

Written Testimony HB 769-SB 682 Zombie Mortgages

Uploaded by: Allison Harris

Position: FAV



HB 769/SB 682
REAL PROPERTY – RESIDENTIAL FORECLOSURES – MATERIALLY DELINQUENT MORTGAGES
February 25, 2025
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 HB 769/SB 682 because this legislation directly helps vulnerable homeowners who are under economic strain and who deserve basic fairness in foreclosure proceedings to avoid home loss and displacement.

PBRC has a longstanding track record of engaging in foreclosure prevention work so we bear witness when a trend develops that is a threat to maintaining homeownership in our state. We are seeing such a trend now with sophisticated debt buyers coming forward to foreclose on our clients' very old second mortgages – long ago written off by the original lender but sold on to these debt buyers for pennies on the dollar - once the target homes have built up sufficient equity to make a big payday possible for these debt buyers. As a result, these clients and other affected homeowners across the state are facing an unexpected home ownership crisis just as they have finally reached a point where their homes are worth more than their mortgage.

The homeowners in this situation whom we have assisted at PBRC generally come to us thinking that they are the victim of a scam when they receive a collection letter and soon thereafter a notice of intent to foreclose and a court summons from the debt buyer. Our clients are right to be shocked and suspicious because they are inevitably current on their first mortgage, do not recognize this new secured party as an entity that they have ever loaned from, have not received monthly mortgage statements or any communication on the loan for a decade or more, and were told by their past mortgage servicer and/or the bankruptcy court that the loan was discharged. Imagine finding yourself in that situation: facing a huge and sudden loan reinstatement or payoff demand from an unrecognized creditor with very little time to sort things out and with your longtime home at stake.

Starting in earnest on October 1, 2027, HB 769/SB 682 would offer homeowners meaningful protections from this high pressure, high stakes collection effort by requiring secured parties seeking to collect on mortgages where there has been no payment activity for 5 years or more to first send regular loan correspondence to the homeowner for a full 24 months before being able to initiate foreclosure. Giving homeowners this two-year runway to address and inform themselves about these old loans, instead of having foreclosure sprung on them with little notice, will better enable them to effectuate a rescue of their home.

The bill would further mandate that this required two-year loan correspondence to the homeowner include key loan-related information such as a reinstatement amount with itemization for principal, interest, charges, and fees. Currently what PBRC clients get from the secured party in these foreclosure cases is a large lump sum reinstatement demand amount or loan payoff amount with no breakdown of the components, and the amounts are typically more than double what the delinquent amount was years ago. Without this bill, it would remain very difficult for homeowners to get timely access to this necessary information to try to verify whether the secured party has been honest or correct in its calculation of these large figures.

In addition, this bill would specify that homeowners can ask courts to consider the defense of laches in response to such foreclosures where a secured party (almost always a debt buyer or a chain of debt buyers) has strategically delayed enforcement for many years while waiting for the home to increase in value. This would make it clear to homeowners, courts, and these debt buyers that a consideration of the fairness of allowing enforcement of such a debt after many years is relevant.

The homeowner protections proposed in HB769/SB682 are concise and sensible, if not coming nearly soon enough, with the bill enactment date stated as January 1, 2026 and with the main thrust of the protective loan correspondence requirements not kicking in till October 1, 2027. Nevertheless, this bill would be a big step forward in giving Maryland homeowners time, notice, and information needed to evaluate and respond to these secured parties with the goal of preserving homeownership. There would be no cost to the State of Maryland and no impact on secured parties who are sending regular monthly statements or foreclosing on loans that are less than 5 years' delinquent. Thank you very much for your time and consideration of this testimony in support of HB 769/SB 682.

For the above reasons,

PBRC urges a FAVORABLE report on HB 769/SB 682.

Please contact Allison Harris, Director of PBRC's Home Preservation Project, with any questions.

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SB682_OFR_Letter of Support.docx.pdf

Uploaded by: Amy Hennen

Position: FAV

February 25, 2025

Senate Judicial Proceedings Committee

Chair: Senator William Smith

Senate Bill 682 - Real Property – Residential Foreclosures – Materially Delinquent Mortgages

Re: Letter of Support

Dear Chair, Vice-Chair, and Members of the Committee,

The Office of Financial Regulation (OFR) is Maryland’s state consumer financial protection agency. OFR provides this testimony in support of Senate Bill 682, Real Property – Residential Foreclosures – Materially Delinquent Mortgages.

Bill Summary

SB682 seeks to ensure that homeowners at risk of foreclosure from old mortgage debt are provided with certain protections. In the legislation, old mortgage debt is referred to as a “materially delinquent mortgage” and defined as a mortgage for which no payments have been made in the previous five or more years.

The bill requires a mortgage holder to have provided periodic statements to the homeowner for at least a 24 month-time period immediately preceding the start of a foreclosure on a materially delinquent mortgage. (Prior to October 1, 2027, this requirement can also be satisfied if the mortgage holder serves notice to the homeowner on a form created by OFR.)

The bill also allows courts to consider a homeowner’s defense of laches during a foreclosure proceeding. Laches is a legal term that refers to an unreasonable delay on the part of a claimant in pursuing their legal right or claim. In the context of a foreclosure, a laches defense means the homeowner is asserting that the mortgage holder’s delay unfairly burdened them in such a way as to make the foreclosure inactionable.

Background

Holders of materially delinquent mortgages are typically debt buyers who have purchased the old mortgage debt after it has been charged off by the previous secured party. Because they are not receiving any communication from the mortgage holder regarding the loan, homeowners mistakenly believe that they no longer owe the debt.

Recently, as housing values have increased, holders of materially delinquent mortgages have been initiating foreclosure actions in an effort to collect on the old debt, plus interest and fees. In many situations the old debt

is from a second lien mortgage that was originated in the years leading up to the Great Recession and subsequent foreclosure crisis. In addition to not receiving correspondence on these old loans, those homeowners who successfully obtained loan modifications on their first mortgage were often led to believe that the second mortgage was included in their modification.

Scope and Homeowner Impact

OFR records indicate that since 2018 over 3,000 mortgage borrowers in Maryland received a Notice of Intent to Foreclose for a mortgage on which the last payment was made five or more years ago. During that same time period, a total of over 373,000 Notices of Intent to Foreclose were filed. Therefore, materially delinquent mortgages as defined in the bill comprise less than 1% of all potential foreclosures. Consequently, OFR believes that the requirements in this bill would impact a very small percentage of mortgages in Maryland.

The impact on affected homeowners, however, is significant. An analysis of the same Notices of Intent to Foreclose for materially delinquent mortgages revealed that the average amount a homeowner would need to pay the mortgage holder in order to avoid foreclosure is over \$193,000. Such a substantial sum of money is challenging for most consumers to raise with little to no advance notice, particularly so for those homeowners with limited resources.

Federal Response

In April 2023, the federal Consumer Financial Protection Bureau (CFPB) issued guidance regarding “zombie” mortgages, described by the CFPB as “silent second mortgages... that consumers thought were satisfied long ago and that may be unenforceable in court”. The CFPB guidance reminds debt collectors covered under the Fair Debt Collection Practices Act that they are prohibited from collecting or attempting to collect on old debt past the debt’s relevant statute of limitations, referred to as “time-barred debt”.

