

SENATE BILL 936

N1

7lr3201

By: **Senator Smith**

Introduced and read first time: February 3, 2017

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Residential Property – Foreclosure Timelines and Procedures**

3 FOR the purpose of altering requirements for a certain final loss mitigation affidavit;
4 altering the timeline for filing an action to foreclose a mortgage or deed of trust on
5 residential property; requiring a certain notice of intent to foreclose to be
6 accompanied by a loss mitigation application for specific loss mitigation programs
7 that are applicable to a certain loan; requiring an order to docket or a complaint to
8 foreclose a mortgage or deed of trust on residential property to include a certain
9 affidavit; increasing the period for which the Office of Administrative Hearings may
10 extend the time for completing foreclosure mediation under certain circumstances;
11 providing that good cause for extending the time for completing foreclosure
12 mediation exists if the Office of Administrative Hearings determines that the
13 secured party has failed to act in good faith, as required by certain provisions of law;
14 requiring any representative of the secured party at a foreclosure mediation to have
15 the authority to settle the matter; providing that a secured party has the sole
16 obligation to provide certain documents and information to the mediator at a
17 foreclosure mediation; requiring a secured party to provide a certain affidavit at a
18 foreclosure mediation; requiring a secured party or a representative of a secured
19 party to act in good faith with respect to transparency and the disclosure of certain
20 information and participation in foreclosure mediation; authorizing the Office of
21 Administrative Hearings to enter certain orders; altering the timeline for a
22 mortgagor or grantor to file a motion to stay a foreclosure sale; requiring a certain
23 notice to a record owner to be sent not later than a certain number of days before the
24 date of a certain sale; providing for the application of this Act; and generally relating
25 to foreclosure timelines and procedures.

26 BY repealing and reenacting, with amendments,
27 Article – Real Property
28 Section 7–105.1(a), (b)(1), (c)(5), (e), and (k) through (m) and 7–105.2(c)
29 Annotated Code of Maryland
30 (2015 Replacement Volume and 2016 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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.

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

(2) (i) “Certified community development financial institution” means
a community development financial institution that is certified by the Community
Development Financial Institutions Fund in the U.S. Department of the Treasury under
12 U.S.C. § 4701 et seq.

(ii) “Certified community development financial institution”
includes any company that controls, is controlled by, or is under common control with a
certified community development financial institution.

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

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

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

**(III) PROVIDES SPECIFIC DETAILS REGARDING ANY EFFORTS BY
THE SECURED PARTY TO ASSIST THE MORTGAGOR OR GRANTOR TO AVOID
FORECLOSURE;**

(IV) DISCLOSES WHETHER:

**1. THE SECURED PARTY RECEIVED A LOSS MITIGATION
APPLICATION FROM THE MORTGAGOR OR GRANTOR;**

2. THE LOSS MITIGATION APPLICATION WAS COMPLETE;

**3. ANY DOCUMENTS WERE MISSING FROM THE LOSS
MITIGATION APPLICATION; AND**

**4. ANY LOSS MITIGATION PROGRAMS ARE STILL
AVAILABLE TO THE MORTGAGOR OR GRANTOR; AND**

1 [(iii)] (v) If denied, provides [an]:

2 1. A CLEAR AND DETAILED explanation for the denial of a
3 loan modification or other loss mitigation; AND

4 2. NOTICE TO THE MORTGAGOR OR GRANTOR OF THE
5 DEADLINE FOR FILING AN APPEAL TO THE LOSS MITIGATION ANALYSIS.

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

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

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

16 (i) Whether a mortgagor or grantor qualifies for a loan modification;
17 and

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

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

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

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

28 (iii) Lessens the harmful impact of foreclosure on the mortgagor or
29 grantor.

30 (8) “Owner–occupied residential property” means residential property in
31 which at least one unit is occupied by an individual who:

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

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

(9) "Postfile mediation" means foreclosure mediation that occurs in accordance with subsection (j) of this section after the date on which the order to docket or complaint to foreclose is filed.

(10) "Prefile mediation" means foreclosure mediation that occurs in accordance with subsection (d) of this section before the date on which the order to docket or complaint to foreclose is filed.

