

# HOUSE BILL 1277

N1

9lr1660

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By: **Delegate Sydnor**

Introduced and read first time: February 8, 2019

Assigned to: Environment and Transportation

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## A BILL ENTITLED

1 AN ACT concerning

2 **Real Property – Mortgages and Deeds of Trust – Foreclosure Actions**

3 FOR the purpose of invalidating a power of sale or assent to decree authorized in a  
4 mortgage or deed of trust on certain residential property that is executed on or after  
5 a certain date; requiring an action to foreclose a mortgage or deed of trust on certain  
6 residential property to be commenced only by the owner of the debt instrument  
7 secured by the mortgage or deed of trust; requiring an action to foreclose a mortgage  
8 or deed of trust on certain residential property to be commenced by filing a complaint;  
9 requiring practice and procedure in an action to foreclose a mortgage or deed of trust  
10 on certain residential property to be governed by certain provisions of the Maryland  
11 Rules, subject to certain exceptions; requiring a complaint to foreclose on a mortgage  
12 or deed of trust on certain residential property to include certain affidavits;  
13 increasing the filing fee for a complaint to foreclose a mortgage or deed of trust on  
14 residential property; making conforming changes; and generally relating to actions  
15 to foreclose a mortgage or deed of trust on residential property.

16 BY repealing and reenacting, with amendments,  
17 Article – Real Property  
18 Section 7–105 and 7–105.1  
19 Annotated Code of Maryland  
20 (2015 Replacement Volume and 2018 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
22 That the Laws of Maryland read as follows:

23 **Article – Real Property**

24 7–105.

25 (a) In this section, “individual” means a natural person.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (b) (1) A mortgage or deed of trust may authorize the sale of the property or  
2 declare the borrower's assent to the passing of a decree for the sale of the property, on  
3 default in a condition on which the mortgage or deed of trust provides that a sale may be  
4 made.

5 (2) (I) **[A] SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH,**  
6 A power of sale or assent to decree authorized in a mortgage or deed of trust may be  
7 exercised only by an individual.

8 (II) **1. A MORTGAGE OR DEED OF TRUST ON**  
9 **OWNER-OCCUPIED RESIDENTIAL PROPERTY EXECUTED ON OR AFTER OCTOBER 1,**  
10 **2019, MAY NOT INCLUDE A POWER OF SALE OR ASSENT TO DECREE.**

11 **2. A POWER OF SALE OR ASSENT TO DECREE INCLUDED**  
12 **IN A MORTGAGE OR DEED OF TRUST IN VIOLATION OF THIS PARAGRAPH IS VOID AND**  
13 **UNENFORCEABLE.**

14 (3) The individual selling the property under a power of sale need not be  
15 named in the mortgage or deed of trust.

16 (4) An error or omission in a mortgage or deed of trust concerning the  
17 designation of the trustee or the individual authorized to exercise a power of sale does not  
18 invalidate the instrument or the ability of the mortgagee or beneficiary of the deed of trust  
19 to appoint an individual to exercise the power of sale.

20 (5) If a mortgage or deed of trust allows for the appointment or substitution  
21 of a trustee or an individual authorized to exercise a power of sale, the holder of the  
22 mortgage or deed of trust may make the appointments or substitutions from time to time.

23 (c) A sale made pursuant to this section, §§ 7–105.1 through 7–105.8 of this  
24 subtitle, or the Maryland Rules, after final ratification by the court and grant of the  
25 property to the purchaser on payment of the purchase money, has the same effect as if the  
26 sale and grant were made under decree between the proper parties in relation to the  
27 mortgage or deed of trust and in the usual course of the court, and operates to pass all the  
28 title which the borrower had in the property at the time of the recording of the mortgage or  
29 deed of trust.

30 7–105.1.

31 (a) (1) In this section the following words have the meanings indicated.

32 (2) (i) “Certified community development financial institution” means  
33 a community development financial institution that is certified by the Community  
34 Development Financial Institutions Fund in the U.S. Department of the Treasury under  
35 12 U.S.C. § 4701 et seq.

1 (ii) “Certified community development financial institution”  
2 includes any company that controls, is controlled by, or is under common control with a  
3 certified community development financial institution.

4 (3) “Final loss mitigation affidavit” means an affidavit that:

5 (i) Is made by a person authorized to act on behalf of [a secured  
6 party of] **THE OWNER OF A DEBT INSTRUMENT SECURED BY** a mortgage or deed of trust  
7 on owner-occupied residential property that is the subject of a foreclosure action;

8 (ii) Certifies the completion of the final determination of loss  
9 mitigation analysis in connection with the mortgage or deed of trust; [and]

10 (iii) **PROVIDES THE INFORMATION DESCRIBED UNDER §**  
11 **5-1203(B)(3) OF THE COURTS ARTICLE; AND**

12 (IV) If denied, provides [an]:

13 1. **AN** explanation for the denial of a loan modification or  
14 other loss mitigation; **AND**

15 2. **A DETAILED DESCRIPTION OF THE LOSS MITIGATION**  
16 **PROGRAMS AVAILABLE TO THE MORTGAGOR OR THE GRANTOR.**

17 (4) “Foreclosure mediation” means a conference at which the parties in a  
18 foreclosure action, their attorneys, additional representatives of the parties, or a  
19 combination of those persons appear before an impartial individual to discuss the positions  
20 of the parties in an attempt to reach agreement on a loss mitigation program for the  
21 mortgagor or grantor.

