

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

House Bill 274

(Delegate Lafferty, *et al.*)

Environmental Matters

Judicial Proceedings

**Residential Property - Statute of Limitations for Certain Specialties and Motion
for Certain Deficiency Judgments**

This bill reduces the time period allowed for the filing of a civil action, from 12 years to 3 years, for the specialties of (1) a deed of trust; (2) a mortgage; or (3) a promissory note that has been signed under seal and secures or is secured by owner-occupied residential property. The bill authorizes a secured party, or an appropriate party in interest, within three years after the final ratification of the auditor's report following a foreclosure sale, to file a motion for a deficiency judgment if the proceeds of the sale, after deducting all costs and expenses allowed by the court, are insufficient to satisfy the debt and accrued interest. The bill requires the party to serve the motion in accordance with the Maryland Rules. The filing of a motion for deficiency judgment as specified in the bill constitutes the sole post-ratification remedy available to a secured party or party in interest for breach of a covenant contained in a deed of trust, mortgage, or promissory note that secures or is secured by owner-occupied residential property.

The bill takes effect July 1, 2014.

Fiscal Summary

State Effect: None. The change is procedural in nature and does not directly affect governmental finances.

Local Effect: None. The change is procedural in nature and does not directly affect governmental finances.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill applies prospectively to any cause of action that arises on or after July 1, 2014. Even so, a cause of action to collect the unpaid balance due on a deed of trust, mortgage, or promissory note on owner-occupied residential property that accrues before July 1, 2014, and is not otherwise barred, must be filed within 12 years after the date the action accrues or before July 1, 2017, whichever occurs first. Likewise, a motion for deficiency judgment on owner-occupied residential property for which an auditor's report has final ratification before July 1, 2014, and is not otherwise barred, must be filed within three years after the date of the final ratification or before July 1, 2017, whichever occurs first.

Current Law:

Specialties: A civil action must be filed within three years from the date it accrues, unless otherwise provided by State law. State law provides a longer statute of limitations for filing civil actions for specialties, including a promissory note or other instrument under seal; a bond, except a public officer's bond; a judgment; a recognizance; and a contract under seal. With the exception of a specialty taken for the use of the State, a civil action for a specialty must be filed within 12 years after the cause of action accrues, or within 12 years from the date of the death of the last to die of the principal debtor or creditor, whichever is sooner. *Black's Law Dictionary* defines a "specialty" as (1) "a contract under seal" or (2) "a writing sealed and delivered, containing some agreement," including one "given as a security for the payment of a debt, in which such debt is particularly specified."

Deficiency Judgments: Under the Maryland Rules, within 30 days after a foreclosure sale of property, the person authorized to make the sale must file a complete report of the sale with the court. A party or the holder of a subordinate interest in the property may file exceptions to the sale. The court must ratify the sale if (1) the time for filing exceptions has expired and exceptions to the report either were not filed or were filed but overruled and (2) the court is satisfied that the sale was fairly and properly made. Upon ratification of the sale, the court may refer the matter to an auditor to state an account.

At any time after the sale and before final ratification of the auditor's report, any person claiming an interest in the property or in the proceeds of the sale of the property may file an application for the payment of that person's claim from the surplus proceeds of the sale. Within three years after the final ratification of the auditor's report, a secured party, or any appropriate party in interest, may file a motion for a deficiency judgment if the proceeds of the sale, after deducting all costs and expenses allowed by the court, are insufficient to satisfy the debt and accrued interest.

