

SENATE BILL 206

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11r0718
CF 11r2134

By: **Senator Frosh**
Introduced and read first time: January 26, 2011
Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property – Residential Property Foreclosure Procedures – Secured**
3 **Party**

4 FOR the purpose of defining the term “secured party” for purposes of provisions of law
5 governing actions to foreclose certain mortgages and deeds of trust; and
6 generally relating to foreclosure procedures.

7 BY repealing and reenacting, with amendments,
8 Article – Real Property
9 Section 7–105.1
10 Annotated Code of Maryland
11 (2010 Replacement Volume and 2010 Supplement)

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

14 **Article – Real Property**

15 7–105.1.

16 (a) (1) In this section the following words have the meanings indicated.

17 (2) “Final loss mitigation affidavit” means an affidavit that:

18 (i) Is made by a person authorized to act on behalf of a secured
19 party of a mortgage or deed of trust on owner–occupied residential property that is the
20 subject of a foreclosure action;

21 (ii) Certifies the completion of the final determination of loss
22 mitigation analysis in connection with the mortgage or deed of trust; and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



1 (iii) If denied, provides an explanation for the denial of a loan
2 modification or other loss mitigation.

3 (3) “Foreclosure mediation” means a conference at which the parties in
4 a foreclosure action, their attorneys, additional representatives of the parties, or a
5 combination of those persons appear before an impartial individual to discuss the
6 positions of the parties in an attempt to reach agreement on a loss mitigation program
7 for the mortgagor or grantor.

8 (4) “Housing counseling services” means assistance provided to
9 mortgagors or grantors by nonprofit and governmental entities that are identified on a
10 list maintained by the Department of Housing and Community Development.

11 (5) “Loss mitigation analysis” means an evaluation of the facts and
12 circumstances of a loan secured by owner–occupied residential property to determine:

13 (i) Whether a mortgagor or grantor qualifies for a loan
14 modification; and

15 (ii) If there will be no loan modification, whether any other loss
16 mitigation program may be made available to the mortgagor or grantor.

17 (6) “Loss mitigation program” means an option in connection with a
18 loan secured by owner–occupied residential property that:

19 (i) Avoids foreclosure through loan modification or other
20 changes to existing loan terms that are intended to allow the mortgagor or grantor to
21 stay in the property;

22 (ii) Avoids foreclosure through a short sale, deed in lieu of
23 foreclosure, or other alternative that is intended to simplify the mortgagor’s or
24 grantor’s relinquishment of ownership of the property; or

25 (iii) Lessens the harmful impact of foreclosure on the mortgagor
26 or grantor.

27 (7) “Owner–occupied residential property” means residential property
28 in which at least one unit is occupied by an individual who:

29 (i) Has an ownership interest in the property; and

30 (ii) Uses the property as the individual’s primary residence.

31 (8) “Preliminary loss mitigation affidavit” means an affidavit that:

32 (i) Is made by a person authorized to act on behalf of a secured
33 party of a mortgage or deed of trust on owner–occupied residential property that is the
34 subject of a foreclosure action;

1 (ii) Certifies the status of an incomplete loss mitigation analysis
2 in connection with the mortgage or deed of trust; and

3 (iii) Includes reasons why the loss mitigation analysis is
4 incomplete.

5 (9) "Residential property" means real property improved by four or
6 fewer single family dwelling units that are designed principally and are intended for
7 human habitation.

8 (10) (I) "SECURED PARTY" MEANS THE OWNER OF A DEBT
9 INSTRUMENT SECURED BY A MORTGAGE OR DEED OF TRUST ON RESIDENTIAL
10 PROPERTY.

11 (II) "SECURED PARTY" DOES NOT INCLUDE MORTGAGE
12 ELECTRONIC REGISTRATION SYSTEMS, INC. OR ANY OTHER SIMILAR REGISTRY
13 OR DATABASE THAT TRACKS MORTGAGE LOAN SERVICERS OR OWNERS.

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

17 (i) 90 days after a default in a condition on which the mortgage
18 or deed of trust provides that a sale may be made; or

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

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

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

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

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

29 4. The default occurred after the stay has been lifted in a
30 bankruptcy proceeding.

