

Department of Legislative Services
 Maryland General Assembly
 2015 Session

FISCAL AND POLICY NOTE

Senate Bill 756 (Senator Muse)
 Judicial Proceedings

Prince George's County - Foreclosure Relief Act of 2015

This emergency bill prohibits a secured party from maintaining an action to foreclose a mortgage or deed of trust on residential property in Prince George’s County for six months from the date of enactment. If an order to docket (OTD) or a complaint to foreclose a mortgage or deed of trust is filed on owner-occupied residential property located in Prince George’s County, the bill requires the court to send a one-page checklist to the mortgagor or grantor containing specified information which must be returned to the court in 15 days. The bill requires the Office of the Attorney General (OAG) to submit a report containing specified research findings on illegal foreclosures to the General Assembly by July 1, 2016.

The bill applies prospectively and may not be applied or interpreted to have any effect on or application to any action filed before its effective date.

Fiscal Summary

State Effect: General fund expenditures increase by \$105,200 in fiscal 2016 for OAG to hire a contractual attorney to perform the required study and to pay for contractual services related to the study. Special fund revenues for the Department of Housing and Community Development (DHCD) are delayed beginning in FY 2015 for the duration of the foreclosure moratorium in Prince George’s County. General and special fund expenditures increase beginning in FY 2015, to the extent that DHCD incurs costs on Maryland Mortgage Program (MMP) loans affected by the moratorium.

(in dollars)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
SF Revenue	(-)	(-)	-	\$0	\$0
GF Expenditure	\$0	\$105,200	\$0	\$0	\$0
GF/SF Exp.	-	-	\$0	\$0	\$0
Net Effect	\$0	(\$105,200)	\$0	\$0	\$0

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

Local Effect: The bill may minimally increase expenditures in Prince George’s County Circuit Court. Additional circuit court expenditures may be required to modify information records systems and to develop, print, mail, and administer the required checklist. An increase in caseload that may occur at the end of the bill’s six-month moratorium can likely be handled with existing resources.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill defines “residential property” for purposes of the moratorium as real property improved by four or fewer single-family dwelling units that are designed principally and are intended for human habitation.

Required Checklist

The checklist to be sent by the court must (1) request verification that the mortgagor or grantor received all documents and information required to be served by the secured party as specified; (2) inform the mortgagor or grantor of the right to dispute the OTD or complaint to foreclose and file a motion to dismiss the OTD or the complaint to foreclose; and (3) require the mortgagor or grantor to return the checklist to the court within 15 days.

OAG Study

The bill requires OAG to study (1) the legal remedies available to a person who has been the victim of an illegal foreclosure, including an action in which documents are filed that are inaccurate, forged, or signed by a person other than the person whose name appears on the document; (2) whether fines assessed against lenders for illegal foreclosure actions have been paid to injured homeowners; (3) whether statistical or other evidence exists that the mortgage loan modification process is fair to homeowners; and (4) whether the financial practice of pooling various types of contractual debt through securitization is detrimental to homeowners and whether the practice may be considered illegal.

Current Law:

Foreclosure Process

Except under specified circumstances, to foreclose on residential property in Maryland, the secured party must first send a notice of intent to foreclose (NOI) then file and serve an OTD or complaint to foreclose.

Prefile mediation may occur prior to the filing of an OTD or a complaint to foreclose on owner-occupied residential property. A secured party is not required to offer prefile mediation; however, the secured party must include specified information with the NOI if it does offer the option. If a mortgagor or grantor elects to participate in prefile mediation, the mortgagor or grantor must notify the secured party by submitting an application within 25 days after the secured party mails the NOI. Once the secured party receives the application, the secured party must notify the Office of Administrative Hearings (OAH) within five business days. OAH must (1) schedule a prefile mediation session within 60 days after the day on which it receives the notice from the secured party; (2) notify the parties and their attorneys, if any, of the date of the prefile mediation session; and (3) provide a report to the parties and their attorneys, if any, describing the result of the mediation upon its completion.

