HB 664

Department of Legislative Services

Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

House Bill 664 (Delegate Krimm)
Environment and Transportation

Foreclosures - Responsibility for Maintenance of Residential Property and Registration Requirement

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This bill requires that, on and after filing an action to foreclose a mortgage or deed of trust on a residential property, a secured party must be responsible for the maintenance of the property until the foreclosure sale occurs. The bill requires the secured party to submit a registration containing specified information to the Foreclosed Property Registry (FPR) maintained by the Department of Labor, Licensing, and Regulation (DLLR) within 30 days after filing an action to foreclose on a residential property, and to pay a specified fee.

The bill applies prospectively, but it specifies that any secured party that has a pending action to foreclose a mortgage or a deed of trust on residential property as of the bill's October 1, 2016 effective date must register the property with FPR by November 30, 2016.

Fiscal Summary

State Effect: Special fund revenues increase, beginning in FY 2017, by at least $920,100 due to collection of registration fees; out-years reflect annualization and assume no changes in the registration fee or the number of properties registered. Special fund expenditures increase by $16,300 in FY 2017 for DLLR to expand FPR, with ongoing maintenance costs. General fund expenditures minimally increase for the Department of Housing and Community Development (DHCD) to pay registration fees and for DLLR to respond to an increased number of complaints as a result of the expanded registration requirement.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
SF Revenue	$920,100	$1,226,800	$1,226,800	$1,226,800	$1,226,800
GF Expenditure	$21,000	$20,000	$20,000	$20,000	$20,000
SF Expenditure	$16,300	$10,000	$10,000	$10,000	$10,000
Net Effect	$882,900	$1,196,800	$1,196,800	$1,196,800	$1,196,800

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

Local Effect: Minimal increase in fine revenue if a local jurisdiction imposes a fine for failure to register. Minimal increase in property tax revenue if a local jurisdiction charges the costs incurred to abate a nuisance or maintain the property as part of the property's tax assessment.

Small Business Effect: Potential meaningful. Small businesses that purchase foreclosed properties to renovate and sell must now pay registration fees and be liable for maintenance costs and penalties.

Analysis

Bill Summary: The registration for FPR must be on the form required by DLLR and contain (1) the name, telephone number, and address for the secured party; (2) the street address of the property that is subject to the foreclosure action; (3) the date the foreclosure action was filed; (4) whether the property is a single-family or multifamily property; (5) the name and address of the person who is authorized to accept legal service for the secured party; (6) to the best of the secure party's knowledge, whether the property is vacant, and the name, telephone number, and street address of the person who is responsible for the maintenance of the property; and (7) whether the secured party has possession of the property.

The bill establishes nonrefundable filing fees of $50 for a registration filed within the 30-day period after the action to foreclose is filed, and $100 for a registration filed after the 30-day period. A local jurisdiction is authorized to enact a local law that imposes a civil penalty of up to $1,000 on a secured party for failure to register. Additionally, the bill expands the ability of a local government that abates a nuisance on or maintains a registered property to collect any incurred costs as a charge included on the property's tax bill for the residential property, as long as specified notice requirements are met.

The bill applies prospectively, and may not be interpreted to have any effect on any foreclosure action filed before the bill's October 1, 2016 effective date. However, for orders to foreclose that are pending as of the bill's effective date, the registration deadline is extended to November 30, 2016.

Current Law:

Foreclosed Property Registry

State law does not require a secured party to register or maintain a residential property after filing an action to foreclose a mortgage or deed of trust.

Chapter 155 of 2012 required DLLR to establish and maintain an Internet-based FPR for information relating to foreclosure sales of residential property. The law requires a foreclosure purchaser to submit an initial registration form to DLLR within 30 days of the sale and a final registration form within 30 days after a deed transferring title to the property has been recorded. A local jurisdiction may enact a local law that imposes a fine of up to $1,000 for failure to register, and a local government that abates a nuisance on or maintains a registered property may collect any incurred costs as a charge included on the property's tax bill, as long as specified notice requirements are met.

The registry is supported by a special nonlapsing fund administered by DLLR. The fund consists of filing fee revenue collected by DLLR, the fund's investment earnings, money appropriated in the State budget to the fund, and any other money from any other source accepted for the benefit of the fund. The purpose of the fund is to support the development, administration, and maintenance of the registry.

DLLR is prohibited from granting access to the registry to any person or entity other than a local jurisdiction, its agencies or representatives, or a State agency. FPR is not a public record as defined by the State Government Article and is, therefore, exempt from public access requirements. However, DLLR or a local jurisdiction may provide information for a specific property in the registry to a person who owns property on the same block or a homeowners association or condominium in which the property is located.

Only the State may enact a law requiring a notice to be filed with a governmental unit relating to residential properties that are subject to foreclosure. However, another unit of government may require a registration or notice to be filed for a purpose other than one relating to foreclosure, even if a property to be identified in the registration or notice is subject to foreclosure.