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

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

5 (c) (1) Except as provided in subsection (b)(2)(iii) of this section, at least
6 45 days before the filing of an action to foreclose a mortgage or deed of trust on
7 residential property, the secured party shall send a written notice of intent to foreclose
8 to the mortgagor or grantor and the record owner.

9 (2) The notice of intent to foreclose shall be sent:

10 (i) By certified mail, postage prepaid, return receipt requested,
11 bearing a postmark from the United States Postal Service; and

12 (ii) By first-class mail.

13 (3) A copy of the notice of intent to foreclose shall be sent to the
14 Commissioner of Financial Regulation.

15 (4) The notice of intent to foreclose shall:

16 (i) Be in the form that the Commissioner of Financial
17 Regulation prescribes by regulation; and

18 (ii) Contain:

19 1. The name and telephone number of:

20 A. The secured party;

21 B. The mortgage servicer, if applicable; and

22 C. An agent of the secured party who is authorized to
23 modify the terms of the mortgage loan;

24 2. The name and license number of the Maryland
25 mortgage lender and mortgage originator, if applicable;

26 3. The amount required to cure the default and reinstate
27 the loan, including all past due payments, penalties, and fees;

28 4. A statement recommending that the mortgagor or
29 grantor seek housing counseling services;

30 5. The telephone number and the Internet address of
31 nonprofit and government resources available to assist mortgagors and grantors facing
32 foreclosure, as identified by the Commissioner of Financial Regulation;

1 6. An explanation of the Maryland foreclosure process
2 and time line, as prescribed by the Commissioner of Financial Regulation; and

3 7. Any other information that the Commissioner of
4 Financial Regulation requires by regulation.

5 (5) The notice of intent to foreclose shall be accompanied by:

6 (i) A loss mitigation application:

7 1. For loss mitigation programs that are applicable to
8 the loan secured by the mortgage or deed of trust that is the subject of the foreclosure
9 action; or

10 2. If the secured party does not have its own loss
11 mitigation application, in the form prescribed by the Commissioner of Financial
12 Regulation;

13 (ii) Instructions for completing the loss mitigation application
14 and a telephone number to call to confirm receipt of the application;

15 (iii) A description of the eligibility requirements for the loss
16 mitigation programs offered by the secured party that may be applicable to the loan
17 secured by the mortgage or deed of trust that is the subject of the foreclosure action;
18 and

19 (iv) An envelope preprinted with the address of the person
20 responsible for conducting loss mitigation analysis on behalf of the secured party for
21 the loan secured by the mortgage or deed of trust that is the subject of the foreclosure
22 action.

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

25 (1) Include:

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

27 1. The mortgage originator; and

28 2. The mortgage lender; and

29 (ii) An affidavit stating:

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

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

4 (2) Be accompanied by:

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

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

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

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

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

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

18 2. The action is authorized by the Act;

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

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

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

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

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

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

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

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

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

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

9 “NOTICE

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

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

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

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

24 If your lender determines that you are not eligible for any loan modification or
25 other relief, you have the right to file a request with the court and have foreclosure
26 mediation. This will be a conference with you, someone representing your lender, and
27 a neutral third party to discuss your loan and possible options. To request foreclosure
28 mediation, you must complete the Request for Foreclosure Mediation form that will
29 accompany the lender’s final loss mitigation affidavit and mail it to the court and the
30 lender’s foreclosure attorney within 15 days after receipt. If you file a Request for
31 Foreclosure Mediation, your property cannot go to sale until at least 15 days after your
32 mediation has been held.

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

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

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

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

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

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

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

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

20 2. An envelope preprinted with the address of the clerk
21 of the court; and

22 3. An envelope preprinted with the address of the
23 foreclosure attorney.

24 (e) Only for purposes of a final loss mitigation affidavit that is filed with an
25 order to docket or complaint to foreclose, a loss mitigation analysis is not considered
26 complete if the reason for the denial or determination of ineligibility is due to the
27 inability of the secured party to:

28 (1) Establish communication with the mortgagor or grantor; or

29 (2) Obtain all documentation and information necessary to conduct the
30 loss mitigation analysis.

