

SENATE BILL 724

N1

11r2039
CF HB 1009

By: **Senator Carter**

Introduced and read first time: February 5, 2021

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Mortgage Servicers – Requirements and Prohibitions During and After a State**
3 **of Emergency and Catastrophic Health Emergency**
4 **(Foreclosure Relief Act of 2021)**

5 FOR the purpose of prohibiting a mortgage servicer from commencing or completing an
6 action to foreclose a mortgage or deed of trust under certain circumstances; requiring
7 a certain servicer to grant a forbearance of a mortgage loan under certain
8 circumstances; prohibiting a period of forbearance from lasting more than a certain
9 number of days except under certain circumstances; authorizing a borrower to
10 request a forbearance if the servicer has commenced a certain action; requiring a
11 servicer to notify the court of a certain request for forbearance under certain
12 circumstances; requiring a servicer to notify a borrower of a certain right to
13 mediation under certain circumstances; requiring a certain notice to contain certain
14 information; prohibiting a servicer from assessing certain fees or costs under certain
15 circumstances; prohibiting certain penalties and interest from accruing on a
16 mortgage under certain circumstances; requiring a servicer to provide written notice
17 to a borrower regarding the denial of a request for forbearance during a certain
18 period of time under certain circumstances; providing for the contents of the notice;
19 requiring a servicer to take certain actions and make certain allowances if a request
20 for a forbearance has a defect or is incomplete; requiring a servicer to send to the
21 borrower a statement of denial under certain circumstances; providing that a certain
22 foreclosure sale occurring during a certain period of time is not valid except under
23 certain circumstances; authorizing a servicer to extend a forbearance period for a
24 certain number of days under certain circumstances; authorizing a servicer to
25 shorten a certain forbearance period on request of the borrower; requiring a servicer
26 to disclose and implement certain postforbearance options by a certain date;
27 providing for the limits of certain postforbearance options; authorizing certain
28 postforbearance options to require certain payments under certain circumstances;
29 prohibiting a servicer from furnishing certain information to a consumer reporting
30 agency for a certain amount of time under certain circumstances; requiring a
31 mortgage servicer to communicate certain information in a certain manner under

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



certain circumstances; requiring a servicer to be deemed to be in compliance with the provisions of this Act under certain circumstances; authorizing a borrower to bring an action for certain relief under certain circumstances; authorizing a court to make a certain award; providing that certain rights, remedies, and procedures are in addition to and independent of any other rights, remedies, and procedures; providing that certain provisions of law do not limit or negate certain rights, remedies, or procedures; establishing that a certain waiver is contrary to public policy and is void; requiring a certain servicer to provide written notice by mail to certain borrowers regarding the borrowers' rights under this Act on or before a certain date; defining certain terms; and generally relating to requirements and prohibitions for mortgage servicers during and after a proclamation of a state of emergency and catastrophic health emergency.

BY repealing and reenacting, with amendments,
Article – Real Property
Section 7–105
Annotated Code of Maryland
(2015 Replacement Volume and 2020 Supplement)

BY adding to
Article – Real Property
Section 7–601 through 7–611 to be under the new subtitle “Subtitle 6. Foreclosures
During States of Emergency”
Annotated Code of Maryland
(2015 Replacement Volume and 2020 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.

(a) In this section, “individual” means a natural person.

(b) (1) A mortgage or deed of trust may authorize the sale of the property or declare the borrower’s assent to the passing of a decree for the sale of the property, on default in a condition on which the mortgage or deed of trust provides that a sale may be made.

(2) A power of sale or assent to decree authorized in a mortgage or deed of trust may be exercised only by an individual.

(3) The individual selling the property under a power of sale need not be named in the mortgage or deed of trust.

(4) An error or omission in a mortgage or deed of trust concerning the

1 designation of the trustee or the individual authorized to exercise a power of sale does not
2 invalidate the instrument or the ability of the mortgagee or beneficiary of the deed of trust
3 to appoint an individual to exercise the power of sale.

4 (5) If a mortgage or deed of trust allows for the appointment or substitution
5 of a trustee or an individual authorized to exercise a power of sale, the holder of the
6 mortgage or deed of trust may make the appointments or substitutions from time to time.

