

## Chapter 478

(House Bill 412)

AN ACT concerning

### **Real Property – Residential Property Foreclosure Procedures – Lost Note Affidavit**

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

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

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

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

### **Article – Real Property**

7–105.1.

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

- (1) Include:
  - (i) If applicable, the license number of:
    1. The mortgage originator; and
    2. The mortgage lender; and

## (ii) An affidavit stating:

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

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

## (2) Be accompanied by:

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

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

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

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

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

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

2. The action is authorized by the Act;

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

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

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

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

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

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

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

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

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

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

#### “NOTICE

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

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

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

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

If your lender determines that you are not eligible for any loan modification or other relief, you have the right to file a request with the court and have foreclosure mediation. This will be a conference with you, someone representing your lender, and a neutral third party to discuss your loan and possible options. To request foreclosure mediation, you must complete the Request for Foreclosure Mediation form that will accompany the lender's final loss mitigation affidavit and mail it to the court and the lender's foreclosure attorney within 15 days after receipt. If you file a Request for

Foreclosure Mediation, your property cannot go to sale until at least 15 days after your mediation has been held.

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

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

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

Some people may approach you about “saving” your home. You should be careful about any such promises.

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

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

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

1. A request for foreclosure mediation in the form prescribed by regulation adopted by the Commissioner of Financial Regulation; and
2. An envelope preprinted with the address of the clerk of the court; and
3. An envelope preprinted with the address of the foreclosure attorney.

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

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

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

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

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

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

Approved by the Governor, May 19, 2011.