

HOUSE BILL 1046

N1

71r0624

By: **Delegate Holmes**

Introduced and read first time: February 8, 2017

Assigned to: Environment and Transportation

Committee Report: Favorable

House action: Adopted

Read second time: March 8, 2017

CHAPTER _____

1 AN ACT concerning

2 **Residential Property – Foreclosure Process – Filing Requirements – Mediation**
3 **Procedures**

4 FOR the purpose of altering the timing requirements for filing an action to foreclose a
5 mortgage or deed of trust on residential property under certain circumstances;
6 authorizing the Office of Administrative Hearings to hold a prehearing conference
7 before a prefile mediation session under certain circumstances; authorizing the
8 Office of Administrative Hearings to hold a prehearing conference before a postfile
9 mediation session under certain circumstances; altering the rules of procedure for
10 contested cases of the Office of Administrative Hearings that govern a foreclosure
11 mediation under certain circumstances; and generally relating to the foreclosure
12 process for residential property.

13 BY repealing and reenacting, with amendments,
14 Article – Real Property
15 Section 7–105.1(b), (d), (k), and (l)
16 Annotated Code of Maryland
17 (2015 Replacement Volume and 2016 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
19 That the Laws of Maryland read as follows:

Article – Real Property

20
21 7–105.1.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (b) (1) Except as provided in paragraph (2) of this subsection, an action to
2 foreclose a mortgage or deed of trust on residential property may not be filed until the later
3 of:

4 (i) [90] **120** days after a default in a condition on which the
5 mortgage or deed of trust provides that a sale may be made; or

6 (ii) 45 days after the notice of intent to foreclose required under
7 subsection (c) of this section is sent.

8 (2) (i) The secured party may petition the circuit court for leave to
9 immediately commence an action to foreclose the mortgage or deed of trust if:

10 1. The loan secured by the mortgage or deed of trust was
11 obtained by fraud or deception;

12 2. No payments have ever been made on the loan secured by
13 the mortgage or deed of trust;

14 3. The property subject to the mortgage or deed of trust has
15 been destroyed; or

16 4. The default occurred after the stay has been lifted in a
17 bankruptcy proceeding.

18 (ii) The court may rule on the petition with or without a hearing.

19 (iii) If the petition is granted, the action may be filed at any time after
20 a default in a condition on which the mortgage or deed of trust provides that a sale may be
21 made and the secured party need not send the written notice of intent to foreclose required
22 under subsection (c) of this section.

23 (d) (1) For owner-occupied residential property, a secured party may offer to
24 participate in prefile mediation with a mortgagor or grantor to whom the secured party has
25 delivered a notice of intent to foreclose.

26 (2) If offered by a secured party, a mortgagor or grantor may elect to
27 participate in prefile mediation.

28 (3) If a mortgagor or grantor elects to participate in prefile mediation, the
29 mortgagor or grantor shall notify the secured party by submitting the application described
30 in subsection (c)(5)(vi) of this section not more than 25 days after the date on which the
31 notice of intent to foreclose is mailed by the secured party.

32 (4) (i) As a precondition to prefile mediation, a mortgagor or grantor
33 shall participate in housing counseling services.

1 (ii) The Department of Housing and Community Development shall
2 prescribe the timing and form of certification of participation in housing counseling
3 services.

4 (5) If a mortgagor or grantor submits an application to participate in prefile
5 mediation to the secured party in accordance with paragraph (3) of this subsection, the
6 secured party shall notify the Office of Administrative Hearings not more than 5 business
7 days after the date on which the secured party receives the application.

8 (6) The Office of Administrative Hearings [shall]:

9 (i) **SHALL SCHEDULE [Schedule]** a prefile mediation session not
10 more than 60 days after the day on which it receives notice by a secured party of an election
11 to participate in prefile mediation; [and]

12 (ii) **SHALL NOTIFY [Notify]** the parties and their attorneys, if any,
13 of the date of the prefile mediation session; **AND**

14 **(III) MAY HOLD A PREHEARING CONFERENCE BEFORE A**
15 **PREFILE MEDIATION SESSION.**

16 (7) By regulation, the Commissioner of Financial Regulation shall:

17 (i) Establish the fee for prefile mediation; and

18 (ii) Prescribe the form and content of the notice about prefile
19 mediation, the application to participate in prefile mediation, and instructions to complete
20 the application.

21 (8) (i) Notwithstanding subsection (b)(1) of this section, if the secured
22 party and grantor or mortgagor elect to participate in prefile mediation, an order to docket
23 or complaint to foreclose may not be filed until the completion of prefile mediation in
24 accordance with this section.

25 (ii) The date that prefile mediation is completed is the date that the
26 Office of Administrative Hearings issues the report describing the results of the prefile
27 mediation.

28 (9) The fee for prefile mediation collected under this subsection shall be
29 distributed to the Housing Counseling and Foreclosure Mediation Fund established under
30 § 4-507 of the Housing and Community Development Article.

31 (10) By regulation, the Commissioner of Financial Regulation shall
32 establish a mediation checklist that describes the matters that shall be reviewed and
33 considered in a prefile mediation.

