Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

Senate Bill 783 (Senator Brochin)
Judicial Proceedings

Foreclosure Sales of Residential Property - Motion for Deficiency Judgment

This bill reduces the time period within which a motion for deficiency judgment on an owner-occupied residential property, for which an order to docket or a complaint to foreclose has been filed, from three years to two years after the final ratification of the auditor's report.

The bill takes effect July 1, 2015.

Fiscal Summary

State Effect: The Office of the Attorney General, Consumer Protection Division, can handle the bill's requirements with existing resources, assuming 50 or fewer new complaints are generated by the bill. Since most deficiency judgments are handled without a trial or hearing, it is expected that the Judiciary can implement the bill's requirements with existing resources.

Local Effect: None. The change is procedural in nature and does not directly affect local governmental operations or finances. Any impact on the circuit courts can be handled with existing resources.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill applies prospectively to any motion for a deficiency judgment that is filed on or after July 1, 2015. A motion for deficiency judgment on owner-occupied residential property for which an auditor's report has final ratification before July 1, 2015, and is not otherwise barred, must be filed within two years after the date of the final ratification or before July 1, 2017, whichever occurs first.

Current Law: Under the Maryland Rules, within 30 days after a foreclosure sale of property, the person authorized to make the sale must file a complete report of the sale with the court. A party or the holder of a subordinate interest in the property may file exceptions to the sale. The court must ratify the sale if (1) the time for filing exceptions has expired and exceptions to the report either were not filed or were filed but overruled and (2) the court is satisfied that the sale was fairly and properly made. Upon ratification of the sale, the court may refer the matter to an auditor to state an account.

At any time after the sale and before final ratification of the auditor's report, any person claiming an interest in the property (or in the proceeds of the sale of the property) may file an application for the payment of that person's claim from the surplus proceeds of the sale. For owner-occupied residential property, a secured party, or any appropriate party in interest, may file a motion for a deficiency judgment within three years after the final ratification of the auditor's report, if the proceeds of the sale, after deducting all costs and expenses allowed by the court, are insufficient to satisfy the debt and accrued interest. The filing of this motion is the sole post-ratification remedy available to a secured party or a party in interest for breach of a covenant under a deed of trust, mortgage, or promissory note that is secured by owner-occupied residential property.

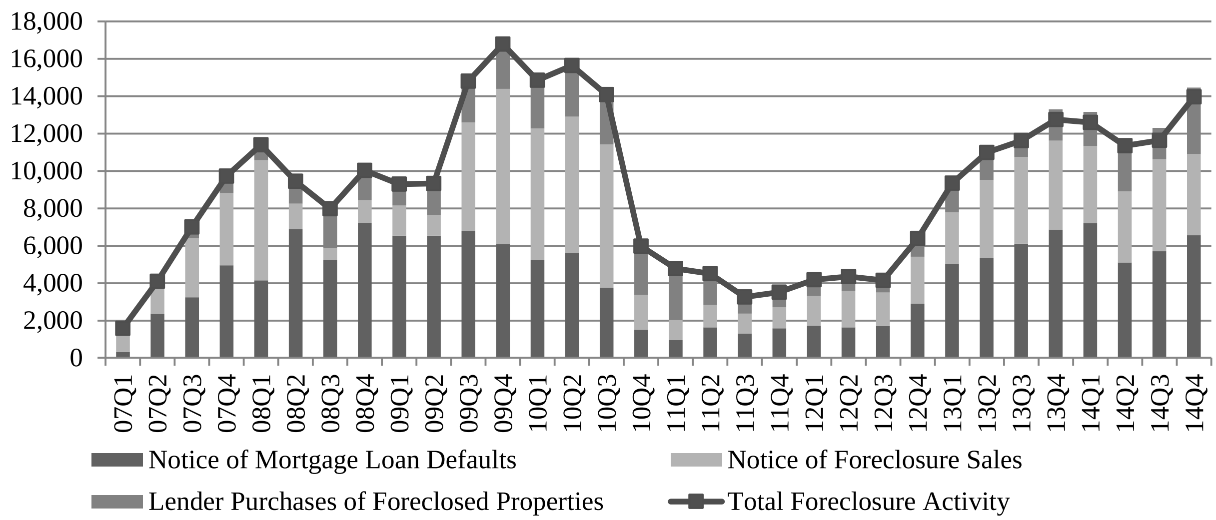
Background: The District of Columbia and 40 states, including Maryland, allow deficiency judgments. Of those states that do allow deficiency judgments, statutes of limitation range from the time of foreclosure to 20 years, with at least 12 states requiring a judgment be sought within 3 months and 3 states (Illinois, Kansas, and South Carolina) requiring deficiency judgments to be sought at or very near the time of foreclosure. Many states restrict not only when and under what conditions deficiency judgments are allowed, but also the maximum recovery for the creditors. These more restrictive states are collectively considered "nonrecourse" states and include Alaska, Arizona, California, Connecticut, Idaho, Minnesota, Nevada (since 2009), North Carolina (since 2009), North Dakota, Oregon, Texas, Utah, and Washington.

