

Written Testimony SB 904 - right to counsel in for

Uploaded by: Allison Harris

Position: FAV



SB 904

FORECLOSURE PROCEEDINGS – RESIDENTIAL MORTGAGORS AND GRANTORS – ACCESS TO COUNSEL HEARING BEFORE THE SENATE JUDICIAL PROCEEDINGS COMMITTEE MARCH 21, 2023 POSITION: SUPPORT

The Pro Bono Resource Center of Maryland (“PBRC”), an independent 501(c)(3) non-profit organization, is the statewide thought leader and clearinghouse for volunteer civil legal services in Maryland. As the designated pro bono arm of the Maryland State Bar Association, PBRC provides training, mentorship, and pro bono service opportunities to members of the private bar and offers direct legal services through free legal clinics. PBRC supports SB 904 because vulnerable homeowners who are under economic strain desperately need legal assistance navigating the complex foreclosure process to avoid displacement.

PBRC has a longstanding track record of engaging in foreclosure prevention work. As coordinator of the statewide Foreclosure Prevention Pro Bono Project during the mortgage foreclosure crisis that began in 2008, we trained over 1,400 volunteer attorneys to participate in our 140+ legal clinics and to accept mortgage foreclosure cases from other providers. PBRC is once again offering legal clinics for homeowners facing the post-pandemic increase in foreclosures, but more legal support is needed for the thousands of homeowners at risk. Maryland is sixth in the nation for rates of serious mortgage delinquency, defined as 90 days or more past due, including loans in foreclosure. The metro areas surrounding DC and Baltimore have particularly high volumes of FHA mortgages—mortgages more frequently held by low-income and minority homeowners—and have especially high delinquency rates. Maryland’s Office of the Commissioner of Financial Regulation, which tracks the number of Notices of Intent to Foreclose (“NOIs”) that mortgage servicers send to Maryland homeowners with delinquencies, reports that the NOIs have been steadily increasing since Covid-related forbearance periods came to an end, and are continuing to rise each month. Thousands of these homeowners, already struggling to make ends meet, may soon be involved in foreclosure proceedings but will not have the funds required to pay an attorney.

SB 904 will ensure that certain homeowners across the state have access to counsel during foreclosure proceedings. We know the positive effect of providing free counsel to those in legal proceedings, particularly when something as fundamental as housing is at stake. But the need spreads beyond the capability of the legal services providers currently representing at-risk homeowners.

PBRC supports SB 904, which may protect certain Marylanders from the loss of their home to foreclosure, thereby preserving homeownership and the transfer of intergenerational wealth. Thank you for the opportunity to testify.

For the above reasons,

PBRC urges a FAVORABLE report on SB 904.

Please contact Allison Harris, Director of PBRC's Home Preservation Project, with any questions.
aharris@probonomd.org • 443-703-3050

SB0904-703026-01.pdf

Uploaded by: Alonzo Washington

Position: FAV



SB0904/703026/1

AMENDMENTS
PREPARED
BY THE
DEPT. OF LEGISLATIVE
SERVICES

20 MAR 23
14:44:15

BY: Senator A. Washington
(To be offered in the Judicial Proceedings Committee)

AMENDMENTS TO SENATE BILL 904
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 14, strike “the Comptroller” and substitute “clerks of the circuit courts”.

AMENDMENT NO. 2

On page 7, in line 13, strike “**COMPTROLLER**” and substitute “**CLERK OF THE CIRCUIT COURT WHERE THE INSTRUMENT OF WRITING IS RECORDED**”.

SB904_MLSC_FAV.pdf

Uploaded by: Deb Seltzer

Position: FAV



MLSC

MARYLAND LEGAL SERVICES CORPORATION

IOLTA - INTEREST ON LAWYER TRUST ACCOUNTS

Testimony Concerning SB 904
“Foreclosure Proceedings – Residential Mortgagors and Grantors – Access to Counsel”
Submitted to the Senate Judicial Proceedings Committee
Hearing Date: March 21, 2023

Position: Favorable

Contact: Deb Seltzer, Executive Director, 410-576-9494 x1009, dseltzer@mlsc.org

Maryland Legal Services Corporation requests a favorable report on Senate Bill 904, enactment of which would establish a program providing access to legal representation in foreclosure proceedings for income-eligible Marylanders.

