

Department of Legislative Services
 Maryland General Assembly
 2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1377 (Delegate Parrott, *et al.*)
 Environment and Transportation

Real Property - Vacant and Abandoned Property - Expedited Foreclosure

This bill authorizes a secured party to petition the circuit court for leave to immediately begin an action to foreclose a mortgage or deed of trust on a vacant and abandoned property, as specified in the bill. The bill also authorizes specified entities to notify a secured party of a “vacant and abandoned property,” and it *requires* the secured party to (1) petition the court to immediately begin foreclosure proceedings and (2) assume responsibility for maintaining the property in accordance with specified standards. The bill requires the secured party to proceed with the foreclosure process and schedule a foreclosure sale in accordance with specified time limits. Finally, the bill authorizes specified entities to seek injunctive or other equitable relief from a court to require the secured party to maintain a property, in accordance with specified standards, and to progress through the foreclosure process.

Fiscal Summary

State Effect: Special fund expenditures by the Department of Housing and Community Development (DHCD) decrease by \$22,500 in FY 2017, due to the accelerated foreclosure process, net of the additional maintenance requirement. Special fund expenditures decrease by more than \$30,000 in FY 2018 and annually thereafter to reflect annualization and inflation. The Department of Labor, Licensing, and Regulation (DLLR) can likely implement the bill’s provisions with existing resources, as discussed below. No effect on revenues.

| (in dollars) | FY 2017 | FY 2018 | FY 2019 | FY 2020 | FY 2021 |
|----------------|----------|----------|----------|----------|----------|
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 |
| SF Expenditure | (22,500) | (30,300) | (30,600) | (30,900) | (31,200) |
| Net Effect | \$22,500 | \$30,300 | \$30,600 | \$30,900 | \$31,200 |

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

Local Effect: The bill is not anticipated to materially impact the operations or finances of local governments.

Small Business Effect: Potential meaningful. Secured parties that qualify as small businesses must be responsible for maintenance costs and face additional restrictions related to foreclosing on vacant and abandoned property.

Analysis

Bill Summary: “Vacant and abandoned property” means residential property, subject to a mortgage or deed of trust, where the mortgage or deed of trust has been in default for 90 days or more and the property has been unoccupied for 120 days or more.

The bill specifies that vacant and abandoned property does not include property that (1) is undergoing construction; (2) is occupied on a seasonal basis; (3) is the subject of specified court actions, or any other ownership dispute; (4) has been damaged by a natural disaster and the mortgagor or grantor intends to repair and reoccupy the property; or (5) is occupied by a relative of the mortgagor or grantor or by a bona fide tenant.

Notice to Secured Party

A county, municipal corporation, homeowners association, or condominium may notify a secured party of any vacant and abandoned property located in the county, municipal corporation, homeowners association, or condominium. The notice must be in writing, and sent by certified mail, return receipt requested. The notice must include:

- the street address of the property;
- the name of the mortgagor or grantor, if known;
- a statement certifying that, to the best of the sender’s knowledge, the property is a vacant and abandoned property as defined under the bill; and
- a description of any evidence of abandonment at the property.

Required Action by a Secured Party

No later than 30 days after receiving notice of vacant and abandoned property from a county, municipal corporation, homeowners association, or condominium, the secured party *must* petition the circuit court to immediately begin an action to foreclose the

mortgage or deed of trust on the property. The secured party must also assume responsibility for maintaining the vacant and abandoned property, consistent with applicable building codes and ordinances, no later than 30 days after receiving the notice. The secured party must continue to maintain the property until a deed transferring title to the property has been recorded. The bill authorizes a secured party to enter a vacant and abandoned property to carry out required maintenance.

No later than 30 days after the circuit court grants a secured party's petition to immediately begin an action to foreclose the mortgage or deed of trust on a vacant and abandoned property, the secured party must file an order to docket (OTD) or a complaint to foreclose the mortgage or deed of trust. A copy of the OTD or complaint to foreclose must be served on the mortgagor or grantor in accordance with specified standards.

The secured party must schedule a foreclosure sale on the vacant and abandoned property no later than 60 days after a copy of the order to docket or complaint to foreclose is served on the mortgagor or grantor.