22 (5) “Housing counseling services” means assistance provided to mortgagors  
23 or grantors by nonprofit and governmental entities that are identified on a list maintained  
24 by the Department of Housing and Community Development.

25 (6) “Loss mitigation analysis” means an evaluation of the facts and  
26 circumstances of a loan secured by owner-occupied residential property to determine:

27 (i) Whether a mortgagor or grantor qualifies for a loan modification;  
28 and

29 (ii) If there will be no loan modification, whether any other loss  
30 mitigation program may be made available to the mortgagor or grantor.

31 (7) “Loss mitigation program” means an option in connection with a loan  
32 secured by owner-occupied residential property that:

1 (i) Avoids foreclosure through loan modification or other changes to  
2 existing loan terms that are intended to allow the mortgagor or grantor to stay in the  
3 property;

4 (ii) Avoids foreclosure through a short sale, deed in lieu of  
5 foreclosure, or other alternative that is intended to simplify the mortgagor's or grantor's  
6 relinquishment of ownership of the property; or

7 (iii) Lessens the harmful impact of foreclosure on the mortgagor or  
8 grantor.

9 (8) "Owner-occupied residential property" means residential property in  
10 which at least one unit is occupied by an individual who:

11 (i) Has an ownership interest in the property; and

12 (ii) Uses the property as the individual's primary residence.

13 (9) "Postfile mediation" means foreclosure mediation that occurs in  
14 accordance with subsection (j) of this section after the date on which the [order to docket  
15 or] complaint to foreclose is filed.

16 (10) "Prefile mediation" means foreclosure mediation that occurs in  
17 accordance with subsection (d) of this section before the date on which the [order to docket  
18 or] complaint to foreclose is filed.

19 (11) "Preliminary loss mitigation affidavit" means an affidavit that:

20 (i) Is made by a person authorized to act on behalf of [a secured  
21 party of] **THE OWNER OF A DEBT INSTRUMENT SECURED BY** a mortgage or deed of trust  
22 on owner-occupied residential property that is the subject of a foreclosure action;

23 (ii) Certifies the status of an incomplete loss mitigation analysis in  
24 connection with the mortgage or deed of trust; and

25 (iii) Includes reasons why the loss mitigation analysis is incomplete.

26 (12) "Residential property" means real property improved by four or fewer  
27 single family dwelling units that are designed principally and are intended for human  
28 habitation.

29 (b) (1) Except as provided in paragraph (2) of this subsection, an action to  
30 foreclose a mortgage or deed of trust on residential property may not be filed until the later  
31 of:

32 (i) 90 days after a default in a condition on which the mortgage or

1 deed of trust provides that a sale may be made; or

2 (ii) 45 days after the notice of intent to foreclose required under  
3 subsection (c) of this section is sent.

4 (2) (i) The [secured party] **OWNER OF A DEBT INSTRUMENT**  
5 **SECURED BY A MORTGAGE OR DEED OF TRUST** may petition the circuit court for leave  
6 to immediately commence an action to foreclose the mortgage or deed of trust if:

7 1. The loan secured by the mortgage or deed of trust was  
8 obtained by fraud or deception;

9 2. No payments have ever been made on the loan secured by  
10 the mortgage or deed of trust;

11 3. The property subject to the mortgage or deed of trust has  
12 been destroyed;

13 4. The default occurred after the stay has been lifted in a  
14 bankruptcy proceeding; or

15 5. The property subject to the mortgage or deed of trust is  
16 property that is vacant and abandoned as provided under § 7–105.14 of this subtitle.

17 (ii) The court may rule on the petition with or without a hearing.

18 (iii) If the petition is granted:

19 1. The action may be filed at any time after a default in a  
20 condition on which the mortgage or deed of trust provides that a sale may be made; and

21 2. The [secured party] **OWNER OF THE DEBT INSTRUMENT**  
22 need not send the written notice of intent to foreclose required under subsection (c) of this  
23 section.

24 (c) (1) Except as provided in subsection (b)(2)(iii) of this section, at least 45  
25 days before the filing of an action to foreclose a mortgage or deed of trust on residential  
26 property, the [secured party] **OWNER OF THE DEBT INSTRUMENT** shall send a written  
27 notice of intent to foreclose to the mortgagor or grantor and the record owner.

28 (2) The notice of intent to foreclose shall be sent:

29 (i) By certified mail, postage prepaid, return receipt requested,  
30 bearing a postmark from the United States Postal Service; and

31 (ii) By first-class mail.

