

Testimony to the House Environment and Transportation Committee
HB 803-Residential Property Foreclosure - Filing and Adjudication of Counterclaims
Position: Favorable

February 22, 2022

The Honorable Kumar P. Barve, Chair
Environment and Transportation Committee
Room 251, HOB
Annapolis, MD 21401
cc: Members, Environment and Transportation Committee

Honorable Chair Barve and Members of the Committee:

The Maryland Consumer Rights Coalition (MCRC) is a statewide coalition of individuals and organizations that advances financial justice and economic inclusion for Maryland consumers through research, education, direct service, and advocacy. Our 8,500 supporters include consumer advocates, practitioners, and low-income and working families throughout Maryland.

We are writing today in support of HB 803. HB 803 permits Maryland homeowners facing unfair or deceptive foreclosures pursued in violations of Maryland and Federal laws to have their day in court. HB 803 expressly permits for counterclaims in a foreclosure action where the lender is threatening to take their home. It makes no sense as a matter of judicial economy to require homeowners who have claims against their mortgage company to pursue separate actions while their mortgage company is trying to take the home: this situation just creates a race to the finish line and is just not fair, just, or equitable.

HB 803 responds to the issue of inaccurate data and errors found in today's secondary mortgage market. Examples include:

- The Mortgage Servicing Collaborative ("MSC") of the Urban Institute's Housing and Finance Policy Center has identified in its comprehensive report, *The Case for Mortgage Servicing Data Standards* (Urban Institute, 2018) (the "MSC Report") that "[D]uring the foreclosure crisis when hundreds of billions of dollars of servicing portfolios were transferred from one servicer to another in a short period...Some [transfers between servicers] were affected by widespread data errors that led to borrower harm through missed opportunities for loss mitigation, misapplication of escrow payments, or erroneous fees. Servicers incurred significant financial costs, penalties, and reputational harm." *Id.* at 6 (citations omitted)
- A 2017 market survey of the servicing industry conducted by the Federal Housing Finance Agency, i.e. *Future of Mortgage Servicing: Market Survey Results* (Apr. 2018), identified the known challenges faced by the mortgage servicing market including that "[a]pproximately 60% of respondents indicated the key challenges for servicing transfers are ensuring data accuracy

and completeness, and minimizing borrower impacts.” *Id.* at 6. More specifically the FHFA survey found,

- Respondents stated that varied data and document standards followed by different servicers leads to data inconsistencies and gaps during the [Mortgage Servicing Rights (MSR)] transfer process.
 - Respondents also expressed that system limitations inhibit the ability to effectively execute MSR transfers.
 - Servicer transfer processes can be manual and time consuming with the need to map every data field, even when transferring to the same servicing system.
 - 50% of nonbanks also highlighted document custody as one of their top three challenges in transferring servicing. *Id.*
- The problems involved in the integrity of loan data in servicing transfers is well known by state-based regulators (including Maryland’s Office of the Commissioner of Financial Regulation) as well. *See e.g.,* Conference of State Bank Supervisors’ Proposed Regulatory Standards for Non-Bank Mortgage Servicers at 5, 11 (“Regulators and the industry have also recognized widespread data quality and integrity issues, especially in the context of transferring servicing rights. Non-bank mortgage servicers often struggle to integrate acquired loan portfolios, and to locate legal and collateral documents associated with the transferred loans. All of these issues are exacerbated if a servicer’s operational capacity has not kept pace with its growth...[these issues involve not only] data mapping problems so often experienced during a large transfer, but also the compatibility of the data”).

Homeowners facing unfair, deceptive, or abusive conduct by mortgage actions, deserve the same rights and opportunities across the state. It simply is not fair that some Maryland courts allow homeowners certain protections in the procedures and others do not—especially in a world where it is well known that the data traded on the secondary mortgage market is prone to mistakes and errors. *See Exhibit 1, “Fresh outrage for Wells Fargo After Mortgage Error Led to hundreds of Foreclosures,”* Charlotte Observer (8/7/2018). HB 803 will provide uniformity and fairness for homeowners facing foreclosure statewide.

For all of these reasons, we support HB 803 and ask for a favorable report.

Best,

Marceline White
Executive Director