7 (c) [A] EXCEPT AS PROVIDED IN § 7-606 OF THIS TITLE, A sale made pursuant
8 to this section, §§ 7-105.1 through 7-105.10 of this subtitle, or the Maryland Rules, after
9 final ratification by the court and grant of the property to the purchaser on payment of the
10 purchase money, has the same effect as if the sale and grant were made under decree
11 between the proper parties in relation to the mortgage or deed of trust and in the usual
12 course of the court, and operates to pass all the title which the borrower had in the property
13 at the time of the recording of the mortgage or deed of trust.

14 **SUBTITLE 6. FORECLOSURES DURING STATES OF EMERGENCY.**

15 **7-601.**

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

18 (B) “MORTGAGE LOAN” MEANS A FEDERALLY BACKED MORTGAGE LOAN OR
19 A NONFEDERALLY BACKED MORTGAGE LOAN.

20 (C) (1) “NEGATIVE FINANCIAL IMPACT” MEANS A SUBSTANTIAL LOSS OF
21 INCOME RESULTING FROM CIRCUMSTANCES NECESSITATING A PROCLAMATION OF
22 A STATE OF EMERGENCY AND CATASTROPHIC HEALTH EMERGENCY.

23 (2) “NEGATIVE FINANCIAL IMPACT” INCLUDES:

24 (I) WITH RESPECT TO AN INDIVIDUAL:

25 1. JOB LOSS;

26 2. REDUCTION IN COMPENSATED HOURS OF WORK;

27 3. CLOSURE OF THE PLACE OF EMPLOYMENT; AND

28 4. THE NEED TO MISS WORK IN ORDER TO CARE FOR A
29 CHILD WHO IS ENGAGED IN VIRTUAL LEARNING AS A RESULT OF THE
30 PROCLAMATION OF THE STATE OF EMERGENCY AND CATASTROPHIC HEALTH
31 EMERGENCY; AND

(II) WITH RESPECT TO A BUSINESS ENTITY:

1. LOSS OR REDUCTION IN BUSINESS;

2. REQUIRED CLOSURE; AND

3. LOSS OF EMPLOYEES, WHETHER TEMPORARY OR PERMANENT.

(D) (1) "SERVICER" MEANS A PERSON WHO SERVICES A MORTGAGE LOAN.

(2) "SERVICER" INCLUDES A MORTGAGOR, GRANTOR, OR SECURED PARTY, IF THE MORTGAGOR, GRANTOR, OR SECURED PARTY SERVICES THE MORTGAGE LOAN.

7-602.

A SERVICER MAY NOT COMMENCE OR COMPLETE AN ACTION TO FORECLOSE A MORTGAGE OR DEED OF TRUST DURING A STATE OF EMERGENCY AND CATASTROPHIC HEALTH EMERGENCY.

7-603.

(A) DURING A STATE OF EMERGENCY AND CATASTROPHIC HEALTH EMERGENCY, IF A BORROWER SUBMITS A REQUEST FOR FORBEARANCE TO THE SERVICER AFFIRMING THAT THE BORROWER HAS EXPERIENCED A NEGATIVE FINANCIAL IMPACT, THE SERVICER SHALL GRANT A FORBEARANCE OF THE MORTGAGE LOAN.

(B) EXCEPT AS PROVIDED IN § 7-606 OF THIS SUBTITLE, THE PERIOD OF FORBEARANCE UNDER THIS SECTION MAY NOT LAST MORE THAN 180 DAYS AFTER THE DATE ON WHICH THE PERIOD OF FORBEARANCE BEGINS.

(C) (1) A BORROWER MAY REQUEST A FORBEARANCE UNDER THIS SECTION IF A SERVICER HAS COMMENCED AN ACTION TO FORECLOSE ON THE PROPERTY OF THE BORROWER.

(2) IF A REQUEST IS MADE UNDER THIS SUBSECTION, THE SERVICER SHALL IMMEDIATELY NOTIFY THE COURT OF THE BORROWER'S REQUEST TO ENTER INTO A FORBEARANCE AGREEMENT AND REQUEST THAT THE ACTION BE STAYED UNTIL THE END OF THE REQUESTED FORBEARANCE PERIOD.

