



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

Hearing before the Judiciary Committee,

Feb. 22, 2022

Position: SUPPORT (FAVORABLE)

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

Dear Chair Barve and Members of the Environment and Transportation Committee,

Community Legal Services of Prince George's County, Inc. (CLS), is a non-profit organization established to provide quality legal services to low-income residents in Prince George County. We provide advice and representation to homeowners facing foreclosure in Prince George's and other jurisdictions. Since the Great Recession CLS has been a leading organization in Prince George's County for helping residents avoid foreclosure representing over 10,000 clients through our network and advising thousands more.

We support HB 803 and urge the Committee to issue a favorable report.

Since 2008, I have worked primarily in the areas of foreclosure defense and bankruptcy. I answered the call put forth by then Chief Judge Bell in a letter to the bar pleading for our help in the face of the 2008 housing collapse. That crisis saw foreclosure filings rise to the tens of thousands on monthly basis. At that time, the legislature enacted laws to improve foreclosures and to allow homeowners meaningful participation in the foreclosure process. More improvements were made in the years following as the crisis continued. That work, while praiseworthy, is still unfinished. We are now on the precipice of another housing catastrophe as the consequences of the COVID-19 pandemic commence with the expiration of interim protections emplaced by the Governor and other parties. It behooves us to make further improvements based on the lessons learned since 2008.

At the heart of any sense of justice and fair play in an ordered democracy is the idea that every party has a fair chance to be heard in court. They get to tell their story. Currently that is not consistently the case in Maryland. Individual judges elect, in their discretion, whether a

counterclaim for relief from the conduct of a loan servicer constitutes a defense to foreclosure and is therefore considered in a foreclosure proceeding. That is, whether injuries that a homeowner suffers from a loan servicer, whose only relationship to the homeowner is the mortgage, are applicable to the foreclosure process.

I personally have had clients who have had their homes broken into and damaged prior to foreclosure sale by agents of their loan servicers. I personally have had clients who had their payment terms changed without any signed documentation or notice to them. The result was manufactured defaults that then precipitated foreclosure actions. CLS is aware that servicers engage in a wide range of unlawful activities across thousands of homes and home loans in Prince George's County that also include; refusal to honor existing modifications, improper collection of sums not owed, and dual tracking of homeowners in violation of Federal Law. Such activities are not only unfair but actively dishonor work and settlements already achieved and funded by the State of Maryland. If you can imagine the stress your constituents experience and the damage they suffer from improper assaults on their homes, this should alarm you. The damage to homeowners' credit as well as out of pocket damages and emotional damage from persistent improper threats to their most basic human need, shelter. Where these claims cannot be heard in the foreclosure matter, clients who are struggling to right their finances and work with their loan servicers are issued the further injury of having to fund separate litigation to have their claims heard if they are not allowed to raise them in the foreclosure case. This causes twice the cost, twice the stress, and additional confusion as clients try to understand if a document pertains to one case or the other.

Cases like these have very different fates depending on the discretion of a given judge. Where judges are open to allow counterclaims, clients such as these can often resolve matters through the adversarial process in Circuit Court. Where judges are not open to their claims, such clients are often forced to pursue bankruptcy protection as the only means to have their arguments heard and preserve their homes owing to the bankruptcy code's automatic stay provisions.

How Will HB 803 Help Your Constituents?

The one thing every client who comes to me for help says is they want their day in court. They want to plead their case, tell their story, and have their arguments heard. Too often, their arguments are dismissed for technicalities of Maryland Rule 14. Too often their prayers for justice are not heard. That is what this bill will establish as law. That a homeowner unequivocally has the right to bring to the attention of the court the injury that their loan servicer has done. These are the actual legal wrongs perpetrated by a loan servicer, which homeowners have rights under the Maryland Constitution to have heard before any of the foreclosure issues are even decided. These are claims that have a primacy enshrined within the very structure of our State that is all too often ignored. All this bill directs and spells out is that Maryland citizens are allowed a fair hearing where they get to lay bare for consideration of the court, the whole story.

This Bill accomplishes this by expressly stating that any party to the foreclosure may file a counterclaim under Title 2 of the Maryland Rules within the foreclosure proceeding itself. The proposed legislation then sets and protects the priority of claims as established by the Maryland Judiciary and our Constitution by expressly stating the order of resolution. This resolution restates what has already been stated by the Court of Appeals as what our Constitution requires.

I hope that my testimony and that of others serves to convince you that this legislation is needed so that homeowners in Maryland have a chance to have their day in court. What greater gift could this body give to the homeowners of Maryland than to take up legislation like this to restore faith in the fairness of our Courts in this time of great crisis, division and dissent in our society? Please vote favorably on HB 803. If you have any questions, please contact: John Gabel, Attorney, Gabel@clspgc.org, 240-391-6532.

Respectfully Submitted,

/s/ John D. Gabel

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