Foreclosure Process in Maryland

Except under specified circumstances, to foreclose on residential property in Maryland, the secured party must first send a notice of intent to foreclose (NOI) to the mortgagor or grantor and the record owner, then file and serve an order to docket (OTD) or a complaint to foreclose. Whether an OTD is appropriate, or a complaint to foreclose, is based on the lien instrument held by the secured party. 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 it was sent.

Perquisites for Foreclosure Sales

If the residential property is not owner-occupied, a foreclosure sale may not occur until at least 45 days after specified notice is given. If the residential property is owner-occupied, and foreclosure mediation is not held, a foreclosure sale may not occur until the later of (1) at least 45 days after providing specified notice that includes a final loss mitigation affidavit or (2) at least 30 days after a final loss mitigation affidavit is mailed. Finally, if the residential property is owner-occupied residential property and postfile mediation is requested, a foreclosure sale may not occur until at least 15 days after the date the postfile mediation is held or, if no postfile mediation is held, the date the Office of Administrative Hearings files its report with the court.

Background: California law requires the legal owner of a vacant, foreclosed, residential property to maintain the property and permits a governmental entity to impose a civil fine of up to $1,000 for failure to maintain the property. Failure to maintain includes failing to care for the exterior of the property, failing to take action to prevent trespassers or squatters from remaining on the property, failing to take action to prevent mosquito larvae from growing in standing water, or failing to address other conditions that create a public nuisance.

In 2014, New Jersey passed a law that provides local governments the authority to fine a mortgage holder for failing to maintain a property. The minimum fine for creditors based in New Jersey is $1,500 per day and $2,500 per day for out-of-state creditors. The law also requires out-of-state creditors to designate an individual in New Jersey to manage property maintenance.

DLLR advises that, between the fourth quarter of 2014 and the third quarter of 2015, 20,447 properties were the subject of a notice of mortgage loan default or order to docket.

State Revenues: Special fund revenues increase by at least $920,115 in fiscal 2017 to reflect the collection of registration fees from secured parties for properties where an action to foreclose a mortgage or deed of trust on a residential property is filed on or after the bill's October 1, 2016 effective date. Special fund revenues increase by $1,226,820 in the out-years reflecting annualization and assuming no changes in registrations or fees.

This estimate is based on information from DLLR about the number of properties that entered foreclosure between the first quarter of 2014 and the third quarter of 2015, DLLR advises that in that period, 80% of properties registered within the 30-day period, consistent with current FPR registrations. Special fund revenues further increase in fiscal 2017 to account for the registration of properties where an action to foreclose a mortgage or deed of trust on a residential property is pending as of the bill's effective date and, accordingly, those properties are subject to the registration deadline of November 30, 2016. However, data is not available to reliably estimate the number of pending actions for properties that will be subject to the November 30, 2016 registration requirement.

State Expenditures: Special fund expenditures increase by $16,250 in fiscal 2017, with ongoing annual maintenance costs of $10,000. DLLR reports that the balance of the Foreclosed Property Registry Fund was $2,180,090 as of December 12, 2015, and that the Governor's proposed budget for fiscal 2017 includes a total appropriation of $584,172 from the fund.

DLLR advises that general fund expenditures minimally increase to receive and resolve an increased number of complaints. Complaints are likely to include requests for information from the registry by individuals, as well as from homeowners and third-party tenants objecting to maintenance performed by the secured party as a result of the bill's requirements.

General fund expenditures increase for DHCD to pay registration fees for properties where DHCD is the secured party. DHCD estimates registration costs in fiscal 2017 to be $6,000 for the 120 current actions, and an additional $15,000 for properties where an action to foreclose a mortgage or deed of trust on a residential property is filed following the bill's effective date. Expenditures increase by an additional $20,000 annually in fiscal 2018 and beyond to register approximately 400 properties per year. This estimate assumes that DHCD is able to meet the 30-day deadline in all cases.

Local Fiscal Effect: To the extent that a local jurisdiction exercises its authority to enact a local law that imposes a civil penalty for failure of a secured party to register a foreclosed property, local revenues may increase. *For illustrative purposes only*, assuming the local jurisdiction enacts a law that imposes the maximum allowable fine of $1,000 for failure to register a property, if 10 properties are determined to be facing foreclosure but are not registered, local revenues could increase by $10,000. Additionally, revenues increase to the extent that local governments are newly able to recoup costs to abate a nuisance on or maintain a registered property.

Small Business Effect: While most secured parties required to register and maintain properties under the bill are likely to be large companies, some small businesses may be required to register properties and assume maintenance responsibilities. These requirements may impose additional costs, risks, and liabilities on small businesses.

Additional Comments: DLLR and DHCD advise that the requirement that a secured party maintain a property after filing an action to foreclose, but before completion of the foreclosure sale, may conflict with a borrower's or third-party tenant's right to possess the property pending the completion of the foreclosure.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City; cities of Bowie and Takoma Park; Montgomery County; Department of Housing and Community Development; Department of Labor, Licensing, and Regulation; *Gloucester County Index*; California Civil Code; Department of Legislative Services

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