MLSC’s mission is to ensure low-income Marylanders have access to stable, efficient and effective civil legal assistance through the distribution of funds to nonprofit legal services organizations. It currently funds 41 organizations to work toward that mission across the entire state. The Maryland General Assembly created MLSC in 1982 to administer the state’s Interest on Lawyer Trust Accounts (IOLTA) program, and since that time MLSC grantees have assisted approximately 4 million Marylanders with a wide variety of civil legal needs.

SB 904 names MLSC as the administrator of the Access to Counsel in Foreclosure Proceedings Program. MLSC has the experience necessary to serve in this role. Led by a nine-member Board of Directors appointed by the Governor and confirmed by the Maryland Senate, MLSC has funded and convened civil legal services providers for the past 40 years.

MLSC has an established grantmaking process that includes thorough review of each applicant’s experience, capacity and fiscal health by our Board and staff. Each application is carefully vetted to ensure MLSC is working toward its mission of promoting efficient and effective civil legal services. MLSC also frequently convenes legal services providers to offer chances to learn best practices, identify trends and find opportunities for collaboration.

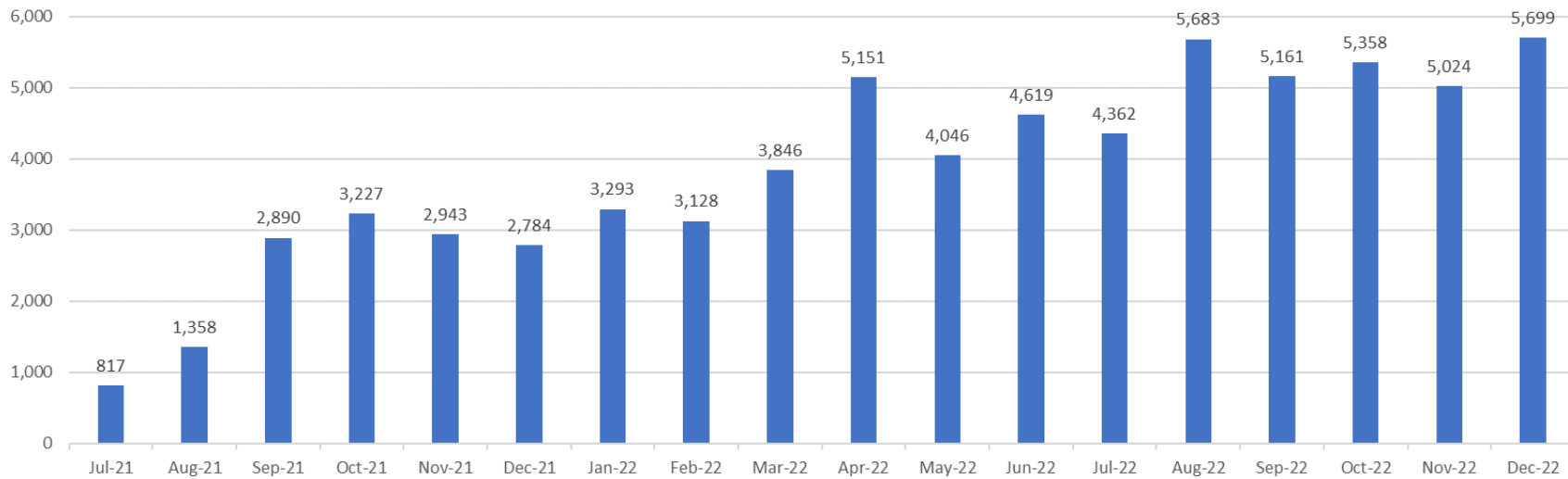
MLSC has also had a special grant program for foreclosure prevention legal services since 2016, paid for with restricted, one-time funding. During the pandemic, legal services providers ensured homeowners had information about various protections available. They have reported that calls related to foreclosures have continued to tick up. Statewide foreclosure statistics are attached.

