

Department of Legislative Services
 Maryland General Assembly
 2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 875

(Senator Kelley)

Judicial Proceedings

Environment and Transportation

Residential Property - Notice of Foreclosure

This bill requires a person authorized to make a sale of residential property to provide the Department of Labor, Licensing, and Regulation (DLLR) with a notice of foreclosure within seven days of the filing of an order to docket (OTD) or a complaint to foreclose a mortgage or deed of trust. The bill expresses legislative intent that it does not repeal any local law enacted prior to January 1, 2017, that requires a notice substantially similar to the notice of foreclosure described in the bill to be filed with the local jurisdiction.

The bill takes effect October 1, 2018.

Fiscal Summary

State Effect: No effect in FY 2018. General fund expenditures increase by \$43,700 in FY 2019 for DLLR to modify the Foreclosed Property Registry (FPR) to accept the notice required under the bill and to modify outreach materials, as discussed below. General fund expenditures in the out-years increase by \$10,000 for required maintenance of the expanded database. The Department of Housing and Community Development (DHCD) can handle the bill’s requirements with existing resources. Revenues are not affected.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	43,700	10,000	10,000	10,000	10,000
Net Effect	(\$43,700)	(\$10,000)	(\$10,000)	(\$10,000)	(\$10,000)

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

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: Under the bill, “residential property” means real property improved by four or fewer dwelling units. “Person authorized to make the sale” means the person designated under the Maryland Rules to sell residential property subject to foreclosure. “Local jurisdiction” means a county or a municipal corporation.

Required Registration: The bill requires that a notice of foreclosure be sent to DLLR in the form required by DLLR, and it specifies that the notice may be the same form that must be used for registration with FPR. The notice must include:

- the street address of the property;
- the tax account number, if known;
- whether the property is vacant, if known,
- the name, address, and telephone number of the owner or owners of the property, if known;
- the name, address, and telephone number of the person authorized to make the sale; and
- the name, address, and telephone number of the person authorized to manage and maintain the property before the foreclosure sale, if known.

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

Notice to Register Property and Exceptions: The existing preemption by the State of local authority to enact a similar notice provision relating to properties subject to foreclosure is applied more broadly to encompass the additional notice required by this bill. However, a local government may require a registration or notice that does not relate to foreclosure, even if the subject of the local registration or notice is a property that is also subject to foreclosure.

Current Law: 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. The initial registration form requires the foreclosure purchaser to provide specified information, including (1) the contact information of the purchaser; (2) the street address of the foreclosed property; (3) whether the property is a single-family or multifamily property; (4) to the best of the purchaser's knowledge, whether the property is vacant; and (5) whether the purchaser has possession of the property. DLLR collects a nonrefundable filing fee of \$50 from a foreclosure purchaser for an initial registration form, if filed within 30 days of the sale, and \$100, if filed after 30 days of the sale. There is no fee for the final registration.

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 for registrations, 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.

Background: DHCD data demonstrates that, in 2016, 14,895 properties were the subject of a notice of mortgage loan default or OTD. DLLR advises that FPR received 13,274 initial registrations over the same period, averaging 1,106 per month.

State Expenditures:

Department of Labor, Licensing, and Regulation: Although DLLR advises it would use FPR functionality to collect notices required under the bill, rather than develop an entirely new system, this analysis assumes special fund expenditures may not be used to do so since the collection of the notices is not directly associated with FPR. Thus, general fund expenditures increase by a total of \$43,700 for DLLR in fiscal 2019. Most of that amount (\$43,200) is for DLLR to develop an additional registration level within the existing FPR and integrate the new registration level with existing software. The remaining \$500 is to redesign and print outreach brochures to ensure individuals authorized to make a sale of residential property are aware of the notice requirement. General fund expenditures in the out-years increase by \$10,000 for required maintenance of the expanded database.

Department of Housing and Community Development: DHCD advises that legal costs to submit the required paperwork to DLLR total approximately \$25,000 annually, which assumes that 500 properties fall under the bill's notification requirement. However, DHCD did not provide an explanation as to why submitting the information required under the bill, which is substantially similar to the information DHCD submits to FPR for registration of foreclosed properties under existing provisions, incurs such an additional cost. DLS advises that, because the required submission merely requires the submission of basic information in a format that will likely be identical to current FPR submissions, DHCD can handle the bill's requirements with existing resources.

Additional Information

Prior Introductions: None.

Cross File: HB 1048 (Delegates Holmes and Angel) - Environment and Transportation.

Information Source(s): cities of Baltimore, Frederick, and Havre de Grace; Harford Montgomery, and Talbot counties; Judiciary (Administrative Office of the Courts); Department of Housing and Community Development; Department of Labor, Licensing, and Regulation; Department of Legislative Services

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Analysis by: Nathan W. McCurdy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510