The Need for Legislation in Maryland

Maryland case law holds that foreclosures do not have a statute of limitations so the debt is not time-barred; as such, the CFPB’s aforementioned guidance is limited.

OFR has received complaints from homeowners who thought the attempt to collect on the old mortgage was a scam, since the homeowners did not recognize the name of the mortgage holder and believed that the debt had been forgiven many years ago. This change would provide homeowners with notice and time to gather the resources to pay off the old mortgage debt or to attempt to work with the mortgage holder to negotiate an alternative to foreclosure, if there is one.

With that, OFR requests a favorable Committee Report.

SB 682 Testimony 02212025.pdf

Uploaded by: Carmen Castro-Conroy

Position: FAV

SB 682: Real Property – Residential Foreclosures – Materially Delinquent Mortgages

Testimony of

February 21, 2025

About HIP

Housing Initiative Partnership, Inc. (HIP) develops innovative affordable housing, revitalizes neighborhoods, and equips people to achieve their housing and financial goals. Our vision is that every person lives in high-quality affordable housing in a thriving community. We maintain offices in Hyattsville in Prince George's County, and in Germantown and Gaithersburg in Montgomery County.

Support of SB 682

Homeowners in Maryland are being impacted by the return of zombie loans. Many of our clients who experienced financial hardships during the most recent mortgage crisis in the United States that started in 2007, almost 20 years ago, received mortgage relief through loan modifications. They were told not to worry about the second loans, that those would be forgiven, and they went on with their lives. Unfortunately, a nightmare scenario developed, and those same homeowners are finding themselves at risk of losing their homes, yes, almost 20 years later.

Over the past 20 years, HIP's Housing Counseling staff have helped over forty thousand renters and homeowners struggling with housing costs. Many of our clients are among the homeowners facing the threat of foreclosure from loans they did not hear of in more than a decade. At first, homeowners discard those notices assuming they are sent in error. They do not recognize the account, their claims, and the nature of the legal actions, until the notices become more frequent and the threat more serious. These loans come back with loan balances that double overtime and the options to negotiate are unrealistic. Recently, one of our clients presented a zombie loan with a principal balance of \$189,000 on the date of default of Oct. 2008 by the time it resurfaced the interest charged was \$258,000 and the new loan balance was \$453,000. The downpayment to settle the account was \$182,000 and a 5-year term with monthly payments of \$4,557.

Our clients are left without home retention options that can be feasible.

We support all efforts to give homeowners more time, resources and tools to workout solutions to the nightmare of the actual threat of foreclosure on residential properties.

CDN SB 682 FAVORABLE.pdf

Uploaded by: Claudia Wilson Randall

Position: FAV



Testimony
SENATE BILL 682
JUDICIARY PROCEEDINGS COMMITTEE
February 25, 2025
Position: FAVORABLE

Dear Chairman Smith and Members of the Judicial Proceedings Committee:

The Community Development Network of Maryland (CDN) is the voice for Maryland's community development sector and serves nearly 200 member organizations. CDN—focuses on small affordable housing developers, housing counseling agencies and community-based non-profits across the state of Maryland. The mission of CDN is to promote, strengthen and advocate for the community development sector throughout Maryland's urban, suburban and rural communities.

SB 682 seeks to help people facing foreclosure due to zombie mortgage debt collection

During the 2007 financial crisis, brokers combined first and second mortgages in a single loan transaction. Referred to as "80-20 mortgages," the transactions typically financed 80% of the principal balance through a first mortgage and the other 20% through a second mortgage. This Zombie mortgages were originated by predatory lenders in the years leading up to the kept the first mortgage within a loan-to-value ratio for easy securitization..

Many homeowners struggled to keep up on their first mortgages through the Great Recession, often with the help of loan modifications. In the early years of the Recession, home values dropped precipitously. With so many properties deep underwater, holders of first mortgages faced reduced recoveries if they foreclosed. Second mortgagees, on the other hand, were almost certain to obtain nothing if they decided to foreclose. Not surprisingly, as many homeowners were unable to make payments on second mortgages, the owners of these loans wrote them off.

Zombie second mortgages are coming back to life as home values have risen significantly in many parts of the country. Homes that were underwater in 2010 now stand well above water, and homeowners' equity has become an enticing target. Over the years since the Great Recession many homeowners also worked to pay down their first mortgages, further increasing their home equity.

Thirteen states have enacted statutes specifically designed to regulate second mortgages. Several of these statutes limit default-related charges. Others set guidelines for second mortgage loan origination and require special licensing. Violation of these origination laws may give rise to recoupment claims against debt buyers.

Zombie mortgage have had a disparate impact on Black and Hispanic homeowners throughout the country. These homeowners were more like to have fallen prey to the pre financial crisis loans and they are less likely to have family wealth to be able to get representation or pay off debt buyers.

We urge your support for Senate Bill 682.

Submitted by Claudia Wilson Randall, Executive Director, Community Development Network

SB 682_MD Center on Economic Policy_FAV.pdf

Uploaded by: Kali Schumitz

Position: FAV

FEBRUARY 25, 2025

Reforming Foreclosure Process Will Protect Maryland Homeowners

Position Statement Supporting Senate Bill 682

Given before the Judicial Proceedings Committee

SB 682 proposes essential reforms to the foreclosure process, aiming to enhance transparency and fairness for homeowners across Maryland. The Maryland Center on Economic Policy (MDCEP) is dedicated to promoting economic policies that foster equity and prosperity for all Maryland residents. **MDCEP supports Senate Bill 682 because it will ensure that homeowners receive comprehensive and affordable equitable defenses during the foreclosure processes.**

Senate Bill 682 seeks to amend existing foreclosure procedures by:

- Modifying requirements for initiating foreclosure actions on residential properties.
- Mandating that secured parties provide pertinent loan-related correspondence when enforcing materially delinquent mortgages, with specific exceptions.
- Allowing mortgagors to invoke the defense of laches in foreclosure proceedings.

These provisions are designed to ensure that homeowners receive comprehensive information and are afforded equitable defenses during foreclosure processes.

It is crucial to recognize that foreclosure practices have historically disproportionately harmed Black and Brown communities. Discriminatory lending practices and systemic inequities have led to higher rates of mortgage delinquency and foreclosure among these populations.

In Maryland, the disparity in homeownership rates is stark. The white homeownership rate stands at 76.3%, while the Black homeownership rate is significantly lower at 46.2%.ⁱ This gap underscores systemic barriers that Black families face in achieving homeownership. Foreclosure rates further exacerbate these disparities as typically Black and Brown households tend to have higher foreclosure rates than their white counterparts.ⁱⁱ

A pressing concern is the resurgence of "zombie mortgages," where homeowners are confronted with unexpected bills and foreclosure threats on second mortgages they believed were resolved. This issue has led to renewed financial strain and increased foreclosure risks, particularly affecting vulnerable homeowners.ⁱⁱⁱ

An analysis of foreclosure data reveals that certain jurisdictions in Maryland experience higher rates of foreclosure, often correlating with communities that have significant Black and Brown populations:

- **Baltimore City:** In the first quarter of 2023, there were 622 foreclosure events, representing 20.2% of the state's total.

- **Prince George's County:** In the first quarter of 2023, there were 686 foreclosure events accounting for 22.2% of the state's total.

These statistics highlight the need for legislative action to protect Maryland homeowners.