An action to foreclose a mortgage or deed of trust may not be filed until the later of 90 days after a default in a condition on which the mortgage or deed of trust specifies that a sale may be made or 45 days after an NOI and accompanying loss mitigation application are sent. An OTD or complaint to foreclose must be filed with the circuit court, and a copy must be served on the mortgagor or grantor. An OTD or a complaint to foreclose must include, if applicable, the license number of both the mortgage originator and the mortgage lender. The OTD or complaint to foreclose must also contain an affidavit stating the date and nature of the default and, if applicable, that the NOI was sent and that the contents of the NOI were accurate at the time the NOI was sent.

Postfile mediation may occur subsequent to the filing of an OTD or complaint to foreclose under specified circumstances. A grantor or mortgagor may file with the court a completed request for postfile mediation within 25 days after the service or mailing of the final loss mitigation affidavit. The secured party may then file a motion to strike, accompanied by an affidavit setting forth the reasons why postfile 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.

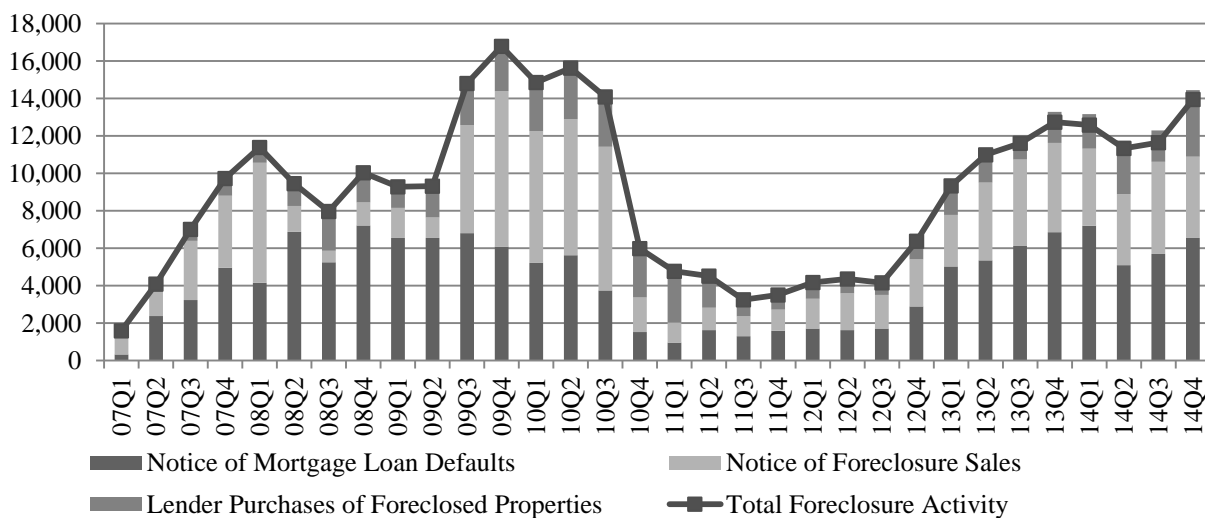
The court must transmit a request for postfile mediation to OAH within five days of receiving the request. OAH must conduct the mediation within 60 days after transmittal of the request, unless the time is extended for good cause. Upon scheduling the mediation, OAH must send notice to the parties with instructions regarding the production of specified documents by a specified date. Following the mediation, OAH must file a report with the court within seven days. 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 within a specified period of time.

Curing Defaults: The mortgagor or grantor of residential property has the right to cure a default and reinstate the loan at any time up to one business day before a foreclosure sale by paying all past-due payments, penalties, and fees. Upon request, and within a reasonable time, the secured party or the secured party’s authorized agent must notify the mortgagor or grantor or his or her attorney of the amount necessary to cure the default and reinstate the loan as well as provide instructions for delivering the payment.

Background:

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, 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.

