



Real Property Section

To: Finance and Transportation Committee

From: Legislative Committee of the Real Property Section Counsel

Date: February 18, 2022 [Hearing Date February 22, 2022]

Subject: **HB 803** – Residential Property Foreclosure - Filing and Adjudication of Counterclaims

Position: **Oppose**

The Real Property Section Counsel of the Maryland State Bar Association (MSBA) **opposes House Bill 803** – Residential Property Foreclosure - Filing and Adjudication of Counterclaims. The bill seeks to permit a debtor to raise a counterclaim in the post file mediation segment of a residential foreclosure proceeding. See page 2, lines 4-6. It appears reasonable to permit a person with a counterclaim to raise that counterclaim in the proceeding that might lead to selling that person’s house. If a person believes “the right to foreclose does not exist” (see lines 12-13), it makes sense for the person to raise this point in the proceeding filed for that purpose.

What is troubling about HB 803 is new subpart (2)(iv), lines 14-19 on page 2. This portion of the bill seeks to apply Title 2 (i.e. Civil Procedure in the Circuit Court) of the Maryland Rules to the counterclaim instead of Chapter 200 of Title 14 which governs foreclosure of lien instruments. This will turn what is already allowed under Maryland law (i.e. the counterclaim in a foreclosure) into a weapon that could be misused to simply obstruct, hinder and delay the foreclosure proceeding.

Finally, Section 2 of the bill indicates that the point of the bill is to be consistent with the two cases identified in lines 22-25. But those two cases have been the governing law in Maryland for more than 25 years.

For these reasons, the Real Property Section Counsel of the MSBA **opposes HB 803** and asks for an **unfavorable report**. Thank you for your consideration.