1 **(3) (I) AT THE END OF THE FORBEARANCE PERIOD, AND**
2 **REGARDLESS OF ANY MEDIATION OR OFFER OF MEDIATION DURING THE**
3 **FORBEARANCE PERIOD, THE SERVICER SHALL SUBMIT A NOTICE TO THE**
4 **BORROWER, NOTIFYING THE BORROWER OF THE RIGHT TO REQUEST FURTHER**
5 **MEDIATION.**

6 **(II) A NOTICE REQUIRED UNDER THIS PARAGRAPH SHALL**
7 **INCLUDE:**

8 **1. THE FORM REQUIRED FOR THE BORROWER TO**
9 **REQUEST MEDIATION; AND**

10 **2. PRE-ADDRESSED ENVELOPES NECESSARY FOR THE**
11 **BORROWER TO SEND THE MEDIATION REQUEST FORM TO THE COURT AND TO THE**
12 **SERVICER.**

13 **(III) THE SERVICER MAY NOT ASSESS TO THE BORROWER ANY**
14 **FEES OR COSTS ASSOCIATED WITH MEDIATION PERFORMED IN ACCORDANCE WITH**
15 **THIS PARAGRAPH.**

16 **7-604.**

17 **DURING A STATE OF EMERGENCY OR CATASTROPHIC HEALTH EMERGENCY,**
18 **PENALTIES AND INTEREST MAY NOT ACCRUE BEYOND THE AMOUNTS SCHEDULED**
19 **AND CALCULATED UNDER THE TERMS OF THE MORTGAGE LOAN.**

20 **7-605.**

21 **(A) DURING THE 2 YEARS IMMEDIATELY FOLLOWING THE DATE ON WHICH**
22 **THE STATE OF EMERGENCY IS TERMINATED AND THE CATASTROPHIC HEALTH**
23 **EMERGENCY IS RESCINDED, A SERVICER THAT DENIES A REQUEST FOR**
24 **FORBEARANCE UNDER THIS SUBTITLE SHALL PROVIDE WRITTEN NOTICE TO THE**
25 **BORROWER THAT INDICATES THE REASON OR REASONS FOR THE DENIAL IF:**

26 **(1) THE BORROWER WAS CURRENT ON MORTGAGE PAYMENTS AS OF**
27 **FEBRUARY 1, 2020; AND**

28 **(2) THE BORROWER IS EXPERIENCING A NEGATIVE FINANCIAL**
29 **IMPACT THAT PREVENTS THE BORROWER FROM MAKING TIMELY PAYMENTS ON THE**
30 **MORTGAGE OBLIGATION.**

31 **(B) IF A SERVICER CITES IN THE WRITTEN NOTICE PROVIDED UNDER**

SUBSECTION (A) OF THIS SECTION ANY DEFECT IN THE BORROWER'S REQUEST FOR FORBEARANCE THAT IS CURABLE, INCLUDING ANY MISSING OR INCOMPLETE INFORMATION, THE SERVICER SHALL:

(1) SPECIFICALLY IDENTIFY THE CURABLE DEFECT;

(2) PROVIDE 21 DAYS FROM THE DATE THAT THE WRITTEN NOTICE IS MAILED FOR THE BORROWER TO CURE AN IDENTIFIED DEFECT;

(3) ACCEPT THE BORROWER'S CURED REQUEST FOR FORBEARANCE DURING THE 21-DAY PERIOD UNDER ITEM (2) OF THIS SUBSECTION; AND

(4) RESPOND TO THE BORROWER'S REVISED REQUEST FOR FORBEARANCE WITHIN 5 BUSINESS DAYS AFTER THE SERVICER RECEIVES THE REVISED REQUEST.

(C) IF A SERVICER DENIES A REQUEST FOR FORBEARANCE UNDER THIS SECTION, THE SERVICER SHALL SEND TO THE BORROWER A STATEMENT OF DENIAL.

7-606.