1 (3) A copy of the notice of intent to foreclose shall be sent to the  
2 Commissioner of Financial Regulation.

3 (4) The notice of intent to foreclose shall:

4 (i) Be in the form that the Commissioner of Financial Regulation  
5 prescribes by regulation; and

6 (ii) Contain:

7 1. The name and telephone number of:

8 A. The [secured party] **OWNER OF THE DEBT**  
9 **INSTRUMENT**;

10 B. The mortgage servicer, if applicable; and

11 C. An agent of the [secured party] **OWNER OF THE DEBT**  
12 **INSTRUMENT** who is authorized to modify the terms of the mortgage loan;

13 2. The name and license number of the Maryland mortgage  
14 lender and mortgage originator, if applicable;

15 3. The amount required to cure the default and reinstate the  
16 loan, including all past due payments, penalties, and fees;

17 4. A statement recommending that the mortgagor or grantor  
18 seek housing counseling services;

19 5. The telephone number and the Internet address of  
20 nonprofit and government resources available to assist mortgagors and grantors facing  
21 foreclosure, as identified by the Commissioner of Financial Regulation;

22 6. An explanation of the Maryland foreclosure process and  
23 time line, as prescribed by the Commissioner of Financial Regulation; and

24 7. Any other information that the Commissioner of Financial  
25 Regulation requires by regulation.

26 (5) For an owner-occupied residential property, the notice of intent to  
27 foreclose shall be accompanied by:

28 (i) A loss mitigation application:

29 1. For loss mitigation programs that are applicable to the  
30 loan secured by the mortgage or deed of trust that is the subject of the foreclosure action;  
31 or

1                                   2.    If the [secured party] **OWNER OF THE DEBT**  
2 **INSTRUMENT** does not have its own loss mitigation application, in the form prescribed by  
3 the Commissioner of Financial Regulation;

4                                   (ii)   Instructions for completing the loss mitigation application and a  
5 telephone number to call to confirm receipt of the application;

6                                   (iii)   A description of the eligibility requirements for the loss  
7 mitigation programs offered by the [secured party] **OWNER OF THE DEBT INSTRUMENT**  
8 that may be applicable to the loan secured by the mortgage or deed of trust that is the  
9 subject of the foreclosure action;

10                                  (iv)   An envelope addressed to the person responsible for conducting  
11 loss mitigation analysis on behalf of the [secured party] **OWNER OF THE DEBT**  
12 **INSTRUMENT** for the loan secured by the mortgage or deed of trust that is the subject of  
13 the foreclosure action;

14                                  (v)   If the [secured party] **OWNER OF THE DEBT INSTRUMENT**  
15 offers prefile mediation, a notice in the form that the Commissioner of Financial Regulation  
16 prescribes by regulation that states that:

17                                   1.    The [secured party] **OWNER OF THE DEBT INSTRUMENT**  
18 offers prefile mediation;

19                                   2.    The mortgagor or grantor may elect to participate in  
20 prefile mediation;

21                                   3.    The mortgagor or grantor will not be entitled to postfile  
22 mediation if the mortgagor or grantor participates in prefile mediation, except as otherwise  
23 provided in a prefile mediation agreement;

24                                   4.    The mortgagor or grantor is required to participate in  
25 housing counseling services as a precondition to prefile mediation; and

26                                   5.    A fee will be charged for the prefile mediation and the  
27 amount of the fee; and

28                                  (vi)   If the [secured party] **OWNER OF THE DEBT INSTRUMENT**  
29 offers prefile mediation, an application to participate in prefile mediation and instructions  
30 to complete and submit the application, all in the form that the Commissioner of Financial  
31 Regulation prescribes by regulation.

32                                  (6)   For a property that is not an owner-occupied residential property, the  
33 notice of intent to foreclose shall be accompanied by:

1 (i) A written notice of the determination that the property is not  
2 owner-occupied residential property; and

3 (ii) A telephone number to call to contest that determination.

4 (d) (1) For owner-occupied residential property, [a secured party] **AN OWNER**  
5 **OF THE DEBT INSTRUMENT** may offer to participate in prefile mediation with a mortgagor  
6 or grantor to whom the [secured party] **OWNER OF THE DEBT INSTRUMENT** has delivered  
7 a notice of intent to foreclose.

8 (2) If offered by [a secured party] **AN OWNER OF A DEBT INSTRUMENT**, a  
9 mortgagor or grantor may elect to participate in prefile mediation.

10 (3) If a mortgagor or grantor elects to participate in prefile mediation, the  
11 mortgagor or grantor shall notify the [secured party] **OWNER OF THE DEBT INSTRUMENT**  
12 by submitting the application described in subsection (c)(5)(vi) of this section not more than  
13 25 days after the date on which the notice of intent to foreclose is mailed by the [secured  
14 party] **OWNER OF THE DEBT INSTRUMENT**.