State's Response to the Foreclosure Crisis: The State's multifaceted approach has involved legislative reforms of mortgage lending laws, extensive consumer outreach efforts, and enhanced mortgage industry regulation and enforcement. This approach began with the Maryland Home Preservation Task Force, which was convened by the Governor in 2007 in response to the dramatic increase in foreclosure events. The task force's charge was to develop a plan which addressed escalating foreclosure rates through revisions in statute, increased opportunity for housing counseling and education programs, and enhanced regulatory authority by the Commissioner of Financial Regulation. The task force's final report in November of 2007 made multiple recommendations which became the backbone for Maryland's response to the foreclosure crisis.

Legislation passed during the 2008, 2009, 2010, and 2011 sessions:

- created the Mortgage Fraud Protection Act, Maryland's first comprehensive mortgage fraud statute (Chapters 3 and 4 of 2008);
- tightened mortgage lending standards and required a lender to give due regard to a borrower's ability to repay a loan (Chapters 7 and 8 of 2008);

- prohibited foreclosure rescue transactions and granted the Commissioner of Financial Regulation additional enforcement powers (Chapters 5 and 6 of 2008);
- reformed the foreclosure process to provide homeowners with greater time and additional notices before their properties are sold (Chapters 1 and 2 of 2008);
- required additional notices to be given to residential tenants renting properties pending foreclosure (Chapters 614 and 615 of 2009);
- required a lender, under specified circumstances, to provide to a borrower notice regarding homebuyer education or housing counseling (Chapter 736 of 2010);
- established procedures for loan modification or mitigation and postfile mediation (Chapter 485 of 2010); and
- lengthened the time period within which a homeowner may elect to participate in foreclosure mediation (Chapter 355 of 2011).

Consumer outreach efforts have included statewide public workshops to assist distressed homeowners, in coordination with the Maryland Foreclosure Prevention Pro Bono Project. These efforts, coupled with the new requirements imposed on the foreclosure process, were at least partially a cause of the decrease in foreclosures in the State.

By the time the Governor convened the next task force, the Maryland Foreclosure Task Force, in fall 2011, foreclosure events had sharply declined from their 2007-2010 levels. The task force was charged with developing new ideas to combat the continuing foreclosure crisis. It included representatives from the Department of Labor, Licensing, and Regulation; DHCD; the General Assembly; the Judiciary; and private industry. In January 2012, the task force issued its report, including 12 recommendations aimed at addressing the continuing foreclosure crisis in Maryland. Several pieces of 2012 legislation resulted from these recommendations, including laws allowing banks to offer prefile mediation in addition to postfile mediation and the creation of a foreclosure registry.

Foreclosure Settlement: On February 9, 2012, the U.S. Department of Justice, U.S. Department of Housing, and 49 state Attorneys General announced an agreement with five major banks providing for compensation for damages arising from improper foreclosure procedures, including robo-signing, and to provide relief to states and homeowners from underwater mortgages. The value of the settlement is approximately \$25 billion.

The settlement agreement has four primary components:

- *Principal Reduction:* \$17 billion allocated to mortgage debt forgiveness/loan modifications, forbearance, short sales, and other assistance to homeowners, primarily by reducing the principal on mortgages that have negative equity and are delinquent. It is estimated that the funding could benefit up to 1 million homeowners nationally.
- *Refinancing:* Homeowners who have negative equity but are current on their mortgages receive about \$3.0 billion in refinancing; up to 750,000 homeowners could be eligible for this refinancing.
- *Payments to Foreclosed Homeowners:* About \$1.5 billion allocated to homeowners who had their homes foreclosed upon between January 1, 2009, and December 31, 2011, and who meet specified criteria. These borrowers receive approximately \$2,000 each, depending on the level of response from the field of qualified borrowers. Borrowers who still owe money following the foreclosure sale (a *deficiency*) may have an opportunity to have some or all of that debt forgiven.
- *Government Payments:* The federal government receives \$750 million under the settlement. States receive approximately \$2.5 billion to help fund consumer protection and state foreclosure protection efforts.