(11) "Preliminary loss mitigation affidavit" means an affidavit that:

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

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

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

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

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

(i) [90] 120 days after a default in a condition on which the mortgage or deed of trust provides that a sale may be made; or

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

(c) (5) For an owner-occupied residential property, the notice of intent to foreclose shall be accompanied by:

(i) A loss mitigation application[:

1. For] **FOR SPECIFIC** loss mitigation programs that are applicable to the loan secured by the mortgage or deed of trust that is the subject of the foreclosure action; [or

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

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

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

(iv) An envelope addressed to the person responsible for conducting loss mitigation analysis on behalf of the secured party for the loan secured by the mortgage or deed of trust that is the subject of the foreclosure action;

(v) If the secured party offers prefile mediation, a notice in the form that the Commissioner of Financial Regulation prescribes by regulation that states that:

1. The secured party offers prefile mediation;

2. The mortgagor or grantor may elect to participate in prefile mediation;

3. The mortgagor or grantor will not be entitled to postfile mediation if the mortgagor or grantor participates in prefile mediation, except as otherwise provided in a prefile mediation agreement;

4. The mortgagor or grantor is required to participate in housing counseling services as a precondition to prefile mediation; and

5. A fee will be charged for the prefile mediation and the amount of the fee; and

(vi) If the secured party offers prefile mediation, an application to participate in prefile mediation and instructions to complete and submit the application, all in the form that the Commissioner of Financial Regulation prescribes by regulation.

(e) 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. 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

B. At the time the notice of intent to foreclose was sent, the contents of the notice of intent to foreclose were accurate; and

(III) AN AFFIDAVIT DISCLOSING, WITH SPECIFICITY:

1. THE RESULTS OF ANY LOSS MITIGATION EFFORTS CONDUCTED PRIOR TO FILING THE ORDER TO DOCKET OR COMPLAINT TO FORECLOSE; AND

2. THE RETENTION AND NONRETENTION OPTIONS FOR WHICH THE LOAN SECURED BY THE MORTGAGE OR DEED OF TRUST MAY BE ELIGIBLE; 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 is in compliance with § 521 of the Servicemembers Civil Relief Act, 50 U.S.C. App. § 501 et seq.;

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

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

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

1 participate in prefile mediation;

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

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

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

10 (k) (1) Within 5 days after receipt of a request for postfile mediation, the court
11 shall transmit the request to the Office of Administrative Hearings for scheduling.

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

14 (ii) 1. For good cause, the Office of Administrative Hearings may
15 extend the time for completing the foreclosure mediation for a period not exceeding [30] 90
16 days or, if all parties agree, for a longer period of time.

17 2. **FOR PURPOSES OF THIS PARAGRAPH, GOOD CAUSE**
18 **EXISTS IF THE OFFICE OF ADMINISTRATIVE HEARINGS DETERMINES THAT THE**
19 **SECURED PARTY HAS FAILED TO ACT IN GOOD FAITH, AS REQUIRED BY SUBSECTION**
20 **(L)(5) OF THIS SECTION.**

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

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

25 (i) Include instructions regarding the documents and information,
26 as required by regulations adopted by the Commissioner of Financial Regulation, that must
27 be provided by [each] **THE SECURED** party to the [other party] **MORTGAGOR OR**
28 **GRANTOR** and to the mediator; and

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

31 (l) (1) (i) By regulation, the Commissioner of Financial Regulation shall
32 establish a mediation checklist that describes the matters that shall be reviewed and
33 considered in a postfile mediation.

(ii) At the commencement of a postfile mediation session, each party shall review the mediation checklist.

(iii) The mediator shall mark each item on the mediation checklist as the item is addressed at the postfile mediation session.

(iv) At the conclusion of a postfile mediation session, each party shall sign the mediation checklist.

(2) At a foreclosure mediation:

(i) The mortgagor or grantor shall be present;

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

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

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

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

(4) (I) AT THE FORECLOSURE MEDIATION, THE SECURED PARTY SHALL HAVE THE SOLE OBLIGATION TO PROVIDE DOCUMENTS AND INFORMATION TO THE MEDIATOR, INCLUDING:

1. ALL DOCUMENTS RELATING TO LOSS MITIGATION RECEIVED BY THE SECURED PARTY FROM THE MORTGAGOR OR GRANTOR;

2. A FULL PAYMENT HISTORY OF THE LOAN SECURED BY THE MORTGAGE OR DEED OF TRUST THAT IS THE SUBJECT OF THE FORECLOSURE ACTION; AND

3. A COMPLETE, UNREDACTED CORRESPONDENCE LOG OF ACCOUNT ACTIVITIES FOR THE LOAN SECURED BY THE MORTGAGE OR DEED OF TRUST THAT IS THE SUBJECT OF THE FORECLOSURE ACTION.