Civil legal aid helps ensure fairness in the justice system. The essential work of legal aid providers ensures Marylanders have access to justice, regardless of the amount of money they have. The legal system can be confusing and requires specialized knowledge; paired with the high stakes of each case, it is vital to connect as many clients with attorneys as possible. Services that help low-income Marylanders understand their rights and allow them to rely on an advocate can make a tremendous difference.

MLSC asks for favorable consideration of Senate Bill 904.

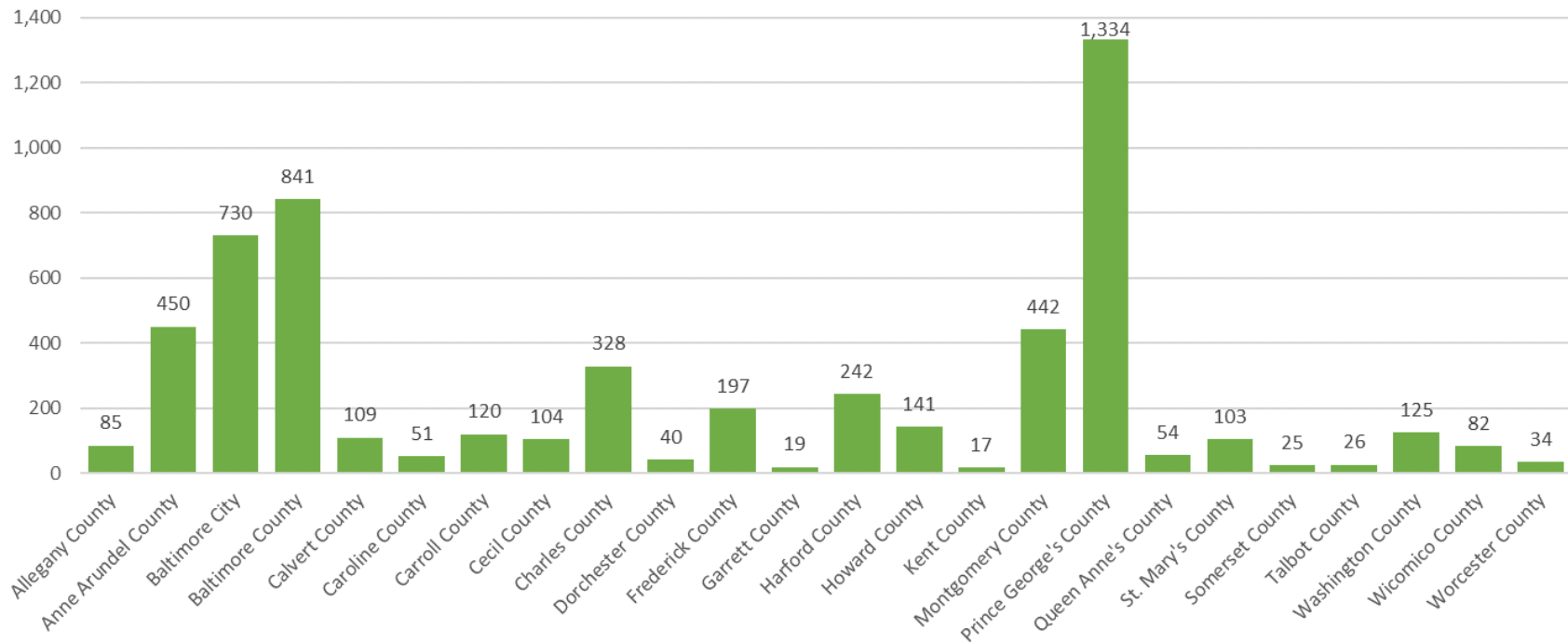
Appendix: Statistics

Notice of Intent to Foreclose, Maryland Total

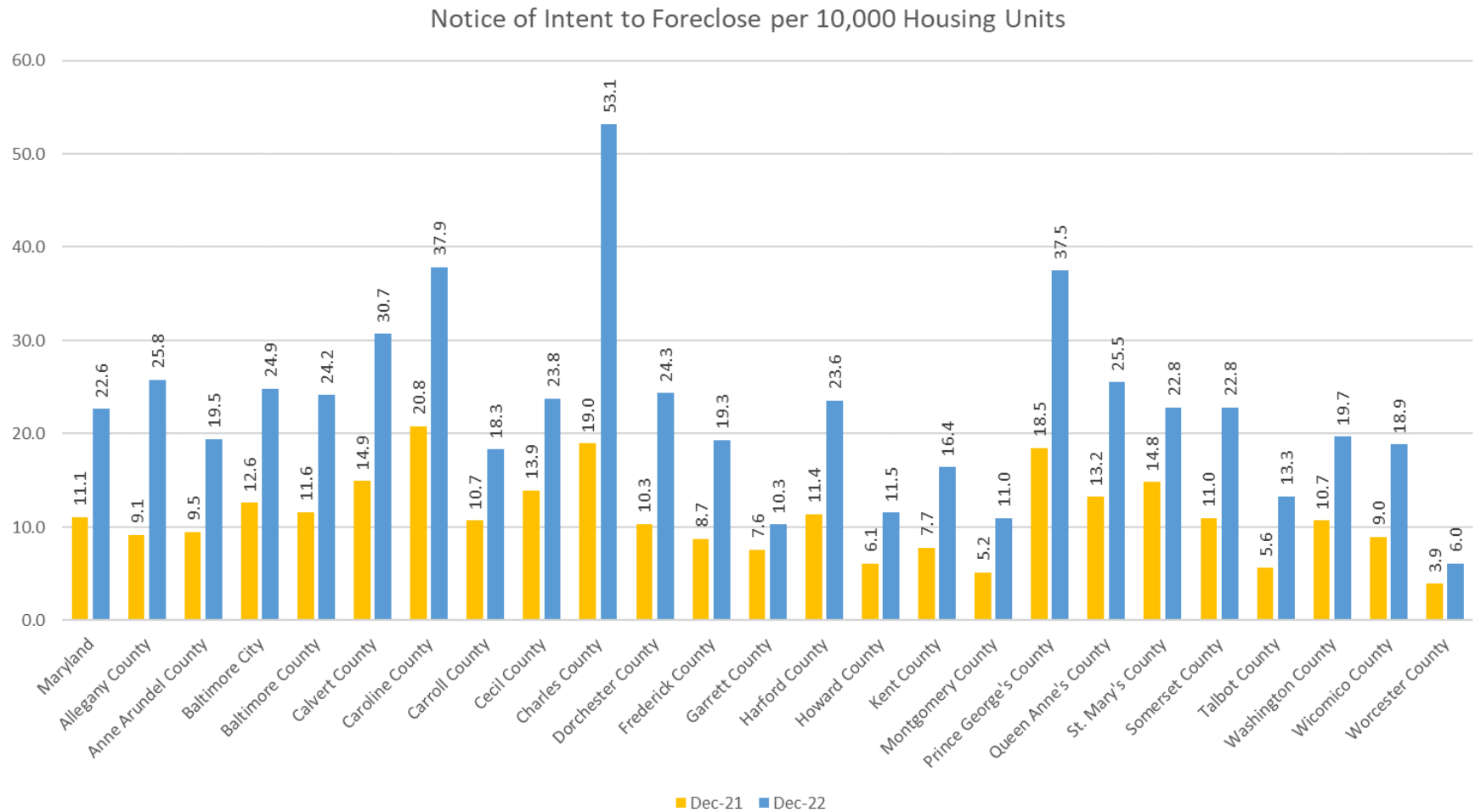


Source: Office of the Commissioner of Financial Regulation, Retrieved from Maryland Open Data Portal

Notice of Intent to Foreclose by County, December 2022



Source: Office of the Commissioner of Financial Regulation, Retrieved from Maryland Open Data Portal



Source: Office of the Commissioner of Financial Regulation, Retrieved from Maryland Open Data Portal; U.S. Census Bureau American Community Survey, 2021 5-Year Estimates, Selected Housing Characteristics

SB 904.pdf

Uploaded by: Jessica Quincosa

Position: FAV



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March 20, 2023

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**Senate Bill 904 –
Foreclosure Proceedings – Residential Mortgagors and Grantors –
Access to Counsel
Position: FAVORABLE**

Dear Committee Members:

Thank you for the opportunity to testify in support of SB 904, a bill that would allow homeowners to receive Access to Counsel in Foreclosure proceedings.

