

**House Bill 769– Real Property – Residential Foreclosures – Materially
Delinquent Mortgages
Hearing on February 18, 2025 – Environment and Transportation Committee
Position: FAVORABLE**

Maryland Legal Aid (MLA) submits its written and oral testimony on HB 769 in response to a request from Delegate Dana Jones.

Maryland Legal Aid (MLA) appreciates the opportunity to testify in support of this vital legislation. We are the state’s largest nonprofit law firm, representing thousands of low-income Marylanders every year in matters related to housing, foreclosure, family law, social security and public benefits. HB 769 requires mortgage servicers to provide additional documentation to a homeowner before commence a foreclosure action. Because HB 769 seeks to remedy the “zombie mortgage” problem, MLA testifies in support of this bill.

The term “zombie mortgage²” is a term of art that has been used to describe a certain type of mortgage in the past few years. During the housing bubble of 2002-2007, it was typical for mortgage originators to sell “80/20” mortgages to homeowners. In this scenario, homeowners, instead of putting a 20% down payment down on a home, the homeowner would originate mortgages for the entire value of the property -- a first mortgage for 80% of the value of the home and a second mortgage for 20% of the value of the home. These products were sold to homeowners as good deals because the assumption was that home prices would continue to increase, thus allowing them to refinance in the future.

Unfortunately, starting with the 1st quarter of 2007, housing prices began to drop, sometimes significantly, and the mortgage servicers were forced to modify the 1st mortgages to allow the homeowners to stay in their homes. The holder of the 2nd mortgages took no collection action, because the value of the homes had dropped below the amount due on the 1st mortgage, and actions to collect were not pursued. Some homeowners filed Chapter 7 bankruptcy to eliminate their personal responsibility on these mortgages. Savvy investors bought these mortgages, sometimes for pennies on the dollar, from the original investors and banks and bided their time. Then, housing prices started to increase again, and eventually, the home values climbed to the point that there was significant equity above the first mortgage, making it valuable for the 2nd mortgages to foreclose³.

Homeowners are now receiving foreclosure notices from mortgages that they did not even realize that they had anymore. HB 769 requires a mortgage company seeking to foreclose to provide either 2 years of mortgage statements before a foreclosure case can be commenced or provide similar documentation as specified by the Commissioner for Financial Regulation. It

² <https://www.npr.org/2024/05/10/1197959049/zombie-second-mortgages-homeowners-foreclosure>.

³ *Id.*

would also allow homeowners to raise a laches (statute of limitation) defense in a foreclosure action.

Both requirements in HB 769, while not a complete solution, help the low-income homeowners that MLA represents. MLA has seen about a dozen of these “zombie mortgage” cases, and the general options to resolve a mortgage default, a loan modification and a Chapter 13 bankruptcy, are difficult for low-income homeowners in these situations. A loan modification is difficult because generally these mortgages are 2nd mortgages, and because there is another mortgage on the property, the flexibility that the mortgage servicer has to modify the mortgage is less. Generally, when MLA has resolved these cases with loan modifications, they require a lump sum payment at the beginning, which can be difficult for MLA’s low-income clients. A Chapter bankruptcy 13 is difficult because a homeowner must pay two regular mortgage payments plus a chapter 13 plan payment, which can be difficult for a low-income homeowner to afford. HB 769 provides additional time for a homeowner to investigate possible foreclosure alternatives and investigate to make sure that the mortgage company has grounds to foreclose. This protective time period makes it more likely that a homeowner will be able to avoid foreclosure. In addition, HB 769 allows homeowners to raise this issue in a foreclosure action and that defense is currently not available.

HB 769 seeks to address the serious problem facing Marylanders of zombie mortgages. MLA supports HB 769. If you need additional information in regard to this bill, please contact William Steinwedel at wsteinwedel@mdlab.org and (410) 951-7643.