

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1223
(Delegate Embry, *et al.*)
Environment and Transportation

**Foreclosure Actions - Responsibility of Secured Parties and Stay for
Determination of Financial Assistance**

This emergency bill, through uncodified language, requires the Commissioner of Financial Regulation (OCFR) within the Maryland Department of Labor to adopt by emergency regulation a specified notice related to the Maryland Homeowner Assistance Fund. The bill also generally prohibits a secured party from initiating or proceeding with a foreclosure on residential property for 120 days if the secured party receives notice, as specified, that the mortgagor or grantor has a pending conditionally eligible application for financial assistance from the fund; the bill establishes related procedures and requirements. **The bill's provisions related to foreclosure procedures take effect June 1, 2023, the bill terminates in its entirety June 30, 2026.**

Fiscal Summary

State Effect: Any potential increase in expenditures associated with legal fees for the Department of Housing and Community Development (DHCD) are assumed to be minimal and absorbable within budgeted existing resources. OCFR can handle the bill's requirements using existing budgeted resources. Revenues are not materially affected.

Local Effect: The bill is not anticipated to materially affect local government operations or finances.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Emergency Provisions

OCFR must adopt by emergency regulation a clearly marked notice that includes (1) a description of the Maryland Homeowner Assistance Fund; (2) specified information regarding how homeowners can learn about and apply for a grant or loan from the fund, including contact information for the administrator for the fund; and (3) a statement that if the secured party is notified by the administrator for the fund that the mortgagor or grantor has a pending conditionally eligible application for financial assistance from the fund, the secured party may not initiate or proceed with foreclosure of a lien on residential property for 120 days. OCFR must adopt regulations to ensure that the notice remains valid for the duration of the bill.

Foreclosure Proceedings

The bill's prohibition against initiating or proceeding with a foreclosure or lien on residential property if a conditionally eligible application for assistance from the fund is pending, as specified, is not applicable to actions for immediate foreclosure, as specified.

A secured party may continue to engage in prefile mediation and postfile mediation activities with a mortgagor or grantor during the 120-day period. A secured party must include an affidavit when the secured party files with the court an order to docket, a complaint to foreclose, a motion to strike the request for postfile mediation, or other required documents, stating that (1) the secured party did not receive notice from the fund administrator that the mortgagor or grantor has a pending conditionally eligible application for financial assistance from the fund or (2) the secured party did receive such a notice and at least 120 days have passed since receipt.

If the court finds that 120 days have not elapsed since the secured party received notice that the mortgagor or grantor has a pending conditionally eligible application for financial assistance from the fund, the court must stay the foreclosure action, as specified.

Current Law: For more information on the foreclosure process in the State, see the **Appendix – Foreclosure Process**.

The American Rescue Plan Act created the Homeowners Assistance Fund to provide relief to homeowners at risk of displacement through foreclosure or loss of utilities or home energy services due to the COVID-19 pandemic. The U.S. Treasury allocated funding based on states' share of unemployed individuals and the number of borrowers with

mortgages in foreclosure or more than 30 days delinquent. Maryland received \$248.6 million for the program, all administered by DHCD, and DHCD has committed \$79.5 million as of January 2023. DHCD has until September 2026 to spend the remaining funds. The fiscal 2024 operating budget as introduced includes \$21.7 million for financial assistance from the fund.

Small Business Effect: Any small business lenders are subject to longer waiting periods during the foreclosure process under the bill's requirements. OCFR advises that pursuant to guidance issued in December 2022, State-licensed servicers and lenders are to pause foreclosure activity while an application for assistance from the Homeowner Assistance Fund is pending.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

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

Fiscal Note History: First Reader - March 6, 2023
km/jkb

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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. The most recent statewide data regarding foreclosures can be found on the [online database](#) maintained by the Maryland Department of Labor.

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.