION (L)(4) OF THIS SECTION; OR THE END OF THE 60-DAY PERIOD SPECIFIED IN PARAGRAPH 25(II)(2) OF THIS SUBSECTION, PLUS ANY EXTENSION GRANTED BY THE OFFICE OF 26 27 ADMINISTRATIVE HEARINGS. 28 The Office of Administrative Hearings shall send notice of the scheduled foreclosure mediation to the foreclosure attorney, the secured party, and the 29
- 31 **[**(4)**] (5)** The notice from the Office of Administrative Hearings shall:



- 1 Except for a request for postponement or a failure to appear, the rules (5)2 of procedure for contested cases of the Office of Administrative Hearings do not govern a 3 foreclosure mediation conducted by the Office. If the parties do not reach an agreement at the postfile mediation, or 4 (m) 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 In the case of postfile mediation, subject to subparagraphs (ii), (2)(i) 8 (iii), and (iv) of this paragraph, the mortgagor or grantor may file a motion to stay the foreclosure sale. 9 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 A motion to stay under this paragraph must allege specific reasons why loss mitigation should have been granted. 16 17 Nothing in this subtitle precludes the mortgagor or grantor from (3)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: If the residential property is not owner-occupied residential property, 2021at least 45 days after service of process is made under subsection (h) of this section; 22 If the residential property is owner-occupied residential property and foreclosure mediation is not held, the later of: 23 24At least 45 days after service of process that includes a final loss mitigation affidavit made under subsection (h) of this section; or 25 26At least 30 days after a final loss mitigation affidavit is mailed (ii) 27 under subsection (i) of this section; and 28 If the residential property is owner-occupied residential property and 29 postfile mediation is requested, at least 15 days after:
- 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

(i)

The date the postfile mediation is held; or

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

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- [(n-1)] (N) (1) If a certified community development financial institution makes an offer to a secured party to purchase owner-occupied residential property for the purpose of transferring the property to the immediately preceding mortgagor or grantor, no person may require, as a condition of a sale or transfer of the property to the certified community development financial institution, any affidavit, statement, agreement, or addendum that limits ownership or occupancy of the property by the immediately preceding mortgagor or 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, statement, agreement, or addendum.
  - (o) Notice of the time, place, and terms of a foreclosure sale shall be published in a newspaper of general circulation in the county where the action is pending at least once a week for 3 successive weeks, the first publication to be not less than 15 days before the 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.
  - (2) The secured party or an authorized agent of the secured party shall, on request, provide to the mortgagor or grantor or the mortgagor's or grantor's attorney within a reasonable time the amount necessary to cure the default and reinstate the loan and 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.

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## **HOUSE BILL 1195**

- 1 (s) The Commissioner of Financial Regulation may adopt additional regulations 2 necessary to carry out the requirements of this section.
  - SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any action to foreclose a mortgage or deed of trust on residential property filed before the effective date of this Act.
- SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect 8 October 1, 2015.