

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 769 (Delegate D. Jones, *et al.*)
Environment and Transportation

Real Property – Residential Foreclosures – Materially Delinquent Mortgages

This bill generally alters certain requirements applicable prior to the initiation of a foreclosure action on residential property, including establishing specific requirements in regard to a “materially delinquent mortgage.” Among other provisions, the bill authorizes a mortgagor to raise a defense of *laches* in an action to foreclose or otherwise enforce a materially delinquent mortgage. **The bill takes effect January 1, 2026.**

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 local government finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Definitions

“Materially delinquent mortgage” means a mortgage on which no payments have been made by a party, other than the secured party, in the preceding five years, excluding any period of time in which a secured party could not institute a foreclosure proceeding due to an executive order or other similar official action restricting foreclosure actions.

“Billing cycle” means (1) if a mortgage requires periodic payments at intervals of three months or less, the interval between the days or dates of regular periodic payments required by the terms of the mortgage or (2) if the mortgage terms do not require periodic payments or require periodic payments at intervals greater than three months, every three months.

“Loan-related correspondence” means written communication from a secured party to a mortgagor that:

- if the secured party is required to provide periodic statements under specified federal regulations, complies with those requirements; or
- if the secured party is not required to provide periodic statements, includes (1) the name and contact information of the secured party; (2) the current amount of the outstanding principal balance; (3) the current interest rate; (4) the amount due, disaggregated by principal, interest, charges, and fees; and (5) the length of any payment delinquency, including the date of the last payment.

Requirements to Enforce a Materially Delinquent Mortgage

The following provisions may not be interpreted to (1) prohibit the filing of a petition to immediately commence an action to foreclose, as authorized under existing statute if specified conditions are applicable (*e.g.*, the subject property has been destroyed, the loan was obtained by fraud/deception, etc.) or (2) preclude the court from granting such a petition with respect to a materially delinquent mortgage.

General Correspondence Requirement: A secured party must send loan-related correspondence to the mortgagor of a materially delinquent mortgage in each billing cycle, unless otherwise prohibited by law, regulation, or executive order.

Foreclosures Before October 1, 2027: Prior to October 1, 2027, a secured party may only enforce a materially delinquent mortgage through foreclosure or judicial sale if (1) during the 24 months immediately preceding enforcement (excluding any prohibited periods), at least one piece of loan-related correspondence was sent to the mortgagor per billing cycle or (2) the secured party serves notice of delinquency on the mortgagor at least 90 days prior to commencement (using a form provided by the Commissioner of Financial Regulation, which may be developed by regulation).

Foreclosures After October 1, 2027: After October 1, 2027, a secured party may enforce a materially delinquent mortgage through foreclosure or judicial sale only if the secured party has sent loan-related correspondence to the mortgagor of a materially delinquent mortgage in each billing cycle for the immediately preceding 24 consecutive months.

Laches Defense

In an action to foreclose or enforce a materially delinquent mortgage, a mortgagor may raise a defense of *laches*. When considering this defense, the court may (1) attribute any delay in enforcement to the secured party, even if the secured party did not hold an interest in the mortgage throughout the delay, and (2) order any appropriate relief.

Order to Docket or Complaint to Foreclose a Mortgage or Deed of Trust – Requirements

In addition to existing requirements, an order to docket or a complaint to foreclose on residential property must include an affidavit stating (1) whether the debt instrument constitutes a materially delinquent mortgage and (2) if the debt instrument is a materially delinquent mortgage, that the secured party has satisfied any requirements for instituting foreclosure under the bill.

Current Law:

Doctrine of Laches

Generally, *laches* is an equitable remedy and defense through which relief may be denied to a claimant who has unreasonably delayed asserting one's rights or claims, thereby prejudicing the opposing party. With respect to the foreclosure of mortgages, Maryland courts have determined that "there is no statute of limitations in Maryland applicable to foreclosure of mortgages; that *laches* does not apply in a proceeding to foreclose an old and stale mortgage; in a case where a mortgage is over twenty years old nonpayment of the principal and interest on the mortgage gives rise to a presumption that the mortgage has been paid, but this presumption can be rebutted, and if it is rebutted there is no legal obstacle to the foreclosure of such a mortgage." *Cunningham v. Davidoff*, 188 Md. 437, 53 A.2d 777, (1947).

Foreclosure Process

Generally, for information regarding the State's foreclosure process, see the **Appendix – Foreclosure Process**.

Small Business Effect: Any small businesses holding a materially delinquent mortgage must abide by additional requirements prior to enforcement and are subject to the defense of *laches* in applicable cases.

Additional Comments: According to the Maryland Department of Labor, a review of its records since 2018 indicate that materially delinquent mortgages represented less than 1% of all notice of intent to foreclose filings.

Additional Information

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

Designated Cross File: SB 682 (Senator Charles) - Judicial Proceedings.

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 - February 14, 2025
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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.