



**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,

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