Senate Bill 682 represents a critical step toward rectifying systemic inequities in Maryland's housing market. By enhancing transparency and providing homeowners with equitable defenses in foreclosure proceedings. For these reasons, **the Maryland Center on Economic Policy respectfully requests the Judicial Proceedings Committee to make a favorable report on Senate Bill 682.**

Equity Impact Analysis: Senate Bill 682

Bill Summary

SB 682 proposes essential reforms to the foreclosure process, aiming to enhance transparency and fairness for homeowners across Maryland.

Background

In Maryland, the disparity in homeownership rates is stark. The white homeownership rate stands at 76.3%, while the Black homeownership rate is significantly lower at 46.2%. This gap underscores systemic barriers that Black families face in achieving homeownership. Foreclosure rates further exacerbate these disparities as typically Black and Brown people tend to have higher foreclosure rates than their counter parts.

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Equity Implications

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- **Prince George's County:** In the first quarter of 2023, there were 686 foreclosure events accounting for 22.2% of the state's total.

Impact

Senate Bill 682 will likely **improve racial, gender, and economic equity** in Maryland.

ⁱ Maryland Matters, "Black Families Fall Further Behind on Homeownership", (Oct. 15, 2022).

ⁱⁱ DCHD, "Property Foreclosure Events in Maryland", (First Quarter 2022)

ⁱⁱⁱ The Wall Street Journal, "Zombie Mortgages Could Force Some Homeowners Into Foreclosure", (Jun. 4, 2023).

SB 682_Consumer Protection Division_Favorable_FINA

Uploaded by: Kira Wilpone-Welborn

Position: FAV

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Assistant Attorney General

February 21, 2025

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

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

Re: Senate Bill 682 – Real Property – Residential Foreclosures – Materially Delinquent
Mortgages (SUPPORT)

The Consumer Protection Division of the Office of the Attorney General (the “Division”) supports Senate Bill 682 sponsored by Senator Nick Charles. Senate Bill 682 seeks to prevent surprise foreclosures of zombie mortgages by requiring lenders to provide correspondence regarding the loan in each billing cycle for the previous 24 months. Senate Bill 682 also expressly permits consumers to raise a defense of laches when a lender seeks to foreclose on a material delinquent mortgage.

Zombie mortgages are loans that a borrower believed, rightly or wrongly, was written off by the initial lender, but were in fact sold to debt collectors for future collection. Often with zombie mortgages, consumers have received no communication regarding the loan balance or that the loan will be sold or serviced by another party. As a result, when the new servicer or debt collector seeks to foreclose on the defaulted mortgage, consumers are surprised. Additionally, zombie mortgages have often been in default for years accruing interest and fees that balloon the balance. As a result, the surprise foreclosure proceedings and large balances can prevent borrowers from modifying the loan or paying off the balance and remaining housed. Senate Bill 682 seeks to prevent these surprise foreclosures by requiring additional communication with consumers as a condition precedent to filing a foreclosure, and by providing borrowers with the explicit defense of laches.

For these reasons, the Division requests that the Judicial Proceedings Committee give Senate Bill 682 a favorable report.

cc: The Honorable Nick Charles
Members, Judicial Proceedings Committee

CLS Support for SB0682 - Materially Delinquent Mor

Uploaded by: Lisa Sarro

Position: FAV



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SB0682 - Real Property – Residential Foreclosures – Materially Delinquent Mortgages Judicial Proceedings Committee Hearing February 25, 2025

Position: FAVORABLE

To the Honorable Members of the Judicial Proceedings Committee:

[Community Legal Services](#) strongly supports SB0682, which provides critical protections to Maryland homeowners against unfair and predatory foreclosure practices. This bill addresses an urgent and growing problem: the exploitation of homeowners by private equity firms leveraging decades-old, written-off “zombie mortgages” to extract exorbitant payments under threat of foreclosure.

Community Legal Services (CLS) is a nonprofit organization that provides free legal services in a broad range of substantive areas to individuals and families who meet income-eligibility restrictions. Our organization is committed to promoting family and community stability and success by providing high quality legal representation for individuals and families who otherwise would not have access to justice and due process.

Maryland Homeowners Need SB0682 to Have a Fair Chance at Defending Against Predatory Practices.

CLS is on the front line of the fight to preserve homeownership and housing stability, defending Maryland homeowners against unjust foreclosure actions. Without clear applicable statutes in Maryland law to provide consumer protections from long dead mortgages, Maryland homeowners face an uphill battle in court, where their best defense often relies on Consumer Financial Protection Bureau (CFPB) federal regulations. However, with the potential for significant reductions in consumer protections at the federal level under a new administration, the continued viability of these defenses is in jeopardy. This bill creates a necessary safeguard in Maryland law by requiring secured parties to provide loan-related correspondence before enforcing a materially delinquent mortgage and by allowing homeowners to raise the defense of laches—ensuring that these zombie loans cannot be unfairly weaponized against them.

The History: Where are These Mortgages Coming From?

In the aftermath of the financial crisis of 2008, many homeowners were informed by their lenders that their second mortgages had been charged off.

Understandably, these homeowners believed their debts had been forgiven. However, in reality, these loans were quietly sold to private equity firms that sat on them for years, waiting for home values to rise. Now, with significant home equity at stake, these firms are aggressively reviving these debts and using Maryland's lack of a statute of limitations on mortgages to threaten families with the loss of their homes. In our experience, the families affected by these zombie mortgages are usually fixed-income seniors on social security who devote a large portion of their budget to pay the primary mortgage on the home they have lived in for decades.

Why Does Maryland Urgently Need to Act in Response to the Emergence of Materially Delinquent (aka, Zombie) Loans?

A materially delinquent loan is one that is at least 5 years delinquent. Most lenders are unwilling to allow a borrower to go 6 months without a payment before foreclosure proceedings begin. This law would put lenders on notice that they have 5 years to do the minimum necessary if they want to keep the right to foreclose. Borrowers targeted by these debt collectors have not received a single statement for over a decade yet are expected to pay a late fee and interest for every single month for which they missed a payment even though the lenders who owned the loan at the time had told them their loans had been written off. If you can't do the bare minimum of providing a monthly statement for more than a decade, the Maryland courts should not be available to you to extract these sums from homeowners.

Maryland is one of the few states without a statute of limitations on mortgages, making the need for this legislation even more pressing. Homeowners should not be subjected to financial ruin and homelessness because of long-dormant debts, written off by bailed-out banks, and later revived for private gain. This bill ensures fairness, transparency, and due process for Maryland families, preventing predatory investors from exploiting legal loopholes to strip homeowners of their hard-earned equity.

Conclusion

CLS urges the Committee to give a favorable report to SB0682 and take decisive action to protect Maryland homeowners from these harmful practices. Please feel free to reach out to Eric Orr, Staff Attorney, Jessica Quincosa, Executive Director, and Lisa Sarro, Director of Litigation & Advocacy, with any questions at orr@clspgc.org, quincosa@clspgc.org and sarro@clspgc.org, respectively.

SB682 EconAction FAV.pdf

Uploaded by: Marceline White

Position: FAV



**Testimony to the Senate Judicial Proceedings Committee
SB682 Real Property – Residential Foreclosures – Materially Delinquent Mortgages
Position: Favorable**

February 25, 2025

The Honorable Senator William Smith, Chair
Senate Judicial Proceedings Committee
2 East, Miller Senate Office Building
Annapolis, Maryland 21401
cc: Members, Judicial Proceedings Committee

Honorable Chair Smith and Members of the Committee:

Economic Action Maryland (formerly the Maryland Consumer Rights Coalition) is a statewide coalition of individuals and organizations that advances economic rights and equity for Maryland families through research, education, direct service, and advocacy. Our 12,500 supporters include consumer advocates, practitioners, and low-income and working families throughout Maryland.