1 (11) (i) At the commencement of a prefile mediation session, each party
2 shall review the mediation checklist.

3 (ii) The mediator shall mark each item on the mediation checklist as
4 the item is addressed at the prefile mediation session.

5 (iii) At the conclusion of a prefile mediation session, each party shall
6 sign the mediation checklist.

7 (12) If the prefile mediation results in an agreement, the parties shall
8 execute a prefile mediation agreement.

9 (13) In addition to describing the terms of the agreement among the parties,
10 the prefile mediation agreement shall, in 14 point, bold font:

11 (i) Designate the person and address to whom the mortgagor or
12 grantor may provide notice of a change of financial circumstances; and

13 (ii) State that the mortgagor or grantor is not entitled to postfile
14 mediation unless otherwise agreed by the parties.

15 (14) The Office of Administrative Hearings shall draft the prefile mediation
16 agreement and provide a copy of the executed agreement to the parties and their attorneys,
17 if any.

18 (15) The Office of Administrative Hearings shall provide a report of results
19 of mediation to the parties and their attorneys, if any.

20 (16) If a mortgagor or grantor notifies the person designated under
21 paragraph (13) of this subsection of a change of financial circumstances, the designee shall:

22 (i) Determine whether the change of financial circumstances shall
23 alter the mediation agreement or outcome of the prefile mediation; and

24 (ii) Notify the mortgagor or grantor of the determination by
25 first-class mail before any additional action is taken with respect to foreclosure.

26 (17) (i) The parties to the prefile mediation agreement may execute an
27 amended prefile mediation agreement based on a material change of financial
28 circumstances of the mortgagor or grantor.

29 (ii) The secured party shall provide a copy of the executed amended
30 agreement to the mortgagor or grantor.

31 (18) To the extent that a notice of intent to foreclose complies with this
32 section and otherwise is valid under the law, a notice of intent to foreclose issued with

1 respect to a property that has been the subject of prefile mediation continues to be valid for
2 1 year after the date on which the initial prefile mediation agreement is executed by the
3 parties.

4 (19) Nothing in this subsection shall prohibit a secured party and mortgagor
5 or grantor from engaging in loss mitigation by other means.

6 (k) (1) Within 5 days after receipt of a request for postfile mediation, the court
7 shall transmit the request to the Office of Administrative Hearings for scheduling.

8 (2) (i) Within 60 days after transmittal of the request for foreclosure
9 mediation, the Office of Administrative Hearings shall conduct a foreclosure mediation.

10 (ii) For good cause, the Office of Administrative Hearings may
11 extend the time for completing the foreclosure mediation for a period not exceeding 30 days
12 or, if all parties agree, for a longer period of time.

13 **(III) THE OFFICE OF ADMINISTRATIVE HEARINGS MAY HOLD A**
14 **PREHEARING CONFERENCE BEFORE A POSTFILE MEDIATION SESSION.**

15 (3) The Office of Administrative Hearings shall send notice of the
16 scheduled foreclosure mediation to the foreclosure attorney, the secured party, and the
17 mortgagor or grantor.

18 (4) The notice from the Office of Administrative Hearings shall:

19 (i) Include instructions regarding the documents and information,
20 as required by regulations adopted by the Commissioner of Financial Regulation, that must
21 be provided by each party to the other party and to the mediator; and

22 (ii) Require the information and documents to be provided no later
23 than 20 days before the scheduled date of the foreclosure mediation.

24 (l) (1) (i) By regulation, the Commissioner of Financial Regulation shall
25 establish a mediation checklist that describes the matters that shall be reviewed and
26 considered in a postfile mediation.

27 (ii) At the commencement of a postfile mediation session, each party
28 shall review the mediation checklist.

29 (iii) The mediator shall mark each item on the mediation checklist as
30 the item is addressed at the postfile mediation session.

31 (iv) At the conclusion of a postfile mediation session, each party shall
32 sign the mediation checklist.

33 (2) At a foreclosure mediation:

- 1 (i) The mortgagor or grantor shall be present;
- 2 (ii) The mortgagor or grantor may be accompanied by a housing
3 counselor and may have legal representation;
- 4 (iii) The secured party, or a representative of the secured party, shall
5 be present; and
- 6 (iv) Any representative of the secured party must have the authority
7 to settle the matter or be able to readily contact a person with authority to settle the matter.

8 (3) At the foreclosure mediation, the parties and the mediator shall address
9 loss mitigation programs that may be applicable to the loan secured by the mortgage or
10 deed of trust that is the subject of the foreclosure action.

11 (4) The Office of Administrative Hearings shall file a report with the court
12 that states the outcome of the request for foreclosure mediation within the earlier of:

- 13 (i) 7 days after a foreclosure mediation is held; or
- 14 (ii) The end of the 60-day mediation period specified in subsection
15 (k)(2) of this section, plus any extension granted by the Office of Administrative Hearings.

16 (5) Except for **A PREHEARING CONFERENCE**, a request for postponement,
17 or a failure to appear, the rules of procedure for contested cases of the Office of
18 Administrative Hearings do not govern a foreclosure mediation conducted by the Office.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 October 1, 2017.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.