31 (f) (1) A copy of the order to docket or complaint to foreclose on
32 residential property and all other papers filed with it shall be served by:

33 (i) Personal delivery of the papers to the mortgagor or grantor;

34 or

1 (ii) Leaving the papers with a resident of suitable age and
2 discretion at the mortgagor's or grantor's dwelling house or usual place of abode.

3 (2) If at least two good faith efforts to serve the mortgagor or grantor
4 under paragraph (1) of this subsection on different days have not succeeded, the
5 plaintiff may effect service by:

6 (i) Filing an affidavit with the court describing the good faith
7 efforts to serve the mortgagor or grantor; and

8 (ii) 1. Mailing a copy of the order to docket or complaint to
9 foreclose and all other papers filed with it by certified mail, return receipt requested,
10 and first-class mail to the mortgagor's or grantor's last known address and, if
11 different, to the address of the residential property subject to the mortgage or deed of
12 trust; and

13 2. Posting a copy of the order to docket or complaint to
14 foreclose and all other papers filed with it in a conspicuous place on the residential
15 property subject to the mortgage or deed of trust.

16 (3) The individual making service of process under this subsection
17 shall file proof of service with the court in accordance with the Maryland Rules.

18 (g) (1) If the order to docket or complaint to foreclose is accompanied by a
19 preliminary loss mitigation affidavit, the secured party, at least 30 days before the
20 date of a foreclosure sale, shall:

21 (i) File with the court a final loss mitigation affidavit in the
22 form prescribed by regulation adopted by the Commissioner of Financial Regulation;
23 and

24 (ii) Send to the mortgagor or grantor by first class and by
25 certified mail:

26 1. A copy of the final loss mitigation affidavit; and

27 2. A request for foreclosure mediation form and
28 envelopes described in subsection (d)(2)(x) of this section.

29 (2) A final loss mitigation affidavit shall be filed under this subsection
30 no earlier than 28 days after the order to docket or complaint to foreclose is served on
31 the mortgagor or grantor.

32 (h) (1) (i) In a foreclosure action on owner-occupied residential
33 property, the mortgagor or grantor may file with the court a completed request for
34 foreclosure mediation not later than:

1 1. If the final loss mitigation affidavit was delivered
2 along with service of the copy of the order to docket or complaint to foreclose under
3 subsection (f) of this section, 15 days after that service on the mortgagor or grantor; or

4 2. If the final loss mitigation affidavit was mailed as
5 provided in subsection (g) of this section, 15 days after the mailing of the final loss
6 mitigation affidavit.

7 (ii) 1. A request for foreclosure mediation shall be
8 accompanied by a filing fee of \$50.

9 2. The court may reduce or waive the filing fee under
10 subsubparagraph 1 of this subparagraph if the mortgagor or grantor is eligible for a
11 reduction or waiver under the Maryland Legal Services guidelines.

12 (iii) The mortgagor or grantor shall mail a copy of the request for
13 foreclosure mediation to the secured party's foreclosure attorney.

14 (2) (i) The secured party may file a motion to strike the request for
15 foreclosure mediation in accordance with the Maryland Rules.

16 (ii) The motion to strike must be accompanied by an affidavit
17 that sets forth the reasons why foreclosure mediation is not appropriate.

18 (iii) The secured party shall mail a copy of the motion to strike
19 and the accompanying affidavit to the mortgagor or grantor.

20 (iv) There is a presumption that a mortgagor or grantor is
21 entitled to foreclosure mediation unless good cause is shown why foreclosure
22 mediation is not appropriate.

23 (3) (i) The mortgagor or grantor may file a response to the motion
24 to strike within 15 days.

25 (ii) The mortgagor or grantor shall mail a copy of the response
26 to the foreclosure attorney.

27 (iii) If the court grants the motion to strike, the court shall
28 instruct the Office of Administrative Hearings to cancel any scheduled mediation.

29 (i) (1) Within 5 days after receipt of a request for foreclosure mediation,
30 the court shall transmit the request to the Office of Administrative Hearings for
31 scheduling.