We are here in strong support of SB682 which provides protections for Maryland homeowners from the terrifying spectre of zombie mortgages. SB682 builds on the work of the General Assembly during the foreclosure crisis of 2008-2011. In many ways, zombie mortgages are a leftover from the Great Recession. SB682 will provide protections for homeowners in Maryland.

Zombie Mortgages

Zombie mortgages are mortgages that homeowners believed were forgiven or satisfied long ago but still exist. Like a zombie, they come back to life to feed-in this case feeding on the rising equity in homes across the state. Many of these mortgages were taken out as a second mortgage during the lending spree of the mid-2000s when banks would make 80/20 loans where the mortgage was divided between a first and second mortgage which allowed a borrower to qualify and possibly avoid downpayment or other costs.

When the foreclosure crisis struck, many homeowners worked with banks to modify their mortgages to make their monthly payments manageable. Many homeowners believed or were wrongly told that their second mortgage was forgiven.

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Tax ID 52-2266235

Economic Action Maryland Fund is a 501(c)(3) nonprofit organization and your contributions are tax deductible to the extent allowed by law.



In fact, in some cases, the lender may have written off the second mortgage but sold it for pennies on the dollar to debt buyers. The homeowner may stop receiving notices or statements from the bank about the second mortgage. The homeowner believes the second mortgage was forgiven or extinguished. Yet, years later debt collectors will try to collect on the second mortgage when the rising values of homes means there is more profit to be made.

Unbelievably, the debt buyer can start a foreclosure process on a second mortgage even when the homeowner is current on the first mortgage. And even when the homeowner received no statements or notices about their second mortgage for years. These out-of-state debt buyers, private equity firms, and hedge funds demand the outstanding balance on the second mortgage, often adding fees and interest.

A Maryland Problem

An NPR report¹ found more than 700 second mortgages in Maryland where companies have filed Notice of Intention to Foreclose (NOI)-- the first step towards foreclosure. These second mortgages had been inactive for more than a decade.

Notably, the vast majority of these foreclosures on second-mortgages are concentrated in Baltimore City and Prince Georges County², which means Black and Brown homeowners are disproportionately affected by these foreclosures, just as they were hardest hit by predatory mortgage products.

Rising Costs and the Benefits of Homeownership Preservation

Currently, many homeowners are struggling with rising costs. In July 2024, Economic Action surveyed nearly 500 supporters and clients about the cost-of-living crisis. More than 50% surveyed said that they have been impacted by the surging costs of utilities, insurance, food, and housing costs. Survey respondents listed mortgage costs as their greatest expense causing them to struggle.

Homeownership preservation benefits individual homeowners, neighborhoods, and the cities/counties that rely on property taxes. A foreclosure depresses the value of homes surrounding it and the current housing crisis means it may be more difficult for an individual who loses their

¹ <https://www.npr.org/2024/05/10/1197959049/zombie-second-mortgages-homeowners-foreclosure>

² *ibid*



home to find a safe, secure, affordable alternative. There is likely to be more reliance on state support if an individual loses their home.

SB682 responds to this problem by providing a defense to foreclosure which means that the foreclosure could be barred if, among other issues, there was 1) an unreasonable delay in commencing action, and 2) harm resulting from the unreasonable delay. Under the laches doctrine described above, a foreclosure could be barred even when the statute of limitations to foreclose have not expired.

SB682 provides important protections for homeowners and builds on Maryland's past history supporting homeownership preservation.

For all these reasons, we support SB682 and urge a favorable report.

Best,

Marceline White
Executive Director

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SB682_ShoreLegalAccess_FAVORABLE.pdf

Uploaded by: Meredith Girard

Position: FAV

**SB682 Real Property- Residential Foreclosures –
Materially Delinquent Mortgages
HEARING BEFORE JUDICIAL PROCEEDINGS COMMITTEE
2/25/2025**

POSITION: FAVORABLE

Shore Legal Access (formerly Mid-Shore Pro Bono) supports SB682. This bill creates process requirements prior to initiation of an action to enforce a materially delinquent mortgage. Additional process requirements are needed to make sure that the borrower is made aware of the lender's intent to enforce prior to taking action.

Shore Legal Access (SLA) connects people on the Eastern Shore with limited financial means to legal representation and essential community resources. Each year, SLA helps over 3,800 people in our community access the legal system when they would otherwise be shut out. Our small legal team and network of volunteer lawyers provide free legal services for eviction prevention, criminal record expungement, life and estate planning, family law, foreclosure, and consumer debt. These services help families gain financial and housing stability and create safe, secure homes for children.

SLA is a provider of legal representation for foreclosure. It is often the case that our clients are facing challenges navigating getting in touch with their lender, filing certain paperwork and information, and getting access to a live person who can answer questions. These challenges are even more difficult when there is no formal communication about the existence of a materially delinquent mortgage or communication comes from a company they don't recognize. Without strong processes in place, homeowners can be evicted from their homes due to a mortgage they thought had been paid off or retired.

SB682 would require correspondence with the borrower prior to enforcement of a materially delinquent mortgage. SLA supports SB682 and urges the Committee's favorable recommendation on this bill. If you have any questions regarding our position, please contact Meredith Girard, Executive Director at 410.690.8128 or e-mail mgirard@shorelegal.org.



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2.21 - SB 682 - Real Property – Residential Forec

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Position: FAV



SB 682 - Real Property – Residential Foreclosures – Materially Delinquent Mortgages

Senate Judicial Proceedings Committee

February 25, 2025

SUPPORT

Chair Smith, Vice-Chair, and members of the committee, thank you for the opportunity to submit testimony in support of Senate Bill 682. This bill will require financial institutions to take specific steps through the foreclosure of residential mortgages.

The CASH Campaign of Maryland promotes economic advancement for low-to-moderate income individuals and families in Baltimore and across Maryland. CASH accomplishes its mission through operating a portfolio of direct service programs, building organizational and field capacity, and leading policy and advocacy initiatives to strengthen family economic stability. CASH and its partners across the state achieve this by providing free tax preparation services through the IRS program 'VITA', offering free financial education and coaching, and engaging in policy research and advocacy. **Almost 4,000 of CASH's tax preparation clients earn less than \$10,000 annually. More than half earn less than \$20,000.**

Senate Bill 682 addresses a significant gap in Maryland's mortgage foreclosure process by ensuring that homeowners receive clear, accurate, and timely information when facing foreclosure. This issue has recently been discussed in [NPR](#) and is currently being addressed [in other states](#). As you may already know, the impacts of "zombie mortgages" are primarily on low-income working families, and in many cases leave homeowners with unexpected and sudden foreclosure proceedings. At the CASH Campaign of Maryland, we work with low- and moderate-income individuals who are striving to maintain financial stability. Many of these individuals are homeowners who, due to financial hardship, may fall behind on mortgage payments and find themselves at risk of foreclosure. Unfortunately, current processes can leave homeowners confused about their rights and options, making it difficult for them to navigate a system that often moves quickly and without sufficient transparency.