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 of Prince George's and surrounding Counties. We provide advice and representation to homeowners facing foreclosure in Prince George's County. Since the 2008 Recession, CLS has been a leading organization in Prince George's County for helping residents avoid foreclosure, advising, and representing clients through our staff and pro bono attorneys.

During the 2008 foreclosure crisis, the legislature enacted laws to improve foreclosures and allow homeowners meaningful notice of the foreclosure of their homes in the hope it would improve the foreclosure process, provide homeowners a fair chance to save their homes, and preserve homeownership across Maryland. These laws while helpful are still not enough to assist all homeowners facing the loss of their homes. Post-pandemic, homeowners across the state face additional challenges limiting meaningful participation in the foreclosure process.

The challenges under Maryland law include numerous technical pitfalls in the normal judicial process outlined in Maryland Rule 14 that can lead to summary denial of a homeowner's argument, silencing their voices. The technical expertise to be heard is too often dependent on funding an attorney to plead for the homeowner. Homeowners who have had hardships causing them to fall behind on their mortgages to find not only the funds to bring their mortgages current and make lenders whole but also to find and pay an attorney for the privilege to do so.

The irony of foreclosure defense is that homeowners pay attorneys to be allowed the time to pay their lenders, instead of simply paying their lenders. It is undeniable that successful foreclosure defense not only preserves home ownership but lenders are made whole because successful foreclosure defense means the homeowner continues paying their mortgage. CLS clients always want their day in court to state their stories. They want to plead their case to a Judge, to have a chance to bring their mortgage current, and hopefully keep their homes. Too often their arguments are dismissed for technicalities of Maryland Rule 14 and usually because a homeowner does not have the funds to retain an attorney.

SB 904 will remedy this problem because it will put in place a mechanism for Maryland homeowners to pre-pay into a fund for a possible future need to save their home from foreclosure. This process is akin to paying title insurance. SB 904 establishes a right to representation in foreclosure cases and provides the funding that will allow homeowners a fair chance of working with their lenders and the Courts to preserve home ownership. This will help homeowners despite numerous forces that might jeopardize their homes, like COVID, or a housing collapse. With funding in place, homeowners can have properly drafted motions and legal resources that will be adequately funded to provide them with the representation and guidance they need so they can be heard. SB 904 will accomplish that by improving the number of performing loans by allowing homeowners guidance within the foreclosure process to help them take advantage of the tools in the process that are in place to help them keep their homes. For example, guidance to understand mediation, loss mitigation, how to interpret lender communications, and numerous other areas that many homeowners lack the experience to navigate.

SB 904 is ultimately beneficial for lenders and the community as well. Lenders know that foreclosed loans are not more profitable than performing loans. Lenders often bear the costs of a foreclosed property sitting empty for months. Foreclosed homes also impact the community and lower the value of homes surrounding a foreclosed property. SB 904 will improve communities and will help maintain generational wealth by preserving homeownership.

For the above reasons,
CLS urges a FAVORABLE report on SB 904.

If you have any questions, please contact Jessica Quincosa, Executive Director, at quincosa@clspgc.org, 240-391-6370.

SB 904_Consumer Protection Division_Fav_2023.pdf

Uploaded by: Kira Wilpone-Welborn

Position: FAV

ANTHONY G. BROWN
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CANDACE McLAREN LANHAM
Chief of Staff

CAROLYN QUATTROCKI
Deputy Attorney General



WILLIAM D. GRUHN
Chief
Consumer Protection Division

Writer's Fax No.

STATE OF MARYLAND
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March 21, 2023

To: The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee

From: Kira Wilpone-Welborn, Assistant Attorney General
Consumer Protection Division

Re: Senate Bill 904 – Foreclosure Proceedings - Residential Mortgagors and Grantors -
Access to Counsel (SUPPORT)

The Consumer Protection Division of the Office of the Attorney General (the "Division") supports the goal of Senate Bill 904 sponsored by Senator Alonzo T. Washington. Senate Bill 904 seeks to facilitate homeowners, at or below 50% of the area median income, facing foreclosure having access to legal advice and representation by creating an Access to Counsel in Foreclosure Proceedings Program and Special Fund. Under Senate Bill 904, the Maryland Legal Services Corporation (MLSC) will create and coordinate the program to connect qualified homeowners with available attorneys. Additionally, MLSC will create an informational pamphlet on the program and the legal rights of homeowners and mortgagors that will be provided to the public.

