

HOUSE BILL 1038

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2lr2613

By: **Delegates Charles, Henson, R. Jones, Landis, Toles, and Turner**

Introduced and read first time: February 10, 2022

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Foreclosure Proceedings – Residential Mortgagors and Grantors – Access to**
3 **Counsel**

4 FOR the purpose of requiring that certain individuals have access to legal representation
5 in certain foreclosure proceedings; establishing the Access to Counsel in Foreclosure
6 Proceedings Program and requiring the Maryland Legal Services Corporation, under
7 the Program, to provide access to legal representation to certain individuals in
8 foreclosure proceedings under certain circumstances; requiring the Maryland Legal
9 Services Corporation to develop a certain pamphlet and the Office of Administrative
10 Hearings to provide individuals in foreclosure proceedings with the pamphlet;
11 requiring the Maryland Legal Services Corporation to designate certain community
12 groups for a certain purpose; establishing the Access to Counsel in Foreclosure
13 Proceedings Task Force; establishing the Access to Counsel in Foreclosure
14 Proceedings Special Fund as a special, nonlapsing fund; increasing the filing fee in
15 a foreclosure action and requiring that a portion of that filing fee be distributed to
16 the Access to Counsel in Foreclosure Proceedings Special Fund; authorizing a local
17 jurisdiction to adopt certain local laws; and generally relating to the right to counsel
18 in housing proceedings.

19 BY repealing and reenacting, with amendments,
20 Article – Real Property
21 Section 7–105.1(e)(2)
22 Annotated Code of Maryland
23 (2015 Replacement Volume and 2021 Supplement)

24 BY repealing and reenacting, without amendments,
25 Article – Real Property
26 Section 7–105.1(m)
27 Annotated Code of Maryland
28 (2015 Replacement Volume and 2021 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



BY adding to

Article – Real Property

Section 7–3A–01 through 7–3A–11 to be under the new subtitle “Subtitle 3A. Access to Legal Representation in Foreclosure Proceedings”

Annotated Code of Maryland

(2015 Replacement Volume and 2021 Supplement)

BY repealing and reenacting, without amendments,

Article – State Finance and Procurement

Section 6–226(a)(2)(i)

Annotated Code of Maryland

(2021 Replacement Volume)

BY repealing and reenacting, with amendments,

Article – State Finance and Procurement

Section 6–226(a)(2)(ii)144. and 145.

Annotated Code of Maryland

(2021 Replacement Volume)

BY adding to

Article – State Finance and Procurement

Section 6–226(a)(2)(ii)146.

Annotated Code of Maryland

(2021 Replacement Volume)

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.

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

(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

1 the mortgage for purposes of foreclosure or the deed of appointment of a substitute trustee;

2 (v) If any defendant is an individual, an affidavit that is in
3 compliance with § 521 of the Servicemembers Civil Relief Act, 50 U.S.C. App. § 501 et seq.;

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

5 (vii) If the secured party and mortgagor or grantor have elected to
6 participate in prefile mediation, the report of the prefile mediation issued by the Office of
7 Administrative Hearings;

8 (viii) If the secured party and the mortgagor or grantor have not
9 elected to participate in prefile mediation, a statement that the parties have not elected to
10 participate in prefile mediation;

11 (ix) In addition to any other filing fees required by law, a filing fee in
12 the amount of [~~\$300~~] **\$600, OF WHICH \$300 SHALL BE DISTRIBUTED TO THE ACCESS**
13 **TO COUNSEL IN FORECLOSURE PROCEEDINGS SPECIAL FUND ESTABLISHED**
14 **UNDER SUBTITLE 3A OF THIS TITLE;** and

15 (x) 1. If the loss mitigation analysis has been completed subject
16 to subsection (g) of this section, a final loss mitigation affidavit in the form prescribed by
17 regulation adopted by the Commissioner of Financial Regulation; and

18 2. If the loss mitigation analysis has not been completed, a
19 preliminary loss mitigation affidavit in the form prescribed by regulation adopted by the
20 Commissioner of Financial Regulation.

21 (m) (1) If the parties do not reach an agreement at the postfile mediation, or
22 the 60-day mediation period expires without an extension granted by the Office of
23 Administrative Hearings, the foreclosure attorney may schedule the foreclosure sale.

24 (2) (i) In the case of postfile mediation, subject to subparagraphs (ii)
25 and (iii) of this paragraph, the mortgagor or grantor may file a motion to stay the
26 foreclosure sale.

