

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 675

(Senator West)

Judicial Proceedings

**Baltimore County - Foreclosure Proceedings - Affidavit That Property Is Vacant
or Unfit for Human Habitation**

This bill establishes special foreclosure proceedings, in Baltimore County only, for residential property that is vacant or unfit for human habitation under the county or municipal housing codes.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State finances or operations.

Local Effect: Potential minimal increase in expenditures for Baltimore County to the extent that the process established by the bill increases the number of foreclosures. Revenues are not materially affected.

Small Business Effect: Minimal.

Analysis

Bill Summary: In Baltimore County only, if a mortgage or deed is in default, a person with a secured interest in the residential property may file an order to docket (OTD) or complaint to foreclose accompanied by an affidavit stating that the residential property is vacant or unfit for human habitation under the county or municipal housing codes.

The bill exempts an OTD or complaint to foreclose filed pursuant to the bill's provisions from existing statutory requirements regarding the foreclosure process, as specified in § 7-105.1 of the Real Property Article. However, the secured party must serve the foreclosure documents, affidavit, and a description of the right of the record owner or

occupant of the property to challenge the accuracy of the affidavit in accordance with specified requirements. The record owner or occupant of a property may challenge the accuracy of the affidavit by filing a motion to strike the affidavit within 30 days after service.

If the court finds by a preponderance of the evidence that there is controversy as to the accuracy of the affidavit, the court must strike the affidavit and require the person with the secured interest to comply with existing statutory requirements regarding the foreclosure process.

If a secured party files a fraudulent affidavit, the party is liable to the owner or occupant for court costs, reasonable attorney's fees, and any other remedy available under State or local law. The subject property may not be sold at a foreclosure sale until 31 days after notice is provided to the owner or occupant or there is a disposition to any motion filed by the record owner or occupant.

Current Law/Background: For information about the foreclosure process generally, including recent foreclosure activity in the State, see the **Appendix – Foreclosure Process**.

If a mortgage or deed of trust on residential property is in default, a person with a secured interest in the property may request, of a jurisdiction that issues such certificates, that the county or municipal corporation issue a certificate of vacancy or a certificate of property unfit for human habitation. "Certificate of property unfit for human habitation" means (1) in Baltimore City, a certificate of substantial repair or (2) a certificate for residential property issued by a unit of a county or municipal corporation indicating that the residential property has been determined to be unfit for human habitation. "Certificate of vacancy" means a certificate for a residential property issued by a unit of a county or municipal corporation indicating that the residential property is vacant.

If the county or municipal corporation determines that the property is vacant or, in accordance with local, county, or State housing codes, unfit for human habitation, it has to issue the appropriate certificate to the secured party. Such a certificate is valid for 60 days after the date of issuance. A county or municipal corporation may charge a fee of up to \$100 and establish procedures for the issuance of such certificates.

The record owner or occupant of a property may challenge a certificate of vacancy or a certificate of property unfit for human habitation by notifying the circuit court of the challenge. A secured party filing an OTD or complaint to foreclose based on a certificate of vacancy or a certificate of property unfit for human habitation must serve the foreclosure documents in accordance with other requirements for service in a foreclosure action on residential property along with a description of the procedure to challenge the certificate and the form needed to make the challenge.

If a certificate is valid at the time of filing an OTD or complaint to foreclose, a secured party may expedite the foreclosure process. However, if a challenge to the certificate is upheld, the process may not be expedited.

The Commissioner of Financial Regulation may develop the description of the procedure to challenge a certificate of vacancy or certificate of property unfit for human habitation and the form needed to make the challenge.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 990 (Delegate Grammer) - Environment and Transportation.

Information Source(s): Baltimore County; Judiciary (Administrative Office of the Courts); Maryland Department of Labor; Department of Legislative Services

Fiscal Note History: First Reader - February 24, 2020
mr/jkb

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Appendix – Foreclosure Process

Beginning with the financial downturn in 2007, Maryland saw a significant increase in the number of foreclosure actions. Foreclosure activity likely peaked in 2010, when the number of foreclosure events exceeded 50,000. Due to a multitude of factors, including legislation addressing the State’s foreclosure mediation process, consumer outreach efforts, and enhanced mortgage industry regulation and enforcement surrounding many banks’ and mortgage companies’ foreclosure practices, the number of foreclosure events decreased significantly to 16,049 in 2011. However, these changes also resulted in the general lengthening of the foreclosure process, leaving many housing units in limbo for years at a time.

Despite improvements, the number of foreclosure events in Maryland has remained stubbornly high, even with national trends downward. According to the real estate information company RealtyTrac, as of January 2020, Maryland ranked fourth in overall foreclosure rate among states and the District of Columbia, with 1 in every 1,500 housing units facing some form of foreclosure action, compared to the national average of 1 in every 2,253 housing units. Other states with high foreclosure rates include New Jersey (1 in every 1,043 housing units) and Delaware (1 in every 1,086 housing units).

