

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 1046

(Delegate Holmes)

Environment and Transportation

Judicial Proceedings

Residential Property - Foreclosure Process - Filing Requirements - Mediation
Procedures

This bill authorizes the Office of Administrative Hearings (OAH) to hold a prehearing conference before (1) a prefile mediation session and (2) a postfile mediation session. The conferences are to be governed by the rules of procedure for contested cases of OAH. The bill also extends the timeline for filing an action to foreclose a mortgage or deed of trust on residential property from 90 days to 120 days after default.

Fiscal Summary

State Effect: Special fund revenues for the Department of Housing and Community Development (DHCD) decrease minimally on an annual basis due to accrued interest that may be lost on loans from the additional delay in the foreclosure process as a result of the bill's provisions. Expenditures are not materially affected. OAH can handle the bill's requirements with existing resources, as discussed below.

Local Effect: The bill is not anticipated to affect local government operations or finances.

Small Business Effect: None.

Analysis

Current Law:

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. Whether an OTD

is appropriate, or a complaint to foreclose, is based 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 90 days after a default in a condition on which the mortgage or deed of trust specifies that a sale may be made, or 45 days after an NOI and accompanying loss mitigation application are 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; or
- the default occurred after the stay has been lifted in a bankruptcy proceeding.

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.

Perquisites for Foreclosure Sales

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 an 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 OAH files its report with the court.

A foreclosure mediation may be extended for good cause by OAH for up to 30 days, unless there is agreement by all parties. 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.

Final Loss Mitigation Affidavit

The final loss mitigation affidavit is made by a person authorized to act on behalf of a secured party of a mortgage or deed of trust on owner-occupied residential property that is the subject of a foreclosure action. The affidavit must certify the completion of the final determination of loss mitigation analysis in connection with the mortgage or deed of trust, and that, if denied, provides an explanation for the denial of a loan modification or other loss mitigation.

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.

Background: The number of foreclosure events on residential property in Maryland has remained stubbornly high, despite national trends downward. DHCD data demonstrates that, in 2016, 14,895 properties were the subject of a notice of mortgage loan default or OTD.

Under federal regulations, if a mortgage is "federally related" then an action to foreclose may be filed no sooner than 120 days after the loan becomes delinquent. Most loans are federally related because most are (1) from a federally regulated or insured lender; (2) related to the U.S. Department of Housing and Urban Development; or (3) intended to be sold to secondary market lenders such as Federal National Mortgage Association (FNMA or Fannie Mae), Government National Mortgage Association (GNMA or Ginnie Mae), and Federal Home Loan Mortgage Corporation (FHLMC or Freddie Mac). As a result, the bill's proposed extension of the foreclosure timeline effectively codifies prevailing practice and reflects federal law with regard to a substantial number of foreclosure actions in the State.

State Revenues: Special fund revenues for DHCD minimally decline in fiscal 2018 and future years due to the longer period required before an action to foreclose a mortgage or deed of trust may be filed. However, as the authorized conferences may alter the outcome of foreclosure actions, there is not enough information to estimate the lost revenue that may be incurred by DHCD. However, the Department of Legislative Services (DLS) advises that any such impact is likely to be minimal.

According to DHCD, special fund revenues decrease by approximately \$75,000 in fiscal 2018, and by approximately \$100,000 annually in the out-years, due to accrued interest lost on loans during the extended foreclosure process. However, DLS notes that this estimate assumes that OAH holds the prehearing conferences as authorized under the bill. The authorized conferences may alter the outcomes of prefile and postfile mediations in a way that reduces the number of foreclosure actions and mitigates the amount of interest lost on housing loans issued by DHCD.

State Expenditures: As the bill authorizes, but does not require, OAH to conduct prehearing conferences, no additional expenditures are incurred. Even so, OAH advises that, because the rules of procedure allow prehearing conferences to be conducted by telephone, OAH anticipates that it will be able to handle any additional prehearing conferences with existing resources.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - February 27, 2017
fn/kdm Third Reader - March 14, 2017

Analysis by: Nathan W. McCurdy

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