15 (4) (i) As a precondition to prefile mediation, a mortgagor or grantor  
16 shall participate in housing counseling services.

17 (ii) The Department of Housing and Community Development shall  
18 prescribe the timing and form of certification of participation in housing counseling  
19 services.

20 (5) If a mortgagor or grantor submits an application to participate in prefile  
21 mediation to the [secured party] **OWNER OF THE DEBT INSTRUMENT** in accordance with  
22 paragraph (3) of this subsection, the [secured party] **OWNER OF THE DEBT INSTRUMENT**  
23 shall notify the Office of Administrative Hearings not more than 5 business days after the  
24 date on which the [secured party] **OWNER OF THE DEBT INSTRUMENT** receives the  
25 application.

26 (6) The Office of Administrative Hearings shall:

27 (i) Schedule a prefile mediation session not more than 60 days after  
28 the day on which it receives notice by [a secured party] **AN OWNER OF THE DEBT**  
29 **INSTRUMENT** of an election to participate in prefile mediation; and

30 (ii) Notify the parties and their attorneys, if any, of the date of the  
31 prefile mediation session.

32 (7) By regulation, the Commissioner of Financial Regulation shall:

33 (i) Establish the fee for prefile mediation; and



1 (ii) Prescribe the form and content of the notice about prefile  
2 mediation, the application to participate in prefile mediation, and instructions to complete  
3 the application.

4 (8) (i) Notwithstanding subsection (b)(1) of this section, if the [secured  
5 party] **OWNER OF THE DEBT INSTRUMENT** and grantor or mortgagor elect to participate  
6 in prefile mediation, [an order to docket or] A complaint to foreclose may not be filed until  
7 the completion of prefile mediation in accordance with this section.

8 (ii) The date that prefile mediation is completed is the date that the  
9 Office of Administrative Hearings issues the report describing the results of the prefile  
10 mediation.

11 (9) The fee for prefile mediation collected under this subsection shall be  
12 distributed to the Housing Counseling and Foreclosure Mediation Fund established under  
13 § 4–507 of the Housing and Community Development Article.

14 (10) By regulation, the Commissioner of Financial Regulation shall  
15 establish a mediation checklist that describes the matters that shall be reviewed and  
16 considered in a prefile mediation.

17 (11) (i) At the commencement of a prefile mediation session, each party  
18 shall review the mediation checklist.

19 (ii) The mediator shall mark each item on the mediation checklist as  
20 the item is addressed at the prefile mediation session.

21 (iii) At the conclusion of a prefile mediation session, each party shall  
22 sign the mediation checklist.

23 (12) If the prefile mediation results in an agreement, the parties shall  
24 execute a prefile mediation agreement.

25 (13) In addition to describing the terms of the agreement among the parties,  
26 the prefile mediation agreement shall, in 14 point, bold font:

27 (i) Designate the person and address to whom the mortgagor or  
28 grantor may provide notice of a change of financial circumstances; and

29 (ii) State that the mortgagor or grantor is not entitled to postfile  
30 mediation unless otherwise agreed by the parties.

31 (14) The Office of Administrative Hearings shall draft the prefile mediation  
32 agreement and provide a copy of the executed agreement to the parties and their attorneys,  
33 if any.

34 (15) The Office of Administrative Hearings shall provide a report of results

1 of mediation to the parties and their attorneys, if any.

2 (16) If a mortgagor or grantor notifies the person designated under  
3 paragraph (13) of this subsection of a change of financial circumstances, the designee shall:

4 (i) Determine whether the change of financial circumstances shall  
5 alter the mediation agreement or outcome of the prefile mediation; and

6 (ii) Notify the mortgagor or grantor of the determination by  
7 first-class mail before any additional action is taken with respect to foreclosure.

8 (17) (i) The parties to the prefile mediation agreement may execute an  
9 amended prefile mediation agreement based on a material change of financial  
10 circumstances of the mortgagor or grantor.

11 (ii) The [secured party] **OWNER OF THE DEBT INSTRUMENT** shall  
12 provide a copy of the executed amended agreement to the mortgagor or grantor.

13 (18) To the extent that a notice of intent to foreclose complies with this  
14 section and otherwise is valid under the law, a notice of intent to foreclose issued with  
15 respect to a property that has been the subject of prefile mediation continues to be valid for  
16 1 year after the date on which the initial prefile mediation agreement is executed by the  
17 parties.

18 (19) Nothing in this subsection shall prohibit [a secured party] **AN OWNER**  
19 **OF A DEBT INSTRUMENT** and mortgagor or grantor from engaging in loss mitigation by  
20 other means.

