

Department of Legislative Services
 Maryland General Assembly
 2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 1033

(Senators Eckardt and Mathias)

Judicial Proceedings

Environment and Transportation

Residential 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 residential property, and it requires the court to promptly rule on the petition. The bill establishes criteria for determining whether residential property is vacant and abandoned, and if the court finds that a residential property is vacant and abandoned and the secured party is entitled to judgment, the court must grant the petition. The bill applies prospectively and has no effect on any order to docket (OTD) or complaint to foreclose that is filed before its October 1, 2017 effective date.

Fiscal Summary

State Effect: Special fund expenditures by the Department of Housing and Community Development (DHCD) decrease by \$37,500 in FY 2018, due to the accelerated foreclosure process. Special fund expenditures decrease by \$50,000 in FY 2019 and annually thereafter to reflect annualization. The Office of the Commissioner of Financial Regulation can handle the bill’s requirements with existing budgeted resources. Revenues are not affected.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	(37,500)	(50,000)	(50,000)	(50,000)	(50,000)
Net Effect	\$37,500	\$50,000	\$50,000	\$50,000	\$50,000

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

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

Small Business Effect: Minimal.

Analysis

Bill Summary:

Vacant and Abandoned Property

Under the bill, a residential property is vacant and abandoned if (1) the court finds that the mortgage or deed of trust on the property has been in default for 120 days or more; (2) no mortgagor or grantor has filed with the court an answer or objection that would prevent the court from entering a final judgment and a decree of foreclosure; (3) no mortgagor or grantor has filed with the court a written statement that the property is not vacant and abandoned; and (4) at least three of the following circumstances are found to be true:

- gas, electric, sewer, or water utility services have been disconnected;
- windows or entrances are boarded up, or multiple window panes are broken;
- doors are broken or continuously unlocked;
- junk, litter, trash, debris, or other hazardous materials have accumulated;
- there are no furnishings, window treatments, or personal items present;
- vandalism, loitering, or criminal conduct occurs on the property, or the property has deteriorated or has been destroyed;
- a mortgagor or grantor has stated in writing that the intention of all mortgagors or grantors is to abandon the property;
- no owner or tenant appears to be residing on the property when it is inspected by the secured party;
- two or more citations have been issued by a county or municipal corporation against the property for failure to maintain the property and a health and safety issue exists;
- the property has been condemned by a county or municipal corporation; or
- other reasonable signs of abandonment exist.

Notice and Service Requirements

Filing a Petition: The bill requires the secured party to send a copy of the petition filed with the court to the last known address of the mortgagor or grantor, and to the record owner of the property, by certified mail, return receipt requested, as well as by first-class mail.

Filing an Order to Docket or Complaint to Foreclose: A secured party filing an OTD or complaint to foreclose based on a petition granted by a court under the bill must serve the foreclosure documents by (1) personal delivery to the mortgagor or grantor or (2) leaving the papers with a resident of suitable age and discretion at the mortgagor's or grantor's dwelling house or usual place of abode. If at least two good faith efforts on different days have not succeeded, the secured party may effect service by filing an affidavit with the court describing the good faith efforts to serve the mortgagor or grantor. In addition, to effect service, the secured party must mail a copy of all required documents by certified mail, return receipt requested, and first-class mail to the mortgagor's or grantor's last known address and, if different, to the address of the residential property subject to the mortgage or deed of trust as well as post a copy of all required documents in a conspicuous place on the residential property subject to the mortgage or deed of trust. The individual serving documents must file proof of service with the court in accordance with the Maryland Rules.

The documents must be accompanied by a separate, clearly marked notice, in a form prescribed by regulations adopted by the Commissioner of Financial Regulation, that states (1) the significance of the OTD or complaint to foreclose and (2) the right of a record owner or occupant of the property to challenge the finding that the residential property is vacant and abandoned.

Exemption from Required Mediation

Generally, if the residential property is found to be vacant and abandoned and the court grants the petition for leave to immediately begin an action to foreclose a mortgage or deed of trust as authorized by the bill, specified mediation and foreclosure process requirements do not apply.

Challenging the Finding that the Property Is Vacant and Abandoned

A challenge to the finding that the residential property is vacant and abandoned must be filed with the court within 20 days after service is made. If a timely filed challenge is upheld, the secured party must follow specified mediation and foreclosure procedures.

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.

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 NOI.

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: Vacant residential property, whether resulting from foreclosure or other circumstances, often becomes a nuisance to the community, which, in turn, lowers the value of surrounding properties and the community as a whole and encourages criminal activities on and near the property. In addition, when abandoned, vacant property does not generate tax revenue for the local government and may, in fact, become a costly drain on local government resources (*e.g.*, enforcement of public safety laws and ongoing nuisance abatement such as weed cutting, removal of dumped garbage, rodent control, and boarding up of windows).

Other State Legislation

In June of 2016, Ohio enacted legislation similar to the bill that created an expedited foreclosure process for residential properties that meet three or more indicia of vacant and abandoned property. Prior to the legislation, properties could sit vacant for at least two years. The new provisions are intended to reduce the length of the foreclosure process to as little as six months.

Foreclosures in Maryland

The number of foreclosure events on residential property in Maryland has remained stubbornly high, despite national trends downward. DHCD data demonstrates that, in 2016, 14,895 properties were the subject of a notice of mortgage loan default or OTD. The number of vacant and abandoned properties awaiting foreclosure in the State is unknown. However, in April 2016, *The Baltimore Sun* reported that there are nearly 17,000 vacant buildings in Baltimore City alone.

Multiple bills introduced over the past several years have sought to address the problems created by foreclosed and vacant properties. For example, House Bill 1377 of 2016, which proposed a different approach to the vacant and abandoned property issue, would have (1) required a secured party to immediately begin the foreclosure process for a vacant and

abandoned property; (2) required the secured party to maintain vacant and abandoned property under certain circumstances; (3) set certain time limits on the various steps of the foreclosure process; and (4) authorized others to petition a court to require the secured party to meet these standards. House Bill 1377 was referred to interim study by the House Environment and Transportation Committee.

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 \$37,500 in fiscal 2018, reflecting the bill's October 1, 2017 effective date. DHCD anticipates savings of \$50,000 in the out-years to reflect annualization.

Additional Information

Prior Introductions: None.

Cross File: HB 702 (Delegate Holmes, *et al.*) - Environment and Transportation.

Information Source(s): cities of Baltimore and Bowie; Montgomery and Prince George's counties; Maryland Association of Counties; Judiciary (Administrative Office of the Courts); Department of Housing and Community Development; Department of Labor, Licensing, and Regulation; State Department of Assessments and Taxation; Department of Legislative Services

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