Enforcement

In addition to any other remedy provided under State law, a county, municipal corporation, homeowners association, or condominium in which a vacant and abandoned property is located may seek an injunction or other equitable relief from the court to require a secured party to comply with the bill's foreclosure and maintenance requirements.

The Commissioner of Financial Regulation may adopt regulations to carry out the requirements of the bill.

Current Law: "Residential property" means real property improved by four or fewer single-family dwelling units that are designed principally and are intended for human habitation.

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

Foreclosure Process in Maryland

Generally, 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 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.

A secured party may petition the circuit court for leave to immediately commence an action to foreclose the mortgage or deed of trust if:

- the loan secured by the mortgage or deed of trust was obtained by fraud or deception;
- no payments have ever been made on the loan secured by the mortgage or deed of trust;
- the property subject to the mortgage or deed of trust has been destroyed; or
- the default occurred after the stay has been lifted in a bankruptcy proceeding.

The court may rule on the petition with or without a hearing. If the petition is granted, the action may be filed at any time after a default in a condition on which the mortgage or deed of trust provides that a sale may be made, and the secured party is not required to send a written notice of intent to foreclose.

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.

Generally, notice of the time, place, and terms of a foreclosure sale must be published in a newspaper of general circulation in the county where the action is pending at least once a week for three successive weeks. The first publication of the notice must be more than 15 days before the sale, and the last publication must be within one week of the sale.

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:

Maintenance of Foreclosed Properties

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.

Foreclosures in Maryland

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 OTD. The number of currently vacant and abandoned properties awaiting foreclosure in the State is unknown.

State Expenditures: DHCD advises that accelerating the foreclosure timeline by enabling the department to immediately proceed with the foreclosure of vacant and abandoned properties may reduce the foreclosure timeframe by six months, and accordingly reduce its expenditures related to the foreclosure process on vacant and abandoned properties. Based on historical information indicating that 5% of DHCD foreclosed properties fit the definition of vacant and abandoned, DHCD estimates that savings total approximately \$22,500 in fiscal 2017, reflecting the bill's October 1, 2016 effective date. This estimate also takes into account additional maintenance costs that may be incurred by DHCD.

DHCD anticipates savings of \$30,300 in fiscal 2018 to reflect annualization and inflation. Out-year expenditures continue to be reduced by a similar amount.

DLLR anticipates that it will receive complaints under the bill. DLLR advises that, if it must *fully enforce* the bill, it requires one additional full-time financial investigator and one additional half-time financial investigator at a total cost of \$92,000 in fiscal 2017 and more than \$111,000 annually thereafter, to handle an increase in the number of complaints received as a result of the bill's provisions. However, as the bill *authorizes* DLLR to adopt regulations, no investigative or enforcement activity is required. This analysis assumes no enforcement by DLLR. Even so, to the extent that the Commissioner of Financial Regulation elects to develop regulations that supplement the enforcement authority available to a county, municipal corporation, homeowners association, or condominium through the courts, expenditures may increase to conduct investigations and to enforce the bill's requirements.

Small Business Effect: In addition to maintenance costs, the bill may require small businesses to commence with the foreclosure process, regardless of whether doing so represents the most prudent business decision. Under current law, a secured party has multiple options for moving forward with a vacant and abandoned property, including negotiating with a mortgagor or grantor, selling the property in accordance with the standard foreclosure process, or writing off the loan.

Under the bill, a secured party could be required to take possession and proceed through the foreclosure process in an accelerated manner. DLLR advises that proceeding with foreclosure while attempting to pursue an option that would allow the borrower to retain the property, such as negotiating a loss mitigation plan, may subject lenders to claims that they are "dual tracking" foreclosures – a practice that is illegal under federal law. The Department of Legislative Services advises that, if a property is genuinely vacant and abandoned, as specified by the bill, any avenues for negotiating with the mortgagor or grantor are likely not being pursued by the lender in any event.

Additional Comments: The requirement that a secured party maintain a vacant and abandoned property after receiving notice, but before the 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, Carroll, and Queen Anne's counties; cities of Bowie and Takoma Park; Judiciary (Administrative Office of the Courts); 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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