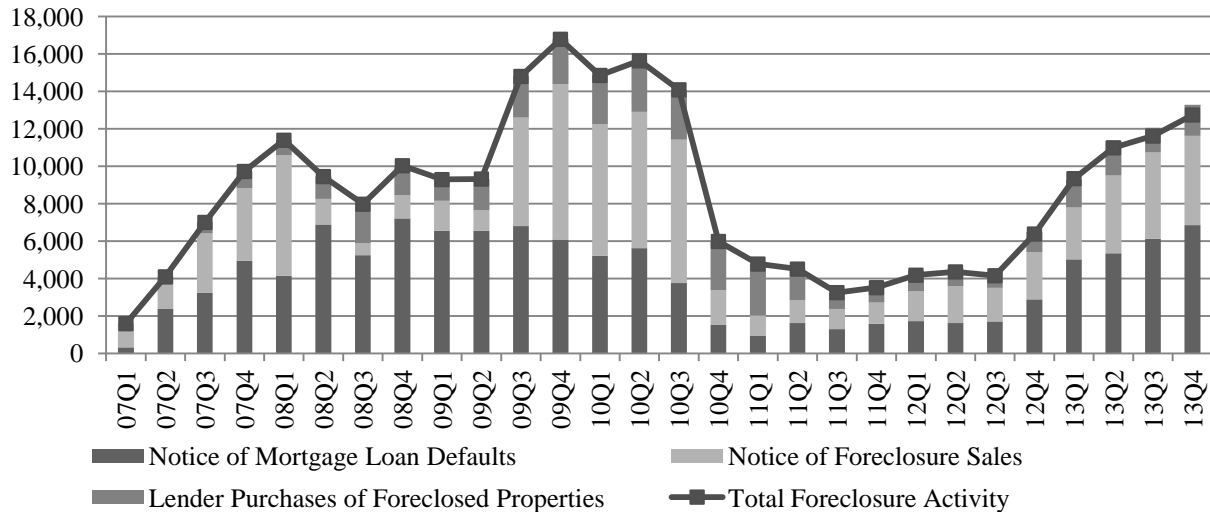
Money Judgments: Under Maryland Rules 2-625 and 3-625, a money judgment expires 12 years from the date of either the entry of the judgment or the most recent renewal. At any time before expiration of the judgment, the judgment holder may have a judgment renewed for an additional 12-year period. In practice, one such renewal may be filed.

Background: In Maryland, debt collectors may have as long as 36 years to pursue a judgment after a foreclosure: up to 12 years to file a civil action, 12 years following a deficiency judgment to collect, and another 12 years to collect if a notice of renewal is filed. According to the *Washington Post*, the District of Columbia and 40 states, including Maryland and Virginia, allow deficiency judgments. Of those states that do allow deficiency judgments, statutes of limitation range from the time of foreclosure to 20 years, with at least 12 states requiring a judgment be sought within three months and 3 states (Illinois, Kansas and South Carolina) requiring deficiency judgments to be sought at the time of foreclosure.

The Maryland Consumer Rights Coalition (MCRC) estimates that, since 2008, at least 400 deficiency collection cases have been pursued in Maryland with 120 deficiency collection cases in 2012 and 57 cases in the first half of 2013. The majority of cases have occurred in Prince George's County, Baltimore City, Montgomery County, and Baltimore County. According to MCRC, the median deficiency is \$88,000, with the average varying greatly among local jurisdictions.

Foreclosure Trends: The number of foreclosure events in Maryland has spiked markedly in three separate periods: the latter half of 2007, in 2009, and the latter half of 2012 through 2013. Foreclosure events encompass real estate-owned purchases (property acquired by a lender as a result of an unsuccessful foreclosure sale on the property), notice of foreclosure sales, and notices of mortgage loan default. After the period of high rates of foreclosures in 2009, the number of property foreclosures decreased significantly from 42,446 in 2010 to 14,321 in 2011. However, property foreclosures rose in 2012, totaling 17,126, up 18.8% from 2011 levels. Foreclosure activity began a more rapid increase in the fourth quarter of 2012, with the number of foreclosure events totaling 6,381. This rapid increase in foreclosure activity continued in 2013 with foreclosure activity reaching the highest level in three years during the fourth quarter. These trends are exhibited in **Exhibit 1**.

Exhibit 1
State Foreclosure Events
2007-2013



Source: Department of Housing and Community Development

The dramatic decrease in 2011 was due, in part, to two factors: Maryland’s response to the foreclosure crisis and the delay by mortgage servicers to begin foreclosure procedures until the results of a foreclosure settlement between five of the largest lenders and the U.S. government were known. The results of the National Mortgage Settlement were announced in February 2012. The uncertainty surrounding the settlement and Maryland’s new increased consumer protections created a backlog of foreclosures which lenders have now begun to address. In the fourth quarter of 2013, Maryland had the second highest foreclosure rate in the nation. The Department of Housing and Community Development attributes the surge in foreclosure activity that began in 2012 to a “rebound in the housing market which encouraged lenders to return inventory of seriously delinquent loans to the market at an increasing pace” allowing servicers to clear the backlog.

Additional Information

Prior Introductions: None.

Cross File: SB 708 (Senator Raskin, *et al.*) – Judicial Proceedings.

Information Source(s): Baltimore City; Montgomery and Prince George’s counties; State Department of Assessments and Taxation; Office of the Attorney General (Consumer Protection Division); Department of Housing and Community Development;
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Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Federal Housing Finance Agency; *Black's Law Dictionary*; Maryland Consumer Rights Coalition; *The Washington Post*; Department of Legislative Services

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Analysis by: Joshua A. Lowery

Direct Inquiries to:
(410) 946-5510
(301) 970-5510