

HOUSE BILL 412

N1

(11r1660)

ENROLLED BILL

— *Environmental Matters/Judicial Proceedings* —

Introduced by **Delegate Niemann**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

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;
7 providing for the application of this Act; and generally relating to residential
8 property foreclosure procedures.

9 BY repealing and reenacting, without amendments,
10 Article – Real Property
11 Section 7–105.1(d)
12 Annotated Code of Maryland
13 (2010 Replacement Volume and 2010 Supplement)

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.

Italics indicate opposite chamber/conference committee amendments.



1 BY adding to
2 Article – Real Property
3 Section 7–105.1(d–1)
4 Annotated Code of Maryland
5 (2010 Replacement Volume and 2010 Supplement)

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

8 **Article – Real Property**

9 7–105.1.

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

12 (1) Include:

13 (i) If applicable, the license number of:

14 1. The mortgage originator; and

15 2. The mortgage lender; and

16 (ii) An affidavit stating:

17 1. The date on which the default occurred and the
18 nature of the default; and

19 2. If applicable, that a notice of intent to foreclose was
20 sent to the mortgagor or grantor in accordance with subsection (c) of this section and
21 the date on which the notice was sent; and

22 (2) Be accompanied by:

23 (i) The original or a certified copy of the mortgage or deed of
24 trust;

25 (ii) A statement of the debt remaining due and payable
26 supported by an affidavit of the plaintiff or the secured party or the agent or attorney
27 of the plaintiff or secured party;

28 (iii) A copy of the debt instrument accompanied by an affidavit
29 certifying ownership of the debt instrument;

1 (iv) If applicable, the original or a certified copy of the
2 assignment of the mortgage for purposes of foreclosure or the deed of appointment of a
3 substitute trustee;

4 (v) If any defendant is an individual, an affidavit that:

5 1. The individual is not a servicemember, as defined in
6 the Servicemembers Civil Relief Act, 50 U.S.C. Appendix § 511; or

7 2. The action is authorized by the Act;

8 (vi) If applicable, a copy of the notice of intent to foreclose;

9 (vii) In addition to any other filing fees required by law, a filing
10 fee in the amount of \$300;

11 (viii) Subject to subsection (e) of this section:

12 1. If the loss mitigation analysis has been completed, a
13 final loss mitigation affidavit in the form prescribed by regulation adopted by the
14 Commissioner of Financial Regulation; and

15 2. If the loss mitigation analysis has not been completed:

16 A. A preliminary loss mitigation affidavit in the form
17 prescribed by regulation adopted by the Commissioner of Financial Regulation;

18 B. The loss mitigation application and a description of
19 the eligibility requirements for loss mitigation programs offered by the secured party
20 as described in subsection (c)(5) of this section;

21 C. Instructions for completing the loss mitigation
22 application, including instructions to return the completed application to the attorney
23 handling the foreclosure; and

24 D. An envelope preprinted with the address of the
25 attorney handling the foreclosure;

26 (ix) A notice to the mortgagor or grantor in substantially the
27 following form, as prescribed by regulation by the Commissioner of Financial
28 Regulation:

29 “NOTICE

30 An action to foreclose the mortgage/deed of trust on the property located at
31 (insert address) has been filed in the Circuit Court for (county).

1 A foreclosure sale of the property may occur at any time after 45 days from the
2 date that this notice is served on you.

3 You may stop the sale and reinstate your mortgage loan by paying all amounts
4 due on your loan, plus fees and costs of the foreclosure action, at any time up to one
5 business day before the sale. Please contact (insert name of authorized agent of
6 secured party) at (insert telephone number) to obtain the amount due to cure the
7 default on your mortgage loan and instructions for delivering the payment.

8 If you own and live in the home that is subject to foreclosure, your lender may
9 be required to conduct an analysis of your loan to see if you qualify for a loan
10 modification or some other loss mitigation. You must apply and provide your lender
11 with specific information as part of this analysis. The results of your lender's analysis
12 of your loan will be provided to you in the form of an affidavit submitted to the court.

13 If your lender determines that you are not eligible for any loan modification or
14 other relief, you have the right to file a request with the court and have foreclosure
15 mediation. This will be a conference with you, someone representing your lender, and
16 a neutral third party to discuss your loan and possible options. To request foreclosure
17 mediation, you must complete the Request for Foreclosure Mediation form that will
18 accompany the lender's final loss mitigation affidavit and mail it to the court and the
19 lender's foreclosure attorney within 15 days after receipt. If you file a Request for
20 Foreclosure Mediation, your property cannot go to sale until at least 15 days after your
21 mediation has been held.

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

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

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

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

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

1 DO NOT DELAY DEALING WITH THE FORECLOSURE BECAUSE YOUR
2 OPTIONS WILL BECOME MORE LIMITED AS TIME PASSES.”; and

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

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

8 2. An envelope preprinted with the address of the clerk
9 of the court; and

10 3. An envelope preprinted with the address of the
11 foreclosure attorney.

12 (D-1) NOTWITHSTANDING ANY OTHER LAW, THE COURT MAY NOT ACCEPT
13 A LOST NOTE AFFIDAVIT IN LIEU OF A COPY OF THE DEBT INSTRUMENT
14 REQUIRED UNDER SUBSECTION (D)(2)(III) OF THIS SECTION, UNLESS THE
15 AFFIDAVIT:

16 (1) ~~LISTS EACH OWNER IN THE CHAIN OF TITLE OF THE DEBT~~
17 ~~INSTRUMENT AND THE DATE ON WHICH EACH OWNER ACQUIRED OWNERSHIP~~
18 ~~IDENTIFIES THE SECURED PARTY AND THE BASIS FOR THE SECURED PARTY'S~~
19 ~~RIGHT TO ENFORCE THE DEBT INSTRUMENT~~ IDENTIFIES THE OWNER OF THE
20 DEBT INSTRUMENT AND STATES FROM WHOM AND THE DATE ON WHICH THE
21 OWNER ACQUIRED OWNERSHIP;

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

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

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
27 construed to apply only prospectively and may not be applied or interpreted to have
28 any effect on or application to any order to docket or complaint to foreclose on
29 residential property filed before July 1, 2011.

30 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take
31 effect July 1, 2011.