21 **(D-1) (1) NOTWITHSTANDING ANY OTHER LAW OR RULE OR THE**  
22 **PROVISIONS OF A DEBT INSTRUMENT, MORTGAGE, OR DEED OF TRUST, AN ACTION**  
23 **TO FORECLOSE A MORTGAGE OR DEED OF TRUST ON RESIDENTIAL PROPERTY SHALL**  
24 **BE COMMENCED BY FILING A COMPLAINT.**

25 **(2) EXCEPT AS PROVIDED IN THIS SECTION, PRACTICE AND**  
26 **PROCEDURE IN AN ACTION TO FORECLOSE A MORTGAGE OR DEED OF TRUST ON**  
27 **RESIDENTIAL PROPERTY SHALL BE GOVERNED BY TITLE 2 OF THE MARYLAND**  
28 **RULES.**

29 (e) [An order to docket or a] **A** complaint to foreclose a mortgage or deed of trust  
30 on residential property shall:

31 (1) Include:

32 (i) If applicable, **AN AFFIDAVIT STATING** the license number of:

33 1. The mortgage originator; [and]

1                   2.     [The mortgage lender] **THE OWNER OF THE DEBT**  
2 **INSTRUMENT SECURED BY THE MORTGAGE OR DEED OF TRUST AT THE TIME THE**  
3 **COMPLAINT TO FORECLOSE IS FILED; AND**

4                   3.     **ALL MORTGAGE SERVICERS WHO SERVICED THE**  
5 **MORTGAGE LOAN ON OR BEFORE THE TIME THE COMPLAINT TO FORECLOSE IS**  
6 **FILED; and**

7                   (ii)    An affidavit stating:

8                   1.     The date on which the default occurred and the nature of  
9 the default; and

10                  2.     If applicable, that:

11                  A.     A notice of intent to foreclose was sent to the mortgagor or  
12 grantor in accordance with subsection (c) of this section and the date on which the notice  
13 was sent; [and]

14                  B.     At the time the notice of intent to foreclose was sent, the  
15 contents of the notice of intent to foreclose were accurate; and

16                  C.     **AT THE TIME OF THE ACTION TO FORECLOSE ON THE**  
17 **MORTGAGE OR DEED OF TRUST WAS FILED THE CONTENTS OF THE NOTICE OF**  
18 **INTENT TO FORECLOSE ARE ACCURATE, EITHER AS ORIGINALLY SENT OR AS**  
19 **AMENDED; AND**

20                  (2)    Be accompanied by:

21                  (i)     The original or a certified copy of the mortgage or deed of trust;

22                  (ii)    A statement of the debt remaining due and payable supported by  
23 an affidavit of the plaintiff or the [secured party] **OWNER OF THE DEBT INSTRUMENT** or  
24 the agent or attorney of the plaintiff or [secured party] **OWNER OF THE DEBT**  
25 **INSTRUMENT;**

26                  (iii)  A copy of the debt instrument accompanied by an affidavit  
27 certifying ownership of the debt instrument;

28                  (iv)    If applicable, the original or a certified copy of the assignment of  
29 the mortgage for purposes of foreclosure or the deed of appointment of a substitute trustee;

30                  (v)     If any defendant is an individual, an affidavit that is in  
31 compliance with § 521 of the Servicemembers Civil Relief Act, 50 U.S.C. App. § 501 et seq.;

1 (vi) If applicable, a copy of the notice of intent to foreclose;

2 (vii) If the [secured party] **OWNER OF THE DEBT INSTRUMENT** and  
3 mortgagor or grantor have elected to participate in prefile mediation, the report of the  
4 prefile mediation issued by the Office of Administrative Hearings;

5 (viii) If the [secured party] **OWNER OF THE DEBT INSTRUMENT** and  
6 the mortgagor or grantor have not elected to participate in prefile mediation, a statement  
7 that the parties have not elected to participate in prefile mediation;

8 (ix) In addition to any other filing fees required by law, a filing fee in  
9 the amount of [~~\$300~~] **\$800**; and

10 (x) 1. If the loss mitigation analysis has been completed subject  
11 to subsection (g) of this section, a final loss mitigation affidavit in the form prescribed by  
12 regulation adopted by the Commissioner of Financial Regulation; and

13 2. If the loss mitigation analysis has not been completed, a  
14 preliminary loss mitigation affidavit in the form prescribed by regulation adopted by the  
15 Commissioner of Financial Regulation.

16 (f) Notwithstanding any other law, the court may not accept a lost note affidavit  
17 in lieu of a copy of the debt instrument required under subsection (e)(2)(iii) of this section,  
18 unless the affidavit:

19 (1) Identifies the owner of the debt instrument and states from whom and  
20 the date on which the owner acquired ownership;

21 (2) States why a copy of the debt instrument cannot be produced; and

22 (3) Describes the good faith efforts made to produce a copy of the debt  
23 instrument.

24 (g) Only for purposes of a final loss mitigation affidavit that is filed with [an order  
25 to docket or] A complaint to foreclose, a loss mitigation analysis is not considered complete  
26 if the reason for the denial or determination of ineligibility is due to the inability of the  
27 [secured party] **OWNER OF THE DEBT INSTRUMENT** to:

28 (1) Establish communication with the mortgagor or grantor; or

29 (2) Obtain all documentation and information necessary to conduct the loss  
30 mitigation analysis.