(A) NOTWITHSTANDING § 7-105(C) OF THIS TITLE, A SALE MADE PURSUANT TO §§ 7-105 THROUGH 7-105.10 OF THIS TITLE OR THE MARYLAND RULES DURING THE YEAR IMMEDIATELY FOLLOWING THE DATE ON WHICH A STATE OF EMERGENCY AND CATASTROPHIC HEALTH EMERGENCY IS TERMINATED IS NOT VALID UNLESS:

(1) WITH RESPECT TO RESIDENTIAL PROPERTY SECURING A FEDERALLY BACKED MORTGAGE LOAN, THE SERVICER:

(I) NOT LESS THAN 30 DAYS BEFORE SENDING A NOTICE OF INTENT TO FORECLOSE IN ACCORDANCE WITH § 7-105.1(C) OF THIS TITLE, SENDS A WRITTEN NOTICE TO THE BORROWER INDICATING THE BORROWER'S RIGHT TO REQUEST A FORBEARANCE IN ACCORDANCE WITH THE FEDERAL CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT; AND

(II) OTHERWISE COMPLIES WITH FEDERAL LAW; AND

(2) WITH RESPECT TO ALL OTHER PROPERTY SECURING A MORTGAGE LOAN, THE SERVICER:

(I) NOT LESS THAN 30 DAYS BEFORE SENDING A NOTICE OF INTENT TO FORECLOSE, NOTIFIES THE BORROWER IN WRITING THAT, IF THE BORROWER IS EXPERIENCING A NEGATIVE FINANCIAL IMPACT, THE BORROWER MAY

1 REQUEST A FORBEARANCE OF NOT MORE THAN 180 DAYS, REGARDLESS OF
2 DELINQUENCY STATUS;

3 (II) PROVIDES A REQUESTED FORBEARANCE WITHOUT
4 REQUIRING THE BORROWER TO PROVIDE INFORMATION IN ADDITION TO THE
5 BORROWER'S ATTESTATION OF A NEGATIVE FINANCIAL IMPACT; AND

6 (III) DURING THE FORBEARANCE PERIOD, HALTS ALL FEES,
7 PENALTIES, AND INTEREST BEYOND AMOUNTS SCHEDULED AND CALCULATED
8 UNDER THE TERMS OF THE MORTGAGE LOAN.

9 (B) A SERVICER MAY:

10 (1) EXTEND A FORBEARANCE PERIOD REQUESTED UNDER
11 SUBSECTION (A)(2) OF THIS SECTION FOR AN ADDITIONAL PERIOD OF NOT MORE
12 THAN 180 DAYS IF THE BORROWER REQUESTS THE EXTENSION DURING THE INITIAL
13 FORBEARANCE PERIOD; AND

14 (2) SHORTEN A FORBEARANCE PERIOD OR AN EXTENSION OF THE
15 FORBEARANCE PERIOD ON REQUEST OF THE BORROWER.

16 7-607.

17 (A) (1) WITHIN 1 YEAR AFTER THE DATE ON WHICH A STATE OF
18 EMERGENCY IS TERMINATED, PAYMENT SUBJECT TO A FORBEARANCE SHALL BE
19 ADDED TO THE END OF THE TERM OF THE MORTGAGE LOAN UNLESS OTHERWISE
20 AGREED TO BY THE BORROWER AND THE SERVICER.

21 (2) (I) PRIOR TO THE END OF A FORBEARANCE PERIOD, A
22 SERVICER SHALL DISCLOSE TO THE BORROWER AND IMPLEMENT ANY
23 POSTFORBEARANCE OPTIONS.

24 (II) EXCEPT AS PROVIDED IN SUBPARAGRAPH (III) OF THIS
25 PARAGRAPH, POSTFORBEARANCE OPTIONS UNDER THIS PARAGRAPH MAY NOT
26 REQUIRE THE BORROWER TO, PRIOR TO THE SATISFACTION OF THE MORTGAGE
27 LOAN:

28 1. MAKE A LUMP SUM PAYMENT; OR

29 2. INCREASE A MONTHLY PRINCIPAL AND INTEREST
30 PAYMENT BEYOND THE AMOUNTS SET PRIOR TO THE FORBEARANCE PERIOD.

