

Department of Legislative Services  
Maryland General Assembly  
2013 Session

FISCAL AND POLICY NOTE

House Bill 1147 (Delegate Kipke)  
Environmental Matters

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**Residential Property Foreclosure Procedures - Required Documents - Request for Waiver of Mediation Filing Fee**

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This bill requires a secured party to include a request for waiver of the postfile mediation filing fee with other documents accompanying an order to docket (OTD) or complaint to foreclose sent to a grantor or mortgagor.

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**Fiscal Summary**

**State Effect:** Special fund revenues decrease minimally for the Department of Housing and Community Development (DHCD) in FY 2014 and subsequent years to account for the decrease in postfile mediation filing fees paid by grantors or mortgagors. No impact on special fund expenditures.

**Local Effect:** The bill's changes can be handled with existing budgeted resources.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** Postfile mediation occurs subsequent to the filing of an OTD or complaint to foreclose. A grantor or mortgagor may file with the court a completed request for foreclosure mediation within 15 days after the service or mailing of the final loss mitigation affidavit. A \$50 filing fee must accompany the request. The court may reduce or waive the filing fee if the grantor or mortgagor is eligible for a reduction or waiver under the Maryland Legal Services Corporation guidelines. A grantor or mortgagor must also mail a copy of the request to the secured party's foreclosure attorney. The secured party may then file a motion to strike, accompanied by an affidavit

setting forth the reasons why foreclosure mediation is not appropriate. If the secured party files a motion to strike, it must mail a copy of the motion and affidavit to the grantor or mortgagor. The grantor or mortgagor has 15 days to file a response.

The court must transmit the request to the Office of Administrative Hearings (OAH) within five days of receiving the mediation request. OAH must conduct the mediation hearing within 60 days of this transmittal, unless the time is extended for good cause. Upon scheduling the mediation hearing, OAH must send notice to the parties detailing the production of specified documents by a specified date.

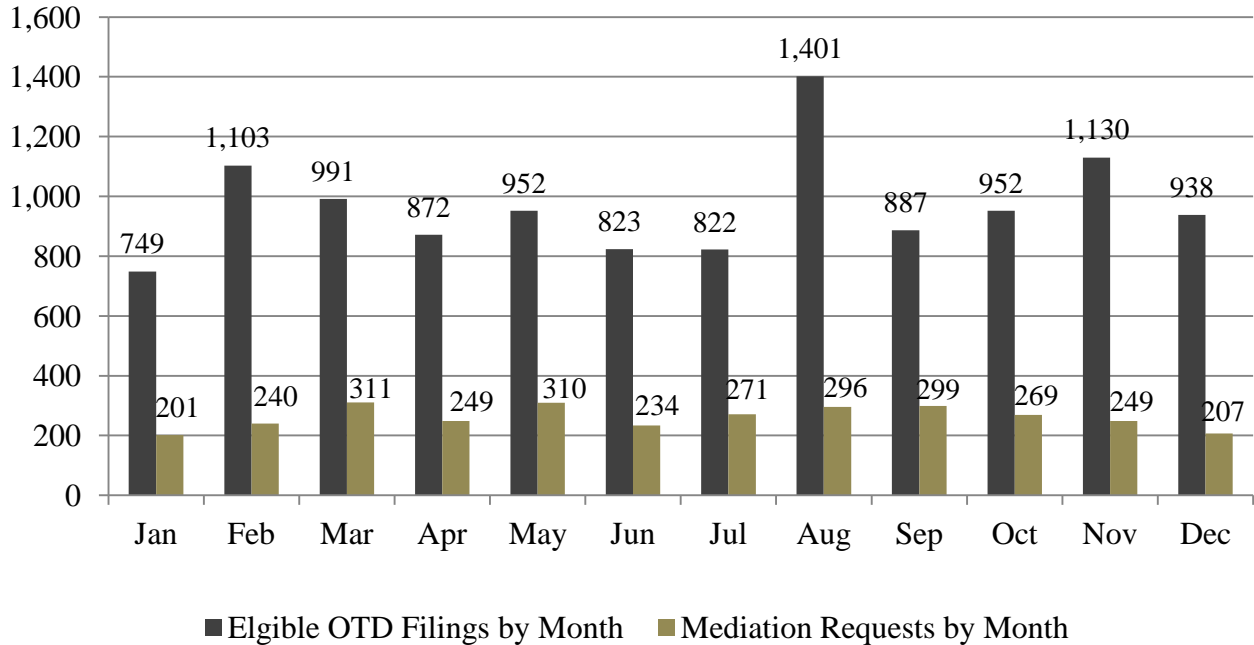
Both the grantor or mortgagor and the secured party, or a representative, must be present at the foreclosure mediation. The parties and the mediator must address loss mitigation programs that may be applicable to the loan secured by the mortgage or deed of trust that is the subject of the foreclosure action. OAH must file a report with the court stating the mediation's outcome by a specified date. If no agreement is reached at the foreclosure mediation, the foreclosure attorney may schedule the foreclosure sale, and the grantor or mortgagor may file a motion to stay the sale if filed by a specified date.

A homeowner may also have the option of electing prefile mediation, which occurs prior to the filing of an OTD or complaint to foreclose. A secured party is not required to offer prefile mediation and may only offer it if the property is owner occupied. The total fee for prefile mediation is \$350.

**Background:** As of January 2013, 5,042 mediation requests, or 25% of eligible OTDs, have been made by grantors or mortgagors. **Exhibit 1** illustrates the number of mediation requests and eligible OTD filings for calendar 2012.

The Request for Waiver of Filing Fee for Foreclosure Mediation form is currently located on the Judiciary's website. A grantor or mortgagor must deliver the form along with a Request for Mediation form to the appropriate circuit court clerk. If the court does not grant the fee waiver, the court must specify the required amount of payment and the amount of time, not to exceed 10 days, within which the grantor or mortgagor must pay. The basis for granting a waiver or reduction is the Maryland Legal Services Corporation's eligibility criteria, specifically that the grantor's or mortgagor's income is below 50% of the State median.

**Exhibit 1**  
**Mediation-eligible Orders to Docket and Mediation Requests**  
**Calendar 2012**



Source: Department of Labor, Licensing, and Regulation; Department of Housing and Community Development

**State Fiscal Effect:** Special fund revenues decrease minimally for DHCD in fiscal 2014 and subsequent years to account for the decrease in postfile mediation filing fees paid by grantors or mortgagors. Given the relatively new option of prefile mediation and the unpredictability of foreclosure rates, the amount of the decrease is not quantifiable. However, because the Request for Waiver of Filing Fee for Foreclosure Mediation form is already available online, any decrease in DHCD special fund revenues is likely to be minimal.

**Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Housing and Community Development; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Maryland Legal Services Corporation; Department of Legislative Services

**Fiscal Note History:** First Reader - March 5, 2013  
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