

HOUSE BILL 412

N1

11r1660
CF 11r1659

By: **Delegate Niemann**

Introduced and read first time: February 4, 2011

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property – Residential Property Foreclosure Procedures – Lost Note**
3 **Affidavit**

4 FOR the purpose of prohibiting a court, in an action to foreclose a mortgage or deed of
5 trust on residential property, from accepting a certain affidavit in lieu of a copy
6 of the debt instrument unless the affidavit contains certain information; and
7 generally relating to residential property foreclosure procedures.

8 BY repealing and reenacting, without amendments,
9 Article – Real Property
10 Section 7–105.1(d)
11 Annotated Code of Maryland
12 (2010 Replacement Volume and 2010 Supplement)

13 BY adding to
14 Article – Real Property
15 Section 7–105.1(d–1)
16 Annotated Code of Maryland
17 (2010 Replacement Volume and 2010 Supplement)

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

20 **Article – Real Property**

21 7–105.1.

22 (d) An order to docket or a complaint to foreclose a mortgage or deed of trust
23 on residential property shall:

24 (1) Include:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 1 (i) If applicable, the license number of:
- 2 1. The mortgage originator; and
- 3 2. The mortgage lender; and
- 4 (ii) An affidavit stating:
- 5 1. The date on which the default occurred and the
6 nature of the default; and
- 7 2. If applicable, that a notice of intent to foreclose was
8 sent to the mortgagor or grantor in accordance with subsection (c) of this section and
9 the date on which the notice was sent; and
- 10 (2) Be accompanied by:
- 11 (i) The original or a certified copy of the mortgage or deed of
12 trust;
- 13 (ii) A statement of the debt remaining due and payable
14 supported by an affidavit of the plaintiff or the secured party or the agent or attorney
15 of the plaintiff or secured party;
- 16 (iii) A copy of the debt instrument accompanied by an affidavit
17 certifying ownership of the debt instrument;
- 18 (iv) If applicable, the original or a certified copy of the
19 assignment of the mortgage for purposes of foreclosure or the deed of appointment of a
20 substitute trustee;
- 21 (v) If any defendant is an individual, an affidavit that:
- 22 1. The individual is not a servicemember, as defined in
23 the Servicemembers Civil Relief Act, 50 U.S.C. Appendix § 511; or
- 24 2. The action is authorized by the Act;
- 25 (vi) If applicable, a copy of the notice of intent to foreclose;
- 26 (vii) In addition to any other filing fees required by law, a filing
27 fee in the amount of \$300;
- 28 (viii) Subject to subsection (e) of this section:

1 mediation, you must complete the Request for Foreclosure Mediation form that will
2 accompany the lender's final loss mitigation affidavit and mail it to the court and the
3 lender's foreclosure attorney within 15 days after receipt. If you file a Request for
4 Foreclosure Mediation, your property cannot go to sale until at least 15 days after your
5 mediation has been held.

6 You are urged to obtain legal advice and the assistance of a housing counselor to
7 discuss possible loss mitigation programs, foreclosure mediation, and other options to
8 stop the foreclosure sale.

9 If you are interested in selling your home to avoid a foreclosure sale, you may
10 wish to contact a licensed real estate broker or salesperson as soon as possible.

11 Housing counseling and financial assistance programs are available through the
12 Maryland Department of Housing and Community Development. Please call (insert
13 telephone number) for information on available resources.

14 Some people may approach you about "saving" your home. You should be careful
15 about any such promises.

16 The State encourages you to become informed about your options in foreclosure
17 before entering into any agreements with anyone in connection with the foreclosure of
18 your home. There are government agencies and nonprofit organizations that you may
19 contact for helpful information about the foreclosure process. For the name and
20 telephone number of an organization near you, please call the Consumer Protection
21 Division of the Office of the Attorney General of Maryland at (insert telephone
22 number). The State does not guarantee the advice of these organizations.

23 DO NOT DELAY DEALING WITH THE FORECLOSURE BECAUSE YOUR
24 OPTIONS WILL BECOME MORE LIMITED AS TIME PASSES."; and

25 (x) If the order to docket or complaint to foreclose concerns
26 owner-occupied residential property and is accompanied by a final loss mitigation
27 affidavit:

28 1. A request for foreclosure mediation in the form
29 prescribed by regulation adopted by the Commissioner of Financial Regulation; and

30 2. An envelope preprinted with the address of the clerk
31 of the court; and

32 3. An envelope preprinted with the address of the
33 foreclosure attorney.

34 **(D-1) NOTWITHSTANDING ANY OTHER LAW, THE COURT MAY NOT**
35 **ACCEPT A LOST NOTE AFFIDAVIT IN LIEU OF A COPY OF THE DEBT INSTRUMENT**

1 REQUIRED UNDER SUBSECTION (D)(2)(III) OF THIS SECTION, UNLESS THE
2 AFFIDAVIT:

3 (1) LISTS EACH OWNER IN THE CHAIN OF TITLE OF THE DEBT
4 INSTRUMENT AND THE DATE ON WHICH EACH OWNER ACQUIRED OWNERSHIP;

5 (2) STATES WHY A COPY OF THE DEBT INSTRUMENT CANNOT BE
6 PRODUCED; AND

7 (3) DESCRIBES THE GOOD FAITH EFFORTS MADE TO PRODUCE A
8 COPY OF THE DEBT INSTRUMENT.

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 July 1, 2011.