In the Attorney General's 2021 Access to Justice Taskforce Report, "ensuring Marylanders had meaningful access to the civil justice system" was a priority recommendation.¹ During the same year, recognizing the immense need and resultant stability legal representation provided to vulnerable tenants facing eviction proceedings, the General Assembly passed HB 18 creating an Access to Justice in Evictions Program. Senate Bill 904 is the corollary to the Access to Counsel in Evictions Program and will provide low-income homeowners facing foreclosure needed access to representation and the opportunity for housing stability.

The Division requests that the Judicial Proceedings Committee give Senate Bill 904 a favorable report.

cc: The Honorable Alonzo T. Washington
Members, Judicial Proceedings Committee

¹ https://www.marylandattorneygeneral.gov/A2JC%20Documents1/AG_Covid_A2J_TF_Report.pdf

SB0904 - MSBA Support Letter (2023.03.21).docx.pdf

Uploaded by: Shaoli Katana

Position: FAV



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MEMORANDUM

To: Members of the Senate Judicial Proceedings Committee
From: Maryland State Bar Association, Shaoli Katana, Esq., Advocacy Director
Subject: Senate Bill 904 - Foreclosure Proceedings – Residential Mortgages and Grantors – Access to Counsel
Date: March 21, 2023
Position: Support

The Maryland State Bar Association (MSBA) supports **Senate Bill 904 - Foreclosure Proceedings – Residential Mortgages and Grantors – Access to Counsel**. Senate Bill 904 requires that individuals have access to legal representation in certain foreclosure proceedings; establishing the Access to Counsel in Foreclosure Proceedings Program and Special Fund; requiring the Maryland Legal Services Corporation to provide access to legal representation under the Program; requiring the Comptroller to collect a fee on residential property sales to be paid to the Fund; etc.

MSBA represents more attorneys than any other organization across the State in all practice areas. MSBA serves as the voice of Maryland's legal profession. Through its Laws Committee and various practice-specific sections, MSBA monitors and takes positions on legislation of importance to the legal profession.

MSBA supports access to justice for Marylanders and funding of the civil justice system. Attorneys make an enormous difference in the civil justice system and case outcomes, as many pro se litigants are unaware of their rights, appropriate defenses, and the judicial process. With over 42,000 attorneys in Maryland, the state has an incredible opportunity to help those most in need through staff and volunteer attorneys, as it did

during the pandemic with the passage of access to counsel in eviction matters.

MSBA has been a strong advocate for the Maryland Legal Services Corporation (MLSC), an entity that provides a significant resource for legal services in Maryland. SB904 will ensure that Marylanders facing foreclosure will have access to counsel during proceedings, through MLSC's programming, and MSBA supports this initiative. The bill would allow organizations across the state to represent Marylanders facing foreclosure in a cost-effective manner.

Two years ago, MSBA joined partners including the Maryland Judiciary, Maryland Access to Justice Commission, Maryland Attorney General, Pro Bono Resource Center, and Maryland Volunteer Lawyers Service to deliver an urgent call to action for pro bono, urging every attorney in Maryland to take at least one pro bono case or provide a designated number of pro bono service hours over the next year in response to the health, economic, and civil justice crisis created by Covid-19. MSBA will work to help implement the call to action and connect the tens of thousands of Maryland attorneys to Marylanders facing foreclosure.

For the reasons stated above, MSBA **supports** SB904 and respectfully requests a **favorable report**. For additional information, please feel free to contact Shaoli Katana at MSBA at shaoli@msba.org.

SB 904 - Maryland Legal Aid - FAV.pdf

Uploaded by: Victoria Schultz

Position: FAV



**MARYLAND
LEGAL AID**

Advancing
**Human Rights and
Justice for All**

**Testimony of Maryland Legal Aid in Support of Senate Bill 904 –
Foreclosure Proceedings – Residential Mortgagors and Grantors – Access
to Counsel**

Maryland Legal Aid (MLA) is a grantee of the Legal Services Corporation and provides legislative testimony on SB 904 at the request of bill sponsor Delegate Charles.