In addition to the above components, the settlement also requires mortgage servicers to reform several of their practices. According to the Office of Mortgage Settlement Oversight, these reforms are intended to prevent servicers from the practice of robo-signing and other improper foreclosure procedures.

State Fiscal Effect:

Mediation Proceedings

Although OAH advises that the bill does not have a fiscal impact on its operations, the Department of Legislative Services (DLS) advises that OAH's caseload related to mediation proceedings is likely affected during the foreclosure moratorium (by reducing or eliminating cases) and in the months following the moratorium (with any pent-up demand for cases). For example, in fiscal 2014, 6,570 foreclosure cases were filed in Prince George's County. While it is not clear from the data available what percentage of cases were eligible for mediation, *for illustrative purposes only*, if 10% of eligible cases in 2014 requested mediation, the OAH caseload could be reduced by 657 cases.

Housing Counseling and Foreclosure Mediation Fund

Special fund revenues for DHCD are reduced due to the prohibition on collecting specified fees that occurs upon enactment of the bill. The loss of revenues is likely to be offset by

recovery of those revenues at a later date, which is likely to commence after the moratorium is lifted. The timing of full recovery of these special fund revenues cannot be reliably projected, but it is likely to begin sometime in the second quarter of fiscal 2016, assuming an April 1, 2015 effective date. This analysis assumes that the impact of the moratorium is an overall reduction in special fund revenues throughout fiscal 2016 but that special fund revenues increase in fiscal 2017.

DHCD collects fees during the foreclosure process for the Housing Counseling and Foreclosure Mediation Fund. These fees include (1) \$300 fee for every OTD or complaint to foreclose that is filed; (2) a prefile mediation fee; and (3) a postfile mediation fee. DHCD reports that fee revenues could decrease by as much as \$42,000, based on an annual caseload of 140 loans subject to foreclosure in the county. Additionally, DHCD reports that interest payments would decrease for the duration of the moratorium, totaling an estimated \$630,000. It is anticipated, however, that any foregone revenues would be collected in the months following the moratorium and would likely mitigate the impact of the moratorium beginning in the second quarter of fiscal 2016, assuming an April 1, 2015 effective date.

Maryland Mortgage Program Loans Affected by Foreclosure Moratorium

DHCD administers MMP, which provides low-interest mortgage loans. The foreclosure moratorium may negatively impact, beginning in fiscal 2015 and for six months after the bill’s enactment, DHCD finances associated with any loans in Prince George’s County to the extent that the department (1) may be unable to collect special fund revenues associated with mortgage insurance associated with the loans; (2) incurs additional legal costs associated with loans already in the foreclosure process; and (3) incurs additional expenditures for real estate taxes and hazard insurance on would-be foreclosed homes.

OAG Study and Report

General fund expenditures increase by \$105,154 in fiscal 2016. This estimate reflects the cost of OAH hiring one half-time contractual attorney to perform the study required by the bill, and it includes \$50,000 for contractual services for economic or statistical analysis, as necessary. It includes a salary, fringe benefits, one-time start-up costs, and operating expenses beginning July 1, 2015, which, assuming an April 1, 2015 effective date for the bill, assumes a three-month start-up delay. The estimate also assumes that the study will be completed by its July 1, 2016 due date.

Position	0.5
Salary and Fringe Benefits	\$50,576
Contractual Services	50,000
Operating Expenses	<u>4,578</u>
Total FY 2016 State Expenditures	\$105,154

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

Additional Information

Prior Introductions: SB 755 of 2014, a similar that would have applied statewide, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 1322, received an unfavorable report from the House Environmental Matters Committee.

Cross File: HB 929 (Prince George's County Delegation) - Environment and Transportation.

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, Office of Mortgage Settlement Oversight, Department of Legislative Services

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mar/kdm

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