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

29 1. The date the postfile mediation is held; or

30 2. If no postfile mediation is held, the date the Office of
31 Administrative Hearings files its report with the court.

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

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

SUBTITLE 3A. ACCESS TO LEGAL REPRESENTATION IN FORECLOSURE PROCEEDINGS.

7-3A-01.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “COMMUNITY GROUP” MEANS A NONPROFIT ENTITY WITH THE CAPACITY TO CONDUCT OUTREACH TO MORTGAGORS AND GRANTORS AND PROVIDE ENGAGEMENT, EDUCATION, AND INFORMATION.

(C) “COVERED INDIVIDUAL” MEANS A MORTGAGOR OR GRANTOR WHO:

(1) OWNS AND OCCUPIES A RESIDENTIAL PROPERTY AS THE MORTGAGOR OR GRANTOR’S PRINCIPAL RESIDENCE; AND

(2) IS A MEMBER OF A HOUSEHOLD WITH AN INCOME THAT IS NOT GREATER THAN 50% OF THE MEDIAN INCOME IN THE STATE AS DETERMINED BY THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES OR ITS SUCCESSOR.

(D) “DESIGNATED ORGANIZATION” MEANS A NONPROFIT ENTITY DESIGNATED BY MLSC WITH THE ABILITY TO PROVIDE LEGAL REPRESENTATION TO COVERED INDIVIDUALS.

(E) “FUND” MEANS THE ACCESS TO COUNSEL IN FORECLOSURE PROCEEDINGS SPECIAL FUND.

(F) “LEGAL REPRESENTATION” INCLUDES ALL REPRESENTATION BY AN ATTORNEY BEYOND BRIEF LEGAL ADVICE AND IS NOT LIMITED TO THE FORMAL ENTRY OF APPEARANCE IN COURT.

(G) “MLSC” MEANS THE MARYLAND LEGAL SERVICES CORPORATION.

(H) “POSTFILE MEDIATION” HAS THE MEANING STATED IN § 7-105.1 OF THIS TITLE.

(I) “PROGRAM” MEANS THE ACCESS TO COUNSEL IN FORECLOSURE PROCEEDINGS PROGRAM.

(J) "TASK FORCE" MEANS THE ACCESS TO COUNSEL IN FORECLOSURE PROCEEDINGS TASK FORCE.

7-3A-02.

A COVERED INDIVIDUAL SHALL HAVE ACCESS TO LEGAL REPRESENTATION AS PROVIDED UNDER THIS SUBTITLE.

7-3A-03.

(A) THERE IS AN ACCESS TO COUNSEL IN FORECLOSURE PROCEEDINGS PROGRAM ADMINISTERED BY MLSC.

(B) THE PURPOSE OF THE PROGRAM IS TO ORGANIZE AND DIRECT SERVICES AND RESOURCES IN ORDER TO PROVIDE ALL COVERED INDIVIDUALS IN THE STATE WITH ACCESS TO LEGAL REPRESENTATION AS REQUIRED UNDER THIS SUBTITLE.

7-3A-04.

(A) UNDER THE PROGRAM, MLSC SHALL PROVIDE FOR ACCESS TO LEGAL REPRESENTATION BY A COVERED INDIVIDUAL FOR A JUDICIAL PROCEEDING UNDER § 7-105.1(M)(2) OF THIS TITLE, INCLUDING THE FIRST APPEAL OF A DECISION IN THE PROCEEDING IF THE DESIGNATED ORGANIZATION DETERMINES THAT THERE ARE SUFFICIENT LEGAL GROUNDS FOR THE APPEAL.

(B) (1) UNDER THE PROGRAM, A DESIGNATED ORGANIZATION SHALL ENSURE THAT A COVERED INDIVIDUAL RECEIVES ACCESS TO LEGAL REPRESENTATION BY AN ATTORNEY IN A PROCEEDING AS REQUIRED UNDER THIS SUBTITLE AS SOON AS POSSIBLE AFTER:

(I) THE DATE A POSTFILE MEDIATION CONCLUDES; OR

(II) IF NO POSTFILE MEDIATION IS HELD, THE DATE THE OFFICE OF ADMINISTRATIVE HEARINGS FILES A REPORT WITH THE COURT.

