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TESTIMONY TO THE HOUSE

ENVIRONMENTAL AND TRANSPORTATION COMMITTEE

SB 803: COUNTERCLAIMS IN FORECLOSURE

POSITION: FAVORABLE

February 18, 2018

The Honorable Kumar P. Barve
Chair
Environmental and Transportation Committee
Maryland House of Delegates, Room 251
House Office Building
Annapolis, MD 21401

Dear Chair Barve & Members of the Environment and Transportation Committee:

Thank you for the opportunity to present House Bill 803 for your consideration today which is designed to ensure all homeowners across the state have the same remedies and procedures available to them to defend a foreclosure action which should not occur. **I URGE YOUR FAVORABLE VOTE ON THIS IMPORTANT LEGISLATION** designed to help some but probably not all homeowners in foreclosure.

Relevant for this legislation, the Maryland Constitution provides

That every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the Land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the Land.

Md. Const. Decl. of Rts. art. 19.

In most civil litigation in Maryland, a defendant has the right to pursue counterclaims against a party or its agents who are suing them. The case law in *Fairfax Sav., F.S.B. v. Kris Jen Ltd. P'ship*,

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338 Md. 1, 21–22 (1995) holds the same is true in foreclosure actions. However, since the Great Recession some circuit courts have held homeowners have no such right to “justice” required under Article 19 for the remedy to assert their counterclaims in a foreclosure action for wrongful conduct by a mortgage actor. So, what is developed is some homeowners facing wrongdoing by their mortgage companies can pursue counterclaims and others cannot based on local rules and customs of the circuit courts.

The Maryland Rules Committee is aware of this absurd and unfair system that has developed but declined to make any recommendations to the Court of Appeals to correct and therefore has allowed it to continue even though we are supposed to have a single, uniform system of rules and procedures in Maryland courts.

To make sure all homeowners in Maryland have the same remedies and rights HB 803 will close the loopholes that have been created in some circuit courts that ignore the law and substitute their policy choices for those we already made and the Court of Appeals and the general Assembly made long ago. As a matter of judicial economy it simply makes no sense for two courts or two different judges to hear the same disputes between homeowners and their mortgage companies. These should be heard in one action when the homeowner chooses to do so by counterclaims.

Conclusion

Finally, it should be noted that in the vast majority of foreclosure cases, the homeowner does not appear in the case and likely has no defense to the claim of foreclosure by their mortgage company. This bill will not change those situations. Instead, for those homeowners facing claims of fictional defaults, improper mortgage fraud claims, dual tracking situations, and failure to honor their predecessor’s agreements, they will have an opportunity to present those claims in a single action with the mortgage company and they will have the same rights as every other litigate in a Maryland civil action in state courts.

PLEASE VOTE FAVORABLE ON HB 803.

Respectfully,

/s/Phillip Robinson

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