

Department of Legislative Services  
Maryland General Assembly  
2017 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1077  
Judiciary

(Delegate Malone)

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Attorney's Liens - Settlement Providing for Conveyance of Real Property -  
Enforcement

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This bill authorizes a court order establishing an attorney's lien – that attaches to a settlement which only involves the conveyance of property – to be recorded in the land records of the county in which the property is located. The bill further authorizes the lien to be enforced and foreclosed in the same manner as the foreclosure of a mortgage or deed of trust on property in the State that contains a power of sale or an assent to a decree.

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Fiscal Summary

**State Effect:** The bill is not anticipated to materially affect State finances or operations.

**Local Effect:** The bill is not anticipated to materially affect the circuit courts or local finances or operations.

**Small Business Effect:** Potential meaningful. Law firms may have increased ability to collect outstanding fees for services.

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Analysis

**Current Law/Background:**

*Attorney's Lien (Business Occupations and Professions Article)*

Generally, an attorney's lien attaches to any settlement, judgment, or award that a client receives as a result of legal services that the attorney performs, if the client owes the attorney a fee or other compensation for those services. An attorney's lien is subordinate

only to (1) a prior lien for wages due to an employee of the client for work related to the settlement, judgment, or award or (2) a lien for taxes that the client owes the State. An attorney may retain property that is subject to a lien, and may bring an action in court for execution under the lien, but must do so in accordance with the Maryland Rules.

#### *Attorney's Lien (Maryland Rules)*

Under the Maryland Rules, an attorney who holds a lien under the Business Occupations and Professions Article may assert the lien by serving a written notice, by certified mail or by personal delivery to the client and each person against whom the lien is to be enforced. The notice must (1) claim the lien; (2) state the attorney's interest in the action, proceeding, settlement, judgment, or award; and (3) inform the client or other person to hold any money payable to the client, or property that would pass to the client, related to the action, proceeding, settlement, judgment, or award.

If an action related to the lien has been filed in a circuit court, on motion by the attorney, the attorney's client, or any person who has received notice, the court must adjudicate the rights of the parties in relation to the lien. If an action related to the lien has not been filed, the attorney, the attorney's client, or any person who has received a notice may file a complaint with a circuit court to adjudicate the rights of the parties in relation to the lien.

#### *Foreclosure of a Mortgage or Deed of Trust*

"Record owner" means the person holding record title to property as of the later of (1) 30 days before the day on which a foreclosure sale of the property is actually held and (2) the date on which an action to foreclose the mortgage or deed of trust is filed.

The person authorized to make a sale in an action to foreclose a mortgage or deed of trust is required to give written notice of the proposed sale to the record owner of the property. The written notice must be sent by certified mail, postage prepaid, return receipt requested, as well as by first-class mail, to the record owner not earlier than 30 days and not later than 10 days before the date of sale. The notice must state the time, place, and terms of the sale.

The person sending the notice is required to file, with the documents submitted to the court, a return receipt for the notice, or an affidavit that the notice was sent or that the address of the record owner could not reasonably be found. In the event a sale is postponed, which may be done at the discretion of the trustee, no new or additional notice is required.

The right of a record owner to file an action for the failure to provide the required notice expires three years after the date of the order ratifying the foreclosure sale.

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.

### *Foreclosure of Residential Property*

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.

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.

### *Maryland Contract Lien Act*

The bill authorizes a process for attorney's liens similar to what currently exists for liens filed under the Maryland Contract Lien Act (MCLA). Generally, under MCLA, a person seeking to create a lien as a result of a breach of contract must give written notice, within two years of the breach, to the person whose property is subject to the lien. Within 30 days after service of the notice, the person served may file a complaint in circuit court to determine whether probable cause exists to establish a lien. If the court orders a lien or the property owner fails to file a complaint, the person seeking to create a lien may file a statement of lien in the land records.

With specified exceptions, a lien may be enforced and foreclosed by the lien holder in the same manner, and subject to the same requirements, as the foreclosure of mortgages or deeds of trust on property containing a power of sale or an assent to a decree. An action to foreclose a lien must be brought within 12 years following recordation of the lien statement.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Legislative Services

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