This bill would require mortgage lenders and servicers to provide detailed notices that clearly outline the status of a foreclosure, available options for homeowners, and key timelines they must meet to protect their homes. Without these protections, struggling homeowners, especially those with limited financial education or access to legal assistance, may lose their homes unnecessarily due to a lack of information or confusion about their rights. At CASH, we have seen clients who could have avoided foreclosure had they received clear communication about their options, such as loan modifications or mediation programs. By ensuring that homeowners receive the information they need in a timely and understandable manner, SB 682 helps prevent avoidable foreclosures, stabilizes communities, and protects Maryland families from losing their homes due to unclear or inadequate foreclosure procedures.

Thus, we encourage you to return a favorable report for SB 682.

Creating Assets, Savings and Hope

SB 682.pdf

Uploaded by: William Steinwedel

Position: FAV



**Senate Bill 682 – Real Property – Residential Foreclosures – Materially
Delinquent Mortgages
Hearing on February 25, 2025 – Senate Judicial Proceedings Committee
Position: FAVORABLE**

Maryland Legal Aid (MLA) submits its written and oral testimony on SB 682 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. SB 682 requires mortgage servicers to provide additional documentation to a homeowner before commencing a foreclosure action. Because SB 682 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. SB 682 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 SB 682, 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. SB 682 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, SB 682 allows homeowners to raise laches in a foreclosure action and that defense is currently not available.

SB 682 seeks to address the serious problem facing Marylanders of zombie mortgages. MLA supports SB 682. If you need additional information in regard to this bill, please contact William Steinwedel at wsteinwedel@mdlab.org and (410) 951-7643.

Zombie Bill Maryland SB 682 Testimony Feb 21 2025

Uploaded by: Geoff Walsh

Position: FWA



February 21, 2025

Honorable William C. Smith, Jr., Chair
Judicial Proceedings Committee
Maryland Senate
2 East Miller Office Bldg.
Annapolis, MD, 21401

Re: SB 682 Real Property – Residential Foreclosures – Materially Delinquent Mortgages

TESTIMONY OF GEOFF WALSH, NATIONAL CONSUMER LAW CENTER

We present these comments on behalf of the National Consumer Law Center (NCLC). NCLC uses its expertise in consumer law to work for consumer justice and economic security for low-income and other disadvantaged people in the U.S. Thank you for the opportunity to offer testimony regarding SB 682, a bill that takes important steps toward reining in the growing threat that foreclosures of dormant second mortgages pose in Maryland and around the country. Often referred to as “zombie” second mortgages, these are old second mortgages that were inactive for many years. After investors buy them up, they suddenly come to life with threats to foreclose and demands for payment of exorbitant sums.

We support the concept of mandating a pause of foreclosures and compelling holders of zombie second mortgages to comply with consumer protection laws in the future. However, we have concerns about potential loopholes in the foreclosure pause that this bill defines. The bill also does not address the need for procedures and standards to adjust the massive accrued debt obligations that will burden homeowners when a foreclosure pause is no longer in place.

We would like to highlight these key points:

- Foreclosure of a second mortgage has devastating consequences for a homeowner – the loss of a home, and often a family’s life savings.
- Foreclosures of long-dormant second (or “zombie”) second mortgages have become a national scourge, with owners of these loans taking unfair advantages of homeowners who have been faithfully paying on their first mortgages for decades.

- Since the foreclosure crisis of 2008, many federal and state laws have been put in place that require owners and servicers of mortgage loans to communicate on a regular basis with borrowers about the status of their mortgage loans.
- For many years, and often for decades, the owners of zombie second mortgages consistently flouted the laws that obligated them to keep borrowers informed about the status of mortgage loans.
- After buying these loans for pennies on the dollar owed, buyers of zombie second mortgages take advantage of homeowners' lack of information about the status of the loans. They use the leverage of foreclosure to demand and collect sums that often exceed the amounts borrowed long ago.
- SB 682 has the potential to save families from foreclosure by creating a temporary delay of foreclosure where, for five years or longer, the owner of the loan flouted federal and state laws that required communications from the loan owner to the borrower about the status of the loan.
- SB 682 should allow holders of long-dormant second mortgages to enforce their property rights in the future only after they have established a pattern of communicating vital information to borrowers. All parties must be able to make informed decisions about their obligations going forward.
- We have concerns about definitions and other terms in the bill, and we address these specifically below. In particular, we are concerned that the bill does not address remedies needed to reduce the substantial debts for interest and fees that accrued while mortgage holders consistently ignored consumer protection laws.

1. The roots of the zombie mortgage foreclosure crisis

The zombie second mortgage crisis arose from a surge of second mortgages originated in the early 2000s, pushed by subprime mortgage brokers and lenders to borrowers who needed the extra financing to purchase or refinance a home. When housing prices were still on the rise, second mortgages, often in the form of “80/20” or “piggyback” loans, became common.

These 80/20 loan transactions financed the bulk of the sum advanced, around eighty percent of the principal balance owed, through a first mortgage and a smaller portion, around twenty percent of the principal balance, through a second mortgage from the same lender. Sometimes these second mortgage was considered the “down payment” for the first loan and eliminated the need for the borrower to put any money down on the loan.¹ The structure allowed

¹ National Commission on the Causes of the Financial and Economic Crisis in the United States, The Financial Crisis Inquiry Report 109–111(2011), available at www.govinfo.gov. According to the report, “Piggyback loans—which often required nothing down—guaranteed that many borrowers would end up with negative equity if housing prices fell, especially if the appraisal had overstated the initial value.” Id. at 110. The report noted that in a sample pool of first mortgage loans securitized by predatory lender New Century in 2006, thirty-three percent had a

the originator to charge fees for two distinct loans. Each loan often came loaded with its own array of abusive lending terms.

The structure of 80/20 mortgages confused many borrowers. Often, they did not realize that two distinct mortgages encumbered their homes. Further complicating the matter, many borrowers obtained modifications of the first mortgages, but not the seconds. If borrowers were aware of the second mortgages, the terms were often egregious, including steep interest rate adjustments. After a short time many could not afford the payments.

As the Great Recession's foreclosure crisis progressed and housing values plummeted, many borrowers came to owe more on the loans than the current value of their properties. For this reason, holders of second mortgages often placed the accounts in charged-off status and ceased collection for a decade or more. However, when property values rose in certain areas, these dormant second mortgages became hot commodities. Debt buyers purchased them, reactivated the accounts, and threatened foreclosures. Invariably, the current loan holders sought to recover the full range of fees and interest that allegedly came due while the loan was charged-off.

2. The consequences of foreclosure of a second mortgage are drastic.

According to common law, upon foreclosure of a second mortgage (or any other junior mortgage), the borrower loses all rights in the property. The purchaser at the junior mortgage foreclosure sale can proceed to evict the borrower and take possession of the property. If there is substantial equity in the property, the purchaser is incentivized to pay off the first mortgage and acquire unencumbered title to a valuable asset. The business model of certain debt buyers is to seek out these "opportunities" to gain a windfall. This is a particularly harsh result when the borrower kept current on the first mortgage for many years while receiving no communications from the junior mortgage holder.

Even if the holder of the second mortgage does not foreclose on it, it can use the threat of foreclosure as powerful leverage to extract payments from the homeowner. The recent rise in housing values has increased equity in homes, making it an ideal time for second mortgage holders to threaten foreclosures. Despite surviving the last foreclosure crisis and then the financial challenges of the COVID-19 pandemic, borrowers are now at risk of losing their homes and the equity they have earned.