(II) AT THE FORECLOSURE MEDIATION, THE SECURED PARTY SHALL PROVIDE AN AFFIDAVIT DISCLOSING THE SPECIFIC RETENTION AND NONRETENTION OPTIONS FOR WHICH THE LOAN SECURED BY THE MORTGAGE OR

1 DEED OF TRUST MAY BE ELIGIBLE.

2 (5) A SECURED PARTY, OR A REPRESENTATIVE OF THE SECURED
3 PARTY, SHALL ACT IN GOOD FAITH WITH RESPECT TO:

4 (I) TRANSPARENCY AND THE DISCLOSURE OF LOSS
5 MITIGATION PROGRAMS THAT MAY BE APPLICABLE TO THE LOAN SECURED BY THE
6 MORTGAGE OR DEED OF TRUST THAT IS THE SUBJECT OF THE FORECLOSURE
7 ACTION; AND

8 (II) PARTICIPATION IN THE FORECLOSURE MEDIATION.

9 [(4)] (6) The Office of Administrative Hearings shall file a report with the
10 court that states the outcome of the request for foreclosure mediation within the earlier of:

11 (i) 7 days after a foreclosure mediation is held; or

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

14 [(5)] (7) Except for a request for postponement or a failure to appear, the
15 rules of procedure for contested cases of the Office of Administrative Hearings do not govern
16 a foreclosure mediation conducted by the Office.

17 (8) THE OFFICE OF ADMINISTRATIVE HEARINGS MAY ENTER AN
18 ORDER:

19 (I) PROHIBITING A FORECLOSURE SALE FOR A PERIOD NOT
20 EXCEEDING 180 DAYS; OR

21 (II) DEEMING THAT THE SECURED PARTY HAS FAILED TO
22 APPEAR IF A REPRESENTATIVE OF THE SECURED PARTY WITH THE AUTHORITY TO
23 SETTLE THE MATTER IS NOT PRESENT AT THE FORECLOSURE MEDIATION, AS
24 REQUIRED BY PARAGRAPH (2)(IV) OF THIS SUBSECTION.

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

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

31 (ii) [A] UNLESS THERE IS GOOD CAUSE FOR UNTIMELY FILING,
32 A motion to stay under this paragraph shall be filed within 15 days after:

1 1. **[The] IF THERE IS NO ACTIVE LOSS MITIGATION, THE**
2 date the postfile mediation is **[held] CONCLUDED;**

3 **2. IF THERE IS ACTIVE LOSS MITIGATION, THE DATE THE**
4 **SECURED PARTY SENDS NOTICE TO THE MORTGAGOR OR GRANTOR THAT LOSS**
5 **MITIGATION HAS CONCLUDED; or**

6 **[2.] 3.** If no postfile mediation is held, the date the Office of
7 Administrative Hearings files its report with the court.

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

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

12 7–105.2.

13 (c) (1) The written notice shall be sent:

14 (i) By certified mail, postage prepaid, return receipt requested,
15 bearing a postmark from the United States Postal Service, to the record owner; and

16 (ii) By first–class mail.

17 (2) The notice shall state the time, place, and terms of the sale and shall
18 be sent not earlier than 30 days and not later than **[10] 21** days before the date of sale.

19 (3) The person giving the notice shall file in the proceedings:

20 (i) A return receipt; or

21 (ii) An affidavit that:

22 1. The provisions of this subsection have been complied with;
23 or

24 2. The address of the record owner is not reasonably
25 ascertainable.

26 (4) The person authorized to make a sale in an action to foreclose a
27 mortgage or deed of trust is not required to give notice to a record owner whose address is
28 not reasonably ascertainable.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to

1 apply only prospectively and may not be applied or interpreted to have any effect on or
2 application to any foreclosure action filed before the effective date of this Act.

3 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2017.