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

1 (ii) For good cause, the Office of Administrative Hearings may
2 extend the time for completing the foreclosure mediation for a period not exceeding 30
3 days.

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

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

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

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

14 (j) (1) At a foreclosure mediation:

15 (i) The mortgagor or grantor shall be present;

16 (ii) The mortgagor or grantor may be accompanied by a housing
17 counselor and may have legal representation;

18 (iii) The secured party, or a representative of the secured party,
19 shall be present; and

20 (iv) Any representative of the secured party must have the
21 authority to settle the matter or be able to readily contact a person with authority to
22 settle the matter.

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

26 (3) The Office of Administrative Hearings shall file a report with the
27 court that states the outcome of the request for foreclosure mediation within the
28 earlier of:

29 (i) 5 days after a foreclosure mediation is held; or

30 (ii) The end of the 60-day mediation period specified in
31 subsection (i)(2) of this section, plus any extension granted by the Office of
32 Administrative Hearings.

1 (4) Except for a request for postponement, the rules of procedure for
2 contested cases of the Office of Administrative Hearings do not govern a foreclosure
3 mediation conducted by the Office.

4 (k) (1) If the parties do not reach an agreement at the foreclosure
5 mediation, or the 60-day mediation period expires without an extension granted by
6 the Office of Administrative Hearings, the foreclosure attorney may schedule the
7 foreclosure sale.

8 (2) (i) Subject to subparagraphs (ii), (iii), and (iv) of this
9 paragraph, the mortgagor or grantor may file a motion to stay the foreclosure sale.

10 (ii) A motion to stay under this paragraph shall be filed within
11 15 days after:

12 1. The date the foreclosure mediation is held; or

13 2. If no foreclosure mediation is held, the date the Office
14 of Administrative Hearings files its report with the court.

15 (iii) A motion to stay under this paragraph must allege specific
16 reasons why loss mitigation should have been granted.

17 (3) Nothing in this subtitle precludes the mortgagor or grantor
18 from pursuing any other remedy or legal defense available to the mortgagor or
19 grantor.

20 (l) A foreclosure sale of residential property may not occur until:

21 (1) If the residential property is not owner-occupied residential
22 property, at least 45 days after service of process is made under subsection (f) of this
23 section;

24 (2) If the residential property is owner-occupied residential property
25 and foreclosure mediation is not held, the later of:

26 (i) At least 45 days after service of process that includes a final
27 loss mitigation affidavit made under subsection (f) of this section; or

28 (ii) At least 30 days after a final loss mitigation affidavit is
29 mailed under subsection (g) of this section; and

30 (3) If the residential property is owner-occupied residential property
31 and foreclosure mediation is requested, at least 15 days after:

32 (i) The date the foreclosure mediation is held; or

1 (ii) If no foreclosure mediation is held, the date the Office of
2 Administrative Hearings files its report with the court.

3 (m) Notice of the time, place, and terms of a foreclosure sale shall be
4 published in a newspaper of general circulation in the county where the action is
5 pending at least once a week for 3 successive weeks, the first publication to be not less
6 than 15 days before the sale and the last publication to be not more than 1 week before
7 the sale.

8 (n) (1) The mortgagor or grantor of residential property has the right to
9 cure the default by paying all past due payments, penalties, and fees and reinstate the
10 loan at any time up to 1 business day before the foreclosure sale occurs.

11 (2) The secured party or an authorized agent of the secured party
12 shall, on request, provide to the mortgagor or grantor or the mortgagor's or grantor's
13 attorney within a reasonable time the amount necessary to cure the default and
14 reinstate the loan and instructions for delivering the payment.

15 (o) An action for failure to comply with the provisions of this section shall be
16 brought within 3 years after the date of the order ratifying the sale.

17 (p) Revenue collected from the filing fees required under subsections
18 (d)(2)(vii) and (h)(1)(ii) of this section shall be distributed to the Housing Counseling
19 and Foreclosure Mediation Fund established under § 4-507 of the Housing and
20 Community Development Article.

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