31 (h) (1) A copy of the [order to docket or] complaint to foreclose on residential  
32 property and all other papers filed with it in the form and sequence as prescribed by  
33 regulations adopted by the Commissioner of Financial Regulation, accompanied by the

1 documents required under paragraphs [(2), (3), and (4)] **(2) THROUGH (5)** of this  
2 subsection, shall be served on the mortgagor or grantor by:

3 (i) Personal delivery of the papers to the mortgagor or grantor; or

4 (ii) Leaving the papers with a resident of suitable age and discretion  
5 at the mortgagor's or grantor's dwelling house or usual place of abode.

6 (2) The service of documents under paragraph (1) of this subsection shall  
7 be accompanied by a separate, clearly marked notice, in the form prescribed by regulation  
8 adopted by the Commissioner of Financial Regulation, that states:

9 (i) The significance of the [order to docket or a] complaint to  
10 foreclose;

11 (ii) The options for the mortgagor or grantor to take, including  
12 housing counseling services and financial assistance resources the mortgagor or grantor  
13 may consult; and

14 (iii) In the case of a mortgagor or grantor who has participated in  
15 prefile mediation, that the mortgagor or grantor is not entitled to postfile mediation except  
16 as otherwise provided in the prefile mediation agreement.

17 (3) If the [order to docket or] complaint to foreclose is accompanied by a  
18 preliminary loss mitigation affidavit, the service of documents under paragraph (1) of this  
19 subsection shall be accompanied by a loss mitigation application form and any other  
20 supporting documents as prescribed by regulation adopted by the Commissioner of  
21 Financial Regulation.

22 (4) (i) Except as provided in subparagraph (ii) of this paragraph, if the  
23 [order to docket or] complaint to foreclose is accompanied by a final loss mitigation affidavit  
24 and concerns owner-occupied residential property, the service of documents under  
25 paragraph (1) of this subsection shall be accompanied by a request for postfile mediation  
26 form and any other supporting documents as prescribed by regulation adopted by the  
27 Commissioner of Financial Regulation.

28 (ii) The [order to docket or] complaint to foreclose may exclude the  
29 request for postfile mediation form if:

30 1. The mortgagor or grantor has participated in prefile  
31 mediation and the prefile mediation agreement does not give the mortgagor or grantor the  
32 right to participate in postfile mediation; or

33 2. The property subject to the mortgage or deed of trust is not  
34 owner-occupied.

35 (5) If at least two good faith efforts to serve the mortgagor or grantor under

1 paragraph (1) of this subsection on different days have not succeeded, the plaintiff may  
2 effect service by:

3 (i) Filing an affidavit with the court describing the good faith efforts  
4 to serve the mortgagor or grantor; and

5 (ii) 1. Mailing a copy of all the documents required to be served  
6 under paragraph (1) of this subsection by certified mail, return receipt requested, and  
7 first-class mail to the mortgagor's or grantor's last known address and, if different, to the  
8 address of the residential property subject to the mortgage or deed of trust; and

9 2. Posting a copy of all the documents required to be served  
10 under paragraph (1) of this subsection in a conspicuous place on the residential property  
11 subject to the mortgage or deed of trust.

12 (6) The individual making service of documents under this subsection shall  
13 file proof of service with the court in accordance with the Maryland Rules.

14 (i) (1) If the [order to docket or] complaint to foreclose is accompanied by a  
15 preliminary loss mitigation affidavit, the [secured party] **OWNER OF THE DEBT**  
16 **INSTRUMENT**, at least 30 days before the date of a foreclosure sale, shall:

17 (i) File with the court a final loss mitigation affidavit in the form  
18 prescribed by regulation adopted by the Commissioner of Financial Regulation; and

19 (ii) Send to the mortgagor or grantor by first class and by certified  
20 mail:

21 1. A copy of the final loss mitigation affidavit; and

22 2. A request for postfile mediation form and supporting  
23 documents as provided under subsection (h)(4) of this section.

24 (2) A final loss mitigation affidavit shall be filed under this subsection no  
25 earlier than 28 days after the [order to docket or] complaint to foreclose is served on the  
26 mortgagor or grantor.

27 (j) (1) (i) This paragraph applies to a mortgagor or grantor who:

28 1. Has not participated in prefile mediation; or

29 2. Has participated in prefile mediation that resulted in a  
30 prefile mediation agreement that gives the mortgagor or grantor the right to participate in  
31 postfile mediation.

32 (ii) In a foreclosure action on owner-occupied residential property,  
33 the mortgagor or grantor may file with the court a completed request for postfile mediation

1 not later than:

2 1. If the final loss mitigation affidavit was delivered along  
3 with service of the copy of the [order to docket or] complaint to foreclose under subsection  
4 (h) of this section, 25 days after that service on the mortgagor or grantor; or

5 2. If the final loss mitigation affidavit was mailed as provided  
6 in subsection (i) of this section, 25 days after the mailing of the final loss mitigation  
7 affidavit.