3. Zombie foreclosures are a growing threat.

A July 2024 CBS News piece reported that, during 2006 and 2007, 30% of second mortgages became delinquent and many lenders wrote off the debts or sold the debts for less than what was owed.² These mortgages are now coming to life and threatening foreclosure. An NPR

piggyback second mortgage on the same property. *Id.* at 111. Keeping the first mortgages at an eighty percent loan-to-value ratio also kept them within the guidelines for securitization by the GSEs. *Id.* at 110.

² *Could a zombie mortgage put you at risk of foreclosure? Long-forgotten debt is coming back to haunt homeowners*, Ash-har Quraishi, Josh Peña, Ryan Beard, Taylor Johnston, Amy Corral, CBS News, July 24, 2024. Found at: <https://www.cbsnews.com/news/zombie-mortgages-debt-haunt-homeowners/>

piece in May 2024 reported that there is now foreclosure activity on at least 10,000 of these second mortgages.³

In a February 2024 survey, NCLC asked homeowner advocates how often their clients had been on the verge of losing their homes or lost their homes because of a zombie second mortgage when they came for help.⁴ Ninety percent of the 116 respondents reported having seen clients with zombie second mortgages, and 56% of that total reported seeing clients with zombie second mortgages either always, usually, or sometimes. Seventy-five percent of survey respondents reported that their zombie second mortgage clients always, usually, or sometimes had not received monthly mortgage statements for two years or more. Eighty-five percent of survey respondents said that either always, usually, or sometimes their clients with zombie second mortgages had been charged interest on the loan during the time they were not receiving monthly statements. Seventy-four percent of respondents said that their zombie second mortgage clients were always, usually, or sometimes on the verge of losing their homes, or lost their homes, because of a zombie second mortgage. This was a nationwide survey, but we have no reason to believe that Maryland homeowners are less affected than those in other states.

In the Appendix to NCLC's 2024 mortgage servicing report, we described borrowers affected by these unfair practices.⁵ For example, a low-income Latina single mother mistakenly believed the second mortgage of an 80/20 loan was discharged when she received a HAMP modification in 2010 and she stopped receiving any correspondence on the second. More than a decade later, she started getting multiple harassing calls from a debt collector threatening to foreclose if she did not start making payments on the second mortgage. They claimed she owed the original principal balance plus over ten years of interest and fees. The stress of potentially losing her home along with other challenges exacerbated her underlying mental health issues, and she had to be hospitalized for several months. The debt collector offered her a loan modification, which she could not afford but, desperate to save her home, signed anyway. She then fell into default on that modification and was facing foreclosure. Our report references similar cases involving Maryland homeowners.⁶

4. The holders of zombie second mortgages violate an array of consumer protection laws before and during foreclosures.

Zombie second mortgage wreak havoc on homeowners because demands for payment appear suddenly following years of complete silence from anyone claiming to own the loan. In

³ Zombie 2nd mortgages are coming to life, threatening thousands of Americans' homes, Chris Arnold, Robert Smith, Jess Jiang, Sam Yellowhorse Kesler, Robert Benincasa, Nick McMillan, Planet Money, NPR May 18, 2024. Found at: <https://www.npr.org/2024/05/10/1197959049/zombie-second-mortgages-homeowners-foreclosure>

⁴ National Consumer Law Center, Homeowners at Risk: Nationwide Survey Reveals Critical Gaps the CFPB Must Address to Prevent Foreclosures, February 21, 2024 Appendix A, Question 15, available at <https://www.nclc.org/resources/homeowners-at-risk-nationwide-survey-reveals-critical-gaps-the-cfpb-must-address-to-prevent-foreclosures/>

⁵ National Consumer Law Center, Homeowners at Risk: Nationwide Survey Reveals Critical Gaps the CFPB Must Address to Prevent Foreclosures, February 21, 2024 Appendix B, pp. 1-4, available at <https://www.nclc.org/resources/homeowners-at-risk-nationwide-survey-reveals-critical-gaps-the-cfpb-must-address-to-prevent-foreclosures/>

⁶ *Id.*, p. 4.

the wake of the 2008 foreclosure crisis, federal and state regulators implemented rules designed to prevent exactly this type of surprise attack from a predatory lender. Major mortgage servicers have adjusted their practices to comply with these rules, but holders and servicers of zombie second mortgages ignored these laws completely. If the holders of second mortgages had followed the laws, homeowners would not be in the position they find themselves today. In effect, holders of zombie seconds are now seeking to profit handsomely from their years of flaunting federal and state laws. Because the recent consumer protection laws at the federal level do not create defenses to foreclosures, mortgage holders can foreclose without facing accountability for repeated violations of these laws.

Several federal laws obligate mortgage servicers to send written communications to homeowners on a regular basis. They also require that holders and servicers of mortgages send communications to borrowers whenever important changes affecting loan servicing take place. The Truth in Lending Act (“TILA”) requires that new holders or assignees of mortgages inform borrowers of any transfers of loan ownership within thirty days after the loan is sold.⁷ A transfer of servicing rights for a second mortgage also triggers obligations under the federal Real Estate Settlement Procedures Act (“RESPA”) for both the transferor servicer and the transferee servicer to provide timely notices of a servicing transfer to the borrower.⁸ Although ownership and servicing rights of zombie second mortgages changed hands multiple times over the years, homeowners seldom, if ever, received notices about these transfers. Receipt of these transfer notices would have given homeowners a clear sign that someone still claimed a right to payment of the mortgage debt.

The Dodd-Frank Act created important obligations under TILA for mortgage servicers to provide periodic account statements to borrowers.⁹ The CFPB issued rules under Regulation Z that implemented this TILA requirement.¹⁰ The rules apply to a first and second mortgage loan secured by a dwelling. Limited exemptions from the periodic statement requirements apply to small servicers, servicers who provide detailed account information in coupon books, and in certain instances, to loans involved in bankruptcy.¹¹

The TILA obligation to send periodic mortgage account statements applies to a “servicer,” which includes the “creditor, assignee, or servicer, as applicable.”¹² The requirement applies to all of these parties.

A periodic account statement takes on a particularly important function in the context of a second mortgage. As in the case of a first mortgage, the servicer of a second mortgage must provide the borrower with an account statement each billing cycle. These are typically monthly statements. Each statement must include, *inter alia*: the amount due as of a specific due date; an explanation of the amount due with a breakdown; a description of the most recent transaction

⁷ 12 C.F.R. § 1026.39(b), implementing 15 U.S.C. § 1641(g).

⁸ 12 U.S.C. § 2605(b); Reg. X 12 C.F.R. § 1024.33(b).

⁹ 15 U.S.C. § 1638(f).

¹⁰ 12 C.F.R. § 1026.41 (initial version effective February 14, 2014).

¹¹ However, they do not cover a reverse mortgage, HELOC, or other type of open-end consumer credit. 12 C.F.R. § 1026.41(a)(1).

¹² Reg. Z 12 C.F.R. § 1026.41(a)(2).

and payment application; contact information for further explanations about the account; and information about the availability of housing counseling.¹³

If the borrower is more than forty-five days delinquent, the periodic statement must provide detailed information about the long-term arrearage owed and warn the borrower about risks of foreclosure.¹⁴ Given that the rule has a specific provision applicable to loans in default, a creditor, assignee, or servicer cannot argue that loans in default are exempt from the periodic statement requirement.