Maryland Legal Aid (MLA) is a nonprofit law firm that provides free legal services to the State's low-income and vulnerable residents. Our 12 offices serve residents in each of Maryland's 24 jurisdictions and handle a range of civil legal matters, including housing, family law, public benefits, bankruptcy and other debt collection matters, and criminal record expungements. MLA supports this Bill and asks that the Committee give it a favorable report.

SB 904 is an important piece of legislation that could change the legal landscape in foreclosure proceedings and help struggling homeowners find solutions to keep their homes. It recognizes the need to provide legal assistance and information to homeowners who are in danger of falling behind on their mortgage payments and face the potential loss of their homes through foreclosure.

As this committee knows, in 2010, the General Assembly passed Maryland's Foreclosure Mediation Law. It was designed to help foster a dialogue between homeowners and "lenders to ensure a fair assessment was made to help homeowners get relief through any available alternatives to foreclosure [for which] they might qualify." It did not provide access to counsel for homeowners in the mediation process. However, Maryland Legal Aid created a special project, funded by the Maryland Legal Services Corporation, the Foreclosure Legal Assistance Project (FLAP) to provide low-income Maryland homeowners legal assistance and representation, including at the foreclosure mediation. FLAP is a statewide unit of attorneys specializing in foreclosure defense who provide full-service legal representation to homeowners facing serious payment delinquency, default and foreclosure. Since that time, MLA's FLAP staff have represented homeowners in foreclosure all over the State.

In the experience of MLA advocates, those who seek legal assistance early in the process and have representation in foreclosure mediation have a higher rate of home retention. Early involvement in the process allows an attorney to investigate legal claims properly and fully explore all available options to save a person's home. Early involvement allows time for exchanging information, pursuing loss mitigation alternatives, making applications for loan modifications, and reviewing vital information regarding the servicing of the loan. All of this helps determine if there are legal grounds to challenge a foreclosure action and makes the mediation much more productive for both parties. It is a more efficient and effective process when both parties are represented in mediation.

Further, SB 904 will ensure that wrongful foreclosures are prevented. While much of the foreclosure defense in Maryland is devoted to loan modifications, deeds in lieu of foreclosure, short sales, and other ways to help homeowners exit their homes, little effort is devoted to challenging a wrongful foreclosure. Under current case law, a borrower must bring any substantive challenges to stop a foreclosure before a sale occurs. After a sale, any right to object is limited primarily to assertions of procedural irregularities in the foreclosure sale itself. The right to counsel must occur early in the process to allow a homeowner time to assert known and ripe defenses regarding the conduct of loss mitigations or foreclosure before the sale, rather than in post-sale exceptions or by filing a motion for pre-sale injunctive relief. For access to counsel in foreclosure cases to be effective, this right to access counsel must occur earlier in the process to assure that any relevant claims are examined and timely pursued.

For these reasons, **Maryland Legal Aid urges the Committee to issue a FAVORABLE report on Senate Bill 904.**

Respectfully Submitted,

Vicki Schultz
Executive Director, Maryland Legal Aid
vschultz@mdlalab.org
443.850.6605 (cell)

SB 904_realtors_unf.pdf

Uploaded by: William Castelli

Position: UNF



**Senate Bill 904 – Foreclosure Proceedings – Residential Mortgagors and Grantors –
Access to Counsel**

Position: Unfavorable

Maryland REALTORS® oppose SB 904 which, among other provisions, would impose a fee on each residential property sale in the state.

Maryland REALTORS® has supported many of the important foreclosure programs, including pre and post file mediation for homeowners, but is concerned about assessing another fee on residential real estate. The Maryland Department of Housing and Community Development has over \$180 million for their homeowner assistance program which provides homeowners with grants and loans to avoid a foreclosure.

Which such significant new funding for foreclosure avoidance programs, the REALTORS® do not believe another fee should be placed on residential sales at a time when housing affordability is such a serious issue.

For this reason, the Maryland REALTORS® recommend an unfavorable report.

**For more information contact lisa.mays@mdrealtor.org or
christa.mcgee@mdrealtor.org**