8 (iii) 1. A request for postfile mediation shall be accompanied by a  
9 filing fee of \$50.

10 2. The court may reduce or waive the filing fee under  
11 subparagraph 1 of this subparagraph if the mortgagor or grantor is eligible for a  
12 reduction or waiver under the Maryland Legal Services guidelines.

13 (iv) The mortgagor or grantor shall mail a copy of the request for  
14 postfile mediation to the [secured party's] **OWNER OF THE DEBT INSTRUMENT'S**  
15 foreclosure attorney.

16 (2) (i) The [secured party] **OWNER OF THE DEBT INSTRUMENT** may  
17 file a motion to strike the request for postfile mediation in accordance with the Maryland  
18 Rules.

19 (ii) The motion to strike must be accompanied by an affidavit that  
20 sets forth the reasons why postfile mediation is not appropriate.

21 (iii) The [secured party] **OWNER OF THE DEBT INSTRUMENT** shall  
22 mail a copy of the motion to strike and the accompanying affidavit to the mortgagor or  
23 grantor.

24 (iv) There is a presumption that a mortgagor or grantor is entitled to  
25 postfile mediation with respect to owner-occupied residential property unless:

26 1. Good cause is shown why postfile mediation is not  
27 appropriate; or

28 2. The mortgagor or grantor participated in prefile mediation  
29 and the prefile mediation agreement does not give the mortgagor or grantor the right to  
30 participate in postfile mediation.

31 (3) (i) The mortgagor or grantor may file a response to the motion to  
32 strike within 15 days.

33 (ii) The mortgagor or grantor shall mail a copy of the response to the  
34 foreclosure attorney.

1 (iii) **THE COURT SHALL HOLD A HEARING ON THE MOTION TO**  
2 **STRIKE.**

3 (iv) If the court grants the motion to strike, the court shall instruct  
4 the Office of Administrative Hearings to cancel any scheduled postfile mediation.

5 (k) (1) Within 5 days after receipt of a request for postfile mediation, the court  
6 shall transmit the request to the Office of Administrative Hearings for scheduling.

7 (2) (i) Within 60 days after transmittal of the request for foreclosure  
8 mediation, the Office of Administrative Hearings shall conduct a foreclosure mediation.

9 (ii) For good cause, the Office of Administrative Hearings may  
10 extend the time for completing the foreclosure mediation for a period not exceeding 30 days  
11 or, if all parties agree, for a longer period of time.

12 (3) The Office of Administrative Hearings shall send notice of the  
13 scheduled foreclosure mediation to the foreclosure attorney, the [secured party] **OWNER**  
14 **OF THE DEBT INSTRUMENT**, and the mortgagor or grantor.

15 (4) The notice from the Office of Administrative Hearings shall:

16 (i) Include instructions regarding the documents and information,  
17 as required by regulations adopted by the Commissioner of Financial Regulation, that must  
18 be provided by each party to the other party and to the mediator; and

19 (ii) Require the information and documents to be provided no later  
20 than 20 days before the scheduled date of the foreclosure mediation.

21 (l) (1) (i) By regulation, the Commissioner of Financial Regulation shall  
22 establish a mediation checklist that describes the matters that shall be reviewed and  
23 considered in a postfile mediation.

24 (ii) At the commencement of a postfile mediation session, each party  
25 shall review the mediation checklist.

26 (iii) The mediator shall mark each item on the mediation checklist as  
27 the item is addressed at the postfile mediation session.

28 (iv) At the conclusion of a postfile mediation session, each party shall  
29 sign the mediation checklist.

30 (2) At a foreclosure mediation:

31 (i) The mortgagor or grantor shall be present;



1 (ii) The mortgagor or grantor may be accompanied by a housing  
2 counselor and may have legal representation;

3 (iii) The [secured party] **OWNER OF THE DEBT INSTRUMENT**, or a  
4 representative of the [secured party] **OWNER OF THE DEBT INSTRUMENT**, shall be  
5 present; and

6 (iv) Any representative of the [secured party] **OWNER OF THE DEBT**  
7 **INSTRUMENT** must have the authority to settle the matter or be able to readily contact a  
8 person with authority to settle the matter.

9 (3) At the foreclosure mediation, the parties and the mediator shall address  
10 loss mitigation programs that may be applicable to the loan secured by the mortgage or  
11 deed of trust that is the subject of the foreclosure action.

12 (4) The Office of Administrative Hearings shall file a report with the court  
13 that states the outcome of the request for foreclosure mediation within the earlier of:

14 (i) 7 days after a foreclosure mediation is held; or

15 (ii) The end of the 60-day mediation period specified in subsection  
16 (k)(2) of this section, plus any extension granted by the Office of Administrative Hearings.

17 (5) Except for a request for postponement or a failure to appear, the rules  
18 of procedure for contested cases of the Office of Administrative Hearings do not govern a  
19 foreclosure mediation conducted by the Office.