The TILA periodic statement rule obligates servicers to keep borrowers informed about the status of a second mortgage, including whether it has been charged-off or re-activated for collection, as well as who currently owns the loan and how to contact appropriate parties for up-to-date information. Compliance with the periodic statement rule would prevent the surprise appearance of a long-dormant second mortgage along with unexpected claims for years of accrued interest and fees.

In addition to the federal laws that mandate written communications from a mortgage holder to a borrower, a number of federal and state laws prohibit debt collection practices that are unfair, deceptive, or abusive. These laws generally apply to mortgage servicing and foreclosures. The Fair Debt Collection Practices Act (“FDCPA”) prohibits a wide range of unfair and deceptive practices by debt collectors.¹⁵ The Consumer Financial Protection Bureau has issued guidance specifically finding that the FDCPA applies to practices of servicers of zombie second mortgages.¹⁶ According to the CFPB, the FDCPA’s remedies for unfair and deceptive debt collection through foreclosure apply in non-judicial as well as judicial foreclosures. They also apply beyond foreclosures to demands for payment related to zombie second mortgages.¹⁷ Maryland has its own statute that regulates debt collection and that embodies many of the same prohibitions as the federal FDCPA.¹⁸

Common practices of zombie second mortgage holders fall within the prohibition of Maryland’s statute barring unfair and deceptive commercial practices.¹⁹ The practices are unfair because loan holders systematically violated consumer protection laws to place themselves in a position of overwhelming power. They then use that position to coerce payment of substantial debts that they acquired for a fraction of the amounts they later demand. The practices are deceptive because the long-term chronic failure to provide essential information about the debts

¹³ 12 C.F.R. § 1026.41(d).

¹⁴ 12 C.F.R. § 1026.41(d). See *Kumi v. United Asset Mgmt., L.L.C.*, 574 F. Supp. 3d 1253, 1259 (N.D. Ga. 2021) (granting injunction against foreclosure sale of second mortgage, noting harm to borrower from not receiving periodic statements that would have informed borrower about the ongoing status of the debt).

¹⁵ 15 U.S.C. §§ 1692, 1693.

¹⁶ Consumer Financial Protection Bureau, [Fair Debt Collection Practices Act \(Regulation F\); Time-Barred Debt](#) (Apr. 26, 2023) at 5, available at www.consumerfinance.gov.

¹⁷ *Id.* at 6.

¹⁸ Md. Code Ann., Com. Law §§ 14-201 to 14-204 (West) (Debt Collection). See also Md. Code Ann., Com. Law §§ 13-301(14)(iii) (applicability of UDAP statute to debt collection).

¹⁹ Md. Code Ann., Com Law § 13-301, *et seq.*

deprives consumers of the ability to make informed decisions about how to best protect their rights under the mortgage.

Finally, investors who purchase zombie second mortgages often buy a bare bones electronic record of a transaction that took place fifteen, twenty, or more years ago. They seldom have access to an accurate servicing history file. This means they cannot vouch for a payment history or past communications to the borrower. They often cannot document that they have authority to enforce the relevant promissory note, a requirement to foreclose under Maryland law.²⁰

5. Existing federal and state laws do not provide effective remedies to homeowners facing foreclosure of a zombie second mortgage.

Although federal and state laws obligate holders of second mortgages to provide important and accurate information to borrowers on a regular basis, the failure to comply with these laws often does not provide an effective defense to a foreclosure under current Maryland law. Violations of the TILA and RESPA communication requirements can subject an offending servicer to a lawsuit for monetary damages, including modest penalties. However, even for these monetary claims consumers face short statutes of limitations, ranging from one to three years from when the violation occurred. The same is true for violations of the FDCPA and state debt collection law.

In addition, obstacles to defense against a foreclosure arise when the party foreclosing is a downstream assignee of the loan. Consumers have faced difficulties bringing certain legal claims under Maryland laws against the current assignee of a mortgage when prior holders were responsible for major misconduct. The consumer's claims involving a zombie second mortgage foreclosure can involve conduct by multiple loan holders and multiple loan servicers who handled the loan for over a decade or longer in the past.²¹ All of these actors contributed to the current unfair foreclosure, but each entity will attempt to shift liability to someone else. Many entities active in the years leading up to the 2008 foreclosure crisis have gone out of business.

Finally, consumers need access to an attorney to effectively contest a non-judicial foreclosure in Maryland. A borrower needs to file a lawsuit in court in order enforce rights under a consumer protection law. Once hauled into court, holders of zombie second mortgages resist requests for documents and other discovery. Litigation can be costly and well beyond the reach of most consumers.

²⁰ Deutsche Bank Nat'l Tr. Co. v. Brock, 63 A.3d 40, 51 (Md. 2013) (applying U.C.C. § 3-301); Anderson v. Burson, 35 A.3d 452, 461–463 (Md. 2011).

²¹ See e.g. Nationstar Mtge. LLC v. Kemp, 476 Md. 149, 258 A.3d 296 (2021) (statutory prohibition on a lender's inspection fee for real property applies to a mortgagee's assignee and a mortgage loan servicer); Thompkins v. Mountaineer Investments, LLC, 439 Md. 118, 94 A.3d 61 (2014) (no recourse against current owner of mortgage for claims arising from loan originator's actions); Sharma v. Rushmore Loan Mgt. Services, LLC, 611 F. Supp. 3d 63 (D. Md. 2020) (trustees and trustees were not mortgage lenders within meaning of Maryland mortgage lender licensing statute); Robinson v. Fay Servicing, LLC, 2019 WL 4735431 (D. Md. Sept. 27, 2019) (assignees of mortgage lenders are not "Mortgage Lenders" under the Maryland Mortgage Lender Law).

6. Senate Bill 682 has the potential to provide much-needed protections for consumers facing foreclosure of a zombie second mortgage

SB 682 defines a “materially delinquent mortgage” as one on which the borrower made no payments during the preceding five years. § 7-105.19(A)(4).²² The Bill has a proposed effective date of January 1, 2026. With that date in mind, the Bill provides that until October 1, 2027 the holder of a materially delinquent mortgage cannot commence a foreclosure or judicial sale unless “at least one piece of loan-related correspondence” was sent to the borrower during each billing cycle for the immediately preceding 24 months. § 7-105.19(B)(3)(I). An exception to this requirement applies if a “law, regulation, or executive order “prohibited” the loan holder from sending the referenced communications to the borrower. *Id.* In the alternative, the Bill would allow the loan holder to foreclose before October 1, 2027 if it served the borrower with “a form provided by the Commissioner of Financial Regulation” at least 90 days before commencing foreclosure. § 7-105.19(B)(3)(II). The Bill text does not describe this form’s purpose or suggest what it would say.

The Bill would potentially prohibit foreclosure of a zombie second mortgage from January 1, 2026 to October 1, 2027 unless the loan holder could show that it gave the borrower “at least one piece of loan related correspondence” each month during the two years preceding foreclosure.

