

# HOUSE BILL 803

D3, N1

2lr2819

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By: **Delegate Williams**

Introduced and read first time: February 3, 2022

Assigned to: Environment and Transportation

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## A BILL ENTITLED

1 AN ACT concerning

2 **Residential Property Foreclosure – Filing and Adjudication of Counterclaims**

3 FOR the purpose of authorizing a mortgagor or grantor to file a counterclaim within a  
4 certain period of time following postfile mediation in an action for residential  
5 property foreclosure or, if no postfile mediation is held, the date the Office of  
6 Administrative Hearings files a certain report; establishing alternative  
7 requirements to file a motion to stay in the case of postfile mediation; providing for  
8 certain rules of procedure and requiring the adjudication of legal counterclaims  
9 before any equitable claims are undertaken; and generally relating to residential  
10 property foreclosure proceedings.

11 BY repealing and reenacting, with amendments,  
12 Article – Real Property  
13 Section 7–105.1(m)  
14 Annotated Code of Maryland  
15 (2015 Replacement Volume and 2021 Supplement)

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

18 **Article – Real Property**

19 7–105.1.

20 (m) (1) **[If] SUBJECT TO PARAGRAPH (2)(IV) OF THIS SUBSECTION AND**  
21 **ANY OTHER APPLICABLE LAW GOVERNING THE SCHEDULING OF FORECLOSURE**  
22 **SALES, IF** the parties do not reach an agreement at the postfile mediation, or the 60–day  
23 mediation period expires without an extension granted by the Office of Administrative  
24 Hearings, the foreclosure attorney may schedule the foreclosure sale.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1                   (2)   (i)    In the case of postfile mediation, subject to subparagraphs (ii)  
2 and (iii) of this paragraph, the mortgagor or grantor may file [a]:

3                               1.    **A motion to stay the foreclosure sale; AND**

4                               2.    **A COUNTERCLAIM UNDER TITLE 2 OF THE**  
5 **MARYLAND RULES.**

6                   (ii)   A motion to stay **OR A COUNTERCLAIM** under this paragraph  
7 shall be filed within 15 days after:

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

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

11                   (iii)   A motion to stay under this paragraph must allege specific  
12 reasons why loss mitigation should have been granted **OR THE RIGHT TO FORECLOSE**  
13 **DOES NOT EXIST.**

14                   **(IV) IF A COUNTERCLAIM IS TIMELY FILED UNDER THIS**  
15 **PARAGRAPH ALONG WITH A DEMAND FOR A JURY TRIAL ON ANY LEGAL CLAIMS, THE**  
16 **ACTION FOR FORECLOSURE SHALL BE GOVERNED BY TITLE 2 OF THE MARYLAND**  
17 **RULES AND THE LEGAL CLAIMS IN THE ACTION SHALL BE CONSIDERED AND**  
18 **ADJUDICATED BY THE FACT FINDER BEFORE ANY EQUITABLE CLAIMS ARE PURSUED**  
19 **OR OCCUR.**

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

22                   SECTION 2. AND BE IT FURTHER ENACTED, That, it is the intent of the General  
23 Assembly that this Act be applied and interpreted to affirm the holdings of the Court of  
24 Appeals in Fairfax Savings, F.S.B. v. Kris Jen Limited Partnership et al., 338 Md. 1, 655  
25 A.2d 1265 (1995) and Higgins v. Barnes, 310 Md. 532, 530 A.2d 724 (1987).

26                   SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect June  
27 1, 2022.