31 (III) POSTFORBEARANCE OPTIONS UNDER THIS PARAGRAPH

MAY REQUIRE THE BORROWER TO MAKE A LUMP SUM PAYMENT OR INCREASE A MONTHLY PRINCIPAL AND INTEREST PAYMENT IF:

1. FOR AN ADJUSTABLE RATE MORTGAGE LOAN, THERE IS AN ADJUSTMENT OF THE APPLICABLE INDEX; OR

2. THERE IS A REQUIREMENT TO REPLENISH AN ESCROW ACCOUNT ASSOCIATED WITH THE MORTGAGE.

(B) NOTHING IN THIS SECTION SHALL PROHIBIT A BORROWER AND SERVICER FROM ENTERING INTO AN ALTERNATIVE PAYMENT AGREEMENT FOR THE PAYMENTS SUBJECT TO THE FORBEARANCE.

7-608.

A SERVICER MAY NOT FURNISH NEGATIVE MORTGAGE PAYMENT INFORMATION TO A CONSUMER REPORTING AGENCY REGARDING MORTGAGE PAYMENTS SUBJECT TO FORBEARANCE UNDER THIS SUBTITLE UNTIL AT LEAST 1 YEAR AFTER THE DATE ON WHICH THE STATE OF EMERGENCY IS TERMINATED AND THE CATASTROPHIC HEALTH EMERGENCY IS RESCINDED.

7-609.

A SERVICER SHALL COMMUNICATE ABOUT FORBEARANCE AND POSTFORBEARANCE OPTIONS IN THE BORROWER'S PREFERRED LANGUAGE IF THE SERVICER REGULARLY COMMUNICATES WITH ANY BORROWER IN THAT LANGUAGE.

7-610.

A SERVICER SHALL BE DEEMED TO BE IN COMPLIANCE WITH THE PROVISIONS OF THIS SUBTITLE IF:

(1) WITH RESPECT TO A FEDERALLY BACKED MORTGAGE LOAN, THE SERVICER COMPLIES WITH THE PROVISIONS OF THE FEDERAL CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT; AND

(2) WITH RESPECT TO A NONFEDERALLY BACKED MORTGAGE LOAN, THE SERVICER PROVIDES A FORBEARANCE IN ACCORDANCE WITH THE REQUIREMENTS OF THE FEDERAL CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT FOR FEDERALLY BACKED MORTGAGE LOANS.

7-611.

1 **(A) A BORROWER WHO IS HARMED BY A MATERIAL VIOLATION OF THIS**
2 **SUBTITLE MAY BRING AN ACTION FOR INJUNCTIVE RELIEF, DAMAGES,**
3 **RESTITUTION, OR ANY OTHER REMEDY.**

4 **(B) A COURT MAY AWARD REASONABLE ATTORNEY'S FEES AND COSTS TO A**
5 **BORROWER BASED ON A VIOLATION OF THIS SUBTITLE IN WHICH RELIEF IS**
6 **GRANTED, INCLUDING:**

7 **(1) INJUNCTIVE RELIEF AGAINST A SALE; OR**

8 **(2) A TEMPORARY RESTRAINING ORDER.**

9 **(C) (1) THE RIGHTS, REMEDIES, AND PROCEDURES PROVIDED TO**
10 **BORROWERS IN ACCORDANCE WITH THIS SECTION ARE IN ADDITION TO AND**
11 **INDEPENDENT OF ANY OTHER RIGHTS, REMEDIES, OR PROCEDURES AFFORDED**
12 **UNDER ANY OTHER PROVISION OF LAW.**

13 **(2) NOTHING IN THIS SUBTITLE MAY BE CONSTRUED TO ALTER,**
14 **LIMIT, OR NEGATE ANY OTHER RIGHTS, REMEDIES, OR PROCEDURES AFFORDED**
15 **UNDER ANY OTHER PROVISION OF LAW.**

16 **(D) ANY WAIVER BY A BORROWER OF THE PROVISIONS OF THIS SUBTITLE IS**
17 **CONTRARY TO PUBLIC POLICY AND SHALL BE VOID.**

18 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before November 30,
19 2021, each servicer authorized to do business in the State shall provide written notice by
20 mail to each of the servicer's borrowers with a mortgage loan secured by property in the
21 State regarding the borrower's rights under this Act.

22 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 2021.