The Bill’s concept of “loan-related correspondence” relies primarily on the periodic mortgage account statement that the TILA obligates services to give borrowers on a regular basis. § 7-105.19(A)(3)(I), referencing 12 C.F.R. § 1026.41. As discussed in Part 4, above, in a few limited circumstances the TILA periodic statement rule excepts servicers from the requirement to give the borrower monthly account statements. SB 682 conditions foreclosure of a materially delinquent mortgage during the 2026-2027 stay period upon creditors’ compliance with the TILA periodic statement rule for the past two years. Unless circumstances existed that triggered one of the exceptions to the obligation to send periodic statements, statements must have been sent for each of the 24 months preceding commencement of foreclosure. Otherwise, the zombie mortgage holder must wait until after October 1, 2027 to commence foreclosure.

If a servicer of a materially delinquent mortgage was not required to send TILA periodic statements during any of the 24 months preceding commencement of a foreclosure, the foreclosure would be permitted during the 2026-2027 stay period if the servicer had provided an alternative statement for each month that a TILA statement was not sent. The alternative statement must have contained: (1) the name and contact information of the secured party; (2) the current amount of the outstanding principal balance; (3) the current interest rate in effect; (4)

²² The definition excludes any period in which an executive order or similar official action restricted foreclosure. The intent behind this exclusion appears to be to subtract from the five years any time affected by orders such as those issued by the Maryland Governor in 2020 during the COVID-19 pandemic. As discussed later in these comments, this time exclusion does not appear to be based on a correct understanding of how executive orders and similar actions restricting foreclosures affect the borrower’s obligation to make payments on a mortgage.

the amount currently due disaggregated by principal, interest, charges, and fees; and (5) the length of any payment delinquency, including the date of last payment. § 7-105.19(A)(3)(II).²³

After October 1, 2027, the holder of the materially delinquent mortgage can commence foreclosure if it sent the loan related correspondence (periodic statements) to the borrower for each of the preceding 24 consecutive months. § 7-105.19(B)(4).

7. Concerns and proposed amendments

a. The bill must be amended to ensure that a foreclosure pause is comprehensive.

The Bill seeks to create a breathing spell during which the mortgage holder can begin to bring itself into compliance with laws that require communications from the loan holder to the borrower. However, the Bill allows foreclosure at any time, even during this breathing spell, if the loan holder gives the borrower a “form provided by the Commissioner of Financial Regulation ninety days before commencing foreclosure.” § 7-105.19(B)(3)(II). Without more information about this notice, it is difficult to assess the ultimate value of the Bill for consumers. If the intent is to provide a 22-month breathing spell for the borrower and loan holder to explore alternatives to foreclosure, it is unclear why § 7-105.19(B)(3)(II) was placed in the Bill. We urge the deletion of § 7-105.19(B)(3)(II).

b. The bill must address relief from the underlying debts.

The Bill does not address modification of the debt obligation and adjustment of repayment terms based on the mortgage holder’s past unlawful conduct. The Bill’s reference to the borrower’s ability to assert a defense of laches in a judicial proceeding is helpful. § 7-105.19(C).²⁴ In particular, the language in this subsection clarifying the application of laches to actions of predecessors of the current mortgage holder and servicer is very helpful.

Maryland law recognizes the authority of courts to enforce equitable principles in the non-judicial and judicial foreclosure contexts.²⁵ Legislation should direct courts to apply these doctrines against holders of zombie second mortgages. For example, abatement of interest, fees, and charges accrued during periods of non-compliance with consumer protection laws is an

²³ The alternative statement language is also helpful because it addresses the need for communications in connections with second mortgages in the form of home equity lines of credit (“HELOC” loans). As a form of open-end credit, HELOCs are not covered by the TILA periodic statement requirements.

²⁴ The laches defense applies when protracted inaction in enforcing the equitable remedy of foreclosure has worked to the disadvantage of the borrower who acted in reliance on that inaction. Laches focuses on the inequity of enforcement of the mortgage in view of the particular circumstances of the borrower and the property. Two elements must coalesce for laches to apply. First, there must have been an unreasonably long delay in the commencement of foreclosure. Second, this delay must cause some prejudice or harm to the borrower. Borrowers are harmed by the delays in foreclosure of a zombie second mortgage in two ways. First, they lost opportunities for modifications and other loss mitigation options when arrearages were manageable. Programs were in effect during the foreclosure crisis that could have wiped out many of these second mortgages had the borrowers been aware of them. Second, the passage of time results in lost documents, records, and other evidence that a borrower needs to defend against a foreclosure.

²⁵ Wells Fargo Home Mortg., Inc. v. Neal, 398 Md. 705, 922 A.2d 538 (2007).

appropriate remedy courts could impose. In the context of laches claims, the Bill should make clear that courts have the authority to direct that liens securing abandoned debts be voided.

Virginia recently enacted legislation addressing zombie second mortgage foreclosures.²⁶ The Virginia legislation specifically provides for the abatement of interest accrued during periods of non-compliance with the TILA periodic statement rule. Inclusion of such a provision in this Bill would better hold loan holders accountable for past misconduct and lead to fewer foreclosures. A bill recently filed in Massachusetts would similarly authorize courts to reduce accrued arrearages upon findings of inequitable conduct by the holders of a zombie mortgage.²⁷ Virginia and Massachusetts, like Maryland, are non-judicial foreclosure states.

If the courts cannot address the massive amounts of interest accrued during the dormancy period of a zombie mortgage, many homeowners will simply find themselves unable to address the mortgage debt, and the zombie mortgage holder will proceed to foreclose. For the same reasons, it is important that the legislation specifically state that it does not limit in any way the ability of borrowers to pursue claims and defenses arising under other laws and from the terms of their loan documents.

c. The definition of “materially delinquent mortgage” inappropriately excludes many zombie mortgages that should be covered.

The definition of “materially delinquent mortgage” should be amended. § 7-105.19(A)(4). Defining a materially delinquent mortgage as one for which the borrower made no payments in the preceding five years is clear. However, excluding from the five years any time during which “a secured party could not institute a foreclosure proceeding due to an executive order or other similar action restricting foreclosure actions” does not make sense. We are not aware of any executive orders or similar actions that directed borrowers not make payments on their mortgages. Certainly executive orders were in effect during the COVID-19 pandemic that limited foreclosure activity. However, these orders did not direct borrowers to cease payments.

Absent a formal forbearance agreement between the mortgage holder and the borrower, the borrower’s obligation to make payments was not affected by an executive order staying foreclosures. The Bill language appears to confuse foreclosure stays ordered by a government authority and forbearance agreements, which were contractual agreements between mortgage holders and borrowers. Given the nature of zombie mortgages, it is highly unlikely that borrowers and holders of zombie mortgages entered into forbearance agreements during the COVID-19 pandemic. Similarly, the automatic stay in bankruptcy cases does not order the borrower to stop making mortgage payments. We suggest deleting references to exceptions to or tolling of the five-year period defining a “materially delinquent mortgage” in § 7-105.19(A)(4).

²⁶ Va. H.B. 184, signed into law by the Governor of Virginia in April 2024, *An Act to amend and reenact § 55.1-321 of the Code of Virginia (relating to foreclosure procedures; subordinate mortgage; affidavit required)*.

²⁷ Mass. Senate Bill No. 2437, as filed Jan. 17, 2025.

d. The bill's proposed effective date is unreasonably delayed.

Finally, there is an immediate need for protections against commencement of foreclosures that this Bill would stay. The proposed January 1, 2026 effective date should be modified to ninety days from final approval of the Bill.

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