Foreclosure Process in Maryland

Generally, to foreclose on residential property in Maryland, the secured party must first send a notice of intent to foreclose (NOI) to the mortgagor or grantor and the record owner, then file and serve an order to docket (OTD) or a complaint to foreclose. A copy of the NOI must be sent to the Commissioner of Financial Regulation, and if the property is owner-occupied, the NOI must be accompanied by a loss mitigation application. Whether the filing of an OTD, or a complaint to foreclose, is appropriate depends on the lien instrument held by the secured party. An action to foreclose a mortgage or deed of trust may not be filed until the later of (1) 90 days (or 120 days if the loan is “federally related”) after a default in a condition on which the mortgage or deed of trust specifies that a sale may be made or (2) 45 days after an NOI is sent. An OTD or complaint to foreclose must be filed with the circuit court, and a copy must be served on the mortgagor or grantor. An OTD or a complaint to foreclose must include, if applicable, the license number of both the mortgage originator and the mortgage lender. The OTD or complaint to foreclose must also contain an affidavit stating the date and nature of the default and, if applicable, that the NOI was sent and that the contents of the NOI were accurate at the time it was sent.

A secured party may petition the circuit court for leave to immediately commence an action to foreclose the mortgage or deed of trust if:

- the loan secured by the mortgage or deed of trust was obtained by fraud or deception;
- no payments have ever been made on the loan secured by the mortgage or deed of trust;
- the property subject to the mortgage or deed of trust has been destroyed;
- the default occurred after the stay has been lifted in a bankruptcy proceeding; or
- the property is found by a court to be vacant and abandoned.

The court may rule on the petition with or without a hearing. If the petition is granted, the action may be filed at any time after a default in a condition on which the mortgage or deed of trust provides that a sale may be made, and the secured party is not required to send a written NOI.

Prerequisites for Foreclosure Sales

Generally, if the residential property is *not* owner-occupied, a foreclosure sale may not occur until at least 45 days after specified notice is given. If the residential property is owner-occupied, and foreclosure mediation is not held, a foreclosure sale may not occur until the later of (1) at least 45 days after providing specified notice that includes a final loss mitigation affidavit or (2) at least 30 days after a final loss mitigation affidavit is mailed. Finally, if the residential property is owner-occupied residential property and postfile mediation is requested, a foreclosure sale may not occur until at least 15 days after the date the postfile mediation is held or, if no postfile mediation is held, the date the Office of Administrative Hearings (OAH) files its report with the court.

A foreclosure mediation may be extended for good cause by OAH for up to 30 days, unless all parties agree to a longer extension. Additionally, both parties have an obligation to provide instructions regarding documents and information to each other and the mediator. Any motion to stay a foreclosure sale must come within 15 days of the date the postfile mediation is held. Notice of the sale of a foreclosed property must be sent 10 days before the date of sale.

Generally, notice of the time, place, and terms of a foreclosure sale must be published in a newspaper of general circulation in the county where the action is pending at least once a week for three successive weeks. The first publication of the notice must be more than 15 days before the sale, and the last publication must be within one week of the sale.

Curing Defaults

The mortgagor or grantor of residential property has the right to cure a default and reinstate the loan at any time up to one business day before a foreclosure sale by paying all past-due payments, penalties, and fees. Upon request, and within a reasonable time, the secured party or the secured party's authorized agent must notify the mortgagor or grantor or his or her attorney of the amount necessary to cure the default and reinstate the loan as well as provide instructions for delivering the payment.

Expedited Foreclosure Process for Vacant and Abandoned Property

In an effort to reduce the number of vacant and abandoned residential properties lingering in foreclosure, Maryland passed legislation during the 2017 session designed to expedite the foreclosure process. Chapter 617 of 2017 authorized a secured party to petition the circuit court for leave to immediately begin an action to foreclose a mortgage or deed of trust on a vacant and abandoned residential property and required the court to promptly rule on the petition. A residential property is vacant and abandoned if (1) the court finds that the mortgage or deed of trust on the property has been in default for 120 days or more; (2) no mortgagor or grantor has filed with the court an answer or objection that would prevent the court from entering a final judgment and a decree of foreclosure; (3) no mortgagor or grantor has filed with the court a written statement that the property is not vacant and abandoned; and (4) at least three of several criteria listed in statute, such as the accumulation of debris or the lack of connected utilities, are present.

Generally, if the residential property is found to be vacant and abandoned and the court grants the petition for leave to immediately begin an action to foreclose a mortgage or deed of trust, specified mediation and other preliminary foreclosure process requirements do not apply.