

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 803 (Delegate Williams)
Environment and Transportation

Residential Property Foreclosure - Filing and Adjudication of Counterclaims

This bill authorizes a mortgagor or grantor to file a counterclaim within 15 days after (1) postfile mediation in an action for residential property foreclosure is held or (2) if no postfile mediation is held, the date the Office of Administrative Hearings (OAH) files a specified report with the court. If a counterclaim is timely filed along with a demand for a jury trial on any legal claims, the action for foreclosure must be governed by Title 2 of the Maryland Rules (applicable to civil procedures in the circuit courts), and the legal claims in the action must be considered and adjudicated by the fact finder before any equitable claims are pursued or occur. **The bill takes effect June 1, 2022.**

Fiscal Summary

State Effect: General fund expenditures increase, potentially significantly, due to additional annual legal costs for the Department of Housing and Community Development (DHCD) beginning in FY 2023. State interest revenues may decrease to the extent there are additional delays in the foreclosure process.

Local Effect: The bill does not materially affect local operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary/Current Law: Under current law, if the parties in a foreclosure action do not reach an agreement at the postfile mediation, or the 60-day mediation period expires without an extension granted by OAH, the foreclosure attorney may schedule the

foreclosure sale. In the case of postfile mediation, a mortgagor or grantor may file a motion to stay the foreclosure sale; the bill also authorizes the filing of a counterclaim under Title 2 of the Maryland Rules. A motion to stay the sale (or a counterclaim, as authorized by the bill) must be filed within 15 days after (1) postfile mediation is held or (2) if no postfile mediation is held, the date OAH files its report with the court (regarding the outcome of the request for mediation). The motion to stay must allege specific reasons why loss mitigation should have been granted. The bill alters the requirements regarding the motion to stay to alternatively authorize the movant to allege specific reasons why the right to foreclose does not exist.

The bill specifies the intent of the General Assembly that the provisions be applied and interpreted to affirm the holdings of the Court of Appeals in specified cases.

For additional information regarding the State's foreclosure process, please see the **Appendix – Foreclosure Process**.

State Fiscal Effect: General fund expenditures increase, potentially significantly, for DHCD to the extent that it incurs additional contractual legal fees as a result of the authorization for mortgagors to file a counterclaim. DHCD advises that legal fees ranging from \$2,000 to \$4,000 are anticipated for each case in which it requires representation in a counterclaim; however, the number of cases for which a counterclaim may be filed cannot be reliably determined beforehand. However, DHCD further advises that its foreclosure inventory generally ranges from approximately 150 to 300 properties. *For illustrative purposes only*, if a counterclaim is filed in 40% of these cases annually (using the lower threshold of 150 properties), general fund expenditures increase by \$180,000 annually (based on \$3,000 in legal fees per case). Despite the bill's June 1, 2022 effective date, it is assumed that fiscal 2022 expenditures are not materially impacted.

The bill is not anticipated to materially affect the operations or finances of the Judiciary/circuit courts.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Housing and Community Development; Office of Administrative Hearings; Department of Legislative Services

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Appendix – Foreclosure Process

Beginning with the financial downturn in 2007, Maryland saw a significant increase in the number of foreclosure actions. Foreclosure activity likely peaked in 2010, when the number of foreclosure events exceeded 50,000. Due to a multitude of factors, including legislation addressing the State’s foreclosure mediation process, consumer outreach efforts, and enhanced mortgage industry regulation and enforcement surrounding many banks’ and mortgage companies’ foreclosure practices, the number of foreclosure events decreased significantly to 16,049 in 2011. However, these changes also resulted in the general lengthening of the foreclosure process, leaving many housing units in limbo for years at a time.

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 order to docket (OTD) or a complaint to foreclose. A copy of the NOI must be sent to the Commissioner of Financial Regulation, and if the property is owner-occupied, the NOI must be accompanied by a loss mitigation application. Whether the filing of an OTD, or a complaint to foreclose, is appropriate depends 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 (1) 90 days (or 120 days if the loan is “federally related”) after a default in a condition on which the mortgage or deed of trust specifies that a sale may be made or (2) 45 days after an NOI is 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;

- the default occurred after the stay has been lifted in a bankruptcy proceeding; or
- the property is found by a court to be vacant and abandoned.

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.

Prerequisites for Foreclosure Sales

Generally, 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 (OAH) files its report with the court.

A foreclosure mediation may be extended for good cause by OAH for up to 30 days, unless all parties agree to a longer extension. Additionally, both parties have an obligation to provide instructions regarding documents and information to each other and the mediator. Any motion to stay a foreclosure sale must come within 15 days of the date the postfile mediation is held. Notice of the sale of a foreclosed property must be sent 10 days before the date of 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.

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.

Expedited Foreclosure Process for Vacant and Abandoned Property

Statutory provisions also set forth an expedited foreclosure process for vacant and abandoned property. 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, specified mediation and other preliminary foreclosure process requirements do not apply.