20 (m) (1) If the parties do not reach an agreement at the postfile mediation, or  
21 the 60-day mediation period expires without an extension granted by the Office of  
22 Administrative Hearings, [the foreclosure attorney may schedule the foreclosure sale]  
23 **WITHIN 45 DAYS AFTER THE OFFICE OF ADMINISTRATIVE HEARINGS FILES ITS**  
24 **REPORT WITH THE COURT, THE COURT SHALL SCHEDULE A TRIAL TO DETERMINE**  
25 **WHETHER THE OWNER OF THE DEBT INSTRUMENT HAS THE RIGHT TO FORECLOSE**  
26 **ON RESIDENTIAL PROPERTY.**

27 (2) [(i) In the case of postfile mediation, subject to subparagraphs (ii)  
28 and (iii) of this paragraph, the mortgagor or grantor may file a motion to stay the  
29 foreclosure sale.

30 (ii) A motion to stay under this paragraph shall be filed within 15  
31 days after:

32 1. The date the postfile mediation is held; or

33 2. If no postfile mediation is held, the date the Office of  
34 Administrative Hearings files its report with the court.

1 (iii) A motion to stay under this paragraph must allege specific  
2 reasons why loss mitigation should have been granted.

3 (3) Nothing in this subtitle precludes the mortgagor or grantor from  
4 pursuing any other remedy or legal defense available to the mortgagor or grantor.

5 (n) A foreclosure sale of residential property may not occur until:

6 (1) If the residential property is not owner-occupied residential property,  
7 at least 45 days after service of process is made under subsection (h) of this section;

8 (2) If the residential property is owner-occupied residential property and  
9 foreclosure mediation is not held, the later of:

10 (i) At least 45 days after service of process that includes a final loss  
11 mitigation affidavit made under subsection (h) of this section; or

12 (ii) At least 30 days after a final loss mitigation affidavit is mailed  
13 under subsection (i) of this section; and

14 (3) If the residential property is owner-occupied residential property and  
15 postfile mediation is requested, at least [15] 45 days after[:

16 (i) The date the postfile mediation is held; or

17 (ii) If no postfile mediation is held, the date the Office of  
18 Administrative Hearings files its report with] the court **DETERMINES AT TRIAL THAT**  
19 **THE OWNER OF THE DEBT INSTRUMENT HAS THE RIGHT TO FORECLOSE ON THE**  
20 **RESIDENTIAL PROPERTY.**

21 [(n-1)] (O) (1) If a certified community development financial institution makes  
22 an offer to [a secured party] **THE OWNER OF A DEBT INSTRUMENT** to purchase  
23 owner-occupied residential property for the purpose of transferring the property to the  
24 immediately preceding mortgagor or grantor, no person may require, as a condition of a  
25 sale or transfer of the property to the certified community development financial  
26 institution, any affidavit, statement, agreement, or addendum that limits ownership or  
27 occupancy of the property by the immediately preceding mortgagor or grantor.

28 (2) Any affidavit, statement, agreement, or addendum that limits  
29 ownership or occupancy of owner-occupied residential property by the immediately  
30 preceding mortgagor or grantor:

31 (i) May not serve as a basis to avoid a sale or transfer of the property  
32 to a certified community development financial institution; and

1 (ii) Is unenforceable against any person named in the affidavit,  
2 statement, agreement, or addendum.

3 [(o)] (P) Notice of the time, place, and terms of a foreclosure sale shall be  
4 published in a newspaper of general circulation in the county where the action is pending  
5 at least once a week for 3 successive weeks, the first publication to be not less than 15 days  
6 before the sale and the last publication to be not more than 1 week before the sale.

7 [(p)] (Q) (1) The mortgagor or grantor of residential property has the right to  
8 cure the default by paying all past due payments, penalties, and fees and reinstate the loan  
9 at any time up to [1] 30 business [day before] DAYS AFTER the foreclosure sale occurs.

10 (2) The [secured party] OWNER OF THE DEBT INSTRUMENT or an  
11 authorized agent of the [secured party] OWNER OF THE DEBT INSTRUMENT shall, on  
12 request, provide to the mortgagor or grantor or the mortgagor's or grantor's attorney within  
13 a reasonable time the amount necessary to cure the default and reinstate the loan and  
14 instructions for delivering the payment.

15 [(q)] (R) An action for failure to comply with the provisions of this section shall  
16 be brought within 3 years after the date of the order ratifying the sale.

17 [(r)] (S) Revenue collected from the filing fees required under subsections  
18 (e)(2)(ix) and (j)(1)(iii) of this section shall be distributed to the Housing Counseling and  
19 Foreclosure Mediation Fund established under § 4-507 of the Housing and Community  
20 Development Article.

21 [(s)] (T) The Commissioner of Financial Regulation may adopt additional  
22 regulations necessary to carry out the requirements of this section.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
24 October 1, 2019.