

WEST_FAV_SB675

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February 25, 2020

Senate Judicial Proceedings Committee
The Honorable William C. Smith
2 East Miller Senate Building
Annapolis, Maryland 21401-1991

RE: SB 675 – Baltimore County – Foreclosure Proceedings – Affidavit That Property Is Vacant or Unfit for Human Inhabitation

Dear Chairman Smith and Members of the Committee:

When the Great Recession hit in 2008, a lot of foreclosures were initiated in Maryland by banking institutions holding mortgages and deeds of trust on private residences. Reacting to the large number of homeowners being dispossessed of their homes, the Maryland General Assembly quickly enacted legislation whose practical effect was to greatly slow down the foreclosure process.

This legislation did the job it was intended to do, but there have been unexpected collateral consequences. Sometimes, the owners of houses have literally walked away from their homes and left them vacant. The existing foreclosure law makes no exceptions for these cases, even though vacant homes are easy targets for vagrants or burglars who enter the vacant homes and strip them of everything of value – hardware, plumbing fixtures, even electrical wiring. Similarly, there are instances in which residences have become unfit for human habitation. Here again, the existing law slows down the foreclosure process and forces holders of mortgages and deeds of trust to jump through numerous legal hoops before they can foreclose on these properties.

It is in no one's interest to have hulking vacant residences or homes that are unfit for human habitation sitting derelict on a residential street for long periods of time because the lenders holding mortgages or deeds of trust on the homes are prevented from using the State's foreclosure laws to sell the homes at public auction to new owners who will stabilize them and rehabilitate them.

This local Baltimore County bill provides a simple way in these limited situations for holders of mortgages and deeds of trust to much more rapidly invoke their rights of foreclosure.

The bill provides that a holder of a mortgage or deed of trust can initiate a foreclosure proceeding in the Circuit Court accompanied by an Affidavit stating that the home is either

vacant or unfit for human habitation under the County's housing code. The holder of the mortgage or deed of trust then must serve the foreclosure documents, including the Affidavit, on the record owner or occupant of the property along with a description of the right of the owner or occupant to challenge the accuracy of the Affidavit. The owner or occupant then has 30 days to file a Motion to Strike the Affidavit. If the Court then finds that a controversy as to the accuracy of the Affidavit exists, the Court *must* strike the Affidavit, *must* require the holder of the mortgage or deed of trust to comply with all of the requirements of the Maryland foreclosure law and, if the Court finds that the Affidavit was fraudulent, *must* award attorney's fees to the owner or occupant to pay for the expenses incurred in getting the Affidavit stricken.

In most cases, if the house is indeed vacant or not fit for human habitation, the owner or occupant will not challenge the accuracy of the Affidavit, and in such an event, this bill provides that the holder of the mortgage or deed of trust will not have to comply with Section 7-105.1 of the Real Property Article, which contains the various provisions which serve to slow down the foreclosure process.

So this bill will facilitate the rapid foreclosure of vacant properties or properties unfit for human habitation in Baltimore County neighborhoods. It will enable the holders of mortgages or deeds of trust on these homes to quickly gain possession of the homes, stabilize them, put them in shape for sale and sell them at public auction to new owners. Instead of neighborhood blight, this bill will lead to a recovery and rehabilitation of these properties, to the benefit of the surrounding neighborhoods.

I ask the committee for a favorable report.

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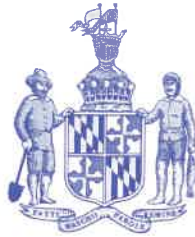
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February 25, 2020

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

From: Kira Wilpone-Welborn
Staff Attorney

Re: Senate Bill 675 – Baltimore County - Foreclosure Proceedings - Affidavit That Property
Is Vacant or Unfit for Human Habitation (OPPOSE)

The Consumer Protection Division of the Office of the Attorney General opposes Senate Bill 675 sponsored by Senator West because it would remove valuable and necessary protections to Maryland homeowners facing foreclosure proceedings in Baltimore County.

The current law limits the ability of secured interest holders to avoid the full foreclosure procedures--including advanced notice of the intent to foreclose, and the ability to seek foreclosure mediation and relief--detailed in the Real Property Article § 7-105.1. These important due process protections ensure Maryland consumers know of their rights in the foreclosure process and allows consumers to retain ownership of their property through mediation.

Unlike the current law, Senate Bill 675 would not require that a county or municipal corporation certify that the property is vacant or unfit for human habitation. Instead, Senate Bill 675 would allow individuals with a secured interest in a property to expedite the foreclosure process by merely filing with the court an affidavit that the property at issue is vacant or uninhabitable. Moreover, the homeowner would only have thirty (30) days to dispute the accuracy of the affidavit foreclosing their access to important due process procedures. Senate Bill 675's proposal to allow secured interest holders in Baltimore County to skirt the full foreclosure notice and medication processes without seeking a certificate of vacancy or uninhabitability from a county or municipal corporation would invite unfairness to the foreclosure procedure and harm Maryland consumers. Accordingly, the Division requests that the Judicial Proceedings Committee give Senate Bill 675 an unfavorable report.

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