The Maryland Consumer Rights Coalition (MCRC) estimates that, between 2008 and 2013, at least 400 deficiency collection cases have been pursued in Maryland with 120 deficiency collection cases in 2012 and 57 cases in the first half of 2013. The majority of cases have occurred in Prince George's County, Baltimore City, Montgomery County, and Baltimore County. According to MCRC, the median deficiency is $88,000, with the average varying greatly among local jurisdictions.

Foreclosure Trends: The number of foreclosure events in Maryland has spiked markedly in three separate periods: the latter half of 2007, in 2009, and the latter half of 2012 into

2014, despite a tapering off in the second quarter of 2014. Foreclosure events encompass real estate-owned purchases (property acquired by a lender as a result of an unsuccessful foreclosure sale on the property), notice of foreclosure sales, and notices of mortgage loan default. After the period of high rates of foreclosures in 2009, the number of property foreclosures decreased significantly from 42,446 in 2010 to 14,321 in 2011. However, property foreclosures rose in 2012, totaling 17,126, up 18.8% from 2011 levels. Foreclosure activity began a more rapid increase in the fourth quarter of 2012, with the number of foreclosure events totaling 6,381. This rapid increase in foreclosure activity continued in 2013 with foreclosure activity reaching the highest level in three years during the third quarter. In the fourth quarter of 2014, foreclosure activity reached 13,959, the highest level since 2010. These trends are exhibited in **Exhibit 1**.

Exhibit 1
State Foreclosure Events
2007-2014



Source: Department of Housing and Community Development

The dramatic decrease in 2011 was due, in part, to two factors: (1) Maryland's legislative response to the foreclosure crisis, which provided additional protections to homeowners at risk of losing their homes; and (2) the delay by mortgage servicers to begin foreclosure procedures until the results of a foreclosure settlement between five of the largest lenders and the U.S. government were known. The results of the National Mortgage Settlement were announced in February 2012. The uncertainty surrounding the settlement and Maryland's new increased consumer protections created a backlog of foreclosures which lenders have since been addressing. In the fourth quarter of 2013, Maryland had the second highest foreclosure rate in the nation. In 2014, the Department of Housing and Community

Development (DHCD) attributed the surge in foreclosure activity that began in 2012 to a "rebound in the housing market which encouraged lenders to return inventory of seriously delinquent loans to the market at an increasing pace," allowing servicers to clear the backlog. The State currently has the third highest foreclosure rate in the nation, behind Florida and Nevada.

However, DHCD advises that other measurements of the State's foreclosure situation depict a different story, noting that foreclosure case data supplied to DHCD by the Maryland courts shows that new foreclosure filings were down 20% in 2014 over 2013. Further, DHCD reports, Maryland ranks twelfth best in the nation in foreclosure sales as a percentage of mortgages in service (6.9% in Maryland compared to a U.S. average of 18.1%, and 11.0%, 8.3%, and 7.8% in Virginia, Delaware, and Pennsylvania, respectively), indicating that homeowners in the State were more likely to remain in their homes than any of the surrounding states.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Department of Housing and Community Development; Judiciary (Administrative Office of the Courts); Office of Administrative Hearings; Department of Labor, Licensing, and Regulation; Maryland Consumer Rights Coalition; *The Washington Post*; www.realtytrac.com; www.alllaw.com; Department of Legislative Services

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