(2) IF FEASIBLE, LEGAL REPRESENTATION REQUIRED UNDER THIS SUBSECTION SHOULD BEGIN NOT LATER THAN 5 DAYS AFTER THE DATE THAT A POSTFILE MEDIATION CONCLUDES OR THE DATE THAT THE OFFICE OF ADMINISTRATIVE HEARINGS ISSUES A REPORT UNDER PARAGRAPH (1) OF THIS SUBSECTION.

(C) MLSC MAY CONTRACT WITH A DESIGNATED ORGANIZATION TO

1 PROVIDE ALL OR PART OF THE SERVICES REQUIRED UNDER THIS SECTION.

2 **7-3A-05.**

3 (A) MLSC SHALL DEVELOP AN INFORMATIONAL PAMPHLET IN BOTH
4 ENGLISH AND OTHER LANGUAGES MLSC DETERMINES APPROPRIATE:

5 (1) DESCRIBING THE LEGAL RIGHTS OF MORTGAGORS AND
6 GRANTORS AND THE ACCESS TO COUNSEL ESTABLISHED UNDER THIS SUBTITLE;
7 AND

8 (2) PROVIDING INFORMATION ON RESOURCES AVAILABLE TO
9 MORTGAGORS AND GRANTORS.

10 (B) THE OFFICE OF ADMINISTRATIVE HEARINGS SHALL PROVIDE A COPY
11 OF THE PAMPHLET DESCRIBED UNDER SUBSECTION (A) OF THIS SECTION TO
12 MORTGAGORS AND GRANTORS:

13 (1) AT POSTFILE MEDIATION; OR

14 (2) IF NO POSTFILE MEDIATION IS HELD:

15 (i) BY FIRST-CLASS MAIL POSTMARKED NOT LATER THAN 5
16 DAYS BEFORE THE DATE THE OFFICE OF ADMINISTRATIVE HEARINGS FILES ITS
17 REPORT WITH THE COURT; AND

18 (ii) BY ELECTRONIC DELIVERY ON THE DATE THE OFFICE OF
19 ADMINISTRATIVE HEARINGS FILES ITS REPORT WITH THE COURT.

20 (C) MLSC SHALL POST A LINK TO AN ELECTRONIC VERSION OF THE
21 PAMPHLET DESCRIBED UNDER SUBSECTION (A) OF THIS SECTION ON ITS WEBSITE.

22 **7-3A-06.**

23 MLSC SHALL DESIGNATE AND CONTRACT WITH APPROPRIATE COMMUNITY
24 GROUPS TO CONDUCT OUTREACH AND PROVIDE EDUCATION TO MORTGAGORS AND
25 GRANTORS LOCALLY AND THROUGHOUT THE STATE REGARDING THE RIGHTS OF
26 MORTGAGORS AND GRANTORS AND THE ACCESS TO LEGAL REPRESENTATION
27 UNDER THIS SUBTITLE.

28 **7-3A-07.**

29 ON OR BEFORE AUGUST 31 EACH YEAR, MLSC SHALL REPORT TO THE

GOVERNOR AND, IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT
ARTICLE, THE GENERAL ASSEMBLY:

(1) THE NUMBER OF COVERED INDIVIDUALS PROVIDED LEGAL
REPRESENTATION DURING THE PREVIOUS CALENDAR YEAR;

(2) INFORMATION ON AND METRICS EVALUATING CASE OUTCOMES;
AND

(3) A SUMMARY OF THE ENGAGEMENT AND EDUCATION OF
MORTGAGORS AND GRANTORS.

7-3A-08.

(A) THERE IS AN ACCESS TO COUNSEL IN FORECLOSURE PROCEEDINGS
TASK FORCE.

(B) (1) THE TASK FORCE CONSISTS OF UP TO 15 MEMBERS APPOINTED
BY THE OFFICE OF THE ATTORNEY GENERAL AND SHALL INCLUDE:

(I) AT LEAST TWO REPRESENTATIVES OF THE MARYLAND
STATE BAR ASSOCIATION;

(II) AT LEAST TWO REPRESENTATIVES OF HOUSING ADVOCACY
GROUPS OR DESIGNATED ORGANIZATIONS;

(III) AT LEAST TWO REPRESENTATIVES OF THE MARYLAND
JUDICIARY;

(IV) AT LEAST TWO REPRESENTATIVES OF COMMUNITY GROUPS;

(V) AT LEAST TWO REPRESENTATIVES OF MORTGAGE LENDERS
OR BANKING INSTITUTIONS;

(VI) REPRESENTATIVES OF MLSC; AND

(VII) MORTGAGORS, GRANTORS, AND OTHER INTERESTED
CITIZENS.

(2) AT LEAST THREE MEMBERS OF THE TASK FORCE MUST BE
MORTGAGORS OR GRANTORS WHOSE INCOME DOES NOT EXCEED 50% OF THE STATE
MEDIAN INCOME ADJUSTED FOR HOUSEHOLD SIZE.

1 (C) (1) THE ATTORNEY GENERAL SHALL DESIGNATE THE CHAIR OF THE
2 TASK FORCE.

3 (2) THE OFFICE OF THE ATTORNEY GENERAL SHALL PROVIDE STAFF
4 FOR THE TASK FORCE.

5 (D) A MEMBER OF THE TASK FORCE:

6 (1) MAY NOT RECEIVE COMPENSATION AS A MEMBER OF THE TASK
7 FORCE; BUT

8 (2) IS ENTITLED TO REIMBURSEMENT FOR EXPENSES UNDER THE
9 STANDARD STATE TRAVEL REGULATIONS, AS PROVIDED IN THE STATE BUDGET.

10 (E) THE TASK FORCE SHALL:

11 (1) EVALUATE THE PROVISION OF SERVICES UNDER THIS SUBTITLE,
12 INCLUDING THE PERFORMANCE OF DESIGNATED ORGANIZATIONS AND COMMUNITY
13 GROUPS;

14 (2) IDENTIFY AND STUDY ADDITIONAL FUNDING SOURCES;

15 (3) IDENTIFY ADDITIONAL LEGAL SERVICES THAT MAY BE PROVIDED
16 TO COVERED INDIVIDUALS FACING FORECLOSURE PROCEEDINGS; AND

17 (4) MAKE RECOMMENDATIONS ON NECESSARY POLICY AND
18 STATUTORY CHANGES NEEDED TO IMPROVE THE IMPLEMENTATION OF THIS
19 SUBTITLE.

20 (F) ON OR BEFORE JANUARY 1, 2023, AND EACH JANUARY 1 THEREAFTER,
21 THE TASK FORCE SHALL REPORT ITS FINDINGS AND RECOMMENDATIONS TO THE
22 GOVERNOR AND, IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT
23 ARTICLE, THE GENERAL ASSEMBLY.

24 (G) THE TASK FORCE MAY APPLY FOR GRANTS FROM PUBLIC AND PRIVATE
25 ENTITIES TO CARRY OUT THE DUTIES OF THE TASK FORCE.

26 7-3A-09.

27 (A) THERE IS AN ACCESS TO COUNSEL IN FORECLOSURE PROCEEDINGS
28 SPECIAL FUND.

29 (B) THE PURPOSE OF THE FUND IS TO PROVIDE FUNDING TO FULLY

1 IMPLEMENT ACCESS TO LEGAL REPRESENTATION IN FORECLOSURE PROCEEDINGS
2 IN THE STATE.

3 (C) MLSC SHALL ADMINISTER THE FUND.

4 (D) (1) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT
5 SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

6 (2) THE STATE TREASURER SHALL HOLD THE FUND SEPARATELY,
7 AND THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.

8 (E) THE FUND CONSISTS OF:

9 (1) REVENUE DISTRIBUTED TO THE FUND UNDER § 7-105.1(E) OF
10 THIS TITLE;

11 (2) MONEY APPROPRIATED IN THE STATE BUDGET TO THE FUND;

12 (3) INTEREST AND INVESTMENT EARNINGS OF THE FUND; AND

13 (4) ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED FOR
14 THE BENEFIT OF THE FUND.

15 (F) THE FUND MAY BE USED ONLY FOR:

16 (1) SERVICES PROVIDED BY A DESIGNATED ORGANIZATION OR
17 ACTIVITY BY A COMMUNITY GROUP TO IMPLEMENT THE PROGRAM AS PROVIDED IN
18 THIS SUBTITLE, INCLUDING ALL COSTS ASSOCIATED WITH REQUIRED LEGAL
19 REPRESENTATION IN ANY PROCEEDING AND ANY OUTREACH AND EDUCATION
20 ACTIVITIES;

21 (2) IF A LOCAL JURISDICTION ENACTS A PROGRAM AUTHORIZED
22 UNDER THIS SUBTITLE, SERVICES PROVIDED BY THE LOCAL JURISDICTION TO
23 IMPLEMENT ACCESS TO COUNSEL IN FORECLOSURE PROCEEDINGS AS PROVIDED
24 FOR IN THIS SUBTITLE, INCLUDING ALL COSTS ASSOCIATED WITH REQUIRED LEGAL
25 REPRESENTATION IN ANY PROCEEDING AND ANY OUTREACH AND EDUCATION
26 ACTIVITIES;

27 (3) ADMINISTRATIVE EXPENSES OF MLSC; AND

28 (4) EXPENSES RELATED TO THE STUDY AND EVALUATION OF:

29 (I) SERVICES AND ACTIVITIES PROVIDED UNDER THIS

1 SUBTITLE;

2 (II) ADDITIONAL LEGAL SERVICES THAT MAY BE PROVIDED TO
3 COVERED INDIVIDUALS FACING FORECLOSURE PROCEEDINGS; AND

4 (III) FUNDING AMOUNTS AND SOURCES NECESSARY TO FULLY
5 EFFECTUATE ACCESS TO COUNSEL IN FORECLOSURE PROCEEDINGS.

6 (G) THE STATE TREASURER SHALL INVEST THE MONEY OF THE FUND IN
7 THE SAME MANNER AS OTHER STATE MONEY MAY BE INVESTED.

8 (H) EXPENDITURES FROM THE FUND MAY BE MADE ONLY IN ACCORDANCE
9 WITH THE STATE BUDGET.

10 (I) MONEY EXPENDED FROM THE FUND IS SUPPLEMENTAL TO AND IS NOT
11 INTENDED TO TAKE THE PLACE OF FUNDING THAT OTHERWISE WOULD BE
12 APPROPRIATED FOR CIVIL LEGAL SERVICES FROM ANY OTHER SOURCE.

13 7-3A-10.

14 (A) LEGAL REPRESENTATION AS REQUIRED UNDER THIS SUBTITLE SHALL
15 BE PHASED IN OVER TIME IN A MANNER THAT MLSC DETERMINES APPROPRIATE
16 WITH THE GOAL OF FULL IMPLEMENTATION BEFORE OCTOBER 1, 2026.

17 (B) PRIORITY IN FUNDING DURING THE PHASE-IN PERIOD WILL BE GIVEN
18 TO MORTGAGORS AND GRANTORS IN A LOCAL JURISDICTION THAT PROVIDES OR
19 AGREES TO PROVIDE SIGNIFICANT ADDITIONAL LOCAL FUNDING TO EFFECTUATE
20 ACCESS TO COUNSEL IN FORECLOSURE PROCEEDINGS IN THE LOCAL JURISDICTION.

21 (C) ACCESS TO LEGAL REPRESENTATION UNDER THIS SUBTITLE IS
22 SUBJECT TO THE AVAILABILITY OF FUNDING.

23 7-3A-11.

24 (A) A LOCAL JURISDICTION MAY ENACT A LOCAL LAW PROVIDING FOR
25 LEGAL REPRESENTATION IN FORECLOSURE PROCEEDINGS FILED IN THE LOCAL
26 JURISDICTION.

27 (B) IF A LOCAL JURISDICTION ENACTS A LOCAL LAW UNDER SUBSECTION
28 (A) OF THIS SECTION PROVIDING FOR LEGAL REPRESENTATION IN FORECLOSURE
29 PROCEEDINGS SUBSTANTIALLY SIMILAR TO THAT DESCRIBED IN THIS SUBTITLE,
30 MLSC SHALL DIRECT FUNDING THAT WOULD HAVE BEEN ALLOCATED UNDER THIS
31 SUBTITLE FOR THE BENEFIT OF COVERED INDIVIDUALS IN THE LOCAL

JURISDICTION TO THE LOCAL PROGRAM.

Article – State Finance and Procurement

6–226.

(a) (2) (i) Notwithstanding any other provision of law, and unless inconsistent with a federal law, grant agreement, or other federal requirement or with the terms of a gift or settlement agreement, net interest on all State money allocated by the State Treasurer under this section to special funds or accounts, and otherwise entitled to receive interest earnings, as accounted for by the Comptroller, shall accrue to the General Fund of the State.

(ii) The provisions of subparagraph (i) of this paragraph do not apply to the following funds:

144. the Health Equity Resource Community Reserve Fund;

[and]

145. the Access to Counsel in Evictions Special Fund; **AND**

146. THE ACCESS TO COUNSEL IN FORECLOSURE PROCEEDINGS SPECIAL FUND.

SECTION 2. AND BE IT